



# **PLANNING REFORM 2014**

## **RESPONSE TO THE EXPERT PANEL ON PLANNING REFORM'S REPORT 'WHAT WE HAVE HEARD'**

June 2014

## 1. INTRODUCTION

The Minister for Planning announced in February 2013 the formation of an Expert Panel on Planning Reform ('the Panel') to provide recommendations for a new planning system to the Government of South Australia by December 2014.

The Local Government Association of South Australia (LGA) welcomed this announcement as an opportunity to address the varied planning issues that have been experienced by Councils and contribute to a more efficient, effective and transparent planning system.

Local Government in South Australia has engaged with the Panel's work in a number of ways. The LGA has two members on the Planning Reform Reference Group, who are charged with the important task of representing the planning reform issues, ideas and opportunities of both metropolitan and country Councils. The Reference Group members are supported by the LGA Secretariat through the sharing of information and ideas.

Councils have also directly participated in the process through various briefing sessions, workshops, written submissions and online feedback during the initial first 'listening and scoping' phase of the Panel's work. The LGA did not make a submission to the Panel during this phase as it was considered to be most valuable for Councils to engage directly with the Panel and share their individual experiences.

The purpose of this submission is to comment upon the extent to which issues raised by Councils have been adequately addressed in the 'What We Have Heard' progress report, and provide advice to the Panel on future phases of the process. The positions and ideas presented in this submission are based on information provided to the LGA by Councils during the review process and previous work or submissions produced by the LGA that have been developed in consultation with the sector.

In summary, the LGA is of the view that the Panel's progress report is comprehensive and has had significant regard to the views expressed by Councils. However, this submission provides further details around some of the issues and ideas and also responds to a number of the ideas submitted by other interest groups.

## 2. THE HALLMARKS OF A GOOD PLANNING SYSTEM

Local Government collectively has a clear vision for an ideal planning system for South Australia. The LGA recommends to the Panel that planning reform options be assessed and prioritised based on whether they will satisfy the following objectives.

### **Accessible**

1. Policies and processes are clear and consistent, resulting in equity, fairness and certainty.
2. Opportunities for public participation in the planning system are clear, with an emphasis on influencing outcomes at the strategic planning and policy development stages.
3. The pathways to development are clear and uncomplicated, with the level of assessment required matched to the level of risk of impact associated with a development.
4. The appeal and review process is timely and cost effective, and compliance and procedural matters are principally resolved through a non-judicial process.

### **Integrated**

5. Planning policies and processes are underpinned by triple bottom line thinking, which balances the State's economic, environmental and social interests.

6. Local Government works with the State Government to develop and implement an overarching planning strategy and to ensure that all major state and local policy documents are consistent with the strategy and with each other.
7. The system promotes excellence in urban and built form which improves the health and wellbeing of communities. This is underpinned by decision makers having a high level of planning and design competency.

#### **Accountable**

8. Decision making at all stages of planning is transparent and decision makers are held accountable for their performance by introducing fair and reasonable performance measures.
9. The development assessment process is robust, but is more efficient through the removal of red tape.
10. Planning policy can be updated quickly and efficiently, with amendments that are not seriously at variance with the Planning Strategy taking no more than 6 months to be finalised from the date of lodgement.
11. There is accountability in the planning policy amendment process through the introduction of performance measures and transparency through the introduction of an online 'tracking' system.

#### **Local Involvement**

12. Local Government has primary responsibility for developing and updating the local elements of planning policy and the assessment of local impacts of all development proposals.
13. Elected Members have a high level of engagement and influence in the development of local planning policy, which is used to make objective decisions about development outcomes.

### **3. LGA RESPONSE TO THE REPORT**

This section of the submission provides a comment on each of the themes discussed in the Panel's report. Discussion on sections of the report which address similar themes have, in some cases, been linked together.

#### **3.1 Balancing State, Regional and Local Interests.**

The report appropriately captures the need to redefine the relationship between State and Local Government in the delivery of the planning system. Issues have occurred in recent years with the imposition of 'top down' political strategies that have insufficient regard for the strategic planning that is undertaken by Councils at a local level. Greater emphasis needs to be placed on State and Local Government working together in clearly defined roles to develop and deliver shared goals.

The Local Excellence Expert Panel report on the Council of the Future contemplates the establishment of 'Regional Councils' to support regional collaboration, resource sharing and decentralised decision making. While the recommendations of this report are subject to ongoing consultation with the Local Government sector and have a long horizon, the LGA is interested in further investigating the concept of regionalisation in planning.

A project is currently underway with the South East Local Government Association (SELGA) to explore the feasibility of a regional planning authority, which amongst its functions could have oversight of a regional Development Plan, Regional Development Assessment Panel, assessment of Major Projects and a Regional Planning Strategy. The LGA looks forward to sharing the outcomes of this project with the Panel.

Whilst the LGA is keen to explore the option of regionalisation, the mandating of regional development assessment panels is not supported at this time.

### **3.2 Community Inputs into Planning Decisions**

### **3.3 Inviting and Enabling Participation**

### **4.4 Who Should be Involved in Strategic Planning**

Local Government broadly supports increased community participation in the planning system to restore confidence in the process. The current 'minimum standards' prescribed in the legislation are outdated and do not reach a broad audience. Community engagement should be 'engaging', user-friendly, and capitalise on commonly available technology. There should not be any ambiguity about how and when members of the community are engaged in strategy, policy or assessment.

Local Government also supports strategies to increase participation at the 'front end' of the planning system. Too often, philosophical debates about optimum density and built form are occurring at the development assessment stage. These discussions need to occur before the planning strategy is settled and communities need to have access to all of the information that is underpinning a Government's proposed directions. Consultation on planning strategies should include public lectures and open debate, with genuine opportunities provided to shape the outcomes. The level of discussion and debate required at this stage in the process cannot be achieved within the short timeframe of 8-12 weeks that is currently provided for community engagement. The ultimate aim is create a process that generates a sense of ownership of the plan within communities.

In addition to increased community engagement, the participation of Councils in strategic planning processes also needs to be enhanced. There needs to be a far greater level of collaboration in the development and review of the State and Regional Planning Strategies.

However, it should be acknowledged that comprehensive engagement processes can be costly to implement and regard needs to be given to how increased participation would be appropriately resourced. The LGA suggests that an approach which would allow costs to be equitably shared between community, government and industry be investigated.

The LGA is currently preparing Issues Papers which will provide an analysis of a range of planning reform options to improve participation in the planning process.

### **3.4 Political Accountability and Oversight**

Elected Members (EMs) play an important role in the planning system by contributing local knowledge and representing community expectations. The LGA seeks to maintain the role of EMs in Council/Regional Development Assessment Panels (DAPs) and setting planning policy. The report mentions the recent media commentary about the role of EMs on DAPs and the perception that some groups hold that elected officials can frustrate the assessment process and stifle investment. The LGA strongly rejects these claims as they are unfounded and unsubstantiated. Under the current model, the balance of DAP members are independent and there is a general sense that this is a workable structure.

However, the LGA would support a review of the experience, professional development and training requirements for all DAP members. The LGA currently offers a training program to DAP members on a voluntary basis and would consider expanding this program if mandatory training requirements were introduced. It may also be beneficial to prescribe the skills, knowledge and experience required of Independent Members.

A small number of Councils have indicated they would prefer EM participation on DAPs to be optional, particularly in smaller regional communities where the dual role can create tension.

The report captures the view held by many in Local Government that the Minister's powers are too broad, with insufficient transparency and accountability measures. Particular issues that have arisen are the lack of criteria for the declaration of Major Projects, liberal use of interim development plan controls and limited access to investigations underpinning Ministerial Development Plan Amendments (DPAs). To overcome these issues, the LGA is supportive of greater parliamentary oversight and/or more independence in Local Government's decision making.

Whilst the LGA does not have an endorsed view on the establishment of an independent planning commission at this point in time, further investigation of this concept is supported and the LGA is currently contemplating the role and membership of a Commission through a series of research papers.

### **3.5 The Role and Influence of Professional Expertise**

The LGA agrees with the sentiment in the report that good planning relies on expert technical advice. There is a clear role for the planning legislation to ensure that planning decisions are made by individuals or groups with appropriate skills, qualifications and experience. However, any mandatory requirements should consider the resource implications, particularly for regional areas where there is an existing skills shortage and it is cost prohibitive to 'buy in' expertise on an ad-hoc basis.

Decision makers need to be empowered to request additional information from a project proponent if expert technical advice is required to make an informed decision on a proposal. There may also be instances where the advice requires a degree of independence, in which case the decision maker should be empowered to seek this advice and recover the costs from the proponent.

The Design Review Panel established by the State Government is a good example of development outcomes being positively influenced by independent expert advice. Unfortunately this process is only available to Councils at significant cost, without a mechanism to recover costs from the applicant. This ultimately precludes Councils from accessing this advice. The LGA strongly recommends to the Panel that Councils should have legislative authority to require design review as part of the development assessment process to ensure quality design outcomes and to recover any associated fees from the applicant on a full cost recovery basis.

### **3.6 Integrity in Decision Making**

The increasingly contentious nature of planning decisions is linked to increasing expectations about what the planning system can achieve. Council planners need to operate in an environment where they can make finely balanced decisions without fear of their integrity being unfairly questioned. To achieve this, the planning process needs to be easy to navigate, transparent and requires a high degree of accountability at all levels.

The idea of establishing a 'planning ombudsman' to hear complaints about planning process warrants further consideration. However, this office would need to be adequately resourced and may require a 'user pays' system, similar to the Local Government Governance Panel established by the LGA to assist Councils to consider 'Code of Conduct' complaints against Elected Members.

## **4.1 Setting Clear Goals and Priorities**

### **4.5 Implementing Strategic Directions**

The LGA recognises that South Australia is a national leader in strategic planning and supported the development of the 30-Year Plan for Greater Adelaide. However, the LGA

concurs with the issues that have been noted in the Panel's report about the lack of interaction between the planning strategy volumes and local policy directions.

Many Councils have been frustrated that the long term vision within the planning strategies are not accompanied by short or medium term implementation plans, which provide clear guidance about when and how Councils can engage in the delivery of the strategy. This has made it difficult for Councils to align their own strategic plans, schedule planning policy amendments and develop financial plans to support their strategy. Improved mechanisms are required to support the implementation of planning strategies which facilitate better coordination between State and Local Government.

The report outlines an idea to enable elements of the strategy to be to be changed more frequently by administrative means. This would enable the strategy to be more responsive, but the LGA considers that it would be even more difficult for Councils to align their plans to a strategy that is regularly changing.

#### **4.2 Triple Bottom Line Thinking**

The LGA agrees that a planning strategy should seek to concurrently progress a range of economic, social and environmental goals. However, Local Government also firmly understands the political reality that difficult decisions need to be made and it is not always possible to strike a perfect balance between competing demands. This cannot easily be reconciled through legislation; however, the principles and philosophies that underpin the planning system need to embrace triple bottom line thinking which emphasises that the pursuit of economic goals must not be at the expense of social and environmental outcomes for South Australia.

It is recommended that the Panel consider including a set of mandatory criteria that must be included in the volumes of the planning strategy. This is particularly important in regional areas where Councils are reporting that the planning strategy does not include adequate policy applicable to rural contexts.

The idea of establishing a single integrated regional plan, with the NRM plan, land use plans, transport plans and infrastructure plans etc, forming chapters is broadly supported and would link to the idea of establishing a regional planning authority to administer and monitor the implementation of the plan.

#### **4.3 Linking Strategic Policies and Directions**

The ideas presented in this section of the Panel's report regarding regional collaboration are closely related to the concept of regionalisation that has been recommended in the Local Excellence Expert Panel report. The LGA is keen to further explore the benefits of a regionalised governance model and will further engage with the Panel on this issue as further research is undertaken.

The report suggests that the Panel is considering rationalisation of the legislative obligations on Local Government to undertake strategic planning. It is considered that there could be better coordination of the long term planning that is required under the Development Act and Local Government Act, however, any changes should not detract from the importance of local vision setting and prioritisation of activities.

#### **4.6 Planning and Delivering Infrastructure**

##### **7.3 Aligning Funding and Budgets**

Better planning and coordination of infrastructure has been a key issue for Local Government and the Panel's report adequately captures the need for an equitable framework for infrastructure contributions to be developed. The report also recognises the

importance of aligning the State's planning strategy with State infrastructure, planning, funding and provision.

The LGA has undertaken a significant amount of work in this area over the last 10 years. A summary of the reports that have been prepared on the LGA's behalf is provided below.

*2006- Kellog, Brown & Root Report- Developer Responsibilities/Contributions- Analysis and Framework Study.*

A comprehensive report prepared for the LGA which builds a case for a formal infrastructure contributions framework to be adopted in SA. The report analyses the various approaches being used in other jurisdictions at the time and provides an overview of the likely impacts on different sectors if the State shifted towards a formal model. This report outlines that a model needs to be based on the principles of: *'Need, Nexus, Equity, Efficiency and Accountability'*. The conclusion of the report was that Local Government needs to work with the development industry on this issue to ensure that outcomes are 'politically palatable' and practical.

*2007- Macroplan Report- Developer Contributions Mechanism Study*

Following the 2006 report, which was based on principles and implications of development contributions, the LGA commissioned further work to analyse the various mechanisms of achieving an equitable model. The primary options considered by this report were:

1. Special rates/ infrastructure rate levy under the Local Government Act.
2. A legislative framework allowing Councils to negotiate and enforce specific planning agreements with land owners and/or developers specific to projects/areas/infrastructures.
3. Local Development Contributions framework- creating a policy and legislative framework allowing councils to levy contributions to fund local infrastructure requirements.
4. Regional Development Contributions framework - provide a policy and legislative framework allowing Councils, in collaboration with State government and other authorities to fund metropolitan/region-wide infrastructure requirements

The report concluded that options 1 and 2 were viable in the short term and options 3 and 4 should be considered as important long term goals for South Australia.

*2008-2011- Heynen Planning Consultants- Development Contributions Study Final Report*

This report provided further analysis of the options presented in the Macroplan Report through a lens of housing affordability and practicality. The report provides a broader range of legislative and non-legislative implementation options. These include:

1. Establishing an 'Infrastructure Fund' under the Development Act 1993, which would operate in a similar way to the existing Section 50A Carparking Fund.
2. Considering the role that existing strategic documents at the Council level (Strategic Management Plans, Section 30 Reviews etc) could play in setting future infrastructure priorities, which would then link to funding agreements.
3. Expanding Section 50 of the Development Act (which deals with open space contributions) to prescribe a broader range of contributions when assessing a land division.

These options were communicated to the State Government throughout the 2008 Planning Review, 30-Year Plan consultation and early discussions on an Urban Development Authority (which evolved into the URA).

### *2013- Bill Cossey- Contributions to The Costs Of Public Infrastructure- A Discussion Paper*

In 2012, the LGA invited representatives from Councils, UDIA and Property Council to a roundtable discussion on infrastructure funding. This discussion was facilitated by Bill Cossey, who also prepared a paper outlining potential ways forward arising from the discussion. This paper provides a good foundation for continuing discussions and, in summary, outlined the following considerations:

- The economic modelling tool produced for the LGA by Deloitte Access Economics should be further developed and enhanced.
- Councils and developers require assistance, through guidelines, to develop clear and realistic expectations about provision, funding and standards of infrastructure.
- The difference between greenfields and infill developments needs to be contemplated in the guidelines.
- A specific training program for Council officers involved in negotiations with developers about infrastructure contributions.
- Establish a skills sharing arrangements where Councils with significant experience provide assistance to other Councils on a formal fee-for-service basis.
- Research the extent to which State Government regulations impact on negotiations between Councils and developers (EPA, SA Water requirements etc).

The LGA is currently revisiting this work in partnership with development industry peak bodies to develop agreed guidelines for negotiating infrastructure contributions. An MOU was signed with the planning peak bodies to formalise this work. A copy of the MOU is included as an attachment to this submission. Based on the experiences of Councils and developers interstate, the LGA is cautious about a complex legislative approach which results in onerous reporting requirements and adds to the cost of housing.

Since 2010 the LGA on behalf of Local Government has been seeking the establishment of a suitable infrastructure authority that would facilitate a new and collaborative approach to jointly planning, prioritising and delivering infrastructure of state and regional significance. When the State Government is undertaking an infrastructure project or activity that impacts on Councils, Local Government needs to be engaged in the early stages of project analysis and decision making to ensure alignment with Council long term financial and asset management plans.

#### **4.7 Understanding Trends and Monitoring Performance**

Local Government has shared the frustration noted in the report regarding the difficulty in obtaining the reports and data that have underpinned important strategic decisions made by the State Government. It is considered that this frustration could be substantially alleviated if Councils and communities were engaged much earlier in State Government thinking about important policy drivers such as population growth and built form density. Different individuals and groups often enter the debate on these issues from polarised view points and an extended public conversation is required to ensure that all views have been heard and appropriately considered. Adequate justification needs to be provided when the Government has rejected a particular point of view.

#### **5.1 Consistent Rules Across the State**

The LGA generally accepts that the planning policy described in the State's 72 Development Plans has become too unwieldy. Development Plans are often repetitive, contradictory and can contain a number of 'legacy' issues. This leads to confusion for decision makers, proponents and communities, as evidenced by the complex judgements often handed down by the Environment, Resources and Development Court.



As such, there is a role for the South Australian Planning Policy Library and standardisation of zoning. However, the library and the zones it contains would need to be developed and maintained in consultation with Local Government and independent experts. There also needs to be capacity for local variations to be included to recognise the unique character, opportunities and constraints of individual locations.

The LGA is currently preparing an Issues Paper on a best practice planning policy framework, which will contemplate the role of individual and centralised Development Plans in a future planning system. The outcomes of this work will be shared with the Panel.

## **5.2 Clear Rules that Promote Certainty**

As highlighted above, the LGA agrees that Development Plans have become too complex to be efficient and effective planning tools. However, the focus of reform should be on simplifying the structure, content and expression within the Plans, rather than a 'watering down' of planning policy to a 'tick a box' approach.

The obvious danger in expanding a codified approach to planning assessment is that subjective matters such as design and character cannot be adequately assessed without a robust set of design based policies.

Some Councils have noted that the introduction of a 'prohibited' category of development would provide greater certainty about the development that will not be approved within a particular area. This has been reflected in the Panel's report.

The LGA supports a review of land use definitions as there are commonly reports that existing definitions are outdated and do not capture new industries and technologies.

## **5.3 Maintaining and Updating Rules and Frameworks**

Reducing the time and cost to update zoning and planning policy is arguably the most important planning reform objective for Local Government. For many years, Councils have consistently reported that DPAs take too long and are too resource intensive. The entire process needs to be reworked.

The LGA is currently completing an Issues Paper on this theme, with the intent of working with the sector to identify priority reform options. The key ideas that are emerging through this significant piece of work are:

- Introducing different processes for minor, moderate and significant amendment proposals;
- Delegating approval of minor amendments to Local Government;
- Delegating approval of moderate amendments to the Department (or regional authority/independent commission);
- Simplifying the Statement of Intent process and reducing the level of investigations required at this stage;
- Introducing a straightforward process for amendments that are directly linked to the planning strategy;
- Combining rezoning and development application processes for precinct developments (as contemplated in the Urban Renewal Act); and
- Recognising and formalising the option for privately funded development plan amendments.
- Introducing an online DPA tracking system which allows everyone to see what DPAs are in the system and how they have progressed.

The LGA is encouraged by the clear reflection of these issues and ideas in the Panel's report.

#### **5.4 Transparent Process for Planning Changes**

The LGA would argue that Councils carry out Development Plan Amendments in an open and transparent manner and make a genuine effort to engage the community in policy conversations. Policy directions are underpinned by comprehensive investigations, which are usually made available for public scrutiny.

However, many Councils have noted that a Ministerial DPA often does not provide a commensurate level of detail and that the decision making process for Ministerial DPAs often lacks transparency. The LGA recommends that the Panel's final report includes a recommendation that all policy and zoning amendments are subject to the same level of scrutiny, regardless of how they are initiated.

#### **5.5 Focussing on Place and Urban Design**

##### **5.6 Maintaining Heritage and Character**

As discussed in Section 3.5, design outcomes could be enhanced by providing Councils with cost neutral access to design advice through a design review process.

The LGA is currently preparing an Issues Paper in consultation with Councils which will contemplate how place making, design, heritage and character can be better incorporated in the planning system.

The protection of heritage and character is likely to become a significant issue as the number of urban renewal 'precinct' developments increases. The planning system is yet to deliver a suitable mechanism for valuing and protecting character, although several Councils noted that Desired Character Statements have become important in ensuring character and design can be somewhat addressed in an assessment.

It is considered that the environmental performance, particularly energy efficiency, of buildings should be a more fundamental element of urban design.

#### **5.7 Parks, Streetscapes and Urban Greenery**

The LGA supports a comprehensive review of the Open Space Contributions Scheme and is currently working with consultants on recommendations for a more equitable system. The LGA looks forward to sharing the outcomes of this project with the Panel.

#### **6.1 Pathways to Development**

##### **6.2 What needs to be Assessed**

##### **6.3 Elements of Assessment**

The LGA agrees that the level of assessment required for a particular type of development needs to be matched to the level of associated risk. The LGA also agrees that the development pathways need to be reviewed to ensure that resources are dedicated to where they are most needed.

However, the concept of 'low risk' development can be subjective as it is based on a personal view or expectation about what should be 'controlled'. Also, the level of risk associated with a particular development is linked to its location. For instance, the impact of minor structures such as carports and verandas is likely to be significantly different in high density areas when compared with low density rural areas. Therefore, the LGA would recommend caution about blanket recommendations about exempt or self-assessed developments as these pathways are not suitable in all localities.

There is a considerable level of risk associated with the concept of self-assessment and there is concern that this approach would lead to an increasing burden on Councils to undertake enforcement action on those who have accidentally, or by design, made an incorrect assessment.

Views about the introduction and operation of the Residential Code in South Australia vary across Councils. However, it is clear that the Code is inappropriately housed within the Development Regulations and cannot be clearly expressed unless it is removed to a standalone document.

Local Government is generally comfortable with the 'merit' system, which allows all aspects of a development to be considered in a balanced assessment. The use of this system reinforces that development assessment is a skill, which needs to be undertaken by experienced and qualified professionals.

In order to meet industry and community expectations by delivering quality decisions in an efficient manner, Councils need to be appropriately resourced. The current fee schedule is not reflective of true costs. The Local Government Financial Managers Group has developed a cost recovery model to measure the true cost of the activities performed by Councils. It is intended to use this model to measure various components of the planning system to create an evidence base for a complete review of Schedule 6. The State Local Government Working Party has been established by the State Government and the LGA is charged with the responsibility of identifying appropriate fees. This Working Party has done some work in this area but other fees are still under review.

The LGA is proposing to prepare an Issues Paper on Development Assessment Pathways and Processes which will analyse a range of options to address the issues experienced by Local Government.

#### **6.4 Timeframes, Information and Advice**

#### **6.7 Facilitating Development Outcomes**

The LGA does not deny that there is a need for greater efficiency in the Development Assessment process and the reduction of red tape is supported. A recent study of assessment for high value developments in the metropolitan inner-rim conducted by the LGA found that the most significant factor in influencing timeframes is the level of supporting information supplied by the applicant. On average the applications captured by this study were delayed by approximately 80 days waiting for additional information. The LGA is keen to explore how this issue can be resolved through, amongst other ideas, a formal pre-lodgement advice process. This process could include the relevant authority and any referral agencies. It is encouraging to see that this idea has been reflected in the Panel's report.

The LGA will explore options for improving assessment timeframes through the development assessment Issues Paper mentioned above.

#### **6.5 Notification, Consultation and Representation**

The current public notification process is complex, ambiguous and does not always target the right people. It has been described to the LGA as lacking common sense. The tiered approach for the categories of development is generally supported, but the 'default' Category 3 approach does not always work well and creates confusion about the type of development that community members expect to be notified of. The categorisation of development for the purpose of public notification needs to be reviewed to address this ambiguity and provide greater consistency across Councils.

In addition to direct notification of neighbouring properties through a written letter, some Councils are advocating for signs to be placed on a development site outlining that there is a proposal currently under consideration. This approach is used in other jurisdictions.

There is a view that further guidance should be given to representors to increase understanding of the types of issues that can be taken into account by the assessment authority.

There are some Councils that would seek to ensure that DAP deliberations can continue to be held in confidence as there is a view that intimidation from a public gallery can unfairly influence planning outcomes. Others have noted that the way in which Panel members engage with the community and applicants needs to provide an opportunity for questions to be asked and answered and for people who have made a verbal representation to be able to clarify themselves.

### **6.6 Who Should Make Assessment Decisions**

The LGA strongly reinforces the view that Councils should remain the principal authority for local planning assessments. With the exception of major projects which have impacts which cross Council boundaries and developments in which Council has an interest, Local Government is appropriately resourced and experienced, or can acquire additional resources as necessary, to carry out all planning assessments. Recent amendments to the Development Regulations which have limited the planning powers of metropolitan Inner-Rim Councils are unsubstantiated. The LGA is calling for these changes to be reversed with an immediate halt to any further proposals to limit the planning powers of Councils.

The LGA recommends to the Panel that local planning decisions, where required, should have the benefit of expert advice on design standards by making the Design Review Panel available to Councils in a cost effective way.

Refer to section 3.4 for discussion about maintaining the role of Elected Members on Development Assessment Panels.

The LGA has objected to expanding the role of private certifiers to undertake planning assessments and recommends a review of the current arrangements to ascertain the benefits to the community and developers.

The LGA supports the concept of performance measures and increased accountability. However, the benchmarks would need to be reasonable, evidence based and developed in collaboration with Councils.

### **6.9 State Significant Developments and Infrastructure**

Local Government has generally supported the need to have a separate assessment process within the legislation to deal with major developments or projects. However, there have been circumstances in which the use and objectivity of the major projects assessment process has been questioned by Councils and there have been calls for more rigour and transparency.

The LGA recently made a submission to the Productivity Commission's inquiry into the assessment of major projects and made the following recommendations:

1. The use of a Major Project process should deliver the best planning and development outcomes through a rigorous assessment process, which is scalable to the complexity of the proposal.

2. Major Project status should only be granted following an assessment of the proposal against clear and specific criteria. This criteria should exclude any developments that can reasonably be dealt with through the mainstream planning process.
3. In the interests of greater transparency, a publicly available report should be prepared which clearly outlines the Minister's reasons for granting Major Project status. Currently declarations often reference only the vague criteria prescribed in the Act and do not provide a clear rationale.
4. The relevant Council should have the opportunity to comment on its capacity to deal with a proposal prior to Major Project status being granted. This would also give the Council the opportunity to flag any potential issues that might have a negative impact on local communities or local service provision.
5. The role of Local Government in the assessment of a Major Project should not duplicate or add an additional layer of bureaucracy to the assessment process.
6. During the assessment of Major Projects, regard must be given to the local Development Plan and relevant volume of the planning strategy.
7. Legislative controls need to be in place to ensure that a proposal is not in direct conflict with the adopted planning strategy for the State or Region.

### **6.11 Appeals and Reviews**

It is frustrating to Councils that over time, the appeal process through the Environment, Resources and Development Court has become a common feature of the planning system. The consequence has been that the system has become overly legalistic and unfortunately case law often prevails over common sense.

It is understood that the majority of appeals are resolved through a compromise agreement reached prior to a Hearing. As it is inexpensive to lodge an appeal through the ERD Court, there is a view that an applicant is not willing to compromise until all other avenues have been exhausted. Accordingly, the LGA would support a review of the appeal rights and process described in the current system.

### **6.12 Monitoring, compliance and enforcement**

The Panel's report has sufficiently captured the compliance and enforcement issues reported by Councils. The key issue may be that the community expects that Local Government has sufficient powers to demand an immediate remedy to compliance issues and to 'punish' those responsible. The reality is that enforcement action is time consuming and costly and often does not resolve the issue.

Accordingly, the LGA supports a review of compliance and enforcement processes. However, the answer may not necessarily be to grant Councils with more powers and enforcement responsibilities (resulting in greater costs to the rate base). Rather, the LGA supports the introduction of innovative compliance sanctions which would create more of a deterrent effect, such as more 'on the spot' financial penalties.

There is evidence to suggest that there is a higher risk of compliance and enforcement issues when a development is being undertaken by an owner-builder. There is currently limited regulation in place to ensure owner-builders are aware of and can confidently discharge their various compliance duties. A range of permit and education systems have been introduced in other jurisdictions which are of interest to the LGA. It is recommended that the Panel consider the introduction of an online short course (or similar) that an owner-builder must complete prior to receiving approval.

## **7.1 The Role of State Agencies**

## **7.2 Regulatory Overlaps and Referrals**

The LGA supports a review of how planning legislation interacts with other legislation, including the Local Government Act. Where possible, the Panel should seek to restore the original 'one stop shop' intent of the Development Act.

A review of the referral process is also welcomed, with the objective of making sure that advice is received in a timely manner and is useful to the decision maker. There have been suggestions by some Councils that the recommended conditions provided by referral agencies are sometimes invalid and unenforceable.

There has also been some concern that the advice (or direction) provided by referral agencies is too robust. A recent example that has been raised with the LGA relates to large farm buildings and a position that the fire safety requirements insisted on by the CFS are excessive and make certain regional development unviable. Despite the pros and cons of the before mentioned example, the LGA supports the mitigation of risk, where the requirements imposed are suitably balanced against the level of associated risk.

#### **7.4 Using and Providing for Technology**

E-planning is broadly supported by Local Government, but its implementation would need to be supported by a significant financial investment in establishing and maintaining a workable system across the State.

Of particular interest to Local Government is developing a central library of spatial data, held by the State Government, which covers the entire State and has been developed using a consistent methodology. This would provide considerable benefit in the areas of risk mitigation and emergency management.

#### **4. NEXT STEPS**

The LGA looks forward to further engagement with the Panel through the Reference Group and more directly through the consultation process over the coming months. The LGA is preparing a range of discussion papers to assist Councils participate in the next phase of consultations.

Councils and the LGA look forward to receiving the Panel's next progress report in July 2014.