WOOLLAHRA COUNCIL

DRAFT SUBMISSION ON

IMPROVING THE NSW PLANNING SYSTEM DISCUSSION PAPER

JANUARY 2008

1 Introduction

This is Woollahra Council's submission to the State Government's Discussion Paper *Improving the NSW Planning System*.

Council supports, in principle, reforms that improve efficiency and confidence in the planning system provided such reforms do not—

- substantially erode Council's powers, responsibilities and input to planning decisions that affect our community, or
- compromise the quality of planning outcomes and opportunity for meaningful community involvement in the planning process.

To that end, though the intent of some proposals in the Discussion Paper has merit, Council cannot support specific recommendations in the Paper.

The submission supports, in principle, reforms that will seek to—

- tailor the planning system to avoid the "one size fits all" approach, such as streamlining and tailoring the local environmental plan (LEP) making process and level of consultation consistent with the nature, scale and complexity of the proposal,
- allow Council to approve minor LEPs,
- extend the period for evaluating development applications (DAs) consistent with the complexity of the proposal,
- restrict or eliminate conflict of interest in the private certification process,
- enhance Councils' powers of enforcement for unauthorised work, and
- facilitate greater use of technology through ePlanning initiatives.

However, specific objection, or reservation, due to the lack of detail on the Discussion Paper, is identified with proposals to—

- unreasonably take planning control away from elected local representatives through establishing a new development assessment regime,
- extend exempt and complying development provisions through the introduction of mandatory State-wide complying development codes,
- expand the private certification process commensurate with expanded complying development provisions,
- require Council to seek corporate accreditation in the private certification accreditation process,
- expand Council's responsibility to enforce development consents, whether or not the principal certifying authority (PCA) is an accredited certifier, negating the primary role of the PCA which is to ensure compliance with the development consent and conditions, the carrying out of all the required inspections of the site and the issuing of an Occupation Certificate.
- establish a one stop shop for legal drafting of LEPs within the Department of Planning, removing LEP drafting responsibilities from Council's planning officers,
- erode opportunities for community consultation, particularly at the development assessment stage, and
- generally establish arbitrary benchmark figures as a key performance measure of how well the planning system is operating in the absence of considering planning outcomes and community satisfaction.

Detailed comments are made in section 2 of this submission, addressing key elements and recommendations in the Discussion Paper.

The submission focuses on those reforms that have potential implications for Woollahra Council and its community, predominantly arising from proposals in Chapters 3, 4, 5 and 7 of the Discussion Paper.

2 Response to proposed reforms

2.1 The need for reform

In the first instance Council questions the need for reform, particularly of the scope and magnitude proposed in the Discussion Paper, and is concerned with the Department's selective use of sources, information and statistics to support the reform platform.

For example—

- Comments about delays in the development assessment are heavily weighted towards local government; very little is said about the substantial delays with obtaining comments from government agencies for integrated development. The quality and usefulness of comments from government agencies is also an issue.
- Comparisons of the NSW and Victorian exempt and complying development systems are meaningless without discussion on the effectiveness of such a system in Victoria. For instance, was the system introduced willingly in Victoria or imposed by mandate? Have environmental outcomes suffered?

It is also important to note that no assessment about the effectiveness of the previous reforms has been provided in the Discussion Paper, which seems to imply that the previous reforms have brought about improvements. In particular—

- It is premature to imply that the standard instrument is a successful reform.
- It is also premature to conclude that the subregional strategies will be successful in guiding "the assessment and determination of development applications." Subregional strategies should not fetter Council's responsibilities under section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Another round of extensive reforms, such as those currently proposed, should not be undertaken in the absence of awaiting and assessing the impacts of these more recent changes.

2.2 Changing land use and plan making (Chapter 3 of Discussion Paper)

Plan making is the preparation and adoption of strategies, guidelines, land use zonings, controls and processes to articulate the desired future for a particular spatial area or in relation to a specific issue. The plan making process allows the conversion of strategic planning concepts into the rule sets to be used to ensure sustainable development outcomes can be achieved.

The Department of Planning's intent or purpose of reforms to the plan making system
The reforms seek to simplify the system for making local environmental plans (LEPs) by introducing a new system that is tailored to the scale, risk and complexity of the land use changes, and allows most LEPs to be finalised more quickly. For example the process for preparing a comprehensive area wide LEP is currently the same as that required for a minor amendment or spot rezoning.

The objectives for reforming the plan making system are to:
- Improve efficiency and timeliness
- Provide greater certainty of outcome earlier in the plan making process
- Establish a level of assessment and consultation tailored to the likely impact of the land use changes
- Improve efficiency in relation to State agency referrals

Council's responses to key elements and recommendations in the Discussion Paper
Proposed changes to streamline and tailor the LEP making process and level of consultation consistent with the nature, scale and complexity of the LEP are appropriate however the role of Council as the key decision maker must be maintained, as too meaningful opportunities for community consultation.

Detailed responses to recommendations in the Discussion Paper are provided in the table below.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		**Council's responses to the proposed recommendations**
P1	*Introduce a new system of plan making* Introduce a new system of plan making that is better tailored to the scale, risk, and complexity of land use changes, and allows most LEPs to be finalised more quickly.	▪ Support, in principle, the concept of streamlining and tailoring the LEP making process and level of consultation consistent with the nature, scale and complexity of the LEP. ▪ The Discussion Paper identifies that processing times for LEPs will be reduced by 50 percent. This is an arbitrary figure; any performance measures need to consider other factors such as the quality of planning outcomes and level of community satisfaction.
P2	*Establish a gateway screening system for land use changes* Establish a gateway screening system for proposed LEPs which will provide an upfront assessment of the suitability of an LEP against established criteria.	▪ The gateway screening system has merit, as key decisions are sometimes made too late in the plan making process. However, in creating the gateway system it is important that Council is the key player and most decision making is retained at the local level based principally on local planning objectives.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
	A rezoning, or LEP, would not proceed if it did not meet certain specified criteria. The criteria would vary according to the risks and scale associated with a rezoning or development proposal, and would apply whether initiated by a council, State agency, or private proponent. The gateway process would include: ▪ Upfront assessment of the LEP proposal – proceed or not proceed. ▪ Criteria for the gateway – dependent on the type and scale of the proposal. ▪ A statement on community involvement proposed for the LEP. ▪ Determination of how the LEP should be streamed and assessed. This process could also include could also be used to determine the type and level of community consultation, level of referral to agencies, the appropriate timeframe for making of the LEP and the end approval authority.	▪ The Department of Planning needs to acknowledge that its current intervention in the LEP process through the LEP Review Panel is a current cause of substantial delay to gazettal of LEPs. The proposed reforms may exacerbate this. ▪ In particular, the following concerns are identified— ▪ the Discussion Paper provides limited information on how the gateway criteria will be developed, including the role of Council vis-a-vis that of the Department of Planning. There is a need to retain Council input and ownership in this initial decision making /screening process and for most of the LEPs to be directed/delegated to Council to assess at the gateway stage, with assistance and broad direction from the State Government. Essentially, Council should be the main gate keeper, not the State Government. ▪ the gateway approach appears to be a ramping up of the recent LEP Review Panel process and may further diminish Council's role; in its current format the LEP Review Panel is an encroachment of the State Government into local planning issues and can be counter productive to improving timeframes. This is not supported. ▪ unclear if / what role the Planning Advisory Committee (PAC) will have in the plan making stages. PACs should not be mandatory but could be established in the case of particularly sensitive LEPs. ▪ Table 5 in the Discussion Paper identifies a possible gateway model for a major rezoning (land release), it is questionable if planners would have skills and/or resources to suitably assess certain matters to be included in the justification report e.g. investment certainty, and for such matters it may not be appropriate to rely on economic/financial reports that are not independent of the proponent. ▪ the upfront assessment and decision on whether the LEP can proceed must avoid the perception that the following stages will be given token attention and that the outcome is a fait accompli. ▪ the process will likely diminish opportunities for broad community consultation to certain LEPs. There should be a mechanism or trigger within the following stages of the plan making process where the level of consultation, if established at the gateway stage, can be reviewed. This will provide for enhanced community input if a proposal creates unexpected contention or impact. Alternatively a general public notification process could be undertaken by the proponent prior to the gateway stage to help gauge community opinion. This could inform the preparation of the "statement of community involvement", although it would increase processing timeframes. ▪ unclear if there will be an appeals or review procedure

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
		available to proponents that are rejected at the gateway stage.
P3	*Streaming LEPs* Stream LEPs into different categories (local and State significance) to ensure that the level of assessment, process, referral and consultation reflects the type and complexity of the LEP. The more complex and significant the matter proposed by the LEP the more rigorous the process would be, thereby tailoring the plan making process for the different types of LEPs to better reflect the complexity or otherwise of the plans and their significance in terms of economic, social and environmental impacts. For minor land use issues, consideration could be given to expanding matters dealt with under section 73a of the EP&A Act.	▪ Support, in principle, the streaming of LEPs to link the level of assessment, process, referral, consultation and sign off with the type and complexity of the LEP. ▪ It is unclear what role Council will have in determining or requesting that an LEP be streamed into a particular category. ▪ Support the proposal to allow sign-off for certain LEPs by Council. However, it is not stated whether Council would need to go through a panel process. If so, the benefits are significantly reduced due to additional administrative work, impact on timeframes and intervention by the State in local issues. ▪ Section 73A of the EP&A Act (Minor amendments of environmental planning instruments) currently identifies minor amendments such as the inconsistent numbering of provisions, spelling errors, etc. The Discussion Paper identifies possible expansion of matters that can be dealt with under Section 73A such as adding an additional land use to a land use table where it is consistent with the zone objectives. This is not supported. Adding an additional use to a land use table will have zone wide impact and is therefore an appropriate matter to engage the community on. Furthermore, an LEP based on the Standard Instrument uses specifically defined terms, many of which are "group terms" and therefore often broad in their definition and coverage, hence it is likely that any new land use proposed to be permitted in a zone may have possible impacts and will warrant community consultation.
	Provide more meaningful community consultation Provide more meaningful community consultation to ensure major issues of concern to the community are dealt with earlier in the process than is currently the case and to ensure consultation is targeted to proposals that are of genuine broad community interest.	▪ Support greater focus on community consultation at the strategic planning stage (vis-a-vis the DA stage). ▪ The ability to consult with the community before drafting the LEP is currently available under section 62 of the EP&A Act. Any amendments to the Act and associated guidelines should only allow pre-exhibition consultation as an option rather than a mandatory step. ▪ Support, in principle, tailoring the level of community consultation to reflect the type and complexity of an LEP. The gateway screening system must allow Council to identify what proposed LEPs, though at face value may be minor, could be controversial or contentious within the community and therefore should be more widely consulted on. ▪ The reforms will likely diminish opportunities for broad community consultation to certain LEPs. There should be a mechanism or trigger within various stages of the plan

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
		making process to review the level of consultation required. This will ensure that a proposal can be notified for further community consultation if it has greater than initially expected contention or impact. ▪ The Department of Planning needs to more widely communicate to the public its proposals to decrease consultation opportunities at the DA stage, particularly considering the current tendency for residents to generally only be involved at the DA stage (such as for a proposal in their street). ▪ Any proposed extension to section 73A of the EP&A Act (Minor amendments of environmental planning instruments) should not compromise the outcome of achieving meaningful community consultation. For example, land use changes to zoning tables as suggested in the Discussion Paper should not be included as minor amendments under section 73A of the Act.
P4	*Charge appropriate fee for service for third party initiated LEPs* Where land use or plan changes are initiated by a private proponent, an appropriate fee for service would be chargeable to compensate the relevant council or agency for resources required in both gateway reviews and plan making.	▪ Support, in principle, charging fees commensurate with the actual costs incurred by Council involved in processing third party initiated LEPs. ▪ Council needs to have input to how fees will be suitably apportioned between State and local government.
P5	*Targeted and appropriate agency referrals and consultations* Referral to, and consultation with, State agencies would be required at the gateway stage before a plan or LEP is commenced. The referral and consultation process for all plans would be subject to time limits to allow for efficient processing.	▪ All three levels of plan making (SEPPs, REPs and LEPs) should be streamlined and time limited to ensure timely and targeted assessment in the plan making process. ▪ Support requirement for agencies to be consulted earlier in the process for significant proposals. Agency consultation occurring prior to the gateway for significant land use or policy changes would enable the gateway process to better determine the level of assessment required and the issues that should be considered in the preparation of the plan. This would give more certainty to Council about the strategic and policy requirements of State agencies. ▪ Support placing timeframes on agencies to respond; particularly if this will place greater statutory responsibility on agencies to publicly establish a policy position or provide their strategic land use information to assist Council in decision making. ▪ Support establishing circumstances (such as minor inconsequential amendments) where no referral is required. ▪ The Department of Planning should provide guidance on which agencies an LEP needs to be referred to, and to

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
		establish a register of contacts within each agency for Council to use. ▪ Support, in principal, opportunity for agencies to develop guidelines for plan making and if the land use change is consistent with these guidelines no referral would be required. However more detail is needed about possible certification or compliance checking in such a process. ▪ Other State agencies should also be concerned about the role the Department of Planning may try to exert, in resolving matters, particularly if there are competing agency priorities.
P6	*Improving timeframes in plan making* A system of accountability for LEPs would be introduced which might include: ▪ Mandatory timeframes for different stages of the process. ▪ The ability to refer an outstanding LEP or land use issue to the proposed PAC, or a Joint Regional Planning Panel (JRPP), where timeframes are not being met or finalisation of an LEP has stalled. ▪ Extending the existing power in the EP&A Act (Section 74) to allow the State to directly amend an LEP where there are issues of State or regional significance.	▪ Support, in principle, the streamlining and time limiting of stages in the plan making process. For example, referrals should be time limited. However establishing mandatory timeframes for other stages in the process may be more problematic and counter productive to working towards and achieving good planning and relationships between the stakeholders. ▪ Role of the proposed Planning Advisory Committee (PAC) or Joint Regional Planning Panel (JRPP) needs to be carefully balanced with the need to maintain decision making at the local level. Establishing such bodies has potential to erode local decision making as well as create another layer of bureaucracy. ▪ Further consultation with Council is required in relation to the role of PACs for JRPPs, including to further consider the range of consequences of not complying with timeframes and the specific circumstances when an LEP is referred to the PAC or JRPP (such as unresolved agency objectives, inability to resolve issues being raised by the community or resourcing difficulties which stall the process). For example, the process needs to ensure that a private proponent cannot deliberately stall the process because it wants the PAC or JRPP to deal with the proposal and not Council, believing that a more favourable outcome may arise from the panel process. ▪ Panels that provide advice to the Minister or a delegate of the Minister must be totally independent and act in a transparent manner. ▪ If timeframes are applied to various stages of the process, these timeframes must also apply to the Department of Planning and any panels. ▪ Extending section 74 of the EP&A Act (Amendment of environmental planning instruments) is not generally supported. Matters of State or regional significance can be suitably dealt with through other environmental planning instruments (EPIs) (e.g. SEPPs and REPs), subregional

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
		strategies and section 117 directions and agency referrals in the plan making process.
P7	*Clarifying accountability in plan making* To support the gateway and streaming process the responsibilities of different parties in the plan making process would be better defined to streamline the mechanical elements of plan making, in particular legal drafting. This would include a one stop shop model to operate once a council has exhibited and adopted a policy/land use change for incorporation into an LEP.	▪ The Discussion paper proposes that Councils would exhibit, for community consultation, not a draft LEP but rather a statement of intent explaining the policy context of the proposed change. This statement of intent once exhibited and resolved by Council would be submitted to the Department of Planning which would deal with all State and regional issues, including those of other State agencies, and the legal drafting. ▪ This proposed approach is not supported for the following reasons— o Greater certainty (including legal/statutory certainty) is provided to the community when a draft LEP as well as the plain English explanation (which provides to intent of the proposal) is placed on exhibition. o Council is better placed, in the first instance, to liaise with other State agencies about matters raised during exhibition. Only where a matter cannot be satisfactorily resolved should it be referred to the Department of Planning, as provided by the current arrangements. o Relying on the Department of Planning to do all legal drafting for all LEPs will likely create sufficient delays for Council. Providing Council's instructions to the Department's legal drafters will be time consuming for Council officers and may be open to misinterpretation by the drafters if sufficient communication and contact is not available to Council officers from the legal drafters. The current system of referring draft LEPs prepared by Council to the Parliamentary Counsel (PC) is appropriate, particularly in light of the recent introduction of the Standard Instrument which sets out the provisions for a significant majority of a Council's principal LEP.
P8	*Reviewing and streamlining REPs and SEPP*s The Department of Planning should continue to streamline and reduce the number of REPs and SEPPs by: ▪ Preparing and implementing the regional and subregional strategies. ▪ Enabling SEPPs to be prepared for issues of regional significance. ▪ Further consolidation of SEPPs. ▪ The possible removal of REPs from the plan making system.	▪ The Discussion Paper identifies SEPP and REPs will be reduced by 50%. Rationalisation of SEPPs and REPs is supported provided it works towards a planning system that is easier to use, improved quality planning outcomes and community satisfaction. ▪ In reviewing and streamlining SEPPs and REPs, the Department of Planning should provide greater opportunity for consultation with Council and the community. ▪ The Department should put more effort into consulting directly with the community as many of the recent and proposed State initiated reforms potentially remove opportunities for the community to have input into planning and development decisions. Though Council can advocate on behalf of the communities, it is important for

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
		the Department to have first hand contact and understanding of community sentiment.
P9	*Clarifying the content of DCPs* The Department of Planning would issue guidelines for different levels of LEPs and DCPs to support a new system that would identify the appropriate content and timeframes of these Plans, and non-compliance with State policies such as SEPP 65 would be prevented. The Discussion Paper identifies that the Department of Planning may prepare guidelines specifying the level of detail and the structure of DCPs, as well as making clear that DCPs do not raise standards above those set within State codes.	▪ Support, in principle, preparation of guidelines to assist Council in preparing DCPs. ▪ Guidelines for DCPs should address structure and format matters only. The guidelines should not contain actual policy to be implemented through the DCP (such as the Standard Instrument template was used). ▪ The timing of DCP guidelines needs to be expedited as many councils have already commenced the review of their LEPs and DCPs, as well as investing in and incorporating new ePlanning packages.

2.3 Development assessment and review (Chapter 4 of Discussion Paper)

The Department identifies that the NSW development assessment system is complex and sophisticated, which can lead to lengthy delays on minor applications and rising costs for applicants. These delays can be appreciated where complex environmental issues exist, although often the delays occur without any significant improvements to local amenity or the quality of development as a result.

The Department of Planning's intent or purpose of reforms to the development assessment system

The objectives for reforming the development assessment and review system are to:

- Reduce overall time frames for local government DA processing from 68 days (current state average) to 48 days
- Reduce the number of modifications by a third
- Establish a Planning Assessment Commission – to deal with about 80% of state significant projects
- Establish Joint Regional Planning Panels, involving local government representatives, to deal with major or other projects of regional significance (typically worth more than $50 million)
- Reduce the need for legal appeals to the Land and Environment Court by 20% by providing planning arbitrators to resolve disputes on small local applications (usually less than $1million)

Council's responses to key elements and recommendations in the Discussion Paper

Two specific areas targeted for reform are determination and review of applications and the development assessment process.

In addressing these areas, a new system of development decision making is proposed as follows:

- State significant projects or concept approvals, including all current Part 3A applications—determined by the Minister for critical infrastructure or projects of critical significance or a Planning Advisory Committee (PAC) for all other projects of State significance.
- Regionally significant projects could include applications by State agencies exceeding $5m in Capital Investment Value (CIV), and other developments exceeding $50m in value: Regional significant projects—determined by a Joint Regional Planning Panel (JRPP) where they can be resourced by the host council or by the PAC where the host council does not have capability to undertake assessment.
- Local applications would encompass all applications that were not State significant, regionally significant, minor applications or complying development—local applications would be determined by councils and/or Independent Hearing and Assessment Panels (IHAPs).
- Minor applications would include all single dwellings, alterations to single dwellings, and all other development with a CIV of less than $1 million—could be determined by council staff or council.

This new development assessment regime will take planning control away from elected local representatives and raises significant concern for Council.

Detailed responses to recommendations in the Discussion Paper are provided in the table below.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		**Council's responses to the proposed recommendations**
A1	*Establish new development decision making system* A hierarchy of decision making bodies would be established to reflect the differing levels of assessment for State significant, regionally significant, local, minor and complying developments (including reviews) and the degree of the environmental impacts.	▪ Significant concern is raised with the potential erosion of Council's role as decision maker in the development assessment process. ▪ Clear criteria are needed to categorise what is a state significant development, regionally significant development and locally significant development and the role of Council within each assessment category.
A5	*Role of a Joint Regional Planning Panel* At a regional level, JRPPs would be established to determine applications of regional significance. These could include applications by State agencies, and other developments exceeding $50 million in value. JRPPs would be modelled on the current Central Sydney Planning Committee (CSPC) for the City of Sydney, and would comprise three State appointees and two council appointees. These would only be established where Councils have sufficient planning resources to provide proper assessment advice on major applications.	▪ Clear criteria are needed to establish the triggers for a Joint Regional Planning Panel (JRPP) and Independent Hearing and Assessment Panels (IHAP) involvement. The paper infers that regionally significant development will be development with a value >$50M; locally significant development is some where between $1M - $50M. Minor development is <$1M. But it is not clear. ▪ How are the JRPPs & IHAPs to be resourced and funded?
A6 & A8	*Role of Independent Hearing and Assessment Panel* At the local level, Councils could be directed to establish an Independent Hearing and Assessment Panel (IHAP) to deal with certain developments, such as applications seeking a major SEPP 1 variation beyond the existing LEP controls. However, such IHAPs would be advisory only and would be appointed by Councils from an accredited register. The role of IHAPs, design review panels and independent advisory panels should be rationalised to remove duplication and ensure consistent and expeditious advice to elected councils. One possibility is to	▪ Will IHAPs have decision making powers or will they be advisory? The Discussion Paper (page 55) refers to local applications being determined by IHAPs but then gives an example and says they are advisory only. Recommendation A6 also refers to their advisory role. ▪ Woollahra has previously investigated the role of IHAPs and concluded that an advisory IHAP would only add another layer to the assessment with limited benefit to the final decision.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
	ensure IHAPs contain appropriate design skills.	
A9	*Mandate information required for different development applications* The nature and extent of information required for different types of development applications could be mandated. Councils would prepare appropriate guidelines to outline the minimum requirements for plans, reports and studies. The period for councils to reject DAs on the basis of inadequacy could also be increased from seven to 14 days.	▪ It seems that Council will need to prepare a DA guide that indicates the standard of documentation required based on complexity of the development - perhaps separate guides for the different categories of development. Is there opportunity for the Department to prepare model guidelines for Councils to adopt or amend as required? ▪ Extending the period for rejecting DAs is welcomed as it will allow more time to evaluate the suitability of the documentation.
A11	*Role of a planning arbitrators* Appeals to the Court would generally be allowed, as is presently the case. However, the need for appeals when the PAC has held public hearings should be reviewed. Small applications subject to local independent review should only proceed to the Court after the matter has been considered and determined by a planning arbitrator. Stricter accountability measures for complying development would be introduced (see Chapter 5), but no appeals would be allowed.	▪ The use of arbiters will introduce another layer in the decision making process and the benefits are likely to be limited as, in LGAs like Woollahra, applicants will still appeal. ▪ If the arbiter's reviews will be conducted for a small fee who picks up the actual cost?
A12	*Review agency referral requirements* The NSW Government would continue its review of agency referral requirements with a view to reducing unnecessary referrals. Where referral matters have been determined during plan making, they would generally not be referred again at the development assessment stage. Concurrence and DA referral guidelines would be prepared to streamline the referral process.	▪ Reductions in referrals to approval and concurrence bodies will reduce turnaround times and are unlikely to cause problems in our area.
A14	*Development modifications* The current system of development modifications would also be improved. Changes to be considered would include: ▪ A14.1 Reducing the number of	▪ Reducing multiple s.96 modification applications should result in applicants giving more thought to the original DA but 5-10 s.96s are still a lot.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
	Section 96 modifications that can be approved for a development. ▪ A14.2 Allowing councils greater flexibility to re-issue consents under Section 96 if an error is made. ▪ A14.3 Ensuring that Section 96 modifications are subject to SEPP 1 where relevant.	
A16	*DA fees* The current DA fee regime would be reviewed to enable councils to match fees for service.	▪ The discussion on fees, page 55, implies that fees will be based on the real costs to Council. This appears positive but depends on the relativities. That is, what will be the cost-recovery ratio? ▪ Consider providing the option for an applicant to choose and pay for an assessment by a Council appointed consultant.

2.4 Exempt and complying development (Chapter 5 of Discussion Paper)

The Department of Planning's intent or purpose of reforms to exempt and complying development

Exempt and complying development categories should be expanded to deal with a larger range of development proposals than at present, and should be widely applicable to a full range of situations and circumstances.

Expanding exempt and complying development provisions will produce fast and simple approvals for single dwellings and other minor developments and take volume out of the assessment system to allow resources to be directed toward projects with greater potential impact.

The objectives for reforming the development assessment and review system are to:

- Decrease the number of development applications being considered by Council, by expanding exempt and complying development provisions
- Prepare a Statewide mandatory default code for exempt and complying development

Council's responses to key elements and recommendations in the Discussion Paper

The Department's primary objective is to increase the number of matters that can be considered as either exempt or complying development, and decrease the number of development applications being considered by Council.

The Department has set a goal of increasing the number of exempt and complying development certificates across the State from 11% to 50% within 4 years. To achieve this goal the Department proposes to introduce a default code that would apply to all Councils. Standards proposed by individual Councils would need to be either equal to or better than the mandatory default code.

Particular concern is raised with introducing a "one-code" fits all situation. Individual LGAs have different planning and heritage issues and neighbourhood characters; they also have communities with differing expectations that need to be reflected in individual Councils' codes and policies. It is unclear in the Discussion Paper how a mandatory State code would be able to address such matters.

Detailed responses to recommendations in the Discussion Paper are provided in the table below.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		**Council's responses on proposed recommendations**
	Premise for reforms A key factor in the discussion paper is a comparison of the number of development applications that were assessed by Councils before the major planning reforms of 1998 and the number after. It appears that the objective is to reduce the number of development applications back to the	▪ The assumptions made by the Discussion Paper are incorrect. ▪ At Woollahra, pre-1998 building applications required neighbour notification and a merit assessment similar to the requirements of Section 79 of the *Environmental Planning and Assessment Act 1979* and a number of building applications were reported to Committees of Councils due to non-compliance with Council's codes and

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses on proposed recommendations
	pre-1998 levels. The discussion paper bases its recommendations on the assumption that all former building applications had no form of community involvement or merit assessment and that building applications were the equivalent of today's exempt and complying development. The discussion paper suggests that Councils will be able to re-directed their resources to projects with greater potential impact.	policies and objections from adjoining neighbours. ▪ The implications of the proposed reforms are: ▪ Community involvement would be reduced; ▪ Staff resources would need to be re-directed from development assessment to compliance related work, mediating between neighbours on the interpretation of what is and is not exempt and complying development; ▪ Uncertainty to applicants and the general community; and ▪ Increased costs to applicants and Council.
C1	*Extend ambit of exempt development* The Department would extend the ambit of exempt development and develop mandatory guidelines for such development, to ensure, for example, that they have minimal impact upon the environment.	▪ Unable to support this recommendation until Council is aware of the proposed guidelines.
C2	*Extend ambit of complying development* The Department would extend the ambit of complying development and develop mandatory guidelines for such development, to ensure, for example, that they have minimal impact upon the environment.	▪ Unable to support this recommendation until Council is aware of the proposed guidelines. Of specific concerns is the likely impact on the heritage conservation areas. ▪ The Discussion Paper identifies that at the New Ideas Planning Forum held on 14 August 2007 a target of 40-50 percent of all proposals should be dealt with as complying. The Paper almost implies that this was a target agreed to by those at the Forum. This is misleading. The 40-50 percent target is an arbitrary figure that is not supported by Council. Performance measures need to include other factors such as the quality of planning outcomes and level of community satisfaction as a benchmark to determine if the new codes are an improvement on Council's current codes. ▪ The Woollahra LGA is a built up inner ring metropolitan council. It exhibits high quality established and infill development with strongly established character, including heritage and heritage conservation areas. Because of the defined character of areas throughout the LGA, any unsympathetic development can potentially have great significant negative impact. This includes development that is a dwelling house if it displays poor architectural responsiveness to the streetscape. ▪ The Discussion Paper identifies that by improving efficiency of the development assessment system, such as

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses on proposed recommendations
		by expanding complying development, this will improve the delivery of affordable housing. This will not be the case in the Woollahra LGA. Housing affordability in Woollahra relates overwhelmingly to land costs. If the State Government is serious about delivering affordable housing in inner ring metropolitan areas other planning and non-planning mechanisms need to be used.
C3	*Establish a Complying Development Experts Panel* The Department would establish a Complying Development Experts Panel (CDEP) to advise on complying codes policy, and the acceptability of complying development codes. The panel would include experts working within local government.	▪ It is unclear what this Panel's role would be in the acceptance of a Council's complying development code. ▪ Any support for establishing a CDEP would be predicated on inclusion of local government representatives. ▪ All codes should be publicly exhibited before adopted. Comprehensive exhibition should be undertaken by the Department, and have the general community as a key target audience. This has generally not the case with the Department's exhibition of new plans and policies.
C4	*Developing a series of Statewide complying development codes* The Department would develop, with the assistance of the CDEP, a series of Statewide complying development codes for common minor development categories such as single dwellings, alterations and additions, industrial sheds, and commercial fitouts. Such codes would define acceptable standards for community amenity, and would be subject to public exhibition and stakeholder consultation prior to adoption. The implementation of the first mandatory complying code would be targeted for 1 July 2008.	▪ It is not possible to have an "one-code" fits all situation. Individual communities have different expectations and these expectations need to be incorporated into individual Councils' codes and policies. The alternate 'local code' that is suggested in the discussion paper cannot address the differences between individual communities if it must achieve at least the same level as the State codes. ▪ However, if the Department does proceed with mandatory codes, any standard codes for exempt and complying development need to be rigorously tested to ensure that they accommodate local and regional variations, followed by a staged implementation. ▪ The implementation of any future mandatory code for residential development should first apply to outer Sydney and non metropolitan LGAs. Such areas are largely characterised by newer development and greenfield sites on which project type homes are more common and can therefore be more readily considered within a mandatory complying development code. Potential versus realised gains in housing affordability may also be easier to assess within these areas. The application of the code to established LGAs can occur in the next stage, which will also allow for refinement of the code informed by experience with its practical application. ▪ (See also comments to C16 and 18 for further comment on target dates for implementing new code.)
C5	*Statewide mandatory complying development code* The Statewide complying development codes would be made	▪ The inclusion of performance based measures introduces subjective assessment and gives rise to uncertainty for all parties. ▪ With the introduction of subjective elements, Council

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses on proposed recommendations
	mandatory default codes, to apply to all relevant development categories unless an alternative local code has been accredited. Complying development codes will provide for numeric based 'deemed to comply standards', which will provide for both certainty in terms of the standards to be complied with; and flexibility to accommodate innovative design and matters such as different lot sizes and densities and minor non compliances. Performance based measures may be incorporated into the code.	would be called on to adjudicate on alleged discrepancies and mediate between neighbours, thereby involving Council in the process and circumventing supposed efficiency gains. ▪ Difficult to understand how the operation of a mandatory default code would work and the Discussion Paper does not provide detailed information on the preparation, scope or practical application of such as code. For example— ▪ How will controls in relation to architectural design and streetscape impacts be suitably accommodated within a universal code and adequately assessed within the scope of a complying development framework? ▪ How will a standard code recognise existing standards to deal with specific site constraints or environmental sensitivities in a way that balances standards and controls with limited discretion for outcomes? ▪ How will cumulative impact of 'minor' changes be accounted for in the code?
C6	*Alternate complying development code* Councils would be permitted to develop alternative complying development codes, which must be generally consistent with the State codes. These would be accredited by the Department on the advice of the CDEP and must achieve at least the same level of complying development as the State codes.	▪ Support, in principal, the opportunity for Council to develop its own code for accreditation. However, the Discussion Paper provides limited information on how the accreditation process would work and the scope for Council to develop its own code.
C7	*Performance monitoring* The achievement of increased levels of complying development should be reported annually through the Local Development Performance Monitoring Report issued by the Department, with an expectation that the level of complying development will increase from 11 percent to 30 percent within two years of implementation, and to 50 percent within four years.	▪ There is no objection to annual reporting. However, the target figures suggested are arbitrary. ▪ These targets are arbitrary figures that are not supported by Council. Any performance measures need to consider other factors such as the quality of planning outcomes and level of community satisfaction. Such outcomes and expectations vary significantly across NSW councils.
C8	*The certification process* The following procedures would be adopted for determining development where a complying code applies: ▪ C8.1 Where a development	▪ C8.1 and C8.4 are generally supported. ▪ The introduction of 'provisional complying development certificates' requiring Council approval is not supported for the following reasons: ▪ creates uncertainty for the applicant and the broader community;

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses on proposed recommendations
	proposal is fully compliant with an applicable code, a certifier (private or council), may approve the development and lodge the complying development certificate with the local council. ▪ C8.2 Where a development proposal has minor non compliances that in the opinion of the certifier (private or council) would not generate an impact on neighbours or set a planning precedent in the neighbourhood, the certifier would be required to lodge a provisional complying development certificate with the local council. This would become effective after seven days unless challenged by council. If however, the council did not consider the non compliances to be minor then a DA would need to be formally lodged and processed in the normal manner. ▪ C8.3 Where a development proposal has minor non compliances, which require a performance assessment by the council, only that aspect of the proposal will require council approval. ▪ C8.4 A certifier could also be empowered to condition an application that has minor variations so that it becomes compliant.	▪ adds costs; and ▪ adds unnecessary complexity to a so-called 'simple' process. ▪ There should be very limited discretion in the certification system for minor non-compliances. The private certification system has not worked effectively and has resulted in fraudulent behaviour and less than satisfactory and transparent outcomes. Given this platform it is not appropriate to extend the discretionary powers. ▪ Leaving it up to each certifier to determine what is 'minor' will create inconsistency in the interpretation of across the LGA.
C9	*Fee for service* Where an accredited certifier issues a complying development certificate with minor non compliances endorsed by council, the council would be entitled to a fee for the service.	▪ The introduction of 'provisional complying development certificates' requiring Council approval is not supported for the reasons stated above. ▪ Nevertheless, if the Department proceeds with this reform, Council must be able to recover costs for any additional workload created by any change to the current system.
C10	*Provisional complying development certificates* Where a development does not comply with the relevant codes (and non-conformities are not minor or trivial), then a development application to Council would be	▪ The introduction of 'provisional complying development certificates' requiring Council approval is not supported for the reasons stated above. If a proposal does not comply with the relevant provisions or it can not be conditioned to comply, a development application shall be required. ▪ The seven days deemed approval process for Council's

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses on proposed recommendations
	required.	response is too short and would place significant resourcing pressures on Council.
C11	*Standards for developments in environmentally sensitive or heritage areas* The mandatory default code would include appropriate complying development standards for developments in environmentally sensitive or heritage areas. These codes will be informed by better mapping of environmentally sensitive areas.	▪ For the reasons stated above, a mandatory default code is not supported.
C12	*Notice to immediate neighbours* The certifier (whether council or private) would have an obligation to provide a courtesy notice to immediate neighbours advising of the request for a complying development certificate, noting works found to be complying development would be automatically approved.	▪ Support requirement for private certifiers or proponents to issue a mandatory notice to immediate neighbours and provide for on site meeting to inform of the proposal. ▪ Documentary evidence that the notice requirement has been complied with would need to accompany the documentation required to be submitted to the Council by the certifier.
C13	*Electronic database of all complying development* The local council would be required to keep an electronic database of all complying development details (certificates issued, construction values etc) for public and annual reporting purposes.	▪ This recommendation is supported.
C14	*Complying development certification process* Statewide procedures and guidelines governing the complying development certification process and for public reporting purposes would be required.	▪ This recommendation is supported as it will ensure consistency across all certifiers.
C15	*Accountability of accredited certifiers* Changes to existing arrangements would be made to strengthen the accountability of accredited certifiers (see Chapter 7).	▪ Comments provided under Chapter 7.
C16	*Timing for mandatory code* The implementation of the first mandatory complying code would be targeted for 1 July 2008.	▪ The introduction of a mandatory code is not supported and the target date is unrealistic considering the timing of the current consultation.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses on proposed recommendations
C17	*Public education campaign* The NSW Government, in conjunction with local government and industry representatives, would conduct a public education campaign on the system as it is implemented.	▪ This is supported. However, the NSW Government needs to give greater focus to consulting the community now on the proposed reforms; upfront consultation, not back end education and information.

C18	*Targets for changes to exempt and complying development*
	
	The following measurable outcomes are recommended for the changes to exempt and complying development administration:
	
	▪ C18.1 Increase the number of exempt & complying development certificate from 11 per cent (currently) to:
	  ▪ C18.1.1 30 per cent within two years.
	  ▪ C18.1.2 50 per cent within four years.
	
	▪ C18.2 Mandatory default code to be adopted by 100 per cent of Councils across the State by July 2008.
		▪ The target figures suggested are arbitrary and have no regard to the quality of the planning outcomes being achieved or the level of community satisfaction.
		
		▪ The introduction of a mandatory code is not supported and the target date is unrealistic considering the timing of the current consultation.

2.5 ePlanning initiatives (Chapter 6 of Discussion Paper)

The Department of Planning's intent or purpose of reforms to ePlanning
Electronic planning (ePlanning) is being used around the world and across Australia to:

- Improve customer service by helping users find information that is relevant to them, help them prepare an application and speed up processing times. ePlanning means you need fewer experts to work through the system
- Deliver a simple experience for users – yet maintain community expectations that development will be sensitive to the location and environment
- Provide useful information on development activity and performance back to decision makers
- Make it easier for business to find out where to invest and create jobs.

The objectives for reforming the implementing ePlanning are:

- Encourage expansion of ePlanning to improve development assessment
- Establishing an electronic referral management website
- Delivering statewide codes
- Facilitating statewide collection of development activity information for performance monitoring
- Providing a base platform – a publicly accessible 'planning channel'
- Online tracking, assessment and publishing of LEPs

Council's responses to key elements and recommendations in the Discussion Paper
Council supports the use of technology to provide public access to government information in an easy to use and cost effective manner. However any implementation of new technology requirements proposed by the Department of Planning that are to apply across NSW must be suitably resourced and timed so that councils, such as Woollahra, can undertake system improvements with minimal disruption.

Detailed responses to recommendations in the Discussion Paper are provided in the table below.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		**Council's responses to the proposed recommendations**
E1 - E9	*ePlanning* The NSW Government, in conjunction with local Councils, should assess the readiness and current competencies of local government and relevant NSW Government agencies in the areas of ePlanning. The SiX Viewer should be implemented as the platform for e-planning to collate, integrate, manage and display planning information from councils and relevant NSW Government agencies to facilitate and accelerate the adoption of ePlanning initiatives.	▪ Council supports a move to ePlanning. ▪ Recognises that ePlanning expectations will require extensive improvements to Council's current IT systems. ▪ The platform, whether or not SiX Viewer, should be world's best practice. ▪ Council has received funding from the Commonwealth Government's Regulation Reduction Incentive Fund (RRIF) and is working to implement a new electronic system to deliver planning instruments and manage the development assessment process. Timing for establishing Woollahra's on-line DA system is mid-2008. ▪ The preparation of the Department's DCP guidelines should include a style guide for writing controls consistent

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
		with the conversion to an electronic delivery format. ▪ The move to ePlanning by the Department of Planning must be undertaken collaboratively with local councils and appropriately resourced.

2.6 Building and subdivision certification (Chapter 7 of Discussion Paper)

The Department of Planning's intent or purpose of reforms to the building and certification system
To improve the integrity of the certification system so that standards are met consistently and efficiently, and to instill public trust in the process and clarify responsibilities.

The objectives for reforming the building and certification system are:
- Minimise conflicts of interest
- Broaden accreditation
- Clarify responsibilities and sanctions
- Give stronger powers to the Building Professionals Board (BPB)

Council's responses to key elements and recommendations in the Discussion Paper
A number of the recommendations proposed in this section are long overdue and will improve the planning outcomes for the Woollahra local government area. However, as previously documented to the Building Professionals Board in August 2004, the accrediting of Council and Council officers provides no community benefit. Also, it is inappropriate to mandate Council's enforcement role for the reasons stated above.

Generally, however, the recommendations in this chapter are supported, with relevant qualifications.

Detailed responses to recommendations in the Discussion Paper are provided in the table below.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		**Council's responses to the proposed recommendations**
	General scope of reforms The discussion paper makes recommendations in the following areas: ▪ Addressing Conflicts of interest ▪ Broadening accreditation ▪ Clarifying responsibilities and sanctions ▪ Certification of land subdivisions ▪ Miscellaneous amendments ▪ Monitoring the performance of the reforms	▪ There is a general lack of confidence in the current certification system and changes are required to improve its operation and protect the interests of all parties. ▪ The roles and responsibilities of certifiers have never been fully documented, but the discussion paper, while identifying this shortfall, has not fully addressed this issue.
B1 – B5	*Small developments* For small developments (defined under the BCA as any building not requiring a fire isolated exit) a number of measures have been suggested: ▪ B1.1 The number of construction or complying development certificates that can be issued to any one client or involving any	▪ Addressing conflicts of interest—The first five recommendations of this chapter aim to restrict or eliminate any conflict of interest. Any recommendation made to achieve this objective is supported, although it could be argued that the suggested changes amount to a restriction of trade.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
	one builder or developer by an accredited certifier to be limited in any one calendar year. The BPB will be given powers to exempt certifiers in rural areas from this limitation if alternatives are not available. ▪ B1.2 Only the landowner would be allowed to appoint a certifier to issue a construction certificate or complying development certificate. An education campaign will be undertaken to inform landowners of this change. For small developments (defined under the BCA as any building not requiring a fire isolated exit) a number of measures have been suggested: ▪ B2.1 The number of projects to which an accredited certifier could be appointed as the principal certifying authority by any one client or involving any one builder or developer be limited in any one calendar year. The BPB will be given powers to exempt certifiers in rural areas from this limitation if alternatives are not available. For large or complex projects, (defined under the BCA as any building requiring a fire isolated exit), staff of the BPB would allocate the accredited certifier to issue construction certificates and act as the PCA for the project subject to the right of developers to reject the first two certifiers allocated. The BPB would develop a model set of contractual arrangements that will clearly specify the responsibilities of the certifier and the builder/developer. The BPB would undertake targeted audits focusing on: ▪ B5.1 Those certifiers whose income from any one client or income derived from developments involving any one builder or developer exceeds a significant proportion of their total income for the year.	

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
	▪ B5.2 Those certifiers who work on larger projects.	
B6	*Expand the accreditation system from individuals to include companies* The proposed changes would expand the accreditation system from individuals to include companies, provided the company employs at least three accredited certifiers. Under this system, at least one director of the company would be a certifying authority, and an appropriately accredited person must sign all certificates.	▪ This recommendation is supported and will provide improved control and flexibility within one firm.
B7	*Councils to seek corporate accreditation* Under these revised rules, Councils would also seek corporate accreditation. All individuals in Council who are required to sign certificates or conduct mandatory inspections will be deemed to be accredited at A3 level of accreditation. These deemed accredited certifiers would only be allowed to certify certain types of development. All other developments will need to be certified by appropriately accredited certifiers, either from Council or the private sector.	▪ The need to accredit Council or Council staff is not supported. This is an argument that has been advanced for sometime alleging that it is required to provide a level playing field. This argument can not be substantiated as it will never be possible to provide a level playing field between private and council certifiers as detailed in Council's previous submission to the Building Professionals Board dated 27 August 2004 (see annexure 1 to this submission). ▪ Clause 109E of the Environmental Planning and Assessment Regulations 2000 states that Council must, if appointed under subsection (1), accept that appointment. This recommendation does not explain how Clause 109E will apply if Council's officers have not been accredited to a level above A3 and are appointed to a development requiring a higher accreditation level. ▪ Also, this recommendation has no regard to the diminishing number of skilled staff available to Council and the difficulties attracting and retaining such staff. ▪ Council is largely a training ground for accredited certifiers and the discussion paper has not identified or attempted to address this ever increasing problem.
B8	*Accreditation of building design professionals* The NSW Government would investigate whether certain categories of building design professionals, particularly those involved in designing critical building systems, need to be accredited.	▪ This recommendation is supported.
B9	*Councils' responsibility to enforce development consents*	▪ This recommendation is not supported as the proposal negates the certifier's obligation to ensure compliance with the development consent. When an accredited

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
	Council's responsibility to enforce development consents, whether or not the principal certifying authority is an accredited certifier would be mandated. Penalties could be imposed against councils where they are made aware of an issue and do not act.	certifier is appointed as the PCA they assume the role of Council and as such take responsibility for the development site. The primary roles of the PCA are to ensure compliance with the development consent and conditions, the carrying out of all the required inspections of the site and the issuing of an Occupation Certificate. ▪ The *Environmental Planning & Assessment Act 1979* and the Regulation currently identify the responsibilities of the private PCA and their discretion. For example, Section 109E of the Act lists those items that the PCA must be satisfied about in relation to a development. Also, Clause 161 of the Regulation lists the matters that the PCA may make a decision on in lieu of the Council. ▪ Private PCAs currently have some enforcement powers under the Act, including the power to issue a 'notice of intention to issue an order' under Section 109L setting out the proposed terms of an order and the proposed period of compliance. ▪ Where Council is not appointed the PCA for a development it is not "best placed to deal with development consent compliance matters", due to Council's unfamiliarity with the development and the fact that it does not have ready access to various professional reports that may be produced during the construction phase, including structural engineer's certification and survey information. Such information and reports are not required to be submitted to Council until the final occupation certificate has been issued. This is a significant impediment to Council's ability to respond to general enquiries on a development site. ▪ If all enforcement issues were to fall back to Council, it questions the need for a PCA. ▪ Making it mandatory for Council to enforce conditions of development consent removes Council's legal discretion and could result in Council taking legal action on matters that are not in the broader public interest. An example of this situation is where a neighbour complains that a timber privacy screen has been installed in lieu of a metal screen, as required by a condition of consent.
B10	*Increase Council's powers of enforcement for unauthorised work* Council's powers of enforcement for unauthorised work would be increased.	▪ The imposition of larger fines for unauthorised work, cumulative fines, stop work orders, the payment of 'enforcement bonds' by applicants and giving councils the ability to declare construction certificates, occupation certificates and complying development certificates invalid where serious errors are identified are all supported. ▪ It is further recommended that a simple, cost effective and timely process is introduced that facilitates any required

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
		judicial review of stop work orders and declarations that Part 4A certificates are invalid. It is in the public interest that such matters are able to be resolved without undue delays which could occur if they needed to proceed to the Land and Environment Court.
B11	*Increase fees for building certificates* Consideration would be given to increasing fees for building certificates to avoid these certificates from being used as retrospective approvals for unauthorised building works.	▪ Using building certificates to obtain retrospective approval of unauthorised building work is not the preferred mechanism. If the works that were undertaken required prior development consent, there should be no limitation on requiring the owner to apply for such consent. Where a consent is granted, councils should be allowed to impose appropriate conditions that would then be enforceable under the 'Notices and Orders' provisions of the *Environmental Planning and Assessment Act 1979*. ▪ The heads of consideration between a building certificate and a development application are different and there is no opportunity under a building certificate to impose enforceable conditions to address amenity issues such as the installation of landscaping or the installation of privacy screens.
B12	*Expand BPB's powers to fine or suspend* The BPB's powers to fine or suspend an accredited certifier or attach conditions on their accreditation would be expanded and streamlined.	▪ This recommendation is supported in principle.
B13	*Education and information* The respective roles and responsibilities of certifiers, Councils and landowners, should be clarified through the development of guidance/education material as well as possible legislative changes.	▪ This recommendation is long overdue and is supported.
B14	*Private certification of subdivisions* Consideration be given to allowing private certification of subdivisions (both land subdivision and strata subdivision), but with the following controls: ▪ B14.1 A developer could only be able to appoint a certifier from a list of five certifiers identified by the local council. ▪ B14.2 The certifier would be required to lodge a provisional subdivision certificate with the local Council, which would	▪ There is little public benefit gained by the suggested changes as the subdivision certificate is still required to be submitted to the Council for consideration and comment, once certified by one of the five preferred certifiers.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
	become effective after fourteen days unless challenged by council. ▪ B14.3 The local council would be entitled to a fee for the service of reviewing the certificate.	
B15	*Strata subdivision as complying development* Consideration will be given to enabling greater ranges of strata subdivision development proposals as complying development as one of the complying development codes outlined in Chapter 5.	▪ This recommendation is supported in principle.
B16	*Miscellaneous amendments* Consider miscellaneous amendments to improve the certification system including: ▪ B16.1 Mandatory training for accredited certifiers regarding policies for complying development. ▪ B16.2 Mandatory reporting of complaints about developments to both council or the certifier (depending on who has received the complaint). ▪ B16.3 Provide powers to the Minister to define the level of consistency with respect to the relationship of construction certificates to development consents. ▪ B16.4 Review the role of occupation and interim occupation certificates including their relationship with the development consent. ▪ B16.5 Allow for conditioning of construction certificates in relation to BCA matters only. ▪ B16.6 Additional mandatory inspections for fire separating construction and acoustic insulation in BCA class 2–9 buildings as well as new	▪ B16.1—Further training for all person providing certification is supported. ▪ B16.2—It is assumed this is suggesting that there should be a free flow of information on complaints between Council and accredited certifiers. This is supported in principle. However, it needs to be clarified which authority is responsible for investigating the complaint and taking the initial action. ▪ B13—It is agreed that more clarity is required to Clauses 145 (Compliance with development consent and Building Code of Australia) and 146 (Compliance with conditions of development consent) of the Environmental Planning & Assessment Regulation 2000 as the current wording is open to interpretation. ▪ B16.4—The use of interim occupation certificates should be restricted as suggested by the discussion paper and occupation certificates should not be issued until all development consent conditions have been satisfied. ▪ B16.5—Recommendation supported. ▪ B16.6—It is agreed that there should be a review of mandatory inspections for Class 2-9 buildings. Considering the removal of the home warranty insurance provisions on Class 2 buildings and the life safety issues associated with class 2-9 buildings, the required inspections should be no less than that required for Classes 1 and 10. ▪ B16.7—No objection to this proposed change.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's responses to the proposed recommendations
	inspections before the issue of strata certificates; construction certificates and complying development certificates. ▪ B16.7 Amend liability provisions for certifiers under the EP&A Act to make consistent with the insurance requirements under the BPB Act.	
B17	*Targets for changes to certification* The following measurable outcomes are recommended for changes to certification: ▪ B17.1 Accredited certifiers undertaking the role of the principal certifying authority to be audited at least every two years. ▪ B17.2 BPB to undertake at least 100 audits per annum within the first two years of the changes, and to increase this number over time. ▪ B17.3 Number of complaints to the BPB relating to enforcement of development consents by accredited certifiers to reduce by 50 per cent in the first four years of the reforms.	▪ Greater supervision is required of accredited certifiers to improve the integrity of the system and instill public trust. Any changes recommended to address this shortfall are supported. ▪ This is an arbitrary figure and needs to be assessed against the outcomes of the proposed auditing system.

2.7 Strata Management Reform (Chapter 8 of Discussion Paper)

The Department of Planning's intent or purpose strata management reform
The Department states that the establishment of strata schemes for new buildings represents an important transition between the developer of the building and its eventual owners. It is important to ensure that this transition is managed so that the unit owners have sufficient control to organise the building maintenance as well as pursue building rectification under warranty where required.

Council's responses to key elements and recommendations in the Discussion Paper
Generally the recommendations and matters proposed are for improved management of Body Corporates and are reasonable.

Detailed responses to recommendations to this chapter are not provided.

2.8 Resolving Paper Subdivisions (Chapter 9 of Discussion Paper)

The Department of Planning's intent or purpose for resolving paper subdivisions
Across NSW there are a number of local precincts with multiple landowners holding 'paper subdivisions' largely incapable of development. In order to facilitate the development of these precincts, and provide the necessary infrastructure, it is proposed to introduce a new power to mandate a scheme of arrangement, in order to resolve a way forward. Under such a scheme, land could be exchanged or traded for other land or infrastructure, sold or compulsorily acquired.

Council's responses to key elements and recommendations in the Discussion Paper
There are no paper subdivisions in Woollahra.

Detailed responses to recommendations to this chapter are not provided.

2.9 Miscellaneous amendments (Chapter 10 of Discussion Paper)

Preparation of a planning reform exposure draft Bill gives the State Government opportunity to address a number of miscellaneous and typically operational issues with the planning system. Matters addressed in this Chapter of the Discussion Paper are broad and varied, dealing with issues such as lapsing of development consents, operation of the Court, and implementation of the standard instrument.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		**Council's comments on proposed recommendations**
M1	*Lapsing of development Consents* Lapsing of development Consents	▪ The placing of survey pegs as a part of survey work for a subdivision development should not constitute physical commencement of development. Section 95 of the Environmental Planning & Assessment Act 1979 states that a development consent "does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section." It is agreed that the meaning of Section 95 needs to be clarified to provide more certainty to all parties and thereby eliminate the need for costly litigation.
M2	*Share of council rates* Public authorities responsible for providing services usually provided by local government – share of council rates	▪ This matter is outside the scope of a review of the Planning Controls and is a matter for consideration under the *Local Government Act 1993*.
M3	*The standard instrument* *Exhibition of draft LEPs prepared in accordance with the standard instrument*—In circumstances where substantial amendments are made to a draft LEP as a result of changes to the standard instrument following exhibition the legal precedents indicate that the draft LEP may need to be exhibited again before it is made. In cases where the draft LEP has been exhibited with the standard instrument and the standard instrument is subsequently amended, re-exhibition of the draft LEP is not appropriate. To address this issue a provision would be included in the EP&A Act to remove any doubt that the incorporation of amendments made to the standard instrument into a draft LEP during or after exhibition of the LEP, but before it is made by the Minister, does not require re-exhibition. *Conversion into standard LEPs*—In order to facilitate the conversion of existing LEPs into a standard LEP it is proposed to provide powers to allow automatic conversion into the new instrument without the need for the existing	▪ Exhibition of draft LEPs prepared in accordance with the standard instrument — Support for this change which provides certainty to Council and the community over process. ▪ Conversion into standard LEPs— Disagree with the proposal to allow automatic conversion into the new instrument without the need for the existing processes for the making of the LEP. Given that the standard instrument (SI) contains mandatory policy content (i.e. it does not just provide a standard template or format) it is difficult to imagine that there will be such thing as an 'automatic conversion'; even a 'translation' of an existing LEP into a standard LEP will no doubt involve some change that has significant potential impact. The exhibition of a new principal LEP based on the SI also provides the community with an opportunity to be exposed and educated about the look, feel and intent of the new LEP. This is in itself is valuable.

Key elements and/or recommendations of the proposal, as relevant to Woollahra Council		Council's comments on proposed recommendations
	processes for the making of the LEP. This could occur where there are minor policy changes or minor changes to development controls. Conversion would be possible where the strategic underpinning of an LEP remained sound and did not have to be subject to a major review. Facilitating the conversion of those LEPs into standard instruments would mean the possible amendment of the EP&A Act.	

2.10 Suggestions for other reforms

Legislation to address party walls—

- There is a lack of legal certainty in the area of shared structures, particularly party walls in terrace houses.
- This has constrained use of terrace house forms for speculative medium density housing in NSW because there is a reluctance on the part of purchasers, developers, builders and most particularly lending bodies due to the legal uncertainty of party walls and obligations of shared owners in case of work being carried out.
- The UK has developed the Party Wall etc. Act 1996 (based on the long standing London Party Wall Act) which clearly states the legal position of the parties which share the party wall structure and obligations in case of work being carried out. NSW should investigate adopting similar legislation.

Complying development Air Conditioners

- The effectiveness of BASIX as an important part of creating a more sustainable urban environment is regularly undermined by the owners putting air conditioners into their new homes after completion under complying development.
- Suggest that all building applications which have been subject of a BASIX submission be required to make a DA application for any alteration to the energy usage of the building.

3 Conclusion

Council supports, in principle, the need for reform at both the State and local level; however the scope of proposed reforms are extensive and the Discussion Paper often lacks the detail to allow a practical understanding of how some reforms would operate. This creates uncertainty and hesitation to support even for those reforms that appear to be positive at face value, given the devil is in the detail.

Council is also concerned with the short timeframe the Department of Planning has provided local government and the community to consider the Discussion Paper, particularly given the scope of reforms. Question is also raised in relation to the capacity and intent of the State Government to genuinely have regard to matters raised in submissions considering its timeframe for drafting exposure Bill by early in 2008 and having final legislation enacted by mid 2008.

The lack of detail coupled with the pace of the proposed reforms significantly diminishes confidence in the reforms and the State Government's agenda for planning.

The State Government needs to revise the timeframe for implementing the reforms and work more collaboratively with Council and the community in considering the scope of changes proposed and the approach in delivering the changes. This will ensure that the reforms are warranted, and balance improved system efficiency with good quality planning outcomes, local planning and decision making and provide genuine opportunities for community engagement.

Annexure

1. Accreditation of Council Certifiers - Discussion Paper Submission

Council Ref: File 696.G/12
Your Ref:

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Mr Neil Cox
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PO Box 3720
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Dear Mr Cox,

Accreditation of Council Certifiers - Discussion Paper Submission

Thank you for the opportunity to review and comment on the recently prepared discussion paper on the possible accreditation of council certifiers. Your paper has been reviewed in consultation with Council's Director of Planning & Development, Council's Manager – Development Control and all of the building staff in our Compliance Section. This submission is based these discussions with these key staff members.

While the paper requests feedback on specific models for accrediting council certifiers, we would first like to comment on the need for this additional level of certification. The rationale for introducing a council scheme is based on part of recommendation 12 of the Joint Select Committee Report on the Quality of Buildings in NSW. The proposed new scheme purports to provide a level playing field between private and council certifiers and is supposedly in "*the interest of consumer protection*".

We wish to comment on these issues first.

The Building Professionals Board (BPB) should complete more important tasks first

The Joint Select Committee Report on the Quality of Buildings in NSW listed 55 recommendations. The accrediting of council certifiers is only part of recommendation 12, which also recommends;

- the licensing of other building practitioners;
- the need for all building practitioners to be required to;
  (a) undertake continuing education;
  (b) have professional indemnity insurance; and
  (c) be subject to a disciplanry, penalties and audit regime.

It is our opinion that recommendation 12 is reasonably well intentioned, however the arguments for the need to accredit council officers are weak (as discussed further in the

following sections). There are many, far more important, recommendations of the Joint Select Committee report that should be implemented before the NSW Government turns its mind to the need to accredit officers employed by local government.

We submit that the following Joint Select Committee recommendations require urgent implementation prior to the NSW Government implementing recommendations 12 and 38 of the report:

Recommendation 1 – The Home Building Compliance Commission should be formed. The BPB's functions do not meet the full intent of the Joint Select Committee recommendations in this regard. The BPB's functions are not well integrated with the Department of Fair Trading's contractor licensing system such that accountability on the private sector side meets the standards currently imposed upon local government (i.e. ICAC, NSW Ombudsman, Local Government Act 1993 and Department of Local Government).

Recommendation 4 – Formal exchange protocols should be established to mitigate fraud. This has not been done.

Recommendation 6 – Contractor license requirements need to be reviewed to ensure that a 'clerk of works' requirement returns to the industry and trades are competent and accountable.

Recommendation 9 – Regulatory controls including compliance on trades be improved to deter poor building work.

Recommendation 11 - Investigations of the new Building Professionals Board should be far better resourced.

Recommendation 14 – Proactive auditing of certifying authorities and contractors including councils needs to take place. The Auditing undertaken by PlanningNSW prior to the formulation of the BPB had a positive impact upon both private and public certifying authorities. This level of review and auditing must be extended to other building practitioners.

Recommendation 15 – The online building practitioner registry including offence and breach history for all contractors, certifiers and other building professionals must be delivered. This would provide direct consumer protection.

Recommendation 16 – Skills audits need to be completed to identify training needs across the industry targeting issues raised by recommendation 17.

Recommendation 19 – We believe most council libraries provide access to the Building Code of Australia (BCA) and all Australian Standards in electronic form through the State Library Intranet. Local Government has for the most part provided this prior to the Joint Select Committee recommendations coming out.

Recommendation 21 – More simple prescriptive requirements for standards and tolerance should be incorporated in the BCA.

Recommendation 22 – The Act needs to be amended such that private accredited certifiers do not easily dismiss the requirements of the NSW Fire Brigades by removing required essential fire safety measures from buildings.

Recommendation 23 – The old section 82A process whereby performance based variations to the BCA where controlled and regulated by the Building Branch of the Department of Local Government needs to be re-established to bring rigour and consistency back into variations granted to prescriptive BCA requirements. This would further reduce the potential for corrupt (payment based) variations to building standards.

Recommendation 25 – Performance based variations must be recorded centrally by the NSW Government and reviewed annually to ensure that performance based variations are delivering acceptable outcomes.

Recommendations 26 to 28 - These must be generally implemented. In particular, AS3740-2004 has been released and adopted under the BCA2004 without any critical review as to whether or not this new standard will be capable of delivering improved wet area waterproofing outcomes.

Recommendation 31 – We understand the Principal Certifying Authority (PCA) Guide is being developed.

Recommendation 34 – The role of the PCA must be further clarified.

Recommendation 35 – Critical stage inspections should be expanded and be better targeted and linked to the ability of the PCA (private or Council) to issue stop work notices (see recommendation 45)

Recommendation 39 – The effectiveness of complying development must be reviewed. The issue of Complying Development Certificates should be limited to Councils due to the repeated failures of private accredited certifiers to properly implement complying development controls. This results in Councils tightening their complying development standards, rather than encouraging a broad range of complying development controls.

Recommendation 40 – The Act and Regulation (clause 145) has not been amended to clarify the phrase "*not inconsistent with consent*". This needs to be done immediately to provide certainty for all parties.

Recommendation 43 – The term Final Occupation Certificate should be replaced with the term **Completion Certificate.** The term Interim Occupation Certificate should be removed and the Act clarified to allow part occupation certificates, based on compliance with the BCA relating to health, safety and amenity.

Recommendation 44 – Strata Certificate must not be able to be issued until the **Completion Certificate** is issued.

Recommendation 45 – **STOP WORK** orders and appropriate penalties are required. Both private and council certifiers must be given this power.

Recommendation 46 – Fees should be either fully regulated across the industry or fully deregulated it is not a level playing field if Councils' fees are regulated whilst private certifiers are not.

Only when all the above, rather more critical issues, are resolved by the NSW Government should valuable resources be diverted towards considering whether an accreditation system for council officers is warranted.

1. The so called need and feasibility of achieving a Level Playing Field

It will never be possible to provide a level playing field between private and council certifiers for the following reasons;

2. The first assumption of the discussion paper states that Councils cannot refuse to be the certifying authority or principal certifying authority for a development in their area. This restriction is not applied to private certifiers. Private certifiers unlike councils pick and choose their clients leaving, unprofitable, technically and legally problematic developments for local government to pick up.

3. As with any private business, the primary focus of private certifiers is profit. This is definitely not the driving force for Councils. Section 8 of the *Local Government Act 1993* provides Councils' charter, which includes;

   - to exercise community leadership;
   - to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
   - to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants;
   - to keep the local community and the State government (and through it, the wider community) informed about its activities;
   - to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected;
   - to be a responsible employer

   Council management systems support this charter.

4. Applicants are able to appeal councils' decisions in relation to construction, final occupation and subdivision certificates, in accordance with Section 109K of the *Environmental Planning and Assessment Act 1979*. Such appeals result in additional costs to the council and its community. Similar provisions do not apply to private certifiers. The obvious conclusion one can reach is that councils are the only certifying authorities that refuse certificates, hence, local government must already demonstrate a level of rigour above that of private accredited certifiers. The other conclusion that could be drawn is that councils act without fear or favour such that they are the only certifying authorities willing to refuse certificates.

5. Council certifiers, and councils in general, are subject to far more scrutiny than private certifiers. As with private certifiers, complaints can be lodged against council certifiers to the NSW Ombudsman and the Independent Commission Against Corruption (ICAC). In addition, concerns about any council officer can currently be raised with the Department of Local Government, local federal and state members, councillors, general managers, directors, managers and so on. It is an almost daily occurrence that officers' decisions are challenged at some level above them by one of these people or organisations.

6. Councils generally operate, and Woollahra does operate, formal complaint management systems that allow them to undertake independent internal reviews of their operations, service delivery, responsiveness and general conduct. Council staff are required to adhere to formal "*Codes of Conduct*" and failure to do so would result in disciplinary action being initiated in accordance with the Local Government State Award. An additional level of scrutiny would seem to be unnecessary.

7. Council officers must complete pecuniary interest statements every year. These are a public document and allow for the public to determine if grounds exist for the lodgment of a formal complaint about pecuniary interest conflicts. No equivalent pecuniary interest disclosure requirements apply to private accredited certifiers.

8. When residents have concerns with adjoining developments, they continue to contact councils, whether they are the certifying authority or not. It is considered this occurs because the general community sees councils as an independent body and they expect councils to protect their well being and interests – "*that's what they pay rates for*".

   It is considered the community remains sceptical of private certifiers' independence and their lack of ability to provide a swift response to their concerns.

9. Councils generally have a geographical advantage over private certifiers, which will not change. Private certifiers have jobs spread over a wide area and as such their ability to provide immediate responses to community enquiries is definitely hindered.

10. Other than section 109L notices, councils are responsible for enforcement action, being the only body able to;

    (a) issue penalty infringement notices;
    (b) consider representations on Notices of Intention to issue an order under Sections 109L or 121B of the *Environmental Planning & Assessment Act 1979;* and
    (c) serve Orders pursuant to Section 121B of the *Environmental Planning & Assessment Act 1979*.

8. Only councils can determine building certificate applications and when work is undertaken contrary to the approved consent, the private certifier has the option to recommend to the owner of the property to lodge a building certificate application for Council's consideration.

9. It is considered that council certifiers have substantially more statutory and common law responsibilities. Their responsibilities cannot simply be limited to work they

have been contracted for. For example, if a council certifier noticed an unfenced swimming pool while undertaking a mandatory inspection on an unrelated project, they would have a duty of care to take action.

Similarly if a council certifier detected the installation of an authorised air conditioning system, they would be required to take action, even if the installation was not "*required*" pursuant to the Building Code of Australia. This does not seem to be the case for private certifiers.

With regard to the latter example, it is common for councils to be called in on private certified jobs by adjoining residents, to address this form of unauthorised installation. On occasion, the certifier has issued an occupation certificate and has not given any consideration to, or taken action on, the unauthorised installation because it was not part of his/her contract or part of his/her duties as the PCA.

10. Council Management Systems, delegations, pecuniary interest statements, the list goes on, all regulated under the Local Government Act and other Acts, function such that:
    (a) layers of management control exist supervising more junior council officers;
    (b) council officers with lower levels of skills, experience and competence have limited delegated authority;
    (c) any failure of a council officer can be remedied instantly by the general manager modifying or revoking the officer's delegated authority (no waiting months for CRC, SAC, Director General, ADT and appeals to make a determination);
    (d) the NSW Ombudsman, Department of Local Government and ICAC openly investigate complaints and require changes in management systems to address any failure;
    (e) there is a layer of governance oversight above the administrative functions controlled by the general manager. Council general managers and senior staff are on performance based contracts providing direct accountability to the public as represented by the elected members of council.
    (f) strict codes of conduct prohibit even minor gifts being accepted by council officers, unlike private certifiers who clearly accept very significant benefits. Such benefits would be deemed by local government officers, and the community, as a possible bribe, but they are perceived by the private certifiers as a "*benefit of the job*".

Recommendation No.12 of the Joint Select Committee on the Quality of Buildings in NSW Report was meant to deliver a level playing field because of the arguments set out from page 53 of the report. These arguments turn on the need for more accountability. Given all the above facts, the question we put to the BPB is:

"*Are council officers not already fully accountable?*"

No reasonable person could argue that local government officers are not already fully accountable and this level of accountability far exceeds that of the private certifiers.

The whole notion that the playing field is not level is only correct in the sense that private certifiers enjoy a level of accountability well below that of council officers and the roles and responsibilities are not consistent with those of councils.

Having regard to all the above issues, we are unsure who the level playing field is to benefit. There seems to be little benefit to the community in requiring another layer of unnecessary scrutiny.

Consumer Protection

A key point of the discussion paper is the need to accredit council staff so as to provide better consumer protection and in turn, quality building outcomes. However, there seems to be little evidence to suggest that the accreditation schemes and practices currently applied to private certifiers has successfully achieved these objectives. Complaints are still being received in relation to private certifiers at such a rate that it is allegedly taking months for them to be reviewed and determined.

We don't believe there is any evidence to suggest that councils' services are poor or that the building outcomes resulting from councils' involvement are of a lesser quality. The organistational structure of councils generally provides better control mechanisms, scrutiny and quality assurance. In many councils, there are "*checkers checking the checkers*".

It could be argued that the building outcomes currently achieved by council certifiers are of a better quality to those achieved by private certifiers. Therefore, what community benefit or additional consumer protection will be gained by accrediting council certifiers?

Council officers act without fear or favour, in the public interest, with appropriate qualifications, experience and competence in line with formal position specifications. Council officers are supervised by layers of more qualified supervisors and managers, operate within management systems, formal complaint systems, are limited in their authority by delegations and subject to levels of governance and complaint investigation way beyond those of private certifiers. If even one councillor raises a concern about a matter it is investigated at manager level and above by directors and general managers, if necessary. Also, as detailed in the previous section, the remedied is quick.

Local government's role is protection of the public interest, which fully encompasses consumer protection.

To protect consumers, private certifiers can issue 'notices of proposed orders' under section 109L of the *Environmental Planning & Assessment Act* 1979 to the same effect as a notice given by a council under section 121H of the Act. In the Woollahra local government area private certifiers have held a market share of around 70% of all PCA services for the past 4 years. On this basis one would reasonably expect that around 70% of all notices issued under the Act to remedy illegal or defective building work (to protect the consumer), would come from certifiers.

The fact is, that despite Woollahra Council only having control of around 30% of development sites in our area, in 2003 the following 'notices of proposed orders' were issued pursuant to Section 121H of the *Environmental Planning & Assessment Act* 1979;

Notice Type	Council Issued	Certifier Issued
2 - Demolish	86 (100%)	0 (0%)
13 – Comply with Development Standard	6 (86%)	1 (14%)
15 – Comply with Development Consent	28 (85%)	5 (15%)

Who is protecting who?

We consider that consumers would benefit more by;

1. Implementing all the recommendations of the Joint Select Committee listed previously;

2. Increasing the licensing, training and accountability requirements for building contractors and make them sign off "*compliance certificates*" for every job they do;

3. Increasing the need for builders insurance, including insurance against damage to adjoining properties;

4. Reintroducing compulsory home warranty insurance on high rise residential flat buildings;

5. Requiring more meaningful mandatory inspections for class 2-9 buildings; and

6. Providing STOP WORK powers to certifying authorities (council and private) in line with recommendation No.45

While not agreeing that council certifiers should be accredited for the reasons listed above, we would like to provide the following comments on the individual models identified in the discussion paper.

How should council certification staff be accredited?

Council and private certifiers are different and any accreditation system should recognise that. A level playing field provides little to no benefit to the community and is impossible to achieve. Therefore, local government certifiers, if accredited, should be accredited under a different system – Option B.

The most important issue is to weigh-up the cost of accrediting council certifiers against the real benefits that will be achieved. There is no evidence to suggest that councils are currently producing lower quality building outcomes therefore why add unnecessary costs that will need to be met by the community?

Furthermore, if council certifiers were accredited under the same scheme as private certifiers, councils would be nothing more than a training ground. In boom times when higher financial rewards are on offer in the private sector, council trained staff who have achieved their accreditation would be able to easily transfer to the private sector. In such situations, councils and the community bear the high initial cost for obtaining an officer's accreditation and do not obtain the full benefit of the investment.

Council certifiers should hold a minimum qualification or equivalent prior learning that is acknowledged in a similar way to the previous Ordinance 4 scheme. Alternatively, a "*Code of Appointment*" could be developed for local government certifiers that includes a qualification scheme.

Who should be accredited?

It is considered that Option A - "*the accrediting of all staff who undertake functions equivalent to accredited private certifiers*" is the preferred option. This again would minimise the costs to councils and the community and provide councils with the flexibility required to manage their staff.

Non-accredited staff would be able to undertake assessment work, however this work would be checked and certified by a duly accredited officer. This is consistent with many professions and provides the best opportunities for staff to be provided on-the-job training. This is not inconsistent with the way councils' delegations function whereby senior Building Surveyors peer review junior officers' work and sign off certificates.

The disadvantages of extending accreditation to assessment officers (Option A) would far outweigh the benefits. There is no evidence to suggest that such a scheme would provide better consumer protection and quality assurance. In fact, it may lead to complacency and a reduction in the amount of quality checking that currently occurs in local government.

How should transitional accreditation work?

Any transitional system should endeavour to ensure that all existing qualified and experienced staff are not disadvantaged in any way. It should also acknowledge and recognise prior learning and work experience. This can only be achieved by introducing a transitional scheme as detailed in Option D. Given the benefits of full accreditation are questionable, and it is unlikely that councils would have their staff undertake work they are not qualified for or experienced in, without appropriate supervision, there is no perceivable disadvantage associated with Option D.

It should be noted that a degree, post graduate or masters qualification is not a guarantee of competence. Local government has many long term officers with 10 to 40 years experience who hold certificate, associate diploma and diploma level qualifications but who through long term experience in the industry can be trusted to provide critical and rigourous assessments, inspections and determinations of very complex matters. Those who have, by example, Ordinance 4 certificates under the Local Government Act 1919 and relevant experience should be automatically accredited.

It must be appreciated that these older more experienced officers are generally the most conservative in the industry, the most thorough in their assessments, inspections and determinations and the most likely to act without fear or favour in the public interest. This group of experienced council officers has a significant role to play in training and mentoring student building certifiers and must not be disadvantaged because they have a qualification that no longer even exists in the TAFE or university system.

If the BPB reviewed complaints made about some of the "*old chief building inspectors*" that have come before the SAC and CRC, it would no doubt see a trend that the older, less

qualified on paper people (but more experienced) are getting things right more often than the better qualified, on paper (but less experienced), younger counter parts.

What should qualify as continuing professional development?

The principal of continuing professional development (CPD) is fully supported and we believe councils are committed to providing all staff with the opportunity to maintain and enhance their skills and professional knowledge. However, to require council certifiers to achieve a minimum number of CPD points on an annual basis could result in an inequitable amount of money being spent on council certifiers, at the expanse of other staff.

Also, it could result in money being spent on unnecessary courses or seminars, simply to ensure the certifier obtains the required number of CPD points. For example, Woollahra Council certifiers could attend a bushfire course, which has little practical use, but it would provide them with CPD points.

Equally attendance at seminars, conferences or training courses in no way guarantees professional development. People can register for such events and leave soon after they commence. CPD points would be acquired, but what real benefit is gained?

Accordingly, we do not consider mandatory CPD is warranted for people granted transitional accreditation and we would question the value of mandatory CPD across the board.

Non-mandatory and appropriate continued professional development should be encouraged. It should include less costly, but more practical options such as;

1. "Mentoring" programs, where knowledge is acquired from a more experienced person on a one-to-one basis;

2. The preparation of professional papers and technical reports that require personal research and investigation;

3. Provision of and attendance at in-house training sessions; and

4. Attendance at practical workshops.

Conclusion

The issue of accrediting council certifiers is an extremely important matter that should only be considered if it provides real benefits to the community. If you require any further information or clarification of my comments, please do not hesitate to contact me by calling (02) 9391 7065 during business hours.

Yours faithfully

Tim Tuxford
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