

Responses of the Wentworth Falls Chamber of Commerce to the NSW Government White Paper and Green Paper on Reforms to Land Use Planning and Assessment in NSW

Summary

The Wentworth Falls Chamber of Commerce contends that the recommendations of the White Paper and the Green Paper should be applied to the Blue Mountains LGA.

- The current LEP's are outmoded (we note that much of the supporting investigations were undertaken in the 1980s and 1990s). Furthermore they are supported by mapping at the coarse resolution of 1:10,000.
- The LEP's are not sustainable in that they encourage motor vehicles to dominate access to villages and tourism destinations. There is no provision for corner shop business development in residential areas or in tourist areas not currently designated as 'tourist zones'.
- The lack of opportunities for business, tourist and heritage development within the LGA conflicts with the reality that the Blue Mountains LGA is dependent on tourism to provide an economic base and employment.
- In 2012 Council commissioned a report by Stafford Consultants to make recommendations on tourist development in the Blue Mountains LGA. Only three individuals outside Council were interviewed to provide input into that review. The report has still not been released to the community.
- Subdivision policy 500 metres from the village of Wentworth Falls requires a minimum block size of 1200 sq m. Public transport is not supported as evidenced by the lack of bus shelters in the village of Wentworth Falls.
- The LEP's currently use landuse zones not consistent with NSW protocols. Landuse zone classes and nomenclature need to be consistent with all other LEP's in NSW
- The maintenance of subdivision block sizes at 1200m² close to village centre was imposed in LEP 2005 to maintain larger gardens. However the costs associated with maintaining gardens of this size in an alternating wet and dry climate with poor soils is very high. Earlier subdivisions that characterise the 'old' Wentworth Falls village were around 600m². We believe subdivision to 600m² in these locations would not adversely impact on the village character. On the contrary these locations provide Wentworth Falls with it's sought after 'village atmosphere'. Furthermore, 1200m² subdivision restrictions result in subdivision on the periphery involving the urban bushland interface because opportunities, due to the restriction of 1200m² subdivision, are limited close to the village causing development opportunities to be confined to the periphery. Infrastructure is stretched in these peripheral locations, ecological impact on bushland and the National Park World Heritage is greatest and the areas are bushfire prone and often within the flame zone. This is not ecologically, economically nor socially sustainable.
- We contend that business and tourist DA's take far too much time to assess resulting in uncertainty and unnecessary costs and too often require resolution in the Land and Environment Court. We recommend that new procedures and processes, associated with the White Paper, be put in place with adequate provision for review panels that are independent from council representatives and staff thereby minimising the potential for politicisation.

- The Blue Mountains LGA is located within a World Heritage Area and Blue Mountains National Park as well as the catchment of Sydney's Water supply. Strong protection of Environmental values is supported by business and tourism but opportunities for appropriate development need to be supported.
- We believe that adequate safeguards exist through the POEO Act 1997, The National Parks Act, World Heritage Legislation and the Catchment Management Act.

Consequently the Chamber believes there is no argument that there is a need for a special approach to the Blue Mountains. This would only complicate planning processes at a State level.

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Detailed Response

Below is the response of BMCC to the reforms proposed by the White Paper and the Green Paper from the BMCC website. **In red is the response to these points by the Wentworth Falls Chamber of Commerce.**

Council Response

The Local Environmental Plans for the Blue Mountains are strongly rooted in and spring from comprehensive strategic planning and community input. The local plans are highly responsive to the characteristics of the Blue Mountains and seek to retain and enhance the special qualities of the place.

Chamber Response

The LEP's date from 1991 and 2005 and are supported with mapping undertaken in 1998. These LEP's are outdated, not sustainable and are not responsive to changing circumstances of business and tourism in that they do not facilitate opportunities for development because:

- 'Tourist development' is only permissible along major arterial routes and within existing villages
- No opportunities exist for small business facilities such as corner shops outside these locations. Consequently use of motor vehicles by residents to access services is very high
- Lengthy periods for the processing of tourist and business development proposals that create uncertainty and high upfront costs
- In Wentworth Falls maintenance of 1200m² subdivisions in residential areas within an unacceptably short distance of village centres and rail stations where former LEP's permitted subdivision down to 600m².

Council Response

Whilst many of the concepts set out in the Green Paper are worthy, the ability of the reforms to deliver valid, responsive results on the ground is questioned. The emphasis of the reforms is the promotion of growth, the references to ecologically sustainable development or other sustainability concepts, peripheral.

Chamber Response

- Whilst ecological sustainable development is important, particularly in developments peripheral to a World Heritage Area, Council must also commit equally to sustainable business development by enhancing tourism and business opportunities if the communities of the Blue Mountains are to enjoy employment and social benefits
- The council must also be run on a sustainable business model rather than characteristically run on piecemeal outmoded planning, misalignment of priorities and a limited commercial mindset (note five aquatic centres over the mountains) and poor project delivery.

Council Response

In the terms of the Green Paper, the regulatory controls on BM LEPs are the consequence of the strategic plan, not the basis of the plan. This local government area has undertaken extensive analysis and mapping of significant and sensitive environmental characteristics to aid in strategic management of development.

The valued characteristics apply widely over this local government area, creating a complex mosaic of landscape elements and development suitability. Site responsive design is often essential in order to achieve an appropriate development outcome.

The position of the City within and atop a World Heritage listed National Park has

emphasised the need for and priority placed upon the protection of valued environmental qualities. Similarly, the protection and enhancement of the character of the 26 villages and towns of the Blue Mountains is of high importance to our community. In addition to large number of properties and precincts that have formal heritage listing, extensive areas of our villages also have a highly valued character.

Chamber Response

- Site responsive design is important in those areas which abut to the World Heritage Area National Park or bushland however, the scale of mapping supporting the LEP's is 1:10,000 which is not conducive to determination of site specific design.
- The protection and enhancement of villages again is overstated. The Chamber has requested in the case of Wentworth Falls Village that Council undertake a master plan study to ensure that future development of the village is compatible with its heritage character, is sustainable given the limited opportunities for development, and is sustainable given the limited parking opportunities. No such master plan exists nor is it envisaged in the foreseeable future. Further, Council appears to care little for public transport infrastructure provision for residents or tourists in that no bus shelters exist in Wentworth Falls village. A council report on bus shelters stated there was no economic, ecological or social benefit in the provision of bus shelters in the village of Wentworth Falls.

Council Response

The Blue Mountains has no land suitable for greenfields development.

Growth opportunities are limited to infill development, with medium density residential development options being provided in close proximity to the village centres and railway stations.

This is consistent with urban village concepts which promote good public transport access, walkable neighbourhoods centred upon vibrant villages of high quality. These same areas are often also the locations of most valued built character and design quality is a major consideration as part of development assessment in these areas.

Chamber Response

- Infill development is significantly constrained by virtue of subdivision block size within close proximity of villages being limited to 1200m².
- See prior response regarding council's priority for public transport. Bus stops are not well identified, bus shelters absent in a climatic regime which supports 1400mm rainfall per annum and quite severe winters, nor are timetables apparent.
- Often villages are truncated by the highway and there is no supporting commercial infrastructure outside the village and rail station to provide for daily needs of residents or tourists operating outside the village requiring reliance on motor vehicles. Corner store developments or kiosks in areas remote from village centres and tourist destinations would enable residents and tourists to walk to these facilities rather than drive to village centres.

Council Response

The remaining vacant land is almost always subject to significant environmental constraints, whether that be watercourses, difficult vehicular access, significant vegetation and/or steep slopes and the attendant bushfire hazard which is high to extreme over much of the residential area.

Chamber Response

- Much of this remaining vacant land should not have been zoned for development because of these significant environmental constraints. This characterises poor planning decisions in the past.

Council Response

Therefore, the growth prospects of the City of Blue Mountains are modest compared to the balance of the Sydney Metropolitan area of which it forms a part.

One of the consequences of the reform process to date, which has previously been reported to the Council, is the Government's requirement for the Council to combine LEP 1991 and LEP 2005 into a Standard Instrument LEP. LEP 2005 was developed in a way that is more responsive to some of the initiatives proposed as part of the LLUP, rather than the directions embodied by the SI LEP. For instance, LEP 2005 has a nesting of provisions, which is structured from general to specific at each level. Such a logic is more suitable for e-planning approaches like web and smart phone applications. Importantly, for reasons that are outlined below, it is closely aligned with the development assessment process.

In preparing LEP 2005, the Council worked closely with the Department in developing its provisions and framework to align with the plan-making reforms of the early 2000s, known as *PlanFirst*. It would be important from the perspective of the Council and it is argued more efficient, for any revisions of LEP 2005 (including LEP 1991) to dovetail with the emerging LLUP and Green Paper reforms rather than stepping back to the Standard Instrument format, and then converted to LLUP. The LLUP needs to be as streamlined or as detailed as the planning context demands and its community expects.

Chamber Response

The Chamber supports the Standard Instrument format as it believes that a common format should prevail across all LGAs and that the terminology associated with the standard format should be standardised across all planning instruments in the state.

In particular, the role of local government will change in the following ways:

- Stronger, more participative relationship in sub regional strategic planning and engagement with other councils in the same subregion, including potentially the power to 'bargain' allocation of growth targets across the subregion;
- A need to accept and more readily embrace the strategic priorities of the State government within the local plan and the extent to which this is inconsistent with local priorities, a lessening of autonomy with respect to local plans and strategies;
- Leading the engagement of the community in detailed planning of subregional plans and in the allocation of growth targets required to implement the Regional Plans,
- Gaining the acceptance of the community to the shift away from seeking to influence planning outcomes at the development application stage to the setting of policy and development standards which will permit compliant code assessable development as a right;
- Integration and likely review of local government's Community Strategic Plans, prepared in accordance with the Local Government Act, to reflect the strategic intent of the applicable regional and subregional strategies

Support for the Green Paper Concepts

There are many elements of the reform changes that are supported at a conceptual level.

These include:

- Improved strategic planning with a better spatial resolution of objectives and targets;
- Integration and co-ordination of infrastructure provision between agencies and alignment with growth targets
- The engagement of the community in strategic planning and policy development
- Explicit integration of land use planning and community strategic planning
- The facilitation of public engagement by presentation of scenarios and debate and analysis on the assumptions underpinning those scenarios
- The explicit incorporation of market dynamics into scenario testing and growth target setting and allocations to improve predictability and achievability of growth in accordance with the targets
- Strategic planning to protect biodiversity and natural resource values so mitigating incremental impacts
- Better and earlier integration of agency requirements into strategic plans so as to avoid referrals during development assessment and enhance robustness of strategic plans
- Transparency in decision making, demonstrably evidence-based decisions
- Implementation of efficient, accessible electronic planning tools
- Simplified planning legislation
- A more flexible standard instrument
- Clarity as to circumstances in which community submissions may be expected to effect change in development proposals

Chamber Response □

□ The Chamber generally supports the concepts above.

Review mechanisms by expert panels – JRPP and PAC

The BMCC submission will note the support for these aspects of the proposal at a conceptual level.

Chamber Response

Given the prolonged time period for assessment of DA's for business, heritage and tourism developments the review mechanisms by expert panels is strongly supported. Currently there is no recourse to mediation regarding DA disputes beyond the LEC except for the costly Land and Environment Court.

The Chamber considers there is a culture amongst planning assessment staff whereby they perceive themselves as 'guardians of the mountains' and resist any attempts at development. The modis operandi of assessment staff appears to be to prolong the assessment process with excessive demands to the point where the applicant cannot continue because of cost of compliance and income forgone and hence withdrawal of the application.

Concern for Green Paper Proposals

Council Response

Proposed changes that are or may be problematic, depending upon the way in which they are implemented are addressed as follows and the issues arising in this section of the report will form the substantial part of the submission to the NSW Government.

The Blue Mountains is significantly different in character to that of any other local government area in the Sydney Metro Area. First and foremost, it is an area of low growth and is likely to remain so for any foreseeable future.

Growth areas are the focus of the Subregional plans and the Regional plan (the Sydney Metro Plan) must recognize the positive role that the Blue Mountains plays as in the State economy as a major recreational and tourist resource on Sydney's

doorstep, and as a protector of World Heritage listed biodiversity values and Sydney drinking water supplies.

Those values together with the appealing character of the villages and towns underpin the strength of the Blue Mountains as a destination.

It is difficult to contemplate how Subregional plans which propose to define common code assessable development applicable to that sub region could usefully or validly be applied in the same way to the Blue Mountains as it does to adjoining LGAs.

Chamber Response

Many other LGA's incorporate national parks and are within the catchment of Sydney's drinking water supplies. These LGA's are not exempt from the provisions of the Green Paper nor indeed should the BMCC LGA. Sufficient provisions exist under the POEO Act and the Catchment Management Act to protect both the World Heritage National Park and the water supply catchment.

Council Response

Subregional plans appear to seek to resolve local planning issues to a greater level of detail than the current LEPs, notwithstanding that the LEPs are based upon mapping of an unusually high resolution. The preparation of subregional plans to that level of resolution will require substantial resources. The Green paper does not address this resource issue.

The highly diverse nature of the landscape and the built environment in this LGA has been mapped to an unusually high level of accuracy, and that mapping should be utilized in the preparation of subregional plans as they apply to this LGA.

The Green Paper makes passing reference to the potential need to review the Community Strategic Plans that are required for each LGA under the Local Government Act.

Chamber Response

The resolution of current mapping of the LEP's is at 1:10,000 which is not sufficient to identify and evaluate specific DA's at the block level. An increase of resolution for subregional plans would only facilitate better assessment of DA's.

Lack of resources is not a valid argument for the implementation of a better resolution of mapping at the Sub regional planning level.

Council Response

Given the mooted strong directing influence of Subregional Plans down to the local plan level it is highly likely that if the reforms unfold as proposed, there will be significant impact on the priorities contained in the current Community Strategic Plan.

Local government is currently required to review and update the Community Strategic Plan within 12 months of the election of a new Council. Therefore the time frames proposed for the intense effort on preparation of Subregional plans would appear to coincide or at least overlap with the timeframes required for this new Council to review and adopt a Community Strategic Plan.

Chamber Response

This is not a valid reason not to proceed with Sub regional Plans. If council staff were more efficient at the processing of DA's for business, heritage and tourism there would be more resources available for the formulation of Sub regional Plans.

Council Response

The current review of the LGA might affect this and it is recommended that the Government consider the *BMCC submission*:

1. *The unique role of the Blue Mountains must be accommodated and enhanced when defining regional and sub regional plan boundaries and when preparing the related strategies.*

Chamber Response

Many other LGA's incorporate national parks and are within the catchment of Sydney's drinking water supplies. These LGA's are not exempt from the provisions of the Green Paper nor indeed should the BMCC LGA. Sufficient provisions exist under the World Heritage status, the National Parks Act, the POEO Act and the Catchment Management Act to protect both the World Heritage National Park and the water supply catchment.

2. *The sectoral strategies for the Sydney region should fully address and recognize the positive role of the Blue Mountains in the support of the NSW economy and tourism industry, and in the protection of biodiversity, water quality and the values of the World Heritage listed area.*

Chamber Response

Broadly agreed.

3. *Subregional plans must be responsive to local area conditions in their allocation of growth targets, the definition and extent of code assessable and exempt development and in the flexibility of standard instrument to accommodate diversity of place and desired planning outcomes.*

Chamber Response

Broadly agreed but not to the point where there is significant departure from the standard instrument and the definitions and terminology

4. *Local government must be properly resourced to fulfil their role in the preparation of sub regional plans, any related review of Community Strategic plans and the preparation of Local Land Use Plans.*

Chamber Response

Local government needs to be run on business efficiency principles to find ways to overcome current deficits by way of asset sales and/ or greater staff efficiencies, and greater revenue raising through parking fees and / or through LGA amalgamations to fund preparation of sub regional plans, Community Plans and LLUPs.

5. *The time frame for Subregional & Local plan preparation (in both the realm of the Local Government Act and the new planning Act) must be realistic and foster alignment with the concurrent requirement to prepare the SI for the BMts LGA and the review of Community Strategic Plans as required under the Local Government Act.*

Chamber Response

Unless the Dept imposes rigid timelines for completion and compliance the preparation will not be undertaken to the detriment of the principles associated with the Green and White Papers.

6. *The detailed spatial data available at the local level should be utilized in the development of Subregional plans.*

Chamber Response

Agreed providing it is at the resolution required for Sub Regional Plans.

7. The current Blue Mountains LEP framework should be recognised as being the consequence of the strategic planning for the City and thus be given due recognition as a valid matter to inform the development of the relevant regional and sub regional strategies.

Chamber Response

These LEP's are derived from data dating prior to 1991 and 2005 respectively and furthermore do not comply with stand terminology nor, as per the Stafford Report to Council regarding incorporating more opportunities for tourist development in the LEP's, provide sufficient opportunities for such development.

The LEPs prohibit subdivision beyond 1200m², rely on the use of motor vehicles by virtue of prohibition of business opportunities in residential or many existing tourist attractions and do not facilitate development of business, heritage or tourist opportunities. They also rely on mapping resolutions which are clearly too coarse to effectively facilitate assessment of proposals.

8. Engagement of the local community by local government will require participation and genuine responsiveness from state government to the issues raised by the community and by local government representatives.

Chamber Response

Agreed however, in the formulation of the prior LEP's the majority community response appears to have come from the conservation movement rather than being representative of the business or tourism community. It is clearly tourism that provides the sustainability of communities in the BMCC LGA hence it is tourism that should have a major input.

9. Funding and technical support must be provided to local government to implement the extensive and innovative engagement strategies envisaged by the Green Paper, including generation of scenario and market feasibility data for application at the local level engagement.

Chamber Response

Agreed however, subject to efficiencies undertaken by local government and potential amalgamation.

10. Local communities should receive assistance from the State Government to facilitate their capacity and capability to engage meaningfully in the development of regional and subregional plans.

Chamber Response

Agreed however, subject to efficiencies undertaken by local government and potential amalgamation.

11. The objects of the new Act should be to provide an ecologically, economically and socially sustainable framework for land use planning and for development assessment and determination, as recommended at item 6 of Volume 1 of the Way Ahead for Planning in NSW.

Chamber Response

Agreed.

12. The land use planning framework should transparently address the differing spatial and administrative scales applying to the management of democracy, governance, collaboration, regulation, place-making and economic growth considerations, as well as achieving the necessary tension and balance between these objectives.

One method of depicting this framework is at Attachment 2, which is consistent with the Sustainable Blue Mountains 2025 and the existing Blue Mountains LEP 2005.

Chamber Response

'as well as achieving the necessary tension and balance between these objectives'- why is there 'tension' and simply not balance. Why are they competing objectives? Appears a 'motherhood' statement.

13. All levels of strategic plans (State, regional, subregional and local) should be framed in terms of quadruple bottom line outcomes and should aim to form part of a coherent whole, incorporating the evolving principles of Integrated Planning that apply to local government, across all levels of government.

Chamber Response

Would have assumed this was a given attribute

14. The NSW land use planning reforms should acknowledge that land use planning is only one form of planning that occurs as part of the wider strategic planning at all levels of government.

Chamber Response

Surely this is implied in the concept of Sub Regional Plans.

15. The role of Community Strategic Plans, the legislative requirements applying to those plans, the preparation cycle for those plans and any necessity to review those plans as a consequence of the land use planning reforms should be fully and explicitly addressed as part of any reforms springing from the Green Paper. The potential and benefits of engaging the community concurrently on both the preparation of the Community Strategic Plan and the regional/subregional plan development should be considered in this context.

Chamber Response

But not to the point where the Community Strategic Plans subjugate the regional/subregional plan.

16. Maximising Code Assessable development

Code Assessable development is appropriate where the desired planning outcomes can be specified by numerical standards. The usual development standards prescribe building design elements such as maximum height, maximum floor space ratio and minimum building set back.

Code assessable development could also exclude some sites based on land characteristics such as bushfire prone land or heritage items.

Code Assessable development cannot address character of design or codify design outcomes deemed to be compatible with valued streetscapes by metrics. Given the extent of areas of valued built character in the Mountains.

This will either significantly limit the opportunities for Code Assessable development or the community will need to compromise on the extent of areas where character is sought to be protected.

Similarly, whilst the analysis and mapping of significant environmental constraints in the Blue Mountains is unsurpassed in comparable areas of complex landscapes, they cannot be mapped to an order of accuracy that removes the need to evaluate characteristics at the site level as part of an application and assessment.

For this reason the current LEPs contain some performance based provisions that require development applications to identify and mitigate harm to those areas.

This work is not amenable to Code Assessable development as analysis of whether impacts are acceptable and the design is sufficiently responsive to the site constraints cannot be governed by numeric development standards.

Once again either the community will compromise on the outcomes that it seeks or Code Assessable development opportunities will remain limited.

In the instance of the Blue Mountains the planning studies demonstrate that the environment is particularly vulnerable to incremental impacts. Thus limitations on development footprints and the requirements for design responsiveness to site conditions are critical to managing the impact of the urban area upon the surrounding National Park and areas of outstanding natural significance.

Chamber Response

These circumstances exist in situations at the bushland / urban interface and with respect to heritage items or designated urban conservation areas however, a significant amount of development in BMCC lies outside these definitions. Consequently code assessable development is appropriate outside these defined areas.

Notwithstanding the acknowledgement in the report by the Independent Panel that the community has significant concerns with the private certification of development, the Green Paper recommends that the opportunities for Private Certification should be expanded. It is considered that this should only occur if the current issue of cost shifting to local government to address resident complaints about the construction of non compliant privately certified development is addressed.

Furthermore, it is imperative that the roles and responsibilities of certifiers with respect to investigation of complaints and enforcement be clearly identified in legislation.

Chamber Response

Agreed, however, there is no knowledge of significant complaints of private certifiers in BMCC LGA.

The recommendations made in Vol 1 the Independent Panel report that require separation of private certification services that approve a development from the certification of the construction of that development are considered to be an essential element of any reform proposals to expand the private certification role.

Experience with current Complying development (conceptually equivalent to Code Assessable Development) indicates that the checking off of compliance with development standards is not as straightforward as is suggested by the proposed 10 day prescribed approval time.

Private certification of Complying development has had a relatively poor take up rate in the Blue Mountains because of the complexity of interpreting and applying the standards and the significant and costly consequences of making an incorrect determination.

It is critical that the land-based provisions and development standards applying to Code Assessable Development are simplified and not open to inconsistent interpretation.

Code Assessable development opportunities should be restricted in the Blue Mountains to those that are compatible with achieving the desired planning outcomes including the protection of the valued natural and built environments.

Chamber Response

This appears contradictory to the earlier statement: 'Code assessable development could also exclude some sites based on land characteristics such as bushfire prone land or heritage items. Code Assessable development cannot address character of design or codify design outcomes deemed to be compatible with valued streetscapes by metrics. Given the extent of areas of valued built character in the Mountains.'

These circumstances exist in situations at the bushland / urban interface and with respect to heritage items or designated urban conservation areas however, a significant amount of development in BMCC lies outside these definitions.

Consequently code assessable development is appropriate outside these defined areas.

17. *The prescription of 10 working days as a maximum approval time is considered to be inappropriate for the Blue Mountains LGA in view of the complexity of interpreting Code requirements in this diverse and highly constrained landscape.*

Chamber Response

Should not be a problem for complying development based on code assessable development.

18. *The reforms should redress the current financial burden which falls to Councils in the investigation and response to complaints regarding privately certified development that is non-compliant.*

Chamber Response

Agreed, however, there is no knowledge of significant complaints of private certifiers in BMCC LGA.

19. *The roles and responsibilities of certifiers with respect to investigation of complaints and enforcement must be clearly set out in the legislation.*

Chamber Response

Agreed

20. *Land-based provisions and development standards applying to Code Assessable development need to be simplified and facilitate consistent interpretation.*

Chamber Response

Agreed

21. *Any proposal to expand the role of private certifiers should require separation of private certification services that approve a development from the certification of the construction of that development*

Chamber Response

Cannot see the need to separate the two elements based on the fact that private certifiers have to be certified, carry appropriate insurances and after all generally come from the ranks of LGA's.

22. Streamlining and simplifying merit assessment

To the extent that streamlining and simplifying assessment relies upon the maximization of Exempt and Code Assessable development those limitations have been addressed above.

The 'amber light' approach is already adopted by BMCC- the time penalties generated by this approach are significantly greater than the allowance which is suggested in the reform proposals.

A two week period to enable amendments suggested by the 'amber light' approach, translates into more than a two week period for assessing the application.

Any amendments made must be assessed and a decision made as to whether the outstanding matter has been sufficiently addressed as to warrant issue of a development consent. The proposal to limit requests for additional information to a single request, ignores the reality of development assessment whereby information submitted progressively by an applicant reveals new issues that were not identifiable in the application information as originally lodged.

The reform proposals give little if any recognition to the role played by the quality of the application in the assessment time, and proposes no measures to directly target this issue.

The prescription of the maximum assessment periods should refer to 'working days' as per the Independent Panel report. It appears that the new periods will become the new 'deemed refusal' periods.

There are no other indications as to the consequence of failure to meet those periods would be, other than that Council performance will be regularly monitored and reported and the Green Paper notes that the measures to expedite development assessment could include alternative determination pathways once prescribed assessment time frames have been exceeded.

Notwithstanding that the reforms propose to incorporate agency development condition requirements up front into Local Land use plans, the complexity of the Blue Mountains environment will pose challenges and probable limitations on achieving that goal.

Currently a very large proportion of Blue Mountains' development applications (DAs) are subject to inter government referrals and any ongoing requirements of that nature will impact on timeliness of BMCC determinations.

It is also the case that notwithstanding efforts by all parties to improve DA submission and assessment practices the complexity of the Blue Mountains environment and the inclusion of character as a consideration, DA assessment times will remain somewhat higher than the target times.

The way that DAs are lodged and assessed in NSW requires a fundamental review. As noted above, information provision, verification and review are at the core of the development assessment process. A proposed approach for increasing the efficiency and effectiveness of this process is provided at Attachment 3. In many instances the exchange between applicants and assessing officers are directed to improved outcomes, welcomed by both parties and the community.

Simply stopping this process by not requiring DAs or reporting only gross assessment time does not account for the improved 'public planning benefit' and on-the-ground results that arise from development assessment.

Chamber Response

Disagree markedly with this response in the case of business, tourism and heritage DA assessment times and processing and efficiency on the part of Council Officers. Anecdotal evidence from Chamber members and members from other Chambers suggests the contrary. DA assessment times should in the main comply with NSW standards. As earlier discussed, other LGA's exist with National Parks on their perimeter, are within Sydney drinking water catchment and all would have heritage items and urban conservation areas.

Reference to agency condition requirements apply to areas on the urban bushland interface and those of heritage character which constitute the minor part of BMCC LGA.

22 On its face, the reform objective of avoiding a legalistic system and providing flexibility to consider development, consistent with strategic intent notwithstanding planning instrument limitations, may seem attractive.

However, development rights are one of the most contested and high value property rights with a substantial potential to adversely impact on 3rd party property rights or matters of public interest. They therefore require clear legal definition, protection and procedures.

In all likelihood, case law will drive any inadequacies and reduce flexibility. The more that flexibility is introduced, the greater the need for clear, transparent decision making criteria and process. *Working days, applicable measure, need to be expanded to accommodate opportunities for amendment.*

Chamber Response

Transparency has not been a characteristic of development determinations for tourist, heritage and business DAs. The chamber does not consider that an increase in time for assessment is necessary.

23. Applicant should have some accountability for impact of application quality upon assessment timelines via measures such as ensuring that 'stop the clock' provisions are not overly restricted and that the grounds for rejection of a DA on lodgement should include failure to provide documentation required by a Local Land Use Plan.

Chamber Response

If the proforma is standardised and sets out specifically the requirements and is considered at point of submission to comply then this is circumvented.

24. The process for joint merit and code assessable development requires clarification to ensure that it is not open to abuse and does not generate costly and time consuming challenge, whether that be from an applicant or a consent authority. It would appear that this approach could only be valid where the development extends beyond the Code standards to a discrete and minor extent.

Chamber Response

This process would apply to most business, tourism and heritage development and is likely to constitute variation beyond a discrete or minor extent

25. Consideration should be given to the benefits of an on-line system such as that described in Attachment 3, which has benefits of transparency, efficiency and accountability whilst enabling the public benefits of a development assessment system to be maintained.

Chamber Response

The Chamber is not aware of any current on line system. The current DA application is available online. It requires significant modification as it applies to a DA for an event as well as to substantial building construction /modification.

Use of local expert panels

A maximum of approximately 3% of development applications go before a meeting of the Council to determine. The bulk of the 1000 or so applications determined each year are determined by staff under delegation, with 5 applications having been determined by the JRPPs since their inception in 2009/2010, and approximately 10 applications being determined by private certifiers per annum.

Approximately 20 Complying Development Certificates are issued by private certifiers per annum.

The reforms seek to encourage Councillors to step out their DA determination role, and transfer those decisions either to staff or for large applications that do not trigger a determination by JRPP (currently set at \$20M-\$5M, dependent upon the purpose of the development), to a local independent expert panel. These panels have been set up by some Councils to consider matters such as significant residential flat or mixed use development.

This LGA has a relatively small amount of such development and is unlikely to warrant or support the establishment of a local panel. Given the relatively discrete and small size of the local development and design sector the formation of a panel from local experts would be challenging if they were required to observe best practice standards of avoidance of conflict of interest.

The setting up of an independent panel would also have cost implications for the Council.

Chamber Response

The current LEP's provide very limited opportunities for business, tourism or heritage development. Sub regional Plans and implementation of the white paper and incorporation of provision of more development (tourism) opportunities as per the Dept of Planning will ensure that residential flat and mixed use developments will occur requiring the need for an independent panel.

26. In the event that Local Government is required to establish independent local expert panels the cost of those panels to Local Government must be recoverable. It is the case, that the Blue Mountains is a highly complex planning environment, and one with a community with high expectations for the quality of the built environment and the protection of important places. It will be important that the Council maintain its focus as the reform process unrolls and concludes, to ensure that the values of the Blue Mountains and the expectations of its community are met now and in the longer term.

Chamber Response

The Blue Mountains is no different to any other community in that it has high expectations for the quality of the built environment and the protection of important places. The expectations of the community must be inclusive and incorporate the views of business and tourism in any subregional and regional planning instruments.