DEVELOPMENT SEMINAR 2000

PROUDLY PRESENTED BY THE CUMBERLAND GROUP

CHAIRMAN'S FORWARD

CUMBERLAND GROUP COMMITTEE

From Left: Gerard Junek (Treasurer), Greg Oxley, Michael Parkinson (Secretary), Bob Hanna, Barry Yardley, Mark Gordon, and Roy Lowe (Chairman) Andrew Edwards & John Caddey not present.

On Friday 16th June 2000, the Cumberland Group held its 10th Annual Development Seminar at the Sunnybrook Hotel and Convention Centre at Warwick Farm.

As in past years, attendance exceeded 300 despite 'competition' from an marked increase in CPD events on the Institution calendar and the frantic last minute rush of work many experienced as a result of the implementation of the GST. Once again we had attendees coming from all over NSW and from Canberra and it seems the day has almost become an unofficial surveyors reunion day with many surveyors catching up with old friends.

The group has again been most fortunate in attracting quality speakers and representatives from both government departments such as the Land Titles Office, Department of Urban Affairs and Planning, Local Councils and also consultants from private practice. Without their participation there would be no seminar and we are therefore deeply grateful.

The trade exhibition in the foyers again proved popular with many (especially those from remote areas) taking the opportunity to view the latest offerings from the many companies present.

Special mention must be made of our tireless group secretary, Michael Parkinson who spent many, many hours reviewing and editing the transcripts to produce the following proceedings.

Lastly, I would like to again thank all those who participated…. the committee (the Secretary - Michael Parkinson, the Treasurer – Gerard Junek, Group Divisional Representative – Mark Gordon, Greg Oxley, Bob Hanna, Barry Yardley, John Caddey, Andrew Edwards), the guest speakers, the vendors with the trade displays, the registrants and the staff of the Sunnybrook for combining to create such a successful seminar.

We look forward to seeing you all again at the 2001 seminar.

Royston Lowe

2000 Chairman

Cumberland Group of Surveyors

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"CURRENT LEGISLATION ISSUES"

CHAIRED BY ROY LOWE

OPENING ADDRESS

ROY LOWE:
(Chairman, Cumberland Group)

We are fortunate enough to have the Director of the Department of Information & Technology Management, Mr Warwick Watkins along today. The Department was formed in 1999 I believe after the last election, and combines the Office of Information Technology, Land Titles Office, the Valuer General's Department, and the Department of The Surveyor General. Warwick has come along here to talk about the restructure of that Department and how that will affect the bodies directly involving surveyors, which is the Land Titles Office and Surveyor General's Office. I would like everyone to welcome Warwick.

ISA NSW President Terry Watkinson (left), Director- General, DITM Warwick Watkins (right)

WARWICK WATKINS:
(Director- General, Department of Information Technology & Management)

Thank you very much Roy. I am conscious of your time and I haven't come prepared with any overheads or fancy power point slides. I want to just make some comments about, I guess what's driving the reorganisation, and what impact that will have, and to give some reassurances that the bottom line that is driving this whole aspect is one of the Ministry restructure - to bring about some increased efficiencies, but the overall driving aspect is one of bringing together three areas which are inextricably linked. That is the

role and functions of the Valuer General, the role and functions of the Surveyor General and those of the Register General and if you get behind all those functions and you think about the historical growth of your own businesses, and the way in which technology, and the way in which you have responded to society's changes, it would be inappropriate for us, as we bring those three groups together, just to keep them as three separate organisations.

I go back five or six years ago, when I had those as a Director General under a different regime with Crown Lands and a couple of other things. We operated them separately and there has always been if we are quite honest with ourselves, a degree of professional friction on the edges. There has been a degree of duplication, and above all there has been less than satisfactory exploitation of the synergies that exist both professionally, technically and administratively between those areas. The way in which we are bringing those together is to say that from 1 July, the Land Titles Office, the Valuer General's Department as you knew it 12 months ago, or as you know it pretty well as the Office of Surveyor General, and the Land Information Centre, will come together into a new Government trading enterprise which is called Land & Property Information New South Wales.

Well what does that really mean? Physically you will see very little change. The focus will still continue at Bathurst and still continue at Queen Square. Where we have got prime regional locations we will still continue, and will be shoring up a number of those. What we are creating is a focus on not having the three separate agencies focus as individual silos, but to bring together the technical skills, and also the databases and the information, so in fact there is one seamless organisation. And why do I call the Government Trading Enterprise? Well in simple terms we had the Land Titles Office that operated off budget. It operated by paying the dividend to Government. It was a business. It also provided a whole range of services as part of that business. We had the Valuer General who has been operating pretty well as a break even line, and also you appreciate that we are increasingly going out to the market in a contestable way and the private sector is picking up and winning increasingly in significant more numbers of those valuations. The remaining valuation services don't fit; the physical services don't fit under the day-to-day control of Peter Cunningham as the Valuer General. They fit within the commercial side of the Department of Public Works & Services. They will have to compete for the business along with the private sector. We will be doing that by contract, and competitive contract, and there will be a rolling out of those contracts across the regions as they have rolled out across the urban areas over the last two to three years.

Then we had the Land Information Centre at Bathurst which by in large was generating about 25% of its income. So you had the ridiculous situation from my perspective coming in to head up this organisation where not only did you have some areas of technical duplication, not only did you have administrative duplication and loss of efficiencies, but on one hand I am paying a dividend to Government in one part of my business going along cap in hand and asking for money to run part of it in the other.

In very simple language what we have done is open the door, put those three groups together so that we are not interested in operating with three separate organisations. We are interested in operating as one organisation. It won't involve moving people from Bathurst to Sydney or Sydney to Bathurst. The whole basis of this is to bring about the

changes by focusing people's attention on utilising the technologies and bringing about the changes in a virtual sense. Yes there will be some changes to the way in which we structure the organisation. We won't be operating as a separate Land Titles and the other two organisations. We will be starting from the basis of basically about five divisions. You won't be able to recognise the former three separate organisations in name. You will have surveyors that used to work within a pretty confined area, say underneath the Surveyor General, and even though they are professionally new and had the odd interaction with surveyors in the Land Titles Office. I am not interested in two separate groups of surveyors. I am interested in a group of surveyors that can underpin the professional needs of what we have to do, and to assist the professional needs in the day to day businesses that many of you in the audience need to be able to have. Access to data, to technology and access to intellectual capital as well as other capital that we have within that organization. So the surveyors will be working next to each other. They'll be sharing activities and the skill bases will change over time.

I know there's some angst around amongst people and amongst the profession of saying - well does that mean that the traditional services and the benefits that you have had from people in the Land Titles Office are going to disappear? No they are not going to disappear but in the same way, we are not going to stay back in the 19th Century and just because we did something back there and just because there was a relationship between individuals in the private sector and some people in my office and that that was the way it was done, that we shouldn't look at changing that. But the one thing I can give you a guarantee is that the very basis upon which the Land Titles those other functions that have operated over the years, and the place they play in underpinning the social economic development of the State, and the linkage they have with people like you in the profession, is not under threat. What is under challenge is the way in which we work forward to bring about that new relationship so that in fact it produces a more cost-effective product from our end. It gives greater efficiencies in the way that we do our businesses and that should also flow on in the same way to yourselves.

In physical terms it will mean that the statutory roles of the Surveyor General, of the Valuer General and of the Register General will be separated. They will still be within the organisation away from the commercial day-to-day activities. I will personally head up the organisation for the first probably 6 months or longer and be the Director General of the Department as well as being the General Manager of this new organisation. That is a conscious decision by me to drive the process of change and ensure that all those key components that are necessary are there, and that there is a continuity with the products and services that are so important.

So in very simple terms, there will be an information resource area which is all the gathering of the information. There will be a very heavy emphasis on data systems – the storage, manipulation, & dissemination of data. Many of you are aware of the integrated property warehouse. Many of you are starting to operate more intensively in electronic form. I have given the challenge for the Organisation that within 12 months it will be a totally e-enabled Organisation. There will be 50% reduction in paper work and I won't go on with all those types of targets but they are real targets. We are working towards them. I congratulate the Councils in the audience for the way in which they're embracing new technologies and starting to interact with us with plan lodgements and other types of activities, and we have got something now like 140 plus councils out of 170 odd councils

operating in this way. And that is a great credit to those councils. So clearly what I am looking to do is the way in which your profession in the broad senses, grapple with technology and we see it out there in the foyer as we moved into the room, my organisation will be to the forefront of the technologies with respect of not only gathering but storage and disseminating that information. So the old property hub will disappear by April next year. It will be replaced by a totally integrated Land & Property Information Service that will be seamless, so that the data systems will no longer be separate. And that will be build on not only on the ITS but on the cadastre and for those people who had a concern that all this is going to lead to a loss of integrity and clarity of the cadastre, that is also a falsehood. If there is one thing I will continue to protect and in fact grow and enhance, is the cadastral base in New South Wales. There is nothing more important than the spatial aspects that are represented within that whole information database.

So as you work through and as you start to hear the concerns around about these things, I would ask you to contact people like - I don't mind, contact me - but certainly contact the executives that you are so used to dealing with within those former three agencies. Because this isn't the challenge on the profession. It isn't the challenge against the activities. It is really us reinventing ourselves in the same way that you have to reinvent yourselves otherwise you don't stay in business.

The last couple of things I'll mention to try and stick a little bit close to time, is that - many people are aware of course of the national competition policy review. That has been going on for some time. There has been very close interaction with the Institution of Surveyors of New South Wales Incorporated, and other groups. I am taking it over now to drive it much harder because we are getting close to the finality of that. We will continue that close relationship with the associations. We have some deadlines to meet with the Cabinet Office, and I believe that will lead to some very positive outcomes. If you want some guide from me about the role of the Surveyors Board and things of that nature, I have spoken to the representatives of the various associations. My belief is that we need to be moving more towards a co-regulation era and that is something that I am looking at, at this point in time and will be going through and trying to look at some changes between now and the end of the year. And there will be some consultation on that. I don't think that we can afford to just maintain the present status quo with respect to those historical roles. I think what we have to do is make sure that the roles of those positions and the way in which we operate them is contemporary so it meets the needs of the customer not the historical needs of the position. So the position themselves is not under threat but the way in which they operate is very much under challenge and change, and the people within those positions appreciate that and are coming forward and working with that change. I know that Paul Harcombe, the Deputy Surveyor General, will be talking about a number of these things. I think it might even be tomorrow.

So with those few comments can I leave you in a very positive vein by saying that the creation of Land and Property Information, which will come into being on 1 July is a financial rearrangement of the way I am running the business. It will lead to a total integration and a seamless nature of all those activities. It won't lead to a closure at Bathurst or a closure of Sydney or the mass transfer of individuals around the countryside, but it will lead to a very very heightened group of activity with technology that will see the data that you put in and the data that you depend on for your livelihoods maintained in a far more dynamic way and available in a far more dynamic way particularly after April

next year which is the time we have to bring Valnet 2 on board. So can I wish you well for the rest of the day. I apologise but I do have to race back to the city but I wish you well for your deliberations and look for a period of great cooperation and advice and assistance from the professions out there because we have got no wish and I have got no wish as an organization and the head of an organization to work within an island, but only to work in partnership as we move forward. Thankyou.

ROY LOWE:

I would just like to introduce Terry Watkinson who is our President of the New South Wales Division of the Institution. He has also just been re-elected President for next year. My congratulations on that, and Terry will now respond and give a vote of thanks for Warwick.

TERRY WATKINSON:
(President, Institution of Surveyors NSW Division)

Thank you Roy. Ladies and Gentlemen. We once knew the Land Titles Office as the Registrar General's office. Then we knew it as the Land Titles Office. We are going to change again now. Some time or other we will get to know the Land Titles Office as something else I guess. Warwick has today given us an insight into the future of surveying at the Land Titles Office. As I said, whether it is going to be called that or not, I am not sure. I thank him very much for that. It is an important matter to all of us who have experienced the Land Titles system in New South Wales and the Institution has been most active in representing all surveying in that respect. I trust we will have a continuing and prosperous relationship with the Land Titles Office and once again I thank Warwick for coming today to address us. I would like to present this token of our esteem to him.

Just briefly I would like to make a few comments. Chairman Roy and the guests, ladies and gentlemen. It gives me great pleasure to attend the Seminar 2000 conducted by the Cumberland Group. This is the 10th seminar arranged by the group and I congratulate them for the sustained effort in the promotion of surveying and support for surveyors. Not only is Cumberland Group responsible for the seminar but they also maintain the History Sub-committee and the Public Relations Sub-committee. They are also sponsoring the images of surveying category of the Excellence In Surveying 2000 Awards. I thank Chairman Roy and the members of the Cumberland Group on behalf of the whole surveying profession and in particular the Division Committee for their efforts. In respect of the Division Committee I would like to remind all members that the June Azimuth contains a call for nominations. Nominations to the Divisional Committee and in particular positions of Treasurer, Secretary, five Committee Members and four Federal Councillors. This is a time when we need to stand up and be counted, particularly in relation to what changes are happening in the surveying profession. I ask that all members give consideration to these nominations. Another important place which is becoming vacant this year is that of the Azimuth Editor. John Abbott has done a terrific job over the last quite a few years and he has decided to call it a day. So we are looking for a new Azimuth editor. Somebody with new ideas and it is an opportunity to promote the profession through the Azimuth. Once again I thank Roy and the Cumberland Group members for their efforts and look forward to an excellent program today. One thing I would like to mention is that tonight there is an eminent speaker dinner. The first one that tonight we have an Eminent Speaker Dinner. It is promoted by the Institution and we

hope it will be a successful ongoing function and if anybody would like to make a late reservation I am sure that they could be accommodated. I would now like to hand over to John Caddey for the first segment of the seminar. Thank you very much.

SESSION ONE

(Chaired by John Caddey)

JOHN CADDEY
(Committee, Cumberland Group)

The first speaker is Kerry Bedford. She is the Director of the Policy and Reform Unit at DUAP and she is going to talk about the amendments to the EP&A Act. Thank you very much.

REVIEW OF THE AMENDMENT TO THE EPA ACT, STRATA TITLE

KERRY BEDFORD:
(Director of the Policy & Reform Unit, DUAP)

Most of you know about the reforms that happened in July 1998. One of the major things that they did was introduce competition for Councils for certain types of development. Mostly after a development application is done, the private sector can now be involved in post DA construction work and detailed design work. There is also a limited planning approval role for the private sector as well, although most Councils have been fairly conservative in what they have allowed out to the private sector. But I am confident that over time, that as people get more confident in the private sector, and we get more confident in the new system, that in fact there will be more work available for the private sector to do post development application work, detailed design, detailed construction checks and final sign off.

But the latest change, the reforms are continuing and the latest change that has recently happened is that Strata Title, the Certificate of Title, Certificate of Approval it was called, can now be privately certified. And that is what I am going to talk about today. Take you through basically the latest changes that have been made to the EP&A Act through the Strata Titles Act, both the Freehold Act and the Leasehold Act. So that's just an outline of what I will talk about today.

It was the Strata Approvals Act which was actually passed by Parliament in December and it started on the 1st of June this year. And it introduces a number of changes to both the Freehold and the Leasehold Acts. The first change is that the Certificate of Approval is now called a Strata Certificate. That is in line with the names of the certificates that are in the EP&A Act for other types of work. Construction Certificate, Compliance Certificate, Occupation Certificate. Before the amendments you could only go to the Council to get your Certificate of Approval. Now you have the choice of being able to go to private sector employees or private sector professionals who are accredited to issue Strata Certificates. You can still go to the Council and you can go to the Council to get all forms of Strata Certificates for all types of development. So you can get any of the types of plans that are allowed under the Strata Act approved by Council and any form of building, old or new, you can go to Council for. You can only go to accredited certifiers for a Strata Plan, a Strata Plan of Subdivision, or a Notice of Conversion, and only if there is a relative Development Consent

in force. Now a Relative Development Consent is actually defined in the Act and it is in Section 37B of the Freehold Act if you are interested. But in essence it says that there must be a Development Consent for the Strata itself, or if Development Consent for Strata is not required then there is the Development Consent for the building, and it was clear that the building was intended to be used for separate occupation. Now when I say Development Consent, that also includes a Complying Development Certificate. A Complying Development Certificate is equivalent to a Development Consent. Some Councils are allowing dual occupancy development for example, to be dealt with by the private sector which is through a Complying Development Certificate and it is the equivalent of a Development Consent and a Construction Certificate rolled into one. So if you are in say Wollongong Council, a private individual who is certified can issue a Complying Development Certificate for a dual occupancy and then go to another private individual to issue the Strata Certificate. In most Councils you will need to go the Council to get the Development Consent and then you can go to the private individual for the Strata.

Now I will just clarify the difference between Development Consent and Strata Subdivision. The Strata Certificate under the Strata Acts is compulsory and you need it in order to register your plan. Strata Subdivision Approval or Development Consent from a Council is actually discretionary. Most Metropolitan Councils require Consent for Strata Subdivision but a lot of other Councils do not require it. If consent for Strata Subdivision is needed it will be shown in the local Council's Environmental Plan. So you have got the Environmental Planning & Assessment Act that sets up the provision for Development Consent for Strata Subdivision, which is like the approval for the idea of Strata subdividing. And then you have the Strata Certificate which you must have before you register the actual Title.

Now, for accredited certifiers, if you are issuing Strata Certificates, the first thing you must do is you must be accredited. I'll just put a plug in, Guiding Development. If you haven't seen this before, this is our guide to the Part IV Reforms. It has an overview of the legislation. And it also has practice notes. For example, one on Construction Certificates, one on Occupation Certificates and it is added to over time. And we have just done a note now for the changes to the Strata Acts. There will be some people at coffee and lunch who will be outside if you are interested in buying a copy of that. You can also get a copy on our web page if you want to keep up to date on it. I won't go into a lot of detail about being accredited because there is another Session. But you need to be accredited first and then, when you come to look at the application, you must be satisfied firstly of the matters that are in the Strata Acts. Now I would assume that you are reasonably familiar with the Strata Acts where you have the choice between the A or the B which is basically the new building and the old building. They are for example, if it is a new building, that there is a construction Certificate; that the Lots substantially correspond to the Approved Plans; that the building is not more than 12 months old and that there is a Compliance Certificate for water supply; or, that the Strata won't contravene the EP&A Act or a Local Environmental Plan, that it is not subject to an outstanding Order, that a Fire Safety Order has been complied with, and there is a Water Supply Certificate. So they are the current requirements that are in the Strata Act, and they apply equally to Accredited Certifiers as to Councils. So that's the first thing. You have to be satisfied of those matters that are in the Strata Act. Then you have to be satisfied that there is a relevant Development Consent, and that is that there is either a consent for the Strata, or a consent for the Building, if Development Consent for Strata is not needed.

The third thing is you must check that any Relevant Development Consent conditions have

been complied with. Now relevant in this case means relevant to the Strata Subdivision. It will be useful if councils make this clear on their Conditions of Consent. In fact if I were working at a Council I would say a Strata Certificate cannot be issued until these conditions were satisfied. A lot of Councils may not do that though and so it will be up to you as an Accredited Certifier to decide which are relevant to the Strata Certificate and which are not. After a seminar last night we think we might run a few workshop seminars and have some actual Development Consents with conditions and go through the types of things that we think are relevant to the issue of the Strata Certificate. You also need the Owners Corporation Agreement where it is required for Notices of Conversion and that is set out under the Strata Acts.

Now in terms of encroachments, you can issue a Certificate if there is an encroachment, provided that the encroaching building complies with a Development Consent. So in other words the Council has already checked it, decided that the encroachment is satisfactory, or that the relevant Development Consent indicates the encroachment and the plan that you issue the Strata Certificate for must clearly indicate the encroachment and the nature and the extent.

Utility Lots. If the registration of the Strata Certificate creates one or more Utility Lots and there is a condition on the Consent about the use of that Lot, then you must note that restriction on the Strata Title. So you can deal with encroachments and you can deal with Utility Lots. You just need to make sure that you follow those rules.

Now for Councils, the changes have meant that under the EP&A Act, they would have considered the merits of the Strata Subdivision at the DA stage and then under the Strata Act they also would have considered the merits of it again. They consider public interest impact on the amenity. Now that doubling up has been taken out of the Strata Act when Development Consent has been given. As I said for Councils it will be really important for them on their Compliance Certificate now to make sure that they note any Utility Lot requirements for example, and also I think to clearly state what conditions need to be satisfied before a Strata Certificate is issued. Otherwise they could lose control over types of things that they want done before the Strata Certificate is given out. One of the things that we often get complaints from the industry about, is the delay in getting a Strata Certificate because a lot of Councils use it as a defacto way of in fact enforcing their Conditions of Consent. And I have even had somebody tell me that they planted the trees but overnight vandals had come and pulled them out, and council wouldn't issue the Strata Certificate until they had replanted the trees. This is a common complaint that we get and the delay caused in that at the end of the process can be quite costly. So we are encouraging Councils to try to allow the process to go ahead as quickly as possible and use other forms of control in order to get their Conditions of Consent met.

Now you can't issue a Strata Certificate if there's no Development Consent enforced. So if a client comes to you and there is no Development Consent then just don't even touch the job. They have to go to Council and the reason for that is that the Council needs to look at the structural adequacy of the building and also the fire safety aspects of the building and it is an opportunity for them to bring older buildings up towards the current standards in terms of fire safety.

Appeals to the Court. Because the merit, the doubling up of the merit assessment has been taken out for Councils now, where they had 40 days they now only have 14 days. But when

you are an Accredited Certifier there is no appeal to the Land & Environment Court because that is a matter of contract. So your client can still take action against you if you breach your contract but they don't have a statutory right to go to the Land & Environment Court.

Now if you are interested in this, copies of the Amendment Act are available from the New South Wales Information Service, and that includes the Regulation. The Austlii site (www.austlii.edu.au) also has copies of it but not the Regulation at the moment but it will be on there soon. Also our web site, which is www.duap.nsw.gov.au. We have also got copies of the Acts and also the information - the practice notes, about how to use it. It isn't the end of the reforms. We are still looking at trying to make the development process quicker, more efficient but also effective. Trying to get the strategic planning work done up front, so that once you want to do your development you know you have a reasonable level of confidence that you can go ahead and get an approval. The changes to the Strata Acts are likely to have significant benefits to the development industry, & particularly for people who are buying villas and townhouses and flats because of the savings in time, but also the savings in money. The fees for Strata Certificates are not regulated and so you get a wide variation of cost across Councils in Sydney. Mosman Council for example charges $1,300 per Lot. Others only charge $100 per Lot. So with the UDIA, the Urban Development Institute of Australia, we will be monitoring the effect of these changes on the cost to see what effect private certification actually has in terms of the fees set by Council.

This is an opportunity for you to move from being a drawer up of plans and signing the Surveyors Certificate, to move into the role of regulator, and it is an opportunity that I would urge you to take up because I think the surveyors are the ones who are the most who can benefit from this particular reform. Thank you.

COASTAL & FORESHORE LEGISLATION

ANDREW PHILIPPA:
(Resource Officer – Dept. of Land & Water Conservation)

Okay, depending on your experiences with the Department across the State and around the region, you will have different experiences with how the Department deals with development along the water courses or as we call them, rivers. The Legislation that I deal with and I am going to talk to you today about is the Rivers & Foreshores Improvement Act. It has been around since 1948 and depending on what approach the Department has had in the past, and what it is doing at the moment, there will be various constraints, or what you may perceive to be constraints, towards achieving development on sites. So I will just briefly go through some principles on some issues of how we deal with development along watercourses.

What you are looking at is what occurred in the Wollongong area a couple of years ago, and the principles that we are trying to move away from is that of trapezoidal channels, concrete lined. And we are now trying to move towards something that more mimics natural watercourses. That is that it has a meandering shape, it has a pool ripple sequence and there are plants and animals living within that watercourse. What you are looking at is not a perfect example of that but it is the first step away from a more traditional engineering approach to managing streams. The experience from the developer in that site was that they were able to achieve for the land that fronts that watercourse, a slightly higher value in sale.

We are not totally against development. This is something the Department actually did to a river up on the North Coast a couple of years ago.

We actually sent the dozers in to do some remediation work. So where we know what is going on and where we know what the intentions are to do the work, we are quite happy for that to occur. And in some situations is what you are looking at here, that the community considers that to be quite extreme. So we are trying to achieve good things and we do believe that there is a lot of common ground between what developers are trying to achieve and what we are trying to achieve.

We have got actually two pieces of legislation which is important when dealing with watercourse management. The first one is the Water Administration Act. It's what we call the enabling legislation. It creates the Department, and the Water Administration Ministerial Corporation. It also provides us with objectives and aims as to how to deliver legislation wide Rivers & Foreshores Improvement Act. It describes things such as environmental protection, preventing of pollution, integration of natural resource management across various pieces of legislation. So it is fairly strict and it is quite direct in what it would require the Department to do.

And we get on to our more day-to-day sort of applications. The Rivers & Foreshores Improvements Act gives us jurisdiction to the bed and banks of a river and a river is what is defined in the Legislation as a watercourse whether it is perennial or intermittent, and also includes lakes, lagoons and wetlands. Now I will provide a definition to go in some notes from this Seminar today. (See Annexure at conclusion of this section). But we also have jurisdiction for that land 40 metres from the top of the high bank. The top of the high bank is not necessarily where the water line is, nor does it equate to where the flood line is, nor the PMF Line. If you are in any doubt there is always someone in the Department who is willing to visit a site and give you an opinion.

The Legislation primarily relates to excavations, so if someone is undertaking tree clearing along a watercourse, then our Rivers & Foreshores Legislation may not apply but there may be other legislations that may need to be adhered to.

If someone undertakes an activity that may affect a watercourse detrimentally but is outside that 40 metre alignment along the watercourse, then the Department can actually issue Remediation Orders for that work to be rectified. So we have some extremely broad powers as far as management of the watercourses and rivers of this State.

One of the more recent changes that we have had to our Legislation is ecologically sustainable development as a focus that we have got to apply to all applications. So with respect to how we deal with our Legislation and how we deal with rivers we have a prime focus of delivering sustainable development.

What you are looking at is, depending on the situation and depending on the river, is generally the long term aim that the Department is trying to achieve with all developments. That is a habitat where we have a variety of plants. We have a variety of functions occurring and there is also a capacity for interaction between people who live at the site, and whatever else is occurring that is going to occur there.

The Legislation can be quite detailed but it is quite simple as far as application. If anyone is proposing to undertake an excavation on freehold land then they will require to obtain a permit from the Department. Whilst the Legislation requires that an application must be made in all situations, the Department has the discretion to not issue a Permit depending on what information it has at hand. When we assess an Application we will look for benefits as far as ecology, habitat value, vegetation, flooding, geomorphic function and how that interacts with developments.

We have an interim policy which was signed off back in 1992 that we have not necessarily applied strictly, which looks towards having a minimum of a 20 metre setback from any development from a watercourse. So what you may find in the future is that the Department will be commenting on developments more and more and would be requiring a minimum of 20 metres. When we issue a permit, the permit is generally for 12 months, but if works need to continue beyond that 12 months period then we are always happy to renew those permits. And the process as you get involved with it probably becomes easier with familiarity.

To give you some ideas of what changes and what to expect, we are currently looking at rewriting our Legislation with respect to river management and the expectation is that the requirements for a permit will be written and transferred across to the new Legislation. So that status quo would remain.

The other major changes the Department is looking at is a restructure internally which will hopefully result in a better delivery of service and what that means is that as far as compliance and approval processes, we are looking to streamline our process as part of the whole reform of Government so that we can improve our service and provision of delivery of services to clients. So hopefully the expectation is that we would not see any change to our interaction with you on a day-to-day basis. And I think that is probably the best way to sum up and I might leave it at that.

ANNEXURE
HIERARCHY OF LEGISLATION AND POLICY

1. ENABLING LEGISLATION - WATER ADMINISTRATION ACT 1986

- Creates the Water Administration Ministerial Corporation that trades as the Department of Land and Water Conservation
- Provides the Department with objectives of delivery of resource management

2. MANAGEMENT LEGISLATION - RIVERS AND FORESHORES IMPROVEMENT ACT 1948

- Jurisdiction over the bed and banks of rivers and to 40 metres beyond from the top of the high bank. Part 3A Permit
- Only applies to excavations
- Has power to remediate works beyond the 40 metre limit of impacts on a watercourse will or could occur
- ESD principles must be applied to all permit applications

a. Definition of "River" – Rivers and Foreshores Improvement Act

"River" includes any stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in any artificial channel which has changed the course of the stream of water any affluent, confluent, branch, or other stream into or from which the river flows and, in the case of a river running to the sea or into any coastal bay or inlet or into a coastal lake, includes the estuary of such river any arm or branch of same any part of the river influenced by tidal waters.

b. Part 3A of Rivers and Foreshores Improvement Act and cognate amendment of Land and Environment Court Act.

THE LEGISLATURE OF NEW SOUTH WALES ENACTS:

SHORT TITLE

1. This Act may be cited as the Rivers and Foreshores Improvement (Amendment) Act 1991.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Rivers and Foreshores Improvement Act 1948 No. 20

3. The Rivers and Foreshores Improvement Act 1948 is amended as set out in Schedule 1.

Amendment of Land and Environment Court Act 1979 No. 204

4. The Land and Environment Court Act 1979 is amended as set out in Schedule 2.

DEFINITION OF A LAKE

The Act has no specific definition of a lake or what is the shore of a lake "into or from which a river flows". Yet specific definitions are required because of the fact that many inland lakes such as Lake George are variable and may not have any water in them at the time of an application for a permit. In addition, many such lakes have more than one shoreline depending on the frequency and duration of various water levels.

The lake definition will have to include what are commonly known as "wetlands" (emergent vegetation not restricted to the margins). This is because fill or excavation in or near these water bodies can have just as much impact on the inflowing or outflowing rivers as they do where the water bodies are easily recognisable as 'lakes' according to common usage of the word.

The word "lake" has had a fairly restricted definition. The most up-to-date definition in technical literature is one by an Australian lake expert, Brian Timms: "a water body, permanent or temporary, more than one hectare in area, not connected to the sea and with any emergent vegetation confined to the margins" (in: Conservation Status of NSW Lakes, SPCC, in press).

In order to include all relevant aspects it has been decided that a "lake into or from which a river flows" (see definition of 'protected waters', Section 22A of RFI Act) to be defined for purposes of the Act as:

> *"an area of more than one hectare of seasonally, intermittently or permanently inundated land, whether natural or artificial, with at least one inflowing or outflowing "river" (as already defined in the Act) or receiving flood water from an overflowing "river", where inundation by water occurs over a long enough time to affect the type of biota and soil present."*

The criteria that should be used to decide if a particular location is in a lake are as follows:

- are aquatic plants growing there? or

- is the land inundated for a period of one month or more after first being flooded? or
- is the land underlain by hydric soils?

The location of the lake shore (for measuring the 40 m distance) should be taken as the outermost (furthest landward) boundary of one of:-

- the wetland vegetation or
- the lip of the depression which define the maximum inundation or
- the point of change of permanent vegetation type from that characteristic of the lane to that of the surrounding areas or
- where none of the above apply, the limit of the area which would be covered by water for more than one month as a result of any flooding.

The following water bodies should be included under the above definition:

- deep lakes
- brackish lagoons intermittently connected to the sea
- semi-permanent and intermittent river overbank feed wetlands
- billabongs/oxbows
- inland lignum swamps
- impeded tributary drainage areas
- clay pans
- salt lakes
- groundwater-source (spring fed) lakes with an outflow

A lake will not include:

- farm dams (unless specifically designed as a wetland)
- rice paddies
- road ditches
- borrow pits, quarries, open cut mines
- irrigated agricultural land
- aquaculture ponds
- treatment works

Part 1: The Policy

It is the policy of the NSW Government to encourage the sustainable management of the natural resources of the State's rivers, estuaries and wetlands and on the adjacent riverine plains, so as to reduce, and where possible halt:

- declining water quality,
- loss of riparian vegetation,
- damage to river banks and channels,
- declining natural productivity,

- loss of biological diversity, and
- declining natural flood mitigation:

and to encourage projects and activities which will restore the quality of the river and estuarine systems such as:

- rehabilitating remnant habitats,
- re-establishing vegetation buffer zones adjacent to streams and wetlands,
- restoring wetland areas,
- rehabilitating of estuary foreshores, and
- ensuring adequate stream flows to maintain aquatic and wetland habitats

Adoption of the *State Rivers and Estuaries Policy* means that the sustainability of the river and estuarine resources and their biophysical functions will be given explicit consideration in resource management decision making.

The objective of the State Rivers and Estuaries Policy are:

To manage the rivers and estuaries of NSW in ways which:

- slow, halt or reverse the overall rate of degradation in their systems,
- ensure the long-term sustainability of their essential biophysical functions, and
- maintain the beneficial use of these resources.

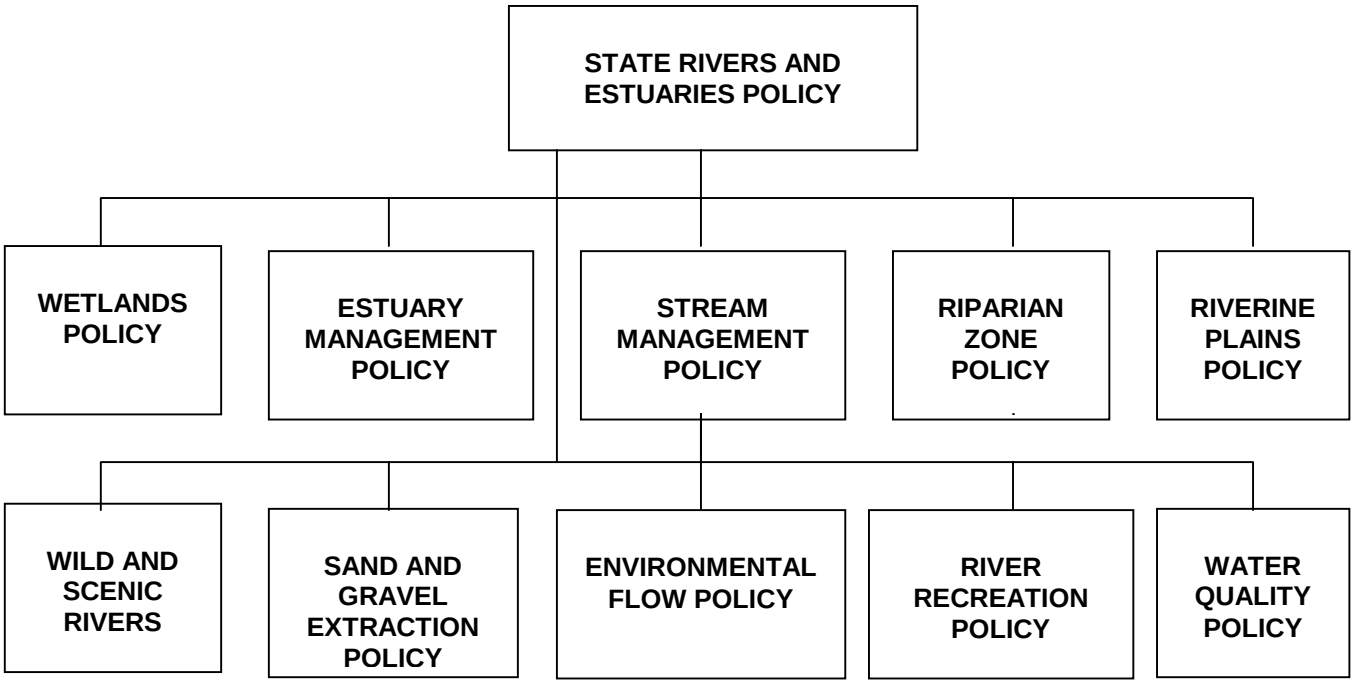
These objectives will be achieved through application of the following management principles:

- Those uses of rivers and estuaries which are non-degrading should be encouraged.
- Non-sustainable resource uses which are not essential should be progressively phased out.
- Environmentally degrading processes and practices should be replaced with more efficient and less degrading alternatives.

- Environmentally degraded areas should be rehabilitated and their biophysical functions restored.
- Remnant areas of significant environmental values should be accorded special protection.
- An ethos for the sustainable management of river and estuarine resources should be encouraged in all agencies and individuals who own, manage or use these resources, and its practical application enabled.

1.1 Component Policies

A comprehensive set of component policies will be developed, identifying management needs and opportunities and providing clear management principles and guidelines. They will commit agencies to the review and modification of related regulatory and operational activities, and to the support of rehabilitation and co-operative management programs. They include the Policies shown below.



INSTRUCTION TO LICENSING OFFICERS

Principles of Implementation

1. When issuing new licences and when reviewing existing licences a condition pertaining to the retention of a vegetated riparian protection zone will be attached to the licence (the criteria for application is that a relationship between the drainage of surface and sub-surface water from the development to which the licence pertains and the riparian zone is likely).

2. All watercourses, as defined under the Water Act, including lakes, lagoons and wetlands, will have a minimum 20 m protection zone width. Where the Regional Environmental Officer deems it necessary (based on site specific consideration of soil types, landform, vegetation, development type, etc.) a greater width will be applied.

3. Natural drainage lines which meet Principle 1 (above) will have a protection zone width as defined by the Regional Environmental Officer (based on site specific consideration of soil types, landform, vegetation, development type, etc.)

4. When formulating conditions a number of factors need to be considered. Of most importance are vegetation, which should be managed for diversity and structure (groundcovers, understorey and overstorey), width (recognising that a width suitable to protect water quality may not be sufficient to sustain habitat) and longitudinal extent (ideally continuous for the drainage system).

Licensing Process

At the time of drafting the conditions of a new, or existing licence under review, the condition pertaining to protection zones will be considered by the Regional Environmental Officer and varied, in accordance with the above principles, at their discretion. Such variations are subject to the approval of the Regional Executive.

When the letter of approval is forwarded to licence applicants it will indicate to them that they may object to the condition. Any such objections must be in writing giving the grounds for the objection and any alternatives proposed.

Upon receipt of an objection to the riparian protection zone condition the matter will be referred to the regional Licensing Environmental Review Committee for consideration and subsequent advice to the applicant. The committee may accept, reject or negotiate the objection with the applicant.

The committee's considerations will be documented and consistent with the implementation principles and with the maintanance of the values described in Attachment and in the literature review.

COUNCIL'S RESPONSE TO LEGISLATION

JOHN CADDEY
(Committee, Cumberland Group)

Our next speaker is Peter Woods from the Local Government Association. He is also the Mayor of Concord, and he is going to respond to the amendments to the EP&A Act, so I would like you to welcome Peter Woods thanks.

PETER WOODS:
(President, Local Government & Shires Association, Mayor of Concord Council)

Thanks very much delegates and for the opportunity to be with you again. I have been asked to speak today in response to the introduction of the Planning Legislation, and in particular, this address will outline Local Government's response to the introduction of the former Part IV, which as we've heard dates back to 1998. We will have a look at it there, up until the current time, and I will also offer some comments at the end of my address on Certification and the ongoing changes in this regard to the approvals process.

As everybody here would appreciate, Local Governments are vested with the task of establishing a framework for the management and development of local communities in a manner that balances the rights of individuals to use and develop their own property in a manner that achieves local and metropolitan planning objectives with the expectations of the community to maintain a maximum level of local amenity. I think it is very important to realise that, because depending on where you are coming from, there are some people who have a view that if you own a bit of dirt you have got a right to do whatever you want to do, and that anyone who intrudes in that ability, is intruding into your particular rights. However we are social animals and we are living in communities and we are interacting in communities and there are community rights. Local Governments have got to try and find a balance to what can become competing interests. In that regard I believe that most Councils in fact understand the diversity and complexity in their local areas, and that they are able and best able to communicate effectively with local communities. And of course importantly, are directly accountable to those communities for their decisions. I can remember addressing a Rotary Club on one occasion, and there was a fellow there who would be well known to everyone in this room, a big, big businessman making a motza. He often appears in the media complaining about his Local Council because he is not able to do what he wants to do. The same bloke is the greatest whinger when any of his neighbours want to do something, and that is often the case. The ones with greatest self-interest are also the greatest whingers when it comes to what is perceived by the rights of others. We have got to work our way through in Local Government through those apparent competing interests. In a hands on sense, in the community, not divorced and hiding in some back room in Macquarie Street, but actually out there amongst the people themselves and so I make no apologies for my support of Local Government in that context. At the time of the introduction of these reforms, Local Government's message to the State Government was very clear. We supported and continue to support reform. We recognise the need for reform and support those objectives of simplifying and rationalising the regulatory assessment process. However at the time, we had

concerns with the proposed system, and these concerns particularly related to a lack of consultation, the bits and pieces approach to reviewing the Environmental Planning & Assessment Act, the promotion of big business interests at the expense of the community - and you can rest assured the property interests had a big big say in driving the initiative of the Government. Those big interests at the expense of community rights to participate in the planning system. The failure to assess the impacts upon Local Government and the lack of training of staff within Local Government, the increased costs to the community and the drain on resources of councils and the complexity of administrative processes and once again the costs involved. We also opposed any form of private certification of Local Government functions relating to the approval of applications. I will say more about that later.

Despite representation from the Local Government & Shires Association and others, these reforms were quickly introduced. So councils madly rushed to familiarise themselves with the reforms and implement the reforms in each council's approval processes. Along with the introduction of these reforms, councils were then asked to do a number of tasks and were given deadlines within which to achieve them. I should add that there was no offer of additional resources with which to carry these out. Remember we don't have the same ability that the State Government has, or the Federal Government, of just whacking on taxes and charges whenever they like. We are constrained in our revenue raising by an artificially non-competitive imposed regime called rate pegging. At the beginning of last year the Associations carried out a survey of all councils to gauge how they were coping with the reforms. We received a very, very high response rate which indicated a great level of interest in the planning reforms. These are some of the results. One of the questions that we asked was if there had been any issues in implementation of these reforms. Very few councils indicated that they had no problems with the implementation. No surprises there, but some of the main problems identified at this stage of the implementation included: the short time frame for implementation and the late release of the Regulations and initial backlog of applications from the old system; the lack of training and education; and the resources and time involved; concerns for the impact on the community; specific concerns with the working of the Legislation, in particular integrated Development Applications; and the impact on councils' resources and this was particularly of concern with many of the smaller councils in non metropolitan Sydney.

Another question that we asked was related to the cost of implementation of the Legislation. A very high percentage of the councils indicated that there had been considerable costs incurred. They included: the training of staff, public and councillors both internally and externally; the deferment of other projects and the re-allocation of staff resources; the printing of forms, policies, planning instruments, public information etc; the setting of fees leading to less revenue than anticipated; updating of computer systems; staff time and employment of additional staff and overtime payments; and delays in the processing time of applications.

We also asked councils what stage they were up to 6 months on. And at this stage there was a huge variation in the status of preparation of exempt and complying plans with about two thirds of the councils having their plans in various stages of preparation.

So that's a general picture of Local Government's initial response to the Legislation. The more recent situation. As it has been acknowledged, the changes that took place with this Legislation were the most significant since the introduction of the Legislation in 1980, and it introduced a totally new assessment process. In my opinion, Councils have shown to the

community an exemplary standard of dealing and coping with these changes despite all those difficulties and resource problems. Another issue was the huge flood of applications at the time of the changes in Legislation and this led to many councils trying to deal with the backlog as well as the new applications. On a strategic level, many councils have prepared their own exempt and complying plans involving much time and resources. Many councils have promptly recognised the need to suit the plan to their local communities and went to great lengths in their public consultation to ensure that the plans would not detrimentally effect the character of the local community. It is one thing to whip you beaut ideas and change through. It is another to recognise that we are living in a consultative era where there is a total expectation by people that they will be involved in the decision-making processes. It is not like the State Government scene where you are given 3 weeks notification to have a response by the end of the month so that it can go through, whack it through the party room, bang, cabinet, finished. It doesn't work like that in Local Government. There is a particular demand by people that they are involved in the decision-making. To be fair much of the system is still showing its colours. It has only been recently that the SEPP for exempt and complying development and other council plans have been up and running. Also many private certifiers are just getting into full flight so the full effect of their involvement in the approval system is yet to be felt.

I would also like to say that fortunately, the attitude of the State Government has changed considerably since the inception of the Legislation. There appears to be a more willing attitude to listen to the concerns on the specifics on the Legislation. The recent regulation review that has occurred for instance involved wider confrontation with many stakeholders and Local Government. A number of factors that have been issues with the administration of the system in Local Government are proposed to be rectified. There has also been a number of other clarifying amendments which have tidied up bits of the Legislation. Of course DUAP have also released a number of guiding documents for use by Councils which have been of considerable assistance. The review of Part III, the plan making section of the Act has commenced, and DUAP appear to have undergone a very large exhibition process. This review included many regional centres and this was a far cry from the processes of the implementation of the Part IV Legislation which was done without anywhere near the extent of consultation that any fair person would have expected. Whilst Local Government does have a number of concerns with some of the ideas suggested in the green paper released last year, such as appeals to the Land & Environment Court and the removal of zonings, we trust that DUAP will be playing a more active role in liaising with Local Government to address these concerns. Of course we have also now fortunately achieved an inquiry to review the Land & Environment Court, which is certainly timely knowing some of the bodgie practices of members of that Court and some of their outrageous decisions. Many people refer to it not as the Land & Environment Court, but the Land Developers Court. I am very pleased to be sitting on that part of the review on the working party. And I look forward to be taking an objective position in that process.

I would like to conclude today on the topic of certifiers. As you may have guessed I am not in favour of further approval powers being removed from the realms of the democratically elected representatives of the community. Local Government of course holds a strong belief that we are best placed to consult with the community. The time of introduction of the Legislation are the concerns that privatisation threatened a key element of the democratic process, which is openness and accountability. There are also concerns that the public interest and the public rights would not be adequately represented. To a point it is still very difficult

to ascertain the full ramifications of the private certification at present. Whilst legislation which introduced a system of private certification and contestability had been introduced back in 1998, there were no private certifiers. To date it does not appear that many certifiers are fully up and running in many areas, so my guess is that we are yet to feel the full effects. One problem we have been grappling with is that Local Government is the repository for all complying certificates and whilst there is supposedly no statutory provision requiring Councils to check the accuracy of certificates, and Councils assume no liability for the information contained therein. Councils are put into the position of either being responsible members of their community and having a second look at the certificates, or else just refusing to check the certified documentation. Unfortunately this has led to councils being in an unenviable position as the public continues to turn to their Local Government where they believe there has been a breach of the Act or other improper conduct by an Accredited Certifier. The Council from their point of view is immediate and accessible. And I think overall the Councils feel sandwiched between the changes to public participation and the public's expectation.

In terms of Strata Title Legislation, which was introduced previously, it is my understanding that this legislation introduces further matters which can be taken up by the certifier. As this legislation has just commenced operation we are not in a position to outline any experience of Councils. However a number of matters have been brought to my attention which are of concern. Firstly the amount of time that an applicant has to appeal to the Land & Environment Court if a Council is not a private certifier has been reduced as was mentioned, to 14 days. So much for the level playing field. This is from the previous 40 days.

When that review was in fact announced of the Land & Environment Court, the Local Government Association established its own working party and one of the issues that we plan to pursue is the inadequacy of the 40 day timing for a deemed refusal. We believe it should be 40 working days. Needless to say, this reduction to 14 days will expose Councils to even further unnecessary legal action. We have situations where applicants backed up by their shonky lawyers, come along, slip an application in knowing it is not going to get up, play around, don't provide what they are supposed to do, make out they are really wanting to get the thing done and as soon as the day arrives, bang, straight into the Land & Environment Court. And of course, we have had procedures where modifications made before the Court not even referred back to the Council for consideration there, bingo, through it goes, another lobster mornay, all over. Well that's really going to be saved by modifying to 14 days isn't it. I mean, lets be realistic. When you have got processes to take place, when you have got people involved in communities, where you have an expectation that they're going to be involved in processes, and we have this sort of stupidity.

The second concern I have with this Legislation, is that it has been stated by DUAP in their regulation note that Councils can reasonably require building work to be completed before a Strata Certificate is issued, but not such things as landscaping. And we heard mentioned maybe the plants were put in and pulled out. What a terrible thing. But what about if it hadn't even been started and the big push was on? We find in many areas with the fly byers that unless you have things properly sorted out and properly completed, you will spend a lot of time, energy and money, having jobs completed. Once again Councils may find themselves in the position to being the policeman after the Certifier has issued a Certificate. The building has not been totally finished according to plan. Who is the community going to call? Call the Local Certifier? Call the Applicant? Call DUAP? Minister for the

Environment & Planning? Not on your nelly. On to the Local Council. That's who they will call. Once again, we don't receive any resources, any extra fees, to carry out the sorting out of that. I hope that that doesn't end up a common situation and a cost to the general community.

Today I basically outlined Councils' experiences to date. With the Legislation amendments made during 1998 and whilst Local Government has concerns with the number of the processes of this Legislation, and the objection to approval processes being taken away from the democratically elected Local Governments, I believe that Local Government has demonstrated how effectively it can adapt to change and implementation of change, in a climate of under-resourcing. But there are many people out in the community who have been led to believe that private certification is the panacea to their problems. And I can only think of one experience by a local builder in my municipality who has done a lot of local building until someone said to him what you need is a Private Certifier. That will save mucking around with the Council. And one of his buildings, half completed was facing the bulldozers going through because unfortunately he was led up the garden path. He thought he was with a Private Certifier. It turns out that then the Private Certifier said oh no you are not, I have just left that firm. I have gone to another one. He was left high and dry. Council couldn't approve it or else we were gong to be up for the liability. And here he is, he and Maria throwing their hands up in the air. What are we going to do, when the bulldozer is revving up outside. We managed to get around that a little bit. It cost him, and it cost him every dollar of my Council Officers' time in having to go through and work through with another Certifier and bring the whole process up. And I tell you what, that is one little developer who will never go near the private certification process again. It is one thing to set the thing up in motion and it is one thing for Council Officers to run out and shove their shingle up and say I am a private certifier. They may not have been too much of a Council Officer either. And that is supposed to engender a great amount of confidence in people. And then people are left high and dry. *Who do they turn to*? The old Council, bail us out. Well we have got to get these matters sorted out very very carefully because we have a responsibility to the whole community, and not just some of the community. I wish you well with your deliberations. Those who have reputable shingles, do come and hang them up. But if you don't have reputable shingles, *don't bother*. Thanks very much.

QUESTIONS

Q: **John Brock**.

Surprisingly it is not for Peter Woods. Andrew Philippa, from Department of Land & Water Conservation – I say to you that your officers who go out to enforce your Act, the Rivers & Foreshores Act, have no idea about the definition of a river and they are virtually untouchable. We have so much trouble with them it is not funny. A dry gully that has water in it once a year is not a river. I had one incident when they came out and said that's a river. Where they pick the high bank is arbitrary. They decide where that is. No one is allowed to question the fact. Where's our second opinion on where the high bank is? We have got one job where they come up; it's clear where the riverbank is. The first high bank is there; there is not doubt about it, the riverbank. This bloke comes 150 metres inland because there's a change of height in the land and calls that the high bank. That's an absolute disaster. I want to know what recourse have we got to question your Officer's judgment.

A: **Andrew Philippa:**

Thanks for that. That's a good way to start the day. If you do have, seriously, if you do have a problem with a decision that is made, there are a variety of people in the Department that do have experience in determining rivers, and if you do not agree with the decision that was made, then by all means question the Department and the decision they have made and ask for a second opinion. If you still don't agree with that second opinion or you don't agree with the determination that is made, then unfortunately the only recourse you have is to appeal via litigation. But generally the people we have in the Department and people like myself who have gone through and have undertaken training in identifying rivers and identifying the features of rivers, and we have continuation of training in that and we expand that training amongst officers and that experience. No denying that there are going to be definitions and determinations made that you may not necessarily agree with but it is not that it's a fait accompli and it shouldn't be a fait accompli and then if it is then it is a matter of talking to managers above, higher in the hierarchy in the Department to have the case looked at and then have that assessed again.

Q: **Gordon Wren**

Andrew I guess sorry for your second question but I guess this is a follow on. You were going to give us a definition of the river in your notes today? Yes. I believe there is a recent case Warringah Council –v- Ardell which I haven't really read as yet. Does that influence the DLAWC's definition of a river?

A: **Andrew Philippa:**

That case has come up many many times and most recently. And I do urge caution on anyone who wants to rely on that. It is a development over near Manly Dam where a development has occurred and the Department went

and had a look at the site and determined that the watercourse on that site does not fit the definition of a river by the Legislation. The community has not agreed with that and they have progressed that politically. The situation that came up, I think it was last year, Warringah Council attempted to have the development brought to a halt using the Rivers & Foreshores Improvement Act, and the caution that I put to you is that the Department has jurisdiction for that Legislation and not Council. So if you were to rely on a decision and the decision is that the Court actually did hear the matter, surprisingly and more interestingly, and the decision went against Council. I don't know the exact details intimately of what the appeal was and how it was worded, but it's not a jurisdiction for Councils. It is for the Department, and that does not necessarily influence the definition. When we view a site, we view the physical characteristics of the site and make our determination on physically what is there. I'll probably just mention on the first question from John, the Legislation does actually say that if a watercourse is an intermittent watercourse then the Legislation still does apply.

Q: **Robert Monteith:**

From Newcastle - Surveyor. John Brock, I might have the answer to your solution. This Rivers & Foreshores Act has been around since 1948 and there has been a lot of debate and controversy over what is a river. There was a fellow by the name of Mr Barwick who was a High Court Judge in times gone by, who has defined a river. In 1968 in a court case that went to the High Court he came up with his interpretation of a river and it would be nice to think that DLAWC will follow the recommendations and interpretations from the High Court of Australia. And what Mr Barwick says and I quote: "A watercourse consists of a stream with a bed, banks and water. That the flow of water in the stream is intermittent or seasonal will not prevent what would otherwise be a watercourse from being counted as such. But though it is quite true that a watercourse may exist though its bed be dry for some periods, the watercourse in my opinion, must exhibit features of continuity, permanence and unity, best seen of course in the existence of defined bed and banks with flowing water. It must in my opinion essentially be a stream and be sharply distinguished from a mere drain or a drain's depression in the contours of the land which serves to relieve upper land of excess water in times of major precipitation. It is not enough that the water, when it does flow, does so in what may be seen as a defined channel or course. In the case of a drain's depression, the water being drained off can be expected to flow into lowest portion of contours confined by the rising levels of the adjacent land. Thus water can be seen when flowing to do so in what would be called a defined channel and not a river. I put it to you and your Department that it may be appropriate for the Department to adopt the High Court decision and not necessarily the interpretations of officers in the field. Do you care to comment?

A: **Andrew Philippa:**

The various decisions and our training that we have internally within the Department is guided by what decisions have been made by the High Court and also the Land & Environment Court. All I can say is by way of comment, is that we are made aware of what the physical characteristics of a river are, based on the Legislation that we have. But we also have to be cogniscent of the fact that in Australia, natural rivers, and there are natural situations where a defined bed and banks may not carry water all year round, and that still has implications where you live within a catchment. If someone then goes and does something that is going to be detrimental to that channel, it could affect someone downstream and upstream. And it's on the basis of trying to manage things equitably amongst all landowners and also the environment that we try and apply this legislation and that we continue to try and maintain standards within the Department.

SESSION 2

"CERTIFICATION AND ACCREDITATION"

CHAIRED BY GREG OXLEY

CERTIFICATION & ACCREDITATION

Chaired by Greg Oxley

GREG OXLEY:
(Committee, Cumberland Group, Chairman ACS)

Welcome to our second session on certification & accreditation. There are certainly some big things happening here for us. Certainly some big things that are going to impact on our profession and there are some good business opportunities that might be coming up for us as well, particularly with the Strata Certification. Kerry has already given an address so I won't reintroduce Kerry apart from just asking her to come up to the microphone. Thank you.

STRATA CERTIFICATION

KERRY BEDFORD:
(Director of the Policy & Reform Unit, DUAP)

Okay, so you know that there is potential for you to have a new role now to certify Strata Certificates. Now the way the system works is that the Act sets up the requirements for the Strata Certificates, and what you must be satisfied about before you issue the Certificate. But the people who actually give you your approval to act as an Accredited Certifier are professional bodies like the Professional Surveyors Organisation of Australia. And the process is that the PSOA applies to us and then the Minister approves the scheme if he is satisfied with it, and I am happy to say the Minister approved the scheme the other day and we will be gazetting the Professional Surveyors Occupational Association Scheme to allow Accredited Certifiers to issue Strata Certificates next Friday. So that is the first hurdle and then you apply as an individual to that Professional Association and they will check certain things that Bob Harrison will talk about later, as to whether or not you qualify to be an Accredited Certifier. Then it is your responsibility to abide by the Scheme.

Now the Australian Engineers, the Institute of Engineers Australia are accredited. BISAP are accredited and they mostly deal with building surveyors. RAPI are accredited by the Minister and they are to approve Planners. I might say there isn't one Planner who has been accredited in New South Wales yet though, and the PSOA. And all of those bodies must report annually to the Department on how they are running the accreditation of individuals. And in the Scheme they must identify what competencies you need as individuals to act as an Accredited Certifier. So they will set levels of qualifications, levels of experience, that you must demonstrate that you satisfy before you can be accredited. They have to outline to us how the application will be assessed, how they are going to manage complaints. The reporting requirements – they must have sufficient resources to manage the Scheme. There are also provisions particularly in the Schemes, to protect the public interest, in that Accredited Certifiers are acting in the public interest and they are acting in the role of checking detailed

requirements that are preset, either by Council or in the case of building, the BCA which is a national document, that are designed to look after health, safety and amenity aspects of the general public. And you are acting as a regulator. You are not a consultant. Somebody said last night that surveyors in fact have already dealt with that issue in that you are looking after the cadastre and so you understand as sort of a greater good I suppose in some other professions that maybe will do whatever the client asks for. But it is an important distinction between satisfying your clients' needs and acting as a regulator. And strong public interest provisions are in there to give the community confidence in the private sector being involved in the whole process. Now the Accreditation Scheme must have a Code of Conduct which you need to comply with. They must be able to deal with complaints. There is an appeal right to the Administrative Decisions Tribunal for professional misconduct but the Scheme itself that is run by PSOA is just dealing with individual complaints against Accredited Certifiers. Conflict of interest which I will talk about. And there is an auditing role as well. It was with the Department of Local Government. It has now been transferred to us and we are currently looking at scoping how we can audit Accredited Certifiers in New South Wales. If you decide to become accredited you will be subject to an audit. I don't know yet whether that will be one per year or one per five year or one per ten years. That is still to be decided. But if you are an Accredited Certifier you are defined as a public authority for the Ombudsman and ICAC and they can also investigate you and the work that you do as an Accredited Certifier.

Now the Act particularly sets out Conflict of Interest provisions and it is 109ZG if you want to read it for yourself. It basically says that: you can't be involved in preparing the plans; that you are not involved in carrying out the work; that you are not the applicant or related to the applicant; that you are not associated with the Council if the Council is the consent authority; and you don't have a pecuniary interest in the proposal. Now to look at each of those ones in detail. Designing Plans: Involved in the preparation of plans - well clearly you can't physically draw up the Plan. There is no way that you can draw up the Plan and then certify that it complies with the requirements. That's quite clear in the Act. The thing that is a bit more of a professional judgment is how much advice can you give until you step over that line. Until you particularly compromise yourself in the decision that you might make. Now I think that you can give advice on how to comply with the requirements, but if in giving that advice you tell people how to design, then you are probably creating a conflict of interest. Now because this is new legislation I expect that some time down the track somebody will end up in Court and we will get a Court judgment on what this particular aspect means and we might have to go back and amend the Legislation. That's just a fact of life. I think this is a professional judgment that as professionals you will be able to make. If you give advice to a client on how to comply in their Strata Plan, I don't think that necessarily conflicts with your role in acting as a Regulator. But it is an individual decision that you need to make.

Now "related to" is a bit clearer. You are either an employer, a partner or employee of the Applicant, or you are a spouse, defacto, sibling or child of the Applicant. Or you have a contractual arrangement that could put you in a difficult position. Now here we are into a little bit of a grey area again. And again it is a professional judgment. What sort of contractual arrangement that could create a conflict of interest, or in other words, put you in a position where you will be forced not to act independently as a regulator. Now that is something you will need to think of with your Applicant. Now if Meriton Apartments for example, had a contract with me to provide certificates on a certain aspect of the development, that is not a contractual arrangement that leads to a conflict of interest in my

opinion, because that is just a matter of earning a salary and understanding how I am going to act for Meritons. But if the contractual arrangement in any way suggested that I always had to approve their certificates regardless of the situation or I was paid an extra bonus, then I would be in a position where I could potentially compromise myself. You need to be aware that you as an individual acting as an Accredited Certifier are independently liable. You are personally liable for that certificate that you issue and the company or the client that you work with is not liable.

Which brings me to firms and how you might set up your practice. Now this often creates a lot of debate from both sides of the camp, as people who think that you should be very careful about conflict of interest provisions, and you would not employ in your firm somebody who draws up the Strata Plan, and somebody who issues a Strata Certificate. But when we were designing the Legislation we said we want people to be able to do that because, in country areas if you are the only surveying firm, you would have to go to another country area to get the Certificate issued. Clearly there is a problem if your competitor is the one who is basically signing off your plans. So we wanted the Legislation to be clear that, within a firm, you could have people who were drawing up the Strata Plans and somebody else who is employed by you as an Accredited Certifier to issue the Certificate. Now that person employed by you in the firm is still acting independently and will be personally liable if the Certificate is issued incorrectly, but it is possible for you to pay their insurance. Now this is what we asked Parliamentary Counsel to draft in the Legislation. This is the intention of the Legislation but as in all things lawyers love to argue over words. The important thing to remember that Accredited Certifiers always act as an independent individual. You are acting as a regulator. You are providing that service to your client whether that is the person who is employing you in the firm, you are acting basically as the traditional council role.

The next Conflict of Interest Provision says that you can't issue the Certificate if you are associated with the Council. Now that means you either are an employee of the Council or you are related to a Councillor or an employee of the Council. So if you have got a job in Sutherland Shire and you are married or your child works there or your sibling or whatever else, or you have a contractual arrangement, you are related to that Council area and you can't issue a Certificate. Now the reason for that is that the people who work at the Council could have knowledge that you wouldn't necessarily know about if you didn't have that connection with that person. So this is a careful side of the Conflict of Interest Provisions to say that if there is any potential for you to be influenced or have information that you wouldn't normally have, then you can't issue the Certificate. Now this is only in the case if the Council is also the consent authority. In some cases my Minister is the consent authority. We have taken the role off Councils and we issue the Consents ourselves. Now if you are working in that council area and you are related to somebody in the Council but the Minister is the consent authority, then you are free to issue the Certificate, because the Council isn't acting as the consent authority. Okay.

Now Pecuniary Interests. You can't issue the Certificate if you have got a pecuniary interest in the Application. Now again this is a grey area, trying to write it down in law for people to act in a professional manner. It basically means that if you will get a considerable financial gain from issuing the Certificate or if you would get a loss, either way, then you can't issue the Certificate. Now what is a considerable financial gain? It is not your wage and it is not your fee, but it could be shares or it could be a bonus. Or it could be that you have some other interest in the company and by issuing the Certificate they will get an advantage somewhere

else along the line. So again you need to be careful that with your client, whoever employs you, that you don't have this Potential Conflict of Interest Provision. So, even though there are those warnings there about conflict of interest, they are there basically to give people confidence that the private sector is acting as the Council as they have perceived the Council to have acted in the past. That is as somebody who is independent, somebody who is checking, somebody who has the public interest as their first client and not necessarily the person who is paying the fee. And that is the role of an Accredited Certifier. It is something I think professionals can manage quite well provided you understand clearly what the provisions are about. Three is a practise note about Conflict of Interest that is coming out. It will be on our web page in a few weeks. It will also fit into the Guiding Development that is on sale up the back, and it will clarify, it will go through what I have said today. It also gives some instances of where we think conflict of interest could actually occur. Thank you.

GREG OXLEY:

Thanks very much Kerry. There were certainly some interesting things come out of that. I would think there might be some questions of Kerry later about how professional indemnity might work and maybe we all would need to think very carefully about how we structure a business plan if we wanted to go down the Strata Certification route.

PSOA & SPAS SCHEMES

GREG OXLEY:
(Committee, Cumberland Group, Chairman ACS)

We will move along and we are going to ask Bob Harrison and Allan Cavanagh to come up. They are going to have a talk about the way the Surveyors Schemes are operating and during this session I think Bob has got a very pleasant duty to perform so we might ask them to come up and get into it.

BOB HARRISON:

Thanks Greg. By now you are all probably aware that the Professional Surveyors Occupational Association is an accreditation body which can allow people to become registered to issue these sorts of certificates that have been devised under the EP&A Act. You don't have to be a member of PSOA necessarily to become an Accredited Certifier, or, in the higher grade, a Principal Certifier of Subdivisions. But you do have to abide by the Rules which have been set in the Legislation in which we continue to convey, and in specifics, you have just heard about the disciplinary type matters that Kerry has talked about in terms of Conflicts of Interest. We also have a complaints handling mechanism which is set up under the Legislation and it follows the Legislation very strictly and in the event that a complaint is made about you, there is a very formal process for handling such a complaint. But let's go back to the beginning and think about how this all came about and you are probably aware that the Survey Practice Accreditation Scheme was devised some years ago, jointly run by the Institution and ACS and Allan will tell you about that in a little moment because he has been closely involved in that over the last couple of years. When this new Legislation came about it was seen that the PSOA was probably an acceptable body or the most appropriate body of surveyors to carry out the accreditation process and consequently we set about and applied for the ability to become an Accreditation Body and we have been granted that and in fact we have just been granted the ability to become a Strata Accreditation Body to allow you people to gain the expertise and to show your expertise in the field of Strata and issue Certificates in lieu of the Council doing that work. That is very pleasing that that has happened in the last day or so.

The means by which you gain your accreditation is firstly and obviously to make application. Whilst you don't have to be a member of PSOA you do have to be a Registered Surveyor. You must demonstrate that you possess the required competencies and you must show that it is going to be a significant component of your business. In doing that all of you would probably have no trouble in showing that you are involved in the land development process and of the twelve categories that we have got, it wouldn't be hard for you to fall into several of those categories and ask for accreditation in those categories. The categories briefly are: Setting out boundaries and buildings; managing building development conditions; locating constructed boundaries and buildings; planning and design related to subdivisions; managing subdivision development conditions; setting out of subdivision; road design and contract supervision; subdivision infrastructure design and contract supervision; on site detention and

drainage design and contract supervision; locating subdivisions as constructed; the Strata Scheme Certificate; and the complying Development Certificate for subdivision. Now there are twelve very distinct categories. You might know something about all of them. You might know something or an awful lot about some of them. And that's the idea – that you can specialise in your area of accreditation.

In order to proceed, you make your application with your curricula vitae and your references, and there is also the need in most instances, for you to be prepared to have an interview with the committee or the panel who are going to give you an accreditation so that you can convince them of your abilities. We are not just rubber stamping any of this. The fact that you are a Registered Surveyor means that you have a base knowledge, but the fact that you haven't been doing a Strata Plan in the last twenty years is a bit of a worry if you are applying for a Strata Certificate. So we are trying to avoid getting ourselves into trouble and you into water deeper than you can swim. You must be prepared to do or to have done a course which has been set up under the Legislation. In specific terms, on the 28th of this month, the University of Technology in Sydney is running a one day course and anybody who wants to be a certifier is required to do that type of course in their first year, or to have done it beforehand. You must agree to be audited by the New South Wales Government if such happens. There is room in the Legislation for audits to occur and we require you to be prepared to submit yourself to an audit. You must agree to be subject to the Code of Ethics and the Disciplinary Provisions of the PSOA.

I won't go through the types of certificates that you are going to be accredited for, but I will tell you about the costs. Your Application will cost you $750. It will cost you the time to carry out the paper work and the paper work in all of these things is probably considerable. There is an annual renewal proposal of $100. You must prove your CPD in the areas of your expertise and you must do that in each subsequent year. You must attend the one day EP&A course. I can't tell you about what the returns are going to be because as you know, we don't set fees, and the consumer and competition people would be down on me like a tonne of bricks if I told you that you were going to make a lot of money, or you were going to charge a certain amount. However, I do have one situation that has occurred in the last couple of days and it is my pleasure, if Patrick McNamara is in the audience here somewhere? Good. I will ask Pat to come forward. Pat has made application to become a Principal Certifier of Subdivisions and it is my great privilege to be the first presenter to the first presentee of the Certificate for this accreditation. It is interesting to note that Pat did have to go through some fairly tall jumps being the first. The pile of paper that he presented was firstly presented that thick, and then it was deemed that it was insufficient, and then it was deemed that it had to be in triplicate. We also had the problem that his partner was part of the PSOA Board so we had to kick him out of all the deliberations so that we were above scrutiny because not only must justice be done, it must be seen to be done. So it has not been an easy path but we have got to the end of that path for the time being, and it is my pleasure to present Pat with his Certificate of Accreditation. He has applied for accreditation in all of those things except Strata because at the time Strata was not approved but no doubt he will turn around and make an application to become a Strata Certifier as well. So congratulations Pat.

And I would like to now hand over to Allan Cavanagh who will tell you more about the SPAS Scheme.

ALLAN CAVANAGH:

Thank you very much Bob. My congratulations to Pat. I would just like to point out Pat that you have now joined the ranks of the Regulators and you have left the Consultants. They're Kerry's words not mine.

The Survey Consultants Accreditation Scheme, or Survey Practice Accreditation Scheme. We are in the throes of identity crisis at present. We changed our name from one to the other, decided we didn't like what we had, so we went back but all our literature has been presently printed as SCAS. The Scheme was set up during about 1996 with an attempt to accredit survey practice firms and give them some credibility of presenting road works, drainage etc, designs to local Councils. Most consultants are aware, and particularly consultants of my age which is now getting considerable. We are always under threat from other professions in the presentation of our work. Over the years surveyors through their own apathy have lost a lot of the skills or areas in which they practice and I just touch on valuation and planning and a few of those things. But we are keen to maintain this area of work of subdivisional engineering and that is what this Scheme was set up to do. To provide some credibility, particularly to those Local Government Councils that were raising questions about whether surveyors were competent to do this work, and of course we all know that surveyors are eminently competent to do this work. And none of us present rubbish to the Local Councils. In fact I would just like to go back to words of Peter Woods' earlier in the session where I would see this as an attempt by the profession to assist its members in presenting a reputable shingle.

The scheme accredits firms rather than individuals which is quite different to the PSOA Scheme which Bob was just speaking about, and accreditations available in the fields of urban road design, drainage and contract supervision. Similarly in rural areas, roads, drainage and contract supervision. Also water mains and sewage. Sewage design is carried out outside the Sydney Metropolitan Area for those people who have never been over the Hawkesbury Bridge. But most of the practitioners here I suppose are concerned with the change in requirements of Sydney Water and we are presently in discussions with Sydney Water about in fact providing accreditation for people practicing in this area. I don't know quite how onerous their requirements are because we only require the stuff to flow downhill where I come from, but I understand that they are quite onerous and have some quite severe financial implications as well so maybe we can provide some assistance in this field.

Again as the PSOA Scheme, you can have full or partial accreditation in whatever areas you have your expertise. Applications are that the main requirements for applicants are the consulting survey firms or multi-disciplinary survey firms. It is not a requirement of the firm to be a member of ACS although the nominated person in that firm must be a member of ISA and a Registered Surveyor. There is initially an application fee of $200 and then now an annual renewal fee of $100. There is considerable work that goes into assessing these plans. The idea of the Scheme is not to provide expertise in design or to teach people how to do design, but it is to ensure that the profession is presenting a reasonable standard of design and plans for their clients to the Regulating Authorities. It is more an image type exercise I

suppose in an endeavour to present the profession in the best light and to ensure that our clients are getting the best presentation to Pat and his Regulator mates.

There are also other professions out there that are serving up rubbish to the Councils and this has been the main criticism I suppose of some of the Councils. The administrators of the Scheme, which is currently ACS, circulate to Local Government, to all of the Local Government Councils in New South Wales each year, a list of accredited firms. There is no suggestion that these are the only firms that are capable of providing this service but we are finding that it is of great assistance in those areas where there is some reluctance by Local Government and in fact some of the State Government Agencies, and Resitech comes to mind, where we have been able to provide evidence to these organisations that our members are in fact as equally qualified to do this work as any other professions.

Again there is some reasonable documentation required. A complete set of plans, specifications, approvals and all supporting documentation is required in an application to become accredited under the Scheme. Such things as Construction Programs and all of those things that we are expected to know about. There's an initial desktop review made of all applicants. Plans and drawings are then examined by several experienced examiners in the fields and again a Certificate is provided, as I said, which is renewable each year. The renewal fee is $100. There is also some auditing carried out on members. As I said earlier, there is a nominated person in each firm who must be a Registered Surveyor and a member of ISA. Again there is a procedure for complaints against the accredited people so we do have an earnest attempt to keep standards up and to ensure that our members are getting as good a presentation as possible.

We are promoting amongst our members, participation in Quality Assurance schemes although again it is not mandatory that participating firms have such a quality assurance.

At present there is no requirement for continuing professional development. As long as the participants in particular disciplines maintain activity in that discipline. If for instance, somebody were to come along and not practice in a particular area for twelve or eighteen months, it may then be a requirement that they provide some evidence of CPD in that field before their application was renewed.

So I guess that is basically the overview of the Scheme. It is not intended to replace or be involved with the EPA Scheme. There was and still is some discussion about whether we do have any place in the EPA Scheme. The biggest stumbling block we have got at present is that we do accredit firms rather than individuals. But I would promote the Scheme to all of our practitioners, consultant practitioners particularly, because it then will give you some assistance in having your plans and qualifications accepted by Local Government and other State agencies. Thanks very much Greg.

PITFALLS & LIABILITIES OF CERTIFICATION

GREG OXLEY:
(Committee, Cumberland Group, Chairman ACS)

Someone who has been involved in certification as a private consultant since basically since the start of the Scheme, someone who has great experience in this area, is Steve Johnson. Steve probably needs no introduction to most of you here because over the years, being at Fairfield Council and Blacktown Council, he has certainly seen you from the other side, and now he is out there with his company Land Development Certificates, handling the private certification, doing a couple of mine. Doing very well too and I might say that Steve is very very thorough in his approach and presentation and would be an excellent role model for any of us who would be looking to enter the accreditation sphere because his processes and the way he undertakes his work is certainly excellent. So anyway we will get Steve up here and he can have a talk to us about that.

STEVE JOHNSON:
(Accredited Certifier / Principal Certifier - Subdivisions, Land Development Certificates Pty Ltd)
Ph: 9610-2008

Thanks for those very kind words Greg. Congratulations to Pat on joining a very small but growing club I guess in being an Accredited Certifier. Although listening to Mr Woods earlier today, I don't whether we are the dreaded certifiers. But first of all let me start by saying that I am a principal certifier in the subdivision and an Accredited Certifier. But first of all let me start by saying that I am a Principal Certifier in the subdivision field and an Accredited Certifier in civil engineering works. I have been accredited under the Institution of Engineers Professional Certification Scheme. There are others of you or perhaps there are some here today who are accredited for building works which are related to the Building Code of Australia, although they probably wouldn't be willing to put their hands up after this morning's comments. Therefore the majority of my talk will relate to subdivisions, a topic I am sure is close to the hearts of many surveyors here today.

Now turning to the topic of certification, I thought I would rather give a more balanced view, not just the difficulties that we face. I must admit that when Roy Lowe asked me to speak here today and asked me to talk about the pitfalls and liabilities of certification, I had to think why I would start a company focussing on certification if there were so many pitfalls and problems. I am sure that there are some and I will expand on those later on but they're really only teething problems and I am sure that the industry will find its way through that maze with the help of all the players.

So turning to the certification, I don't want to just talk about the difficulties we face. No one wants to hear all bad news, so I thought I would expand onto both sides of the story. First the benefits and opportunities and then the responsibilities and pitfalls.

The land development industry has for a long time been looking for a way to save time on the critical path and now that the Government has opened the way for competition in this part of

the process, I am sure that this will go a long way to answering some of their prayers. There have been some teething problems as I said, as with any new system but I will go into these later on.

So if I can move on, I will speak firstly about the benefits offered by certification. Anyone who has worked in Local Government will agree that the demands placed on Councils by the community and changing legislation are continually growing, and that the resources available are rarely sufficient or increased to meet those needs. Certification therefore, provides the opportunity for time savings in having plans assessed and then approved. I should say though that my first words to any prospective client and Greg will probably bear me out is that the approval won't be any easier but it may well be faster. After all the Certifier must obey all the Council's policies and standards but he can also manage his workload to some degree so that he can provide the desired level of service. Those people who have had Local Government experience will know that they don't have the option of saying no I am too busy to take that job on, and that in the past Local Government from my own experience, has suffered under the workloads that are being imposed on it. So in some Local Government areas where certification has been more warmly greeted – Lyndsay Dyce will be speaking to us later on – Certifiers are seen as a resource, even if it is outside the Council and that it makes the Council Officers' workload more manageable. And that applies to both building and subdivisions especially in the buoyant market conditions that we have had over the last two to three years. As you would know the demands on Local Government and consultants in general, over the last two or three years have been very demanding. Any consultant who is not busy just isn't interested in my view.

Another benefit is probably less obvious and that's the benefit of increased certainty of outcomes. It is probably best to explain using an example of the humble roadside guidepost. Few if any Council specifications set out the spacing of guide posts along the side of a new road shelter and that leaves it up to the individual Council Engineer to decide what spacing he would like. As five engineers and you might get five different answers ranging from 3 metres to 6 metres. But now, when dealing with a Certifier, you will soon know what he wants and this can be applied on all designs that are submitted for certification no matter whether they are in Sutherland, Penrith or in Hornsby.

Another benefit comes from the competition and competitive pricing. I don't think I need to expand on this aspect. Obviously cost savings for the industry and general public are a good thing. And also with these benefits are the opportunities to fast track projects that involve both building and civil works also an integrated housing application or a medium density development. Potentially you could engage a number of Certifiers to look after sections of the site. So you could have a Building Certifier and an Engineering Certifier or maybe a number of Building Certifiers to look after parts of the site or parts of the work and have a Consultant or a Principal Certifier that coordinates the certification.

So hopefully I have established that certification is a valuable tool for the development process and I will now move on to speak about the responsibilities and reliabilities of a Certifier.

Responsibilities: Foremost in the Certifier's mind must be that he is standing squarely in the Council's shoes when he is carrying out his regulatory role. He is therefore firstly responsible to the public and I think that is the most important thing, certainly that when you go to your

course that is run by UTS. That is one of the main things that they drum into you, is that you are working for the general public and you are responsible to them, not to your client specifically, or to the Council, but to the public. Everything that the Certifier does involves the creation of an asset, whether it is a building or new roads and drains and the public will use it in some way. It therefore has a duty of care to ensure that the public safety and wellbeing is guaranteed. This is also reinforced in all the accreditation schemes by the Institution of Engineers, PSOA, RAPI and BISA. It is reinforced through their Code of Ethics in that when you become an Accredited Certifier you must also agree to abide by that Code of Ethics so that the interest of the public is guaranteed.

Each Certifier must carry a minimum of a million dollars professional indemnity insurance with run-off coverage lasting ten years. This insurance is again to protect the public interest and it is vastly different to the PI Insurance that Consultants normally carry.

And just while I am speaking about liability issues it is also worthy to note that there are two other components of the Amending Act. The first is that of proportional liability. Simply put this means that each party that shares part of the blame contributes towards restitution in an amount proportional to their degree of the blame. And this is a distinct improvement from joint and several liability where last solvent person picks up the whole tab. You are probably familiar with the case where, something goes to Court and the Council is always named as a party to the claim. And that is so if the builder or the engineer or whatever is not around, has gone insolvent, has gone broke, has disappeared. Then the Council is always joined in the action because under Joint and Several Liability, the Council can then pick up the whole of the tab, basically if there is no one else there to share the liability with. Then the Council picks up 100%. But now under the amendments to the Act, with proportionate liability, the Accredited Certifier will be apportioned his part, if any, of the problem.

The other aspect that has been introduced in the Act is the ten year limitation period to commencement of legal proceedings. That is in Section 109ZK of the Act. Under this section legal action can only be instituted within ten years of the issue of the Subdivision Certificate, or the Occupation Certificate in the case of a building and that is linked to the ten year run-off period that the Accredited Certifier have got a cover with their PI.

So now I will turn to the pitfalls if you want to call them that. These are the challenges for us all to try and improve the way the system works. Perhaps they don't specifically apply to certification but anyway.

For Developers, think carefully about your initial Applications. Get it right the first time. Section 96 modifications can't be dealt with Certifiers. The Accredited Certifier can only work within an approved Development Consent, not a plan that has been modified. So the onus is on the Developer or the Consultant preparing the Application to make sure that he has got the application right when he first submits it to Council. There is not much point getting a Development Consent for something and then two weeks later turning around and saying you want to put in an extra lot, change the lot pattern, regrade the roads a different direction. It adds to the delay and the Certifier can't help you in those circumstances.

As we all know, the DA's are complex matters and getting more so and take lengthy times for approval. So don't introduce delays yourself due to insufficient forethought in the preparation of your Application.

For Consultants, make sure you read all the Conditions of Development Consent when you are preparing the plans. I know that it is often taken for granted that you will read all the Conditions of Consent, but these days with the changing of conditions, the Council Officers have got to change their standard wording and they are trying to accommodate the introduction of Accredited Certifiers into the Scheme. So look for the catch phrases in the Conditions of Consent that say that a certain matter must be addressed prior to the issue of a Construction Certificate. Make sure that those things are addressed at least before you think about getting an Accredited Certifier involved. Or at least you start to address them so that when you get to the stage that the Engineering Plans can be approved, then all the other issues, when the Certifier goes back through his checklist of all the conditions, that he doesn't turn something up and say look I'm sorry, I'm ready to stamp these Plans but I can't do it until such time as the Building and Construction Long Service Levy has been paid. Or something as simple as that. In the same way the Councils are looking for compliance, don't expect anything less from a Certifier. His livelihood depends on making sure that the Conditions are satisfied and he is bound by the same rules as the Council Officers.

I know there are a few Council Officers here today, a lot of my previous colleagues. A few thoughts for the Councils. For those Officers that are framing DA Conditions, take an objective look when you are finished. Is it clear what is required? Will the Certifier interpret your words correctly to give the desired result? Many standard conditions have already been rewritten by the majority of Councils. Specialised Conditions often need clarification. In my new role as an Accredited Certifier I see Conditions from a lot of different Councils and I don't think that we have quite got it right. I know that the Local Government are pressed for time but it really just needs an objective review of the Conditions before the Consent goes out to make sure that what you are asking for in words is actually going to be able to be interpreted by an independent party. You now longer have the chance to pick it up when the Engineering Plans come in because the Conditions of Consent didn't actually ask for what you really wanted. Now you have got an independent person who is potentially going to approve the design and he needs all the guidance he can get from you in making sure that you get the desired result.

What about Council policies and guidelines and standard drawings and specifications? The all need to be formally adopted by Council and they have got to be readily available to a Certifier so that he can obtain copies. I know we are all in a never changing work environment with new legislation like IBA, demanding issues like site contamination and threatened species. And even other legislation like the Rivers & Foreshores Protection Act which is rearing its head from 1948. But with all that, please make sure that the policies and standards referred to in your Conditions are available at the counter and are not superseded or outdated.

But on the brighter side, some Councils are looking to adopt AUSPEC, the subdivision specification, as a generic document that would apply across say all the WESROC Councils. It is a very good technical manual which is comprehensive and up to date and I wish them well with that endeavour. It certainly would make my life easier if there was one specification across all of WESROC Councils but I don't know whether I will live to see that day. I am sure that if the Councils take that step, the higher quality infrastructure and a uniform standard will result.

And lastly a word to those who are, or are contemplating being, a Certifier. Don't be afraid or too proud to contact the Council Officers. They have got a wealth of local information and knowledge and an insight into interpreting conditions. From my experiences to date, many have been very helpful in setting up the necessary procedures to manage certified projects. In saying that our company has been working in fourteen Local Government areas to date, and without exception, I think I could say that all the Council Officers have been quite cooperative. Everyone treats it as a learning experience right from the word go and as I said earlier some of the Councils see the Certifiers as a resource they can use rather than the opposition.

Well that brings me to the end of my paper. I hope it has given you some insight into the practicalities of practicing as an Accredited Certifier and thanks for your attention.

COUNCILS RESPONSE TO CERTIFICATION

GREG OXLEY:
(Committee, Cumberland Group, Chairman ACS)

Councils just like ourselves have to live with budgets and live with tight time frames. We are lucky in the next section to have Lyndsay Dyce and Danny Favotto. Lindsay from Pittwater Council, is managing a unit of Pittwater Council which is a small unit but he has to deal with some fairly high profile and major release areas like Warriewood Valley and the Ingleside area, and he'll talk to us about how Council are responding to certification. Danny, representing Blacktown Council, the biggest Council in New South Wales with probably the enormous development area - enormous developments going on out there – have also their own constraints and problems dealing with certification. What we are going to do is just get them to give an overview of how they are going and then really there has been so much in this session, we would really like to get into a panel discussion and questions from you guys fairly soon. So I might just hand it over to Lyndsay to start off with.

LYNDSAY DYCE:
(Pittwater Council)

Thanks very much Greg. Lyndsay Dyce, Pittwater Council. 23,000 Residential Lots up on the North Shore starting at about half a million dollars each. So quite different from Danny's Council and different problems we experience up there. We'll have arguments during the course of the development process about 2% of 180^{o} view-line and that on one occasion progressed to Court and cost the Council $200,000 - about a mistake made in the assessment and the post approval management. So certification at both ends of the spectrum and is at both ends of the spectrum, does have some problems associated with it.

Anyway, getting into it, rather than go into the real detail of the Act when it was modified, our Council looked at its philosophy and it is interesting to look at where we think the Act came from. That Professor Fels guy, he started it. The modifications to the Act which were the first substantive modifications to the Environmental Planning & Assessment Act since 1979, were created out of introducing competition. Now it wasn't competition for you guys, it was competition for Local Government and really it needed it and it does need it. It was also about and as a result of competition, reducing price. Now I don't think it is necessarily done that at this stage but I am sure it will as time progresses. When we looked at the Act we embraced its philosophy. When you substantially change legislation there are always going to be some glitches and I think Kerry's people are starting to move towards fixing those glitches, which some Councils are still hiding behind, particularly in relation to subdivision. I refer there to the fact that some Councils are hiding behind a glitch in the EP&A Act and some associated acts which actually allows Councils to prevent or attempt to prevent private certification or Accredited Certifiers dealing with land subdivision. Our approach was across the board to embrace certification as a competitive environment within which we had to live as a Council. It's working. 50% I think it is in the vicinity of 50% of jobs, of about 1,300 last year building approvals or development consents per building works, are being dealt with by

private Certifiers. The processes in relation to subdivision and strata subdivision lands will be slower because it's a smaller field. So there is a vast opportunity there. It is real. Any Council that is still thinking that they are not going to have to compete is making a mistake. It's had some interesting results and right from the beginning we looked at our, and Steve mentioned this, we had to look at better approvals. The conditions have to be very clear, unambiguous. The old oh to the satisfaction of the Council Engineer. So what. That gives the Private Certifier carte blanche. He is the Council Engineer. Yeah well that satisfies me, yeah a gravel road will be fine. We had to start to construct our Consents properly for the first time. Actually make sense of them, have sensible conditions that were rational and logical. Mate we are still working on that. We are getting somewhere. First of all we structured them in a proper structure and we started to refer to things like in accordance with the Building Code of Australia, in accordance with AUSPEC, I think we do use that, in accordance with Australian Standards. I mean they're pretty good things, Australian Standards. In accordance with or to best engineering practice. That puts a little bit of onus on the Private Certifier and doesn't give him carte blanche to just make up his own mind. Going away from, to in-house specifications and it is quite interesting, when I looked at our in-house engineering specifications they were copied from the Warringah specifications that were copied from the Hornsby specifications which were – when you had a look at the diagrams, it actually derived from the 1975 Department of Main Road Specifications, and therefore were somewhat out of date. I still see those specifications being used by Council. Things are changing. So you need to reference to good contemporary standards and I do agree with Steve about using AUSPEC although there are some issues there for Council about copyright I suppose.

Opportunities for you guys. Despite the fact that some Councils aren't really embracing it, the opportunities are there. As a profession there are a couple of words that you know more about than other people. "I hereby certify" has always meant something to surveyors. I don't think the average architect quite realises what "I hereby certify" means. They would like to think that "I hereby certify that I think, and in my opinion if I looked at it from that way it might be what I think". Right. They are going to have trouble moving into certification. The fact that no planners have sought certification interests me. It does, it really interests me and I think we will probably have to wait some time if one of them is prepared to say "I hereby certify". Just some interesting observations there.

Since private certification has come about I have been informed by a Private Certifier that blue is an earthy tone. That the road works outside the job that were required as a Condition of Consent weren't associated with the job and therefore weren't his responsibility. Things like that so as you move into it you are going to have to interpret and take on the Council's role and that has been previously stated. I actually deal with not only the planning of Pittwater Council but all the development assessment and the post approval management. I receive about ten phone calls a week on one particular subject and that's complaints from people about post approval things that are happening on the site next door. We probably get about thirty of those sort of phone calls a week when there is a fairly serious issue happening on the site next door. It's starting, with great pleasure I am starting to be able to say well that's actually been privately certified and if you just wait while I look up the Certifier's name and address I will be able to put you in touch. Those issues will be real for Certifiers. You have a responsibility to the community and you won't be able to dodge it because the other group of people who ring us up and write to us are lawyers acting on behalf of the aggrieved persons, seeking to impose damages on the Council. Interesting opportunities, there certainly

are some great opportunities. It is not going to go away. It is going to get greater, this drive towards competition. I think the whole community recognises that is necessary. It is going to force the Councils to get better and that is a good thing. It is going to open up opportunities for people who want to take advantage of them. With those with those opportunities goes considerable responsibility. Thank you.

DANNY FAVOTTO:
(Blacktown Council)

Thanks very much for that Lyndsay. As I actually said earlier, at Blacktown we have some fairly high volumes and large variation in works. A little bit different from Pittwater Council. Our philosophy has been a little bit different. Especially in light of the large volume of infrastructure that is actually generated by developments so we have actually decided, it is actually in Council's interest to actively compete in the Certification of Works. To this end we have actually set up business units, both in engineering and building. Increased staff numbers, introduced flexible fee structures to reward people who actually give good quality submissions, introduce weekend inspections, and the ability to fast track projects like Steve and so on. We have actually done quite a few changes to improve our services, that is one of the good things that has come out of it, in order to remain competing. As a result at this stage we are still actually retaining over 90% of projects in our area. We are facing a lot of problems due to private certification although I must say most of these are actually due to building Private Certifiers. As Lyndsay said different certifiers have different respect as to what "I certify" means. And I can imagine you surveyors have got a fairly good idea by the building guides. For example I will give you one case where Occupation Certificate – as you know the building has to be fit to occupy under the BCA. We had a situation where the actual people occupying the house came to us and said we have got no sewer, no water, no services but we are living here. Can Council do something about it? We thought this is interesting so we went to the Certifier and we said, this is an interesting case. You have actually issued an Occupation Certificate, the Final Occupation Certificate, and the building has got no water, no sewer, nothing. And he said oh it's not a problem. He said the people are only living there part time. So our person investigating this said yeah but I only live part time in my place too, but I like to have somewhere to go to the toilet. To which the certifier promptly came back "That's okay, they have got a verbal agreement with Joe Bloggs who lives four doors down the street if ever they need to go to the toilet at night."

On a more serious note, we have actually had other cases where we have actually had Building Certifiers - well a number of Certifiers, mainly building - actually operating outside their areas of expertise, who all of a sudden think that they can actually design roads and certify roads and know all about road construction. And we have had situations like where we have received plans and I know we can't check plans. But we can actually check to make sure the person who has issued a certificate is an Accredited Certifier and we can actually check that the plans actually do cover the scope of works required by the Consent. No more than that.

We actually had a situation where there was something like 170 metres of road works required. The first thing I noticed was oh the guy is actually certified. This is actually a Building Certifier, this is going to be interesting. One quick glance at the plans. There is only 120 metres of road works shown on the Plans. So the first thing we asked him was what happened to the other 50 metres? His answer was "Oh well, that is not an issue. I am

certifying that that's all okay." I said why? He said "Well we have got an experienced contractor here. I am sure he can wing the last 50 metres. Just continues the same levels along the road". I was saying things like "Do you realise you have to cut down the footpath. It's a high level footpath and you are going to have to cut it down by 1 metre. Services exposed. That is going to be quite expensive and all sorts of hassles." He said "Don't worry, he is an experienced contractor. He knows what he is doing." So I went over to the contractor because we had a meeting on site. I said to the contractor "How's it going, what's your name?" He said "Guiseppe". I said "What's your experience?" And he goes "25 years experience in laying house plumbing services." I thought that seals it, yeah. But I won't go on much about all the problems we actually deal with. Peter Woods as Greg actually mentioned earlier, Peter Woods actually stole most of my thunder and I won't bore you with any more problems. But I just suffice to say that a few other little things. Because we have actually run into quite a few problems where, as Peter said, that do you call when you are in trouble? Go back to Council. We are looking at maybe also maybe increasing our big brother regulatory inspection teams so when there is an issue we actually have to inspect it. Unfortunately, Lyndsay actually said that when there's a problem with Private Certifiers we can actually say well call the Private Certifier. Unfortunately we have actually discovered the hard way that when something is on an existing road under the Road Acts it doesn't matter if there is a Private Certifier there or not, Council is still liable.

But just to finish off, in response to some of Steve's suggestions about conditions on Policies, I agree we have actually revamped, I thought we did have fairly tight conditions when we started but we have revamped them already two or three times. We are about to go through another major revamp to further fine tune them. With regards to our design guidance spec, which I used to think was fairly tight as well, we are actually now going to revise that again even though we have just recently revised it. And probably in the long run, probably within a year or so, we will probably actually be adopting AUSPEC. Well I won't go on any more and I will pass it back to Greg now for the panel discussion. Thanks very much.

QUESTIONS

Q: **Gordon Wren:**

Thanks Greg. I guess it's a double one really. That SPAS Accreditation you mentioned. I might add if you don't mind Allan, on that list is also OSD. On Site Detention & Drainage was one of the categories, and what that means is with the Local Councils areas that are affected by the Upper Parramatta River Catchment Trust. The Upper Parramatta River Catchment Trust have agreed for SPAS Accredited Surveyors with OSD, they will accept their OSD designs, which is quite good. I certainly commend Allan when he was saying that it not only helps the consulting surveyors or the surveying firms but it also helps us fly the flag the more members we have.

Lyndsay, glad to hear you are embracing certification as you say in your Council. So you are saying you have an LEP which allows subdivision certificates to be signed by the principal?

A: **Lyndsay Dyce**:

No, it doesn't. That is the one area that we haven't opened up yet. We have now, although I will just say that yesterday morning I got a Section 73 Certificate and the plans and the fees for the first privately certified subdivision. The plans were released an hour ago. Yes we met with actually Steve, who was the Private Certifier. We had a meeting on Tuesday where we debriefed and handed over the subdivision from Steve as the Private Accredited Certifier, to the Council, right, it's the beginning of a rather substantial development. We walked the site with our engineers and the planning staff. We, virtually within three days we were releasing. We do embrace it, and as we feel our way through it and there are some issues that I want to take up with Kerry about that, because the fact of the matter is if he signs the Subdivision Certificate, I still have to do a whole lot of work to enter in all the record systems into the Council records for the management of the Lots. And I'm not getting a fee for that. So if Kerry organises for me to get the money I'll let him sign the Certificate. Yes we will probably move towards that and I think it's an issue that, when I said that the fine tuning of the Act will certainly address that and I think it will probably remove that anomaly which I believe was created at the assistance of a number of "head in the sand" Councils, wanting to deny the intent of the Act and the real competition to come about and they lobbied very heavily to maintain that particular standard. I think it will go in the not too distant future.

Q: **John Tierney:**

I will just ask anyone on the panel who might wish to answer this. What is the situation where a project, a subdivisional development, is signed off by an Accredited Certifier. I presume the Council then takes over the long term maintenance of, lets say a road. If it is found that there is something defective with that road construction work which requires a lot of very expensive maintenance, who actually is liable for that in terms of those claims of costs?

A: **Steve Johnson:**

Actually I will probably take that one. Hopefully I will never face those circumstances but it is certainly something I have put my mind to. In certifying road works we stick strictly to the procedure that is adopted by Council and by Council specification. We cannot do otherwise. So in supervising the works and doing pavement tests and roll tests and compaction certificates and all the other routine inspections that would normally have been done by Council, we expect that we will produce the

same quality of road and potentially it could be a higher quality, I hope. Because we may be more conservative in protecting our own professional indemnity insurance than perhaps I was when I was in Local Government. So in producing a quality infrastructure of roads or drainage or whatever, we expect that we won't be faced with that situation. If there is a failure in the road, and in my twenty odd years in building subdivisional roads I have never had a catastrophic failure yet, I expect that there will be some discussion between the Council and the Certifier and an inspection of the Certifier's records to show that he has satisfied all the routine inspections that the Council would normally do. Then I guess it would come down to proving that there was a defect in the supervision of the works rather than a defect in the Council's specification that the Certifier followed. As I say, in all my experience in both private and public Local Government experience there haven't been problems to that extent. I think it will ultimately come down to an argument between the Certifier and the Council as to the standard of the specification that Council has adopted and the Certifier has worked to. If the specification is tight enough such as AUSPEC or perhaps the Blacktown specification then I would think that these problems just won't arise.

Q: John Tierney:

I suppose what you might ask then is that in the discussions between the Council and the Accredited Certifier, and if it is shown that there are some problems, obviously the Council I presume are still going to have to carry out the maintenance of whatever the defective part of the works might be. And there could be very lengthy litigation then between the insurance underwriters and I presume the Council. But there just seems to be some problems with which – I am not quite certain how well that has been addressed by the Legislation.

A: Danny Favotto:

If I can just answer the original question and that one there as well. The original question is actually the defect would depend on the size of it. In Blacktown we actually have a maintenance bond which runs for normally six months after the completion of the works. If it is the sort of defect that would show up like in any normal maintenance period, say a cracked kerb, the occasional pothole or whatever, that is something that is covered by the maintenance bond and it is not an issue. If it is something that is a lot more major that is when the investigation and the haggling starts, and then how you can actually point fingers, as you know it is actually quite difficult to point a finger in something like road construction. Was it the paving design, was it the Certifier, was it the roller driver or whatever, but for something that is fairly obvious, I would have thought – for example let's say the Councils standards say use a concrete pipe and the Private Certifier has allowed a plastic pipe that couldn't handle the traffic load and that is why it has collapsed – that would be fairly obvious. If it is something like a drainage pit that should have been 150 thick and it is only 50 mm thick walls or something, that is obvious. In the other cases you have got to

haggle.

Coming back to your second point, you hit the nail on the head. That is actually going to be a fairly major problem in that situation because you would have thought – if there is a problem and Council suspects that it was something due to the Private Certifier, Council is in a very precarious position. Because then you say well if I do go in and do something, well that makes me liable as well. I am assuming liability for the problem. But if I don't under the Roads act I am still caught. It is like a no win situation so I presume probably realistically, what will probably happen is. You will probably have Councillor so and so lives around the corner and his kids have got to walk up that way or something. The Council would probably end up having to fix the problem in the short term and then fight it out in Courts. I can see a lot of lawyers making a lot of money out of those sort of circumstances and hopefully, as Steve said, I hope that doesn't occur too often.

LYNDSAY DYCE:

Just some comments on that, because I am sure that is going to come up. The first instance if a situation like that evolved, we ran through this and looked at it. We report the issue to the Accreditation Body and we would ask them to investigate. If they investigate it and found against you we would then sue you, for damages. In the meantime we would have addressed the problem as a matter of public safety and we would attempt to recover all costs in the matter. So it is, it is inevitable that that is the way to go. I think litigation, I think there has got to be a general acceptance that when you introduce the principles of competition and I go right back to the beginning of my address, that with goes responsibility and responsibility inevitably means litigation where there is contest.

Q: **Peter Price:**

Yes, Peter Price from Nowra. Now a question to Danny. Probably the first one is a bit frivolous. You don't have to be as old as Allan Cavanagh even, to remember when there used to be various rates for plans going through the Land Titles Office. We are interested in your flexible fee structure on fast tracking. What do the public feel about that? The deal with the RG's is if you wanted to delay settlement you would pay a fee to drop your plan behind the cabinet. Have you got any of those? The second question is really more serious. It's really to do with AUSPEC. The UDIA and the Institution were asked a few years ago to look at AUSPEC from the point of view of whether or not it could be called up as a suitable standard. Laurie Rose and myself sat down and spent some time looking at it and we came to the conclusion at that stage that it really was written by somebody who didn't know much about subdivisions. They knew quite a lot about roads, certainly major roads, but subdivisions are quite a different animal and they need to be modified. So I am just concerned about the idea of adopting

AUSPEC without modification. A lot of Councils are doing this and have certainly paid a lot of money to buy it. The other difficulty about it of course is it is quite expensive when we can't get access. So where are you up to and what review have you done on AUSPEC?

A: Danny Favotto:

Okay, just quickly the flexible fee structure. How that simply works. I will do that one first. We actually charge rather than a set like $1100 per metre or whatever, we actually charge like $100 per hour for the plan check and $70 for inspections. What it actually depends on is the factors involved are the size of the job, the quality of the work. In the old days when you had a crappy plan or a good plan you would charge the same and you were actually penalising the person who knew what he was doing. The whole idea of this is, obviously if we are going to take half the time to approve a plan that has actually been prepared properly by somebody who knows what they are doing, they shouldn't be penalised, they should be rewarded. And those are the sort of people we actually like to encourage to come back. As for the other side, well they're the ones we probably don't mind if we lose.

But coming onto AUSPEC, yeah you are right. The reason we haven't already adopted it already. We have already had a preliminary look. It will require extensive modifications. The Councils that are already down the track than us basically have actually indicated essentially you are only really adopting a shell. You cannot use it in its current format. You're only really adopting a shell. You will have to carry out extensive modifications to make it suitable to your local area which sort of really shoots down the original principle that you have this nice uniform document that everybody can use anywhere. It will actually vary from Council to Council. I suppose the one benefit that you still have is at least the order of items will still be the same. Like drainage will still be in section whatever, at the front and so on. But what we had found from our own experience, and we are only probably half way along there, but talking to the other Councils like Campbelltown, Camden, Penrith, Hornsby etc who are actually much further down the track than us, is that Hornsby especially have already finished. When they finished they made extensive modifications to the text and had a 70 page addendum attached to the back of it as well. So that is why I originally wasn't actually that keen to go down that track because I was thinking well that addendum is about the same size as my current specs. You are right, so we will have to make extensive modifications and we simply will be going down that line because that will become eventually industry norm, but how similar the documents will be I don't know. It will probably have the same title page I know.

Q: Greg Oxley:

Does the person who issues the Construction Certificate also have to issue the Compliance Certificate?

A: Danny Favotto:

No.

Q: Greg Oxley:

Would that cause problems?

A: Lyndsay Dyce:

Yes. We haven't had it with subdivisions yet but we have got people who, one driven by a large financial institution which wishes to issue the Construction Certificate then pass over the actual, if you like the project management, back to Council. The way I am going to compete with that is I am going to introduce a fee that where the Construction Certificate is issued by another person or Accredited Certifier and yet the expectation in the Compliance Certificate and the final Occupation Certificate are to be issued by Council well the Council would be approached to do that, I will charge a punitive fee to discourage that practice. The job should be and we have made this approach to DUAP, the job should be one line. You issue the Construction Certificate, you take the job all the way through. To split the job up is simply to put at risk the understanding of what's trying to be achieved on site and end up with problems in our opinion.

Q: Greg Oxley:

And does that therefore mean that an organisation who issues Construction Certificates has to be set up with overseers and project managers to fully supervise the works?

A: Lyndsay Dyce:

At the moment they don't have to be but I think they should be capable of, if they are going to issue the Construction Certificate they should be able to and capable of managing the whole project and that's our opinion. That is not the law at the moment but we are working on that.

A: Danny Favotto:

Just following on from Lyndsay there, at Blacktown we don't actually mind taking on the Compliance Certificate after because, coming back to my philosophy I mentioned earlier, this is infrastructure that we will inherit, so if we have any say in how we actually finish off. Well any say is better than no say. I agree that there often are problems in trying to go through plans. Especially, often you might get some plans and say holy – there is quite a few mistakes and this won't really work. The few cases we have had like that, we have actually been fortunate in that the Certifiers involved were actually quite understanding. We have been able just to talk things out. There is nothing really to be gained by just making a lot of hassle over

nothing. Say well this is the situation and we think this might work better, what do you think? And we have always been able to talk that situation out. With the fee structure we did the same. Because we have got a flexible fee structure, obviously when we give the price for the Compliance Certificate. Again if the plans are fairly decent plans, we know we won't have that much hassle in the field. So the price can still be quite competitive. If the plans are quite lousy and we know we are going to have a lot of problems in the field, having one of my inspectors probably parked there full time on the job, then the price will reflect that as well.

Q: Jonathan Burke:

Just a question and I am not sure who can answer it but just the comments that have been made and from feedback I have been getting from Council, is that if you design a subdivision that abuts an existing public road then the works that are actually undertaken within the public road must be certified, must be approved under the Roads Act and not as a Construction Certificate?

A: Danny Favotto:

The answer to that is yes. We actually learnt this the hard way. We originally didn't require that until we got called out on a job where it was a half road job. It wasn't actually a subdivision. It was a half road job in front of a townhouse where some fairly major accidents happened and we discovered lo and behold to our disgust and horror that we were still liable. So we thought if that is the case what can we do about it. And then we were actually told by the Accreditation Bodies themselves, and in this case it was actually BISAP, saying well we didn't think it was a problem. We thought you were the only guys who could do it. So upon further investigation and legal advice we have actually discovered that yes, that any work on an *existing* public road, not future public road, but *existing* public road under Section 138 of the Roads Act, needs Council approval. What we have actually been told is. This is one of the modifications we may need to do it to our conditions. It actually needs probably a totally separate approval. You probably need to actually condition that up to say that the applicant then actually has to lodge a totally separate application for approval under Section 138. Obviously I don't want to do that. I want to find some way of actually streamlining the original application to take care of everything. But like I said the only reason we got involved was because there were so many situations where we got caught out and we found ourselves liable. And then we found out under that Section 138, yes we are the people who are supposed to give that approval. So in that case what we try to do there obviously if we don't have internal subdivision, again you try to liaise with the relevant Private Certifier, if someone else has got internal subdivision.

A: Kerry Bedford:

Under the Roads Act which has existed for a long period of time, when you create a new crossover into an existing road, the Council is required to give approval. We wanted to integrate that approval. We weren't successful in

integrating it so the Approval is still separate and what usually happens is that the Council looks at the design of the connection to the road. So you certify that aspect of it. But Council also has a role in terms of drainage. There is a requirement under Table 68 in the Local Government Act to approve the connection to drainage. But in terms of the other frontage works, that might be Conditions of Consent, they can be dealt with by Private Certifiers with Compliance Certificates. So this is a fairly complex area and it is unfortunate because there are two separate approvals that can only be given by Council. We are going to produce a practise note on it to clarify it but what we do want to do is actually try to put into one place the Development Consent, the requirement for all of those aspects. So that is the next stage on. We are looking at trying to get that streamlined.

A: **Lyndsay Dyce:**

Just some observations on it and this issue is a real problem. It is good to hear that it is going to be fixed up in the normal rapid time that Legislation takes to be amended. So we can expect that – next year? We would adopt a risk management approach and we will accept, and we know that we are probably outside the law, will accept the Private Certifiers dealing with the issue. Because that is the intent of the Legislation. To introduce competition. Not frivolously as an instrumentality avoid the issue. On a personal note, nothing to do with Pittwater Council, I have a consent from a Council where I am, by condition, required to enter into a contractual arrangement with the Council. I have brought that to the ACCC. I think the ACCC might be quite interested in enforcement by conditions of Development Consent to enter a contract with the Consent Authority. It is just plain illegal under that law. I await the response of the ACCC with interest.

Just that observation is, when you changed legislation, the direction of Legislation is to introduce competition. There is going to have to be some fine tuning. Some Local Government instrumentalities have taken the obstructive role and I don't thing that will last long. I think it will be healed by the appropriate amendments and it will have a smoother path than what we had several years ago.

SESSION 3

"UPDATE ON DEVELOPMENT COSTS"

CHAIRED BY MICHAEL PARKINSON

SESSION THREE

UPDATE ON DEVELOPMENT COSTS

Chaired by Michael Parkinson

MICHAEL PARKINSON:
(Secretary, Cumberland Group)

Welcome ladies and gentlemen to the third session of our Cumberland Group Development Seminar. This one is titled "Update on Development Costs". We are fortunate to have with us today Mr Warren Glass from the Australian Taxation Office. He is from the Tax Reform Business Education & Communication Unit and he will be speaking on GST's that affect the development process. I would like you to give Warren a warm welcome.

EFFECTS OF GST ON DEVELOPMENT

WARREN GLASS:
(Australian Tax Office)
Okay my name is Warren Glass. I am from the Tax Office and I am here to give you, no pun intended but I had to do it, a survey of the GST. No not even a smile, oh well this is going to be difficult. Must've been lunch.

Okay, I have been doing this 27th September last year. I think this is about 2,000 hours of it so I eat, sleep and drink GST and after the 1st July it will be GS coffee as well. And most people say what qualifications do you have to be here? Well I have three qualifications to give you a three-hour lecture in half an hour. And that is number one; I was a schoolteacher for over 30 years. That means I am totally fearless and you notice I still have both arms and legs. You can always tell a school teacher is fearless because anyone who will face a class of feral five-year-olds and survive, knows what it's all about. Secondly I am a solicitor. That means that I care warmly about all of you. And thirdly I am from the Tax Office so you can trust me. Now with those points in mind let's get on to the GST. The thing is this is going to be an overview of the GST presented pretty quickly actually. And the first thing I want to do and we may – we could probably spend the whole 25 minutes on this slide alone – because this slide pretty much shows you an image of the whole tax system, the new tax system. The new tax system that is coming into Australia. This is *different* to the way any other country on earth has ever brought in a Goods & Services Tax. Because the goods and services tax is in fact only, well not minor, but only *one part* of the new tax system. Now you have got to put that in perspective. Even though you are confronted with the beginning of a Goods & Services Tax in 10 days time or less. It's funny you know, when I first gave this lecture on 27 September, at the Hakoa Club at Bondi Beach, to a group of about 120 business people. It was the first of our professional seminars. Everyone was saying, "well what's the big deal, it's not until July next year. That's only been one sleep". I woke up this morning and it's July this year almost. We used to have a slide in that presentation with a clock and it would go tick tick tick. Anyone who saw the presentation knows what I am talking about. And that was to tell people that time is ticking on and you have got to get yourself all ready. I used to

say to people that's going to be a time clock. Actually it's going to be a time bomb, because it is going to explode right in your face if you are not ready on 1/7/2000.

So this is what is going to happen. There will be a reduction in income tax levels. That is by lowering the thresholds across the income tax scenario. Then there will the Pay As You Go system and any of you that have employees or that were paying the equivalent of provisional or quarterly provisional tax, will have to look at Pay As You Go. Also you will have to keep in mind Pay As You Go if you employ people in your industry that are doing consultancy work for you, because if they don't have an ABN there are specific consequences for you in your business.

Then there is the Business Activity Form. Now if I had time in the presentation which I don't, I could take you through how to fill in the Business Activity Form, and this may be something. These lectures on filling in your BAS, your Business Activity Statement, will be given by the Tax Office during the next few months. It maybe be worthwhile looking to where they are given.

Also there is GST and of course there is the ABN. The ABN at this point in time seems to be the big focus. It's the must have. Is there anyone here that does not have an ABN, or has not applied for an ABN? Yes see, either everyone has got one or they're too scared to put their hands up, one or the other. If you don't have the actual number yet – if you are in that position where you are sitting waiting for the number to arrive you will get it and you will have it before 30 June. Okay, and the other important thing to tell you is for the first 18 months of GST there are no penalties. The Commissioner has made it quite clear and the Government has made it very clear through Treasury that no one is to be penalised for making mistakes in GST if the mistake is a *reasonable* mistake or the mistake is not caused by someone scheming to not pay the tax. So if it is just a genuine mistake there will be no penalty. You may have to pay any money you are owing or we will give you a refund if you the mistake in our favour, which is pretty unlikely. I won't say totally unlikely but it's pretty unlikely. So that's another thing to keep in mind.

Okay. What is a GST? That's what a GST is, 10% tax on all goods and services. And that is *exactly* what a GST is. Every consumer in Australia as of 1 July 2000 will pay 10% tax on all goods and all services. It replaces Wholesale Sales Tax. If you think GST was complex, you want to have a look at Wholesale Sales Tax. It's been going since August 1930 and there are so many exemptions. There are so many bits and pieces to the Wholesale Sales Tax. This whole going on about how difficult food is you know and if it is a hot prawn it is taxable and if it's a cold prawn it is not taxable and everyone is going to get the raw prawn or whatever, which actually is GST free. If you looked at Wholesale Sales Tax, the complexity of food under GST is really kindergarten stuff compared to the complexities of the Wholesale Sales Tax. And that's what is disappearing. I guess what the problem is, is that a lot of people never had anything to do with Wholesale Sales Tax, which would be the majority of people in this room, would I be right? And the problem, if it is a problem, with GST is that it will affect pretty well every Australian in business as well as every other – but then Wholesale Sales Tax affected every Australian anyway, because you paid Wholesale Sales Tax on a heap of things. 22% on computers for starters, and pretty well all of you have computers. So what it will affect, the GST, is every single business and service provider in Australia, and I guess this is what people see as the problem. It is so wide reaching. So what's your place in GST? What does it mean for you as service providers? Well it means that you are going to collect tax on

our behalf. Congratulations, you can all put JTC after your name – Junior Tax Collector. However, that's the good side. However, there is a reward for you and the reward is pretty big and that is you run Sales Tax free. From 1/7/2000 you will run your business never having to pay a cent of Sales Tax ever again, on anything, as long as it is an acquisition for your business. That's the other side of the GST coin. That's the one you don't read about. I mean if we printed in the papers GST has a good side, would you buy the paper? No.

What are the key features of GST? If your organisation is registered for GST, you charge GST on the sales and supplies you make. Now people, businesses, say to me why do we have to pay GST? Now this makes it quite clear and it is not just a semantic issue. You don't pay GST, as you will see in a minute. You charge GST, okay? And you claim back the GST included in the price paid on purchases and acquisitions for your business. So that's the whole key to GST. You will charge consumers GST but if you have to pay GST for anything acquired in your business, you can claim it back, and it all goes on your Business Activities Statement. So you take your transaction. If you buy some equipment from the people out there after GST comes in. Say you by a $1,000 tripod thingy, you know, and this $1,000 tripod thingy will be $1,100 after GST comes in, you are going to have to cough up $1,100 for it but on your next Business Activities Statement you will claim a refund of $100. So the tripod thingy will only cost you $1,000. There will be no Sales Tax. First of all the tripod thingy probably won't cost $1,000 after 1 July because it will have the Sales Tax removed off it anyway. And let's take the example of a computer. If you want to buy a computer after 1 July 2000 then you buy it, minus the 22% Sales Tax that it carries at the moment. If you want to buy any software you buy it minus the Sales Tax it carries. Sure there will be 10% added on, but that's meaningless to you because you claim it back on your next Business Activities Statement because it is an acquisition for your business. There is no matching process in GST. That is a myth if anyone still believes it. You don't have to match your credits to the transaction that that credit belongs to. So you don't have to show any matching in your books at all. It's a netting exercise. You look at all your credits for the month or quarter. You look at all the GST you have collected for the month or quarter and you simply net one off against the other. The Business Activities Statement has two pages, front and back. My colleagues love to then announce that there is a 150-page booklet to tell you how to fill it in, and everyone says yeah that would be the Tax Office wouldn't it. When I first heard that I said you're joking, I am not going to tell an audience that. I am going to lose both arms and one leg. But when I went through the booklet 90% of it didn't affect me because it dealt with the Wine Equalisation Tax, it dealt with the Luxury Car Tax. It dealt with a lot of bits and pieces in the Business Activities Statement that have no relationship to my business or probably to your business. And I counted out at the end that for a solicitor, probably about 25 pages of the booklet was of any use and was valid. So really it is not a 150-page booklet. It's for most people a 20 to 25 page booklet with a whole lot of other material in it, because the booklet is a generic booklet for all Australian businesses. So it has to have everything in it. You have just got to go through the contents and look for the bits that fit your business, the forms of taxes that fit your business.

Okay, do you all understand that concept? You claim every cent back. Now what does that mean? It means you have got to keep really good records because you need to collect every single GST credit or input tax credit. The Act refers to it as an input tax credit. A lot of people are now calling them GST credits because it seems to be easier to understand. You will hear it referred to both ways. You want to keep your records so that you get every input tax credit that is available to you and you only want to pay to the Commissioner exactly what

you have collected. Now you will do that with record keeping.

If your organisation is not registered, you do not charge GST on the supplies you make, go away. And, you do not claim back GST included in the price paid on purchases or acquisitions for your organisation. In other words anyone who is not registered for GST does not charge GST, cannot charge GST and cannot claim back any input tax credits. Is it legal to be unregistered? Sure it is. If you are earning less than $50,000 a year you don't have to be registered. Something vitally important that you might like to tell any consultants that you are dealing with, small consultants that are probably earning $15,000 - $20,000 a year just in doing a little bit of business on the side. They can get an ABN and not register for GST. You can actually hold an Australian Business Number and not be registered for GST. Why? Why would you want to do this? Because you are still in this position even though you have got an ABN. You still can't claim any input tax credits. You still can't charge GST because you are not registered for the system. All you do is you hold an ABN. That's because there is a sneaky little bit – a little sleeper in the Pay As You Go System. And it is Pay As You Go Withholding. And it is called No ABN Withholding. Have you heard of that one? No ABN Withholding? Very important for people in your profession. Because you deal in the business industry so you are dealing often with people in small consultancy firms and small contractors. Or you may have someone else who is dealing with small contractors. Now the way No ABN Withholding works is this. It replaces what you would have known as the Prescribed Payment System, the PPS. I see a few heads nodding which suggests that you know exactly what the PPS is and the PPS was designed to cut into the cash economy in the building industry. There was no secret about that and No ABN Withholding replaces PPS. But it does it in a far more extensive way. If you deal with someone in business they provide a service to you, they provide goods to you, and they invoice you and they can't provide an ABN you have to withhold at 48.5%. There is a place on the Business Activities Statement where you put that Withholding Tax in. In other words it is extra bookwork. You are going to have to withhold the money. You are going to have to pay it to the Tax Office with your next Business Activities Statement. And unless someone can supply you with an ABN you are *required* to withhold.

What does that mean for some businesses? Well for some businesses it means what we were saying last September. Some businesses won't deal with people who don't have ABN's. Why? They don't want to do the bookwork. I gave this similar lecture to a group of couriers a couple of weeks ago. A large number of couriers all work for the one company. Someone from the company stood up and said "Any courier who doesn't have an ABN on 1st July won't be working for us." Why? Not because they're trying to stop couriers working for them but simply because they don't want to be involved in No ABN Withholding. They don't want the extra bookwork. They don't want the extra withholding. That means the person has got to produce an ABN and they can do that by simply having an ABN but not being registered for GST. And that is what that is for. Remember I said the GST Net Amount? That you net off one against the other? Well the net amount is all the GST you have charged less all of the input tax credits you can claim back. And it is reported on the Business Activities Statement. The back of the Business Activities Statement is like, for me, the comic page in the newspaper, for some people the sports section. Why, because you go there first. I always head for the comics first because it is about the only happy part of the newspaper. Okay, so straight for the comics and you go straight to the back of the Business Activities Statement. Why? That's the calculation section. And when you have done all your calculations the Business Activities Statement itself guides you to where to put the other

figures on the front. So gradually it allows you to calculate all your taxable supplies and then divide it by 11. It allows you to calculate all your input tax credits. What it actually does, is that you calculate all the things you have acquired for your business and then divide that by 11. What's this division by 11? Have you worked it out yet? 100% is the price. Add 10% GST = 110%. Get back to the price, divide by 11. You buy a ticket to the movies for $11.00. $1.00 of that is GST. $10.00 of that belongs to the people running the theatre. $1.00 of that is sent to the Commissioner. Okay. So that's how. And when you quote a price to anyone, after 1 July 2000 it must be GST inclusive. Any price that you quote will be deemed GST inclusive whether you intend it to be or not. How does someone calculate the GST? They divide by 11.

Tax periods. You have a choice. Now those of you in the audience who are earning more than $20million or more a year. That would be most of you wouldn't it? Yeah. Yes, yes, yes. I normally get a lot of yeses. You ask that in some small country towns and they go ay? You don't have a choice. There's usually one or two farmers that sit there looking very seriously at you and you know that they're there. They don't have a choice. Monthly tax periods and all their dealings with the Tax office will be electronic. That's it. End of story. Some of their dealings will actually be on a daily basis. And that can now be done electronically. And most people ask me is the Tax Office moving towards electronic payments? Yes. We want to do away with cheques completely and we want everything as much as possible to be electronic. And that is why we have got what is called an EBAS, an Electronic Business Activities Statement. Where do you get the EBAS from? 132478. That's a number that you should have down. 132478. That is the number for the GST Help Line and that is the number that you call if you want any of the things that I mention.

Also something that you should be doing is getting a field officer. Now we have 3,000 field officers Australia wide. They will come out to your business, they will sit down with you and they will work with you to help you bring the GST in. They will work with you on the Business Activities Statement to show you how to fill it in and they will work with you on things like tax periods and how to think about them. So ring up that number, book yourself a field officer. Absolutely no charge whatsoever. The same as there is no charge for the Electronic Business Activities Statement. You notice when you put in your application for your ABN you had to place on that application, your BSB number and your Bank account number. Why? Because all refunds made to you will be made directly to your bank account. Now I gave this lecture at another spot in a smaller town and one guy said to me "ay?". And I said "What's wrong?" He said, "I thought I heard that you said that you are saying that I should give you my bank account number. I said "Yeah that's what I said." He said, "I am not going to give you my bank account number. You are from the Tax Office." I said, "No it is okay, we are going to put money into your account." He said "No you won't, I'll get there tomorrow and I will say can I withdraw so and so and they'll say 'no the Tax Office has been here, it has all gone." I said look ring up your accountant. Ask him. It is true. We can't take money out." So he did. Apparently he got hold of a mobile and rang up his accountant and he came back to me later and said "Warren, it's alright. You were telling the truth." I said "Good so you'll give us your BSB?" He said "No.". I think it was a sort of – I trust you but I really don't trust you - so maybe he has got to make special arrangements with the Commissioner.

Before I just go on to types of suppliers - Tax Periods. You may be thinking to yourself why would I want to deal with them monthly when I only have to do it every three months? Well

there are a couple of points. Remember I was saying Input Tax Credits? You are going to get those credits. Also remember another thing. You are collecting GST. That GST does not have to be quarantined from your other money. It can be used in your business. The proviso is that when the time comes to pay money to the Commissioner every quarter or every month, that that money is there to be paid. But what you do with it in the meantime is your business. So if you are keeping good accounts and if you know where you are all the time, and we will help you because when you put in your Business Activities Statement, you will get a statement back from us and there won't be any bits and pieces of money through the Tax Office any more. Everything will be combined. All deductions will be taken out. All refunds put in. You will get a statement telling you the exact position you are in every month or every quarter with the Tax Office. That puts you into real time accounting. That means that we are helping you get your business - by getting our business structured – we are helping you structure your business into real time accounting. Someone said to me earlier when we were having lunch, that accounting was going to be so terribly important because now is the time to bring your accounting up to scratch. We are even offering you 100% depreciation on computers, software, or any other gear that you need in the computer software line to bring yourself into GST. That is 100% depreciation on 30th June. That means you can write the entire thing off on 30th June. And the Treasurer has even increased that. He has made an even better offer still by saying you don't even have to have the thing by 30th June any more. As long as it is ordered before 30th June it doesn't matter when it arrives. You still get the depreciation. And now it has come over the news that the $200 that you got when you put in your ABN, if you haven't spent it yet, you have now got until October. So that money can be used to help you filling in your BAS. To help you with any equipment you need for your Business Activities Statement. So everything is being done because the Tax Office wants to work now, not as us and them, but as a partnership with business. To make this happen smoothly and to help business the Tax Office has got into the sort of educational program that has involved me and a lot of other speakers. These programs will continue now indefinitely. So that there is a constant flow of education coming into the community.

These three types of suppliers are the key to the GST. I guess there are two keys to GST. I have given so many hundreds of these lectures. I teach tax at TAFE and University level and I kept on thinking if I have got to speak to an audience they want to know the key understandings, the key concepts. The suppliers are a key concept in understanding that GST is a transaction-based tax. Everything is analysed in transactions. And I will help you with this. I am very aware of the time as well, that I don't have a lot of time left. So let's go through them very quickly.

GST Free. There are three kinds of suppliers by the way in GST. GST Free, Input Tax and Taxable Supplies. GST Free Suppliers are supplies that you make where you can collect all your input tax credits. That's good stuff because you run essentially Sales Tax free. But you don't have to charge any GST. Input Tax Supplies are supplies you make which is not such good stuff. You cannot charge GST but you cannot claim any input tax credits. You will not be involved much in that. That is mainly financial supplies, also residential tenancies and residential rents. And then there is Taxable Supplies and that will be 95% of the GST System. That will be the supply you mainly make. And that is where you charge GST and remit the amount to us and you claim input tax credits. Now I have given them a name. Because people have said I can't remember that. So remember three things. Vanilla, Chocolate and Sour Milk. What is Vanilla? That is Taxable Supplies. The most common flavour is vanilla and the most common supply is the Taxable Supply. That's Vanilla. You

have to collect the GST, you can collect your Input Tax Credits. Chocolate. GST Free. Get all your Input Tax Credits, don't have to collect one bit of GST. Sour Milk. Input Tax Supplies. You can't charge GST, you can't collect an Input Tax Credit. In other words you have to run 10% dearer. There were nearly 2,000 amendments made to the GST Act late last year. They were mainly in Input Tax Supplies. Because the banks, finance companies, insurance companies went fairly much ballistic over the fact that they would be running 10% dearer and there are now amendments which allow them to get partial Input Tax Credits. So there's GST Free Supplies. No GST on the supply and the supplier is entitled to Input Tax Credits for all acquisitions.

Before we get onto Input Tax Suppliers, GST Free Supplies include health, education, childcare, food. You have all heard about food recently. Now there are a couple of basic rules with food. GST Free Food is food for human consumption and there are a whole lot of exemptions, exclusions, as you have noticed. Basically all processed foods are excluded. Anything nice that you buy from the bakery is excluded except bread. Bread is GST Free. Someone said that the exclusions were all due to the fact that we outsourced to a seven-year old to go around and pick all the foods that were going to be excluded. We didn't actually do that. We out-sourced it to a class of five-year olds. There is a basic rule with food. If it tastes nice it is taxable. Okay. It makes it really simple. Anything that tastes nice is taxable. On an Input Tax Supply there is no GST applied on those goods or that service but the supplier is not entitled to input tax credits for acquisitions. Just out of interest there will be a culture change too with GST. With GST Free supplies damper is GST free. Do you know what damper is? It's the bread that you leave out overnight so it is a lot damper than the bread you have kept inside. Now scones are made in the same way that damper is made. They are made from the same mixture in exactly the same way. They are taxable supplies. I believe after 1/7/2000 you won't be able to buy a scone in Australia. You will buy mini dampers. Wait and see if it is correct. But I don't think you can get around Input Tax Supplies because you are not entitled to anything. That's why I call it Sour Milk – no entitlement to anything. What happens if you, and a lot of you would have investment home units. Home units you bought looking for your retirement investment. Are you going to cop the GST? My word you are. How are you going to avoid it? Well the ACCC has said because the ACCC is involved in all pricing. And if you have any pricing questions www.accc.Government.au. I know you are all computer literate but if you have trouble getting to a web site I have found seven-year olds are excellent resources. They don't seem to have any trouble with the Internet whatsoever. Okay. So that web site is excellent for all pricing issues, and the other web site that has got a huge amount of information on it for you is www.ato.taxreform.gov.au. You will find a mass of information on that web site including a building and construction booklet, which could help you heaps. Because it shows you what a Tax Invoice looks like. Remember I have talked about Input Tax Credits? You have to collect Tax invoices to get your Input Tax Credits. A Tax Invoice is what you are given and what you claim your Input Tax Credit on. You go in there, you buy something after 1/7/2000. You will say to them I want a Tax Invoice. What will it look like? Well it will have the words Tax Invoice written on it. I never say at the top anymore. Every Tax Invoice I have ever been shown has the words at the top. And someone said to me "Warren, where in the law does it say it has to be at the top?" I said "Ay?" Now there is nothing. You can put it at the bottom, in the middle, at the side and it's got to be in warm fuzzy letters big enough for everyone to see okay. "Tax Invoice". And if it is over $1,000 it has got to have on it the name of the recipient and the address or the ABN of the recipient. Why? Have you worked out yet that a Tax Invoice represents money that you get refunded therefore the Tax Invoice

itself is cash money in the hands of someone who can use it? And so there is sure to be an attempted trade in Tax Invoices and we know that because it is happening in Canada, New Zealand, the UK, Europe. So in order to stop that to some degree, we are requiring that any Tax Invoice over $1,000 – why just the address? Well if someone sells $1,200 worth of timber to a domestic client. Someone, you know, they're not in business. They are just doing handy work at home. Now they wouldn't have an ABN so you just put their address there. Their name and address. If you are selling it to a company, the name and the ABN.

Okay. Now, the most important kind of supply there is in GST. The supplies you will make. Am I at finishing time? Okay, just scream loudly will you stop now please. Okay, please write these words down. "Supply for Consideration". That is how you tell a GST Taxable Supply. You ask yourself that question. Is this a supply for consideration within Australia and am I registered or required to be registered? Required to be registered is that I am earning over $50,000 but I haven't bothered yet. By the way what is the penalty for that? I think it is about $5,000. Not a big deal for your mistake and I guess you won't be hit with any penalty for 18 months. What you are going to be hit with though is that we are going to want $1/11^{th}$ of everything you dealt with after you were required to be registered. And that is not a penalty. That's what you owe us in GST. So you must keep your eye on those turnover thresholds. If you know anyone that is going to keep out of the system for as long as they can. Although I can't see that there is a real lot of benefit keeping out of the system especially if you want Input Tax Credits. But I guess that is up to each individual business to decide whether or not.

Okay. Supply for Consideration, within Australia, registered or required to be registered. You must satisfy those to make a taxable supply. Okay. Once you make a taxable supply you must charge GST and you can claim an Input Tax Credit for anything you buy or anything you get to make that supply. The question you are going to ask yourself constantly is who pays the Commissioner. Who is liable to pay the Commissioner? That's a question that everyone will constantly be asking themselves. Do I have to pay or does someone else have to pay?

I'll give you a couple of hardies to work out. If you can work these out and if you can get your mind round these transactions you probably know more than 95% of people in Australia. Here is a transaction. There is a group of surveyors working on a new survey instrument that will completely change the face of surveying. It is going to be a digital laser based instrument and they are doing research on it at the moment and it will put Australia in the forefront of surveying. Because of this the Government is funding them $50,000 in a grant. Okay this happens after GST. The group of surveyors who are doing the research have an ABN. They have formed a little company for their research group and of course the Government Department has an ABN because all Government Departments, charities, hospitals, everything that is an entity carrying on an enterprise must have an ABN. And that as I said includes all Government Departments. Tax Office will have 20 or 30 ABN's across different departments. So they are getting this funding. $50,000. First of all I ask you the question, is that funding a supply for consideration? Put your head that way if you say yes or that way if you say no. And just look at me with glazed eyes if you don't know. Okay. Yes, yes the ayes have it – it is, it is a supply for consideration. The next question is the vital one because I am asking you to analyse the transaction now. Who is making the supply? The Government or the surveyors? Hands up those who reckon the Government. All those in favour of the surveyors? All those who just don't know? They're the honest ones yeah. Okay the surveyors win. Why? Because the surveyors are making the supply. What are they

supplying? They are supplying their knowledge, their skill and their ability to design a new instrument for surveying. That's what they are supplying. The Government is making the consideration. They are paying for that supply by way of the Grant. After GST who is going to have to pay the Commissioner? It's always the supplier who pays the Commissioner. It is always the person making the supply that is liable for GST. So who is making the supply? The surveyors. Who pays the Commissioner? They surveyors. That's $1/11^{th}$ of their grant down the drain. No. Because all Commonwealth Departments have been told every grant is to be grossed up 10% and it looks like all State Departments are going to come to the same party. Every single grant that is being made anywhere in Australia is grossed up 10%. Why? Look at it this way. The Government Department pays the surveyors $55,000. The surveyors collect the $55,000 and on their next Business Activity Statement send off $5,000 to the Tax Office. The Government Department has paid that $55,000. They can collect an Input Tax Credit. Revenue neutral for both bodies. A person in one of my audiences described this as "The recycling of money". Money is simply recycled through the GST or the Value Added System until it hits a point where someone can't claim an Input Tax Credit. And by definition that point is the consumer. The consumer then in a GST System is where the recycling stops. It is where the buck ends literally. The person who can't claim an Input Tax Credit. So if you understand the transactions and if you understand the way to analyse transactions. If you understand what I have said to you thus far, you are about a thousand times better off than you were at the start.

Here is a nice hard one. I know you don't work in this area but this is always a good example to see how your knowledge is. We have got an artist, an art gallery and a buyer. Say you are buying a piece of art. The gallery is holding it on consignment. You buy that piece of art. Who are you buying it from? The gallery or the artist? For GST purposes think about analysing the transactions. For GST purposes who are you buying the work from?

A: The Gallery?.

No, directly from the artist for GST purposes. That's the way the transaction works. The gallery is just acting on consignment. It is acting as a throughput for the artwork. It is simply marketing the artwork. And will the gallery charge the artist? My word it will. Usually about 20% of the value of the art work. So in fact there are two transactions there related but mutually exclusive. One transaction from you to the artist. The other transaction from the gallery to the artist. Well you are out of it because you are the consumer so you have copped the GST on the artwork. As long as the gallery and the artist are both registered and have ABN's then there won't be any GST implications for them. The gallery will charge the artist GST and the artist will get the Input Tax Credit. You will be charged GST, the artist will be liable for paying the GST to the Commissioner because the artist was the supplier and it is as simple as that. Who cops it? The consumer.

Now I went through that because that shows you how you must analyse every transaction you must go through. You must analyse it as a transaction or as a series of transactions. Do you understand what I am getting at? It is this mode of thinking. Look, in the short time I am here, I am not here to try and shove a whole lot of facts down your throat. I am trying to get you to understand the concept of GST so that you can apply it. So that when you do go to your accountant you know what questions to ask and how to deal with them. There is a summary of what supplies are. GST Free Supplies. No GST chargeable. Exporters have got it really good. Anyone exporting there is not GST. It is all GST Free. Anything that is

exported is GST Free. That mans they get all the Input Tax Credits. They don't have to charge an GST. Input Tax Supplies, double cross. Sour milk. You can't get anything.

Oh I was going to mention residential units. If you have a residential unit, yes you will have to pay GST on the management agreement from the agent. Yes you will have to pay GST on everything you buy to maintain the unit. Can you do anything about it? No you cannot charge the person you are renting the unit to GST. But you can up the rent when the lease says you can. How much can you up it? Say you are charging $800 a month. You put aside $80 a month for management fees and maintenance. That goes up to $88 a month after GST. $8 out of $800.

When you get something – Tripod stand, $1,000 GST $100, Total price including GST $1,100. Just a bit of business advice. When you are getting these Tax Invoices can you yourself or train your staff to highlight the Input Tax Credit. Now that can save you hours of work when you are entering it into a computer. If you have got all the Input Tax Credits highlighted then you don't have to go searching for them. Because some invoices are going to be harder to read than others. Some people have really clear invoices. Other people are going to have really complicated ones. So get your staff or get yourself, just have the highlighter there and highlight the Input Tax Credit.

What's going to happen if you go to K-Mart or Big W. Or Le Maison de Target. I'm sorry I have to refer to it as that. I have two daughters and they won't wear anything that doesn't come from Le Maison de Target. What are you going to get? You go there, you want to buy some food, you want to get some mixed supplies. You have run out of paper for your photocopier. You want a bit of stationery because you are not going to go and put in a big stationery order. You have just run out of a few things. You will get a tape back from Big W or K-Mart. It will be a Tax Invoice. Nobody, no business is going to stand there at every checkout saying do you want a Tax Invoice, do you want a Tax Invoice? They're just going to give Tax Invoices. Everything will be a Tax Invoice. It'll have their name, their trading address, their ABN and it will have something on it like – bananas GST Free, apples GST Free, paper Taxable Supply, pens Taxable Supply. And at the bottom it'll have something like total amount of GST payable = X, total amount payable = Y. Train your staff on those sorts of invoices to highlight the parts of those invoices that you are going to claim back as an Input Tax Credit. What does that mean? Good record keeping.

And to finish off with, a bit of an ad for the Tax Office. If you have a small business and you don't want to spend a lot of money on compliance software, we have a thing called E-Records. I believe it is going to be downloadable from the Internet very soon. It is already available on CD-Rom and it will run on a Macintosh and it will run on a PC. You can have it for nothing. It fits into the Business Activities Statement. It has all the column names on the Business Activities Statement. You get it for nothing. It doesn't need a powerful computer. If you only have a small computer and you don't want to upgrade at this stage, it will run on a P1, it'll run on a System 7 Mac. Okay and they are fairly basic computers nowadays. And it's great software. I tested it at the start of the year. It works well. You can have it for nothing. It's not for big businesses but certainly it is very good for small businesses. And it doesn't do any of the bells and whistles things like when you switch on your computer, you don't get a little screen saying "please update your finances today" and all those fancy things that the other software does. Some of the other software provides Business Activities Statements I believe. This won't do that but it is basic software. And combined with the

EBAS, the Electronic Business Activities Statement which is designed to fit in with E-Records, you can create your Business Activities Statement on screen and then send it via the Internet to the Tax Office. Nothing ever has to be put into hard copy although I presume you will probably put the Business Activities Statement in hard copy in order just to check the calculations on it. So it is all available to you. It's all there. Thank you very much. I know I have taken too long. You have been a great audience. Thank you very very much. And I will answer whatever questions I can at the end. Thank you.

SYDNEY WATER'S DEVELOPER SERVICE CHARGES

MICHAEL PARKINSON:
(Secretary, Cumberland Group)

I would like to introduce our next speaker. Mr Thang Nguyen is a Senior Economist from Sydney Water. Thang has prepared over a hundred development servicing plans generating a revenue of over $81million and has previously worked as a Management Consultant. He will be speaking on Sydney Water Boards Developer Service Charges. I would like you all to put your hands together and welcome Thang.

THANG NGUYEN:
(Senior Economist, Sydney Water)

Good afternoon ladies and gentlemen. I am an Economist so I guess you can trust me too. Actually I am very pleased to have Warren to present his session before me because that means that I won't have any problem explaining the Developer Charges to you. Well, there are two certain things in life - you have heard the GST and the GST on funeral services. But the Developer charges to developers are basically not avoidable. But Sydney Water charges have been reformed. The quarterly bills, periodic charges and the developer charges are calculated very much on the basis of the services that we provide to you. They are very much based on cost and the user of the services pays for the use of these services.

So I'll put on the first slide - the definitions of Developer Charges. I am sure you have advised your clients on Developer Charges before and it is not quite an impost but it is a fairly heavy charge because it is an up-front payment required by Sydney Water and actually other utilities like the Hunter, and Gosford and Wyong Councils on the connection of subdivided land and actually any other new development within the urban areas to assist them to have access to the water and sewerage services.

So we have these charges which have been introduced about a few years ago. It all started with a determination by the Independent Pricing & Regulatory Tribunal. IPART for short and these charges have exhibited themselves through a number of documents that we have issued.

So when do we levy these Developer Charges? When a Developer subdivides the land and applies for a Development Application with the Council or some other Consent Authority, depending on where you are. It could be the State Government if it is under a SEPP instrument. These Consent Authorities refer the Developers to Sydney Water to acquire a Certificate called a Section 73 Compliance Certificate, which is a requirement under our legislation. As a condition to the approval of the DA. When the Section 73 Certificate is issued by us we assess your requirements of the services from the system and apply the charges to you so obviously if you develop a dual occupancy unit the charge would be much smaller than a big block of land which will have to be subdivided into 50 or 100 lots.

The Developer Charge has been relatively new so people ask why do we introduce a new charge to you? We have had quarterly bills for hundreds of years now. I guess the ratepayer has paid it and then later it is basically the householders who have to pay the quarterly bills.

These periodic charges, even they have become increasingly user pays because the charges now as you can see, you pay around 90 cents per kilolitre. In the past you paid something like 30-40 cents per kilolitre and that would make up only a very small fraction of the total revenue of Sydney Water or any other comparable water and sewage utilities. But now with 90 cents per kilolitre, we are looking at something like 50% or more than 50% - moving towards something like 55-60% of the revenue to be raised from customers from this form of kilolitre charge. So the users are already paying.

Now why do we have the Developer Charges? Well it is particularly because the periodic charges at the moment are very much a postage stamp price. Within the Sydney Water Operational Area everyone pays 90 cents per kilolitre and the access charge for a quarterly period is basically the same. Now there is no differentiation between the cost of supplying the service between one area and the other areas. With telecommunication you pay for the distance and so on and maybe it would probably go into time of use and certainly with electricity you go into that form of big pricing and so on. There is a need to reflect the differential costs in another form of charge, and that charge again exhibits itself in the form of Developer Charges, which are location specific because they differ from one area to the other area, and I will go into that in more detail a little bit later. And therefore, if you develop in the West you may pay a higher charge than if you develop in the South or the North of Sydney. Therefore it captures what the regulator and the industry think that user will have to pay and the cost of the providing the services will be defrayed through this approach. So what is the purpose of this Location Specific Charge? To provide service say in the Northern area like Hornsby, Baulkham Hill, Rouse Hill, we face major costs. We have to put in new infrastructure, we have to deal with much tighter environmental standards, regulation applied by the EPA. The DUAP and its Minister requires much stronger conditions for the development of Rouse Hill. That's why you could see that we actually had to install the recycled water system in Rouse Hill. So you could say that the cost of providing services in that area in Rouse Hill or that Northern part there are much higher than providing service to someone else say already in a well established area where we have got the capacity within our existing infrastructure to service them. So one of the key roles of the Developer Charge is to signal the cost of providing service to the customers, to the Developers who obviously will have to pass that cost on to the final consumers, the buyer of the land or homes.

Another reason for applying this charge is Sydney Water needs to have a means of funding to support the investment in these new infrastructure assets. In the past we have been forced to either dip into general revenue, taxpayers' money or some form of other cost subsidisation to fund investment in areas where we could not recover the full cost from the old periodic charges. Now the new system of Developer Charges allows us the capability to provide actually better service to the development industry, because we can meet the needs of urban development by providing the infrastructure services to you as you require. As long as you are prepared to pay the cost of that service provision.

The charges are high because they are again up front and they reflect the huge cost of infrastructure but Sydney Water doesn't have its liberty how it determines its charges. We are subject to the IPART Regulation. IPART – it's the name for Independent Pricing Regulatory Tribunal – is a separate government body. It's actually supposed to be independent of Government Minister. It has its own legislation which requires it to protect customers' interests, protect the environment, protect the commercial viability of the operating entity, in this case Sydney Water, and to lead other objectives that are let out by the Government. So

IPART set down a determination in December 1995 and Sydney Water is obliged to implement that determination in the calculation of charges. And there are other mechanisms apart from the determination of the methodology that IPART and other stakeholders can oversee the way Sydney Water calculate our charges. IPART made the last or actually the current determinations in December 1995 and it's still the current one, but they are reviewing this determination as part of their next 5 year medium term price path review and you should hear from them fairly soon about what changes may be afoot for the calculation of charges.

The current system of Developer Charges are more equitable than the past system in my view. In the past before the IPART Developer Charges, we levied a so-called major water charges only in new release areas. In most cases those charges were higher than existing DSP charges. Those major water charges require you to pay for all the local amplification work or the local system configuration work in full. In a lot of cases because of the – some times there is a smaller size of the release areas, the costs become very prohibitive for the developers to develop their land.

I am going to go into something which is likely to be fairly technical but don't worry about it because this is the methodology that is set down for us by IPART. Rest assured that IPART and other stakeholders or representatives of the industry keep an eye on these things. So it's a bit like the GST. You just pay 10% and don't worry about it. This one here, you calculate the Developer Charges. Our charges will take into account the cost of the assets which is fair enough. These are the assets that are going to be used to service you so you pay for part of the cost of the asset. So if you can see in there that there is on the left-hand side that is the charge that you are calculating. On the right hand side, don't worry about the NPV. There is a K component, which is the first component. That is the capital costs of the assets so you pay for that.

Now what are you getting back in allowance because Sydney Water is always interested in its market growth. Every time we have a new customer we actually have a new source of revenue. Even if the revenue only trickles in but we are here for a long-term business. So for the next 30-40 years every customer on average is worth to us say $1500. Every new customer. Now you get an allowance for that and that's what's on the right, the last component. So if you have 1,000 customers, that's $1.5million of allowance we have to offset against the cost of capital, and you pay for the difference between the two. The NPV thing in there is again as you would have already guessed, is the calculation that economists use, because we make an investment that most of the money will be spent now or in the next 2 or 3 years of establishing the service. But we won't be getting the money back for the next 5 or 10 years. We may build a new sewage treatment plant or even amplify part of the plant now putting major mains in place. But the take-up the land development will happen over the next 10 or 20 years and therefore there is the money now and the money then. The NPV is just a way that economists use to try to compare really the money now and the money then. Basically they bring everything down to today's dollar in an investment sense so that they can compare that. NPV is the Net Present Value as you know.

So in the NPV calculation and now I am going to go through this very quickly. We have the bulk of our system as existing assets. We have put them in there well before you arrive. We, at the present getting 3% on that investment and on the future assets that we have to put up new money we are going to get 9%. So it's a bit more profitable for the new asset investment. The 30 year operating surplus – every customer will be contributing $10, $20

and so on in total over the 30 year period. They are probably worth $1500 to us and we have to use that to offset against your costs.

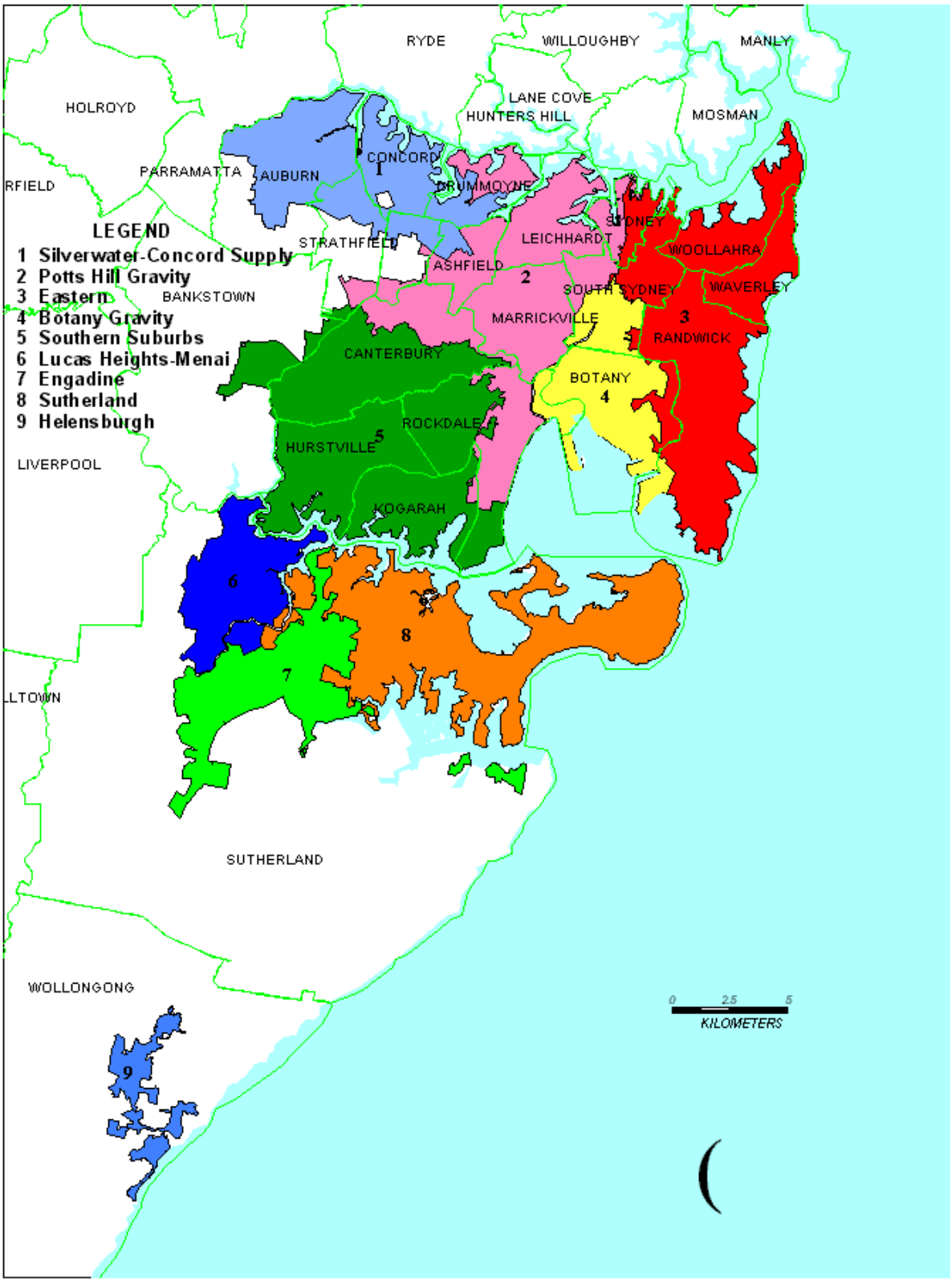
Now this is the last item and is an interesting issue. This will keep us honest. We are required to match best practice costing. Therefore in the past we may have spent a lot of money to build lands and infrastructures, assets and so on. We cannot get all of that money back. IPART is saying that you have got all of these assets and we know that you spend a zillion dollars on that but you are only allowed to recover the efficient cost of that. And how do you define efficient cost of that? The way to do it is to look at the service that is provided by that asset. It may be a pumping station for example. What is the latest technology of manufacturing providing that pumping station and what is the current cost of providing that pumping station? So you can see that if you built an asset about 10 years ago, we may not get all of that cost back. We may only get 50% of that if the technology in manufacturing pumping stations and all the labour input costs - these days you use computers and stuff – into that, that will bring the unit cost of the pumping station down significantly. Probably 1½ to 2% a year. You would probably get 20% to 25% cost reduction if that is a 10 year old asset.

So we are required to be honest by saying that go ahead and determine the modern equivalent values of that asset and use that cost to calculate the charge. Next please.

So even though we are a monopoly, we are very well regulated. We are supposed to mimic the behaviour of the competitor because anyone else like Lendlease, any engineering firms will come along, will only produce that modern equivalent cost. And we, by the force of the regulation, are forced to mimic that competitive behaviour.

I think I am going to go into some more colourful presentation here. We have a few maps here to show you.

There has been calculation of about 100 charges. In each situation we put the document which is called the Development Servicing Plan, which shows how we are going to service that area and when I say that area it means what is the existing customer base, what will be the future customer base, what is the existing demand, what is the future demand and how our supply system works with all the different components of the system and how we are going to amplify that system to service you. So there is going to be a servicing strategy to show how we are servicing the needs of the customers and the cost involved in that. And that is enshrined in so called Development Servicing Plan. The DSP is put out for public consultation for a minimum period of 28 days. Usually it is longer and there is a process of public submission and consultation to go with this exhibition process. Following that we register the charges and the DSP with the Regulator.



Sydney
WATER

Development Servicing Plans
Water Systems
Central Sydney

Major Capital &
Development Projects
1999

This is the water supply system in the central region. You will probably see that there is the Olympic centre, Homebush, over there is Silverwater Concord supply. Botany, so each of the systems is made up of a number of pumping stations, pipe mains usually down to the size of 300mm. Below that we don't call that part of the system. It is really reticulation assets and it is the responsibility of the developer.

Sydney WATER

Development Servicing Plans
Sewer Systems
Central Sydney

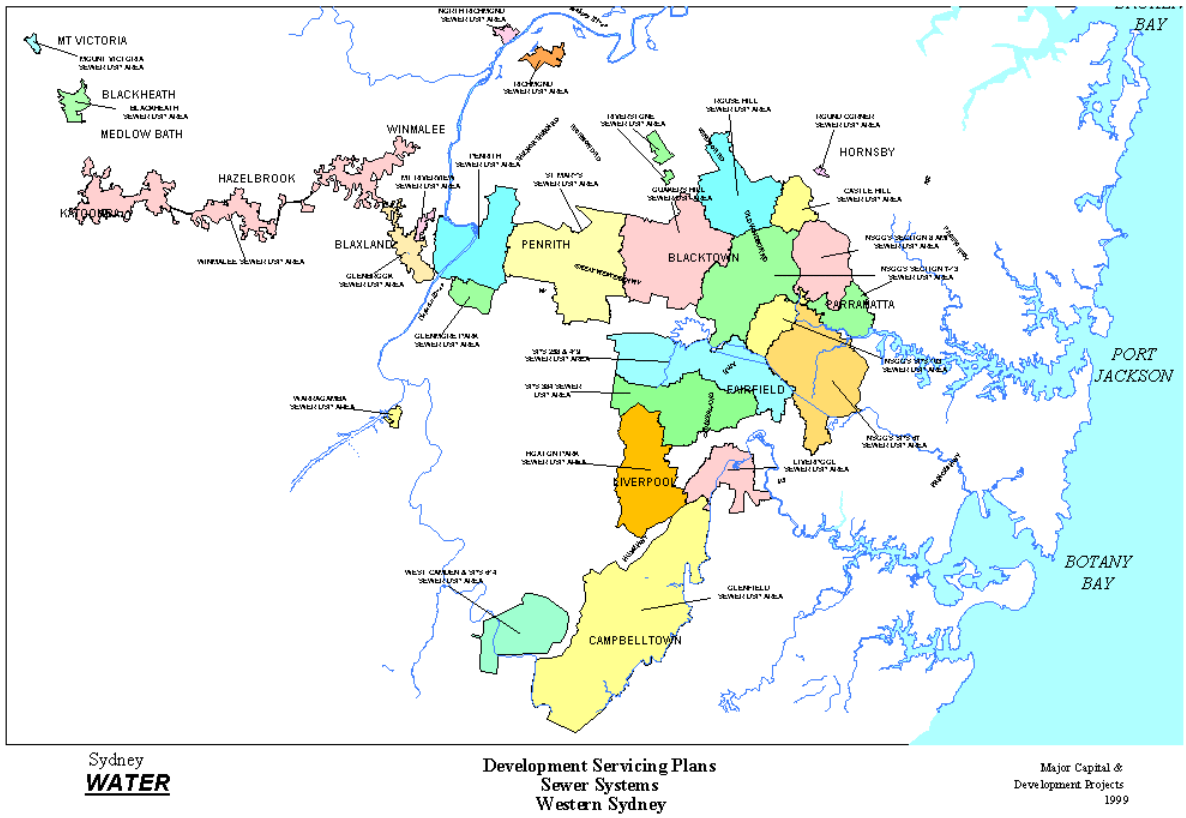
Major Capital & Development Projects 1999

This is the sewer system. You have the Bondi Ocean Outfall System which is the pinkest

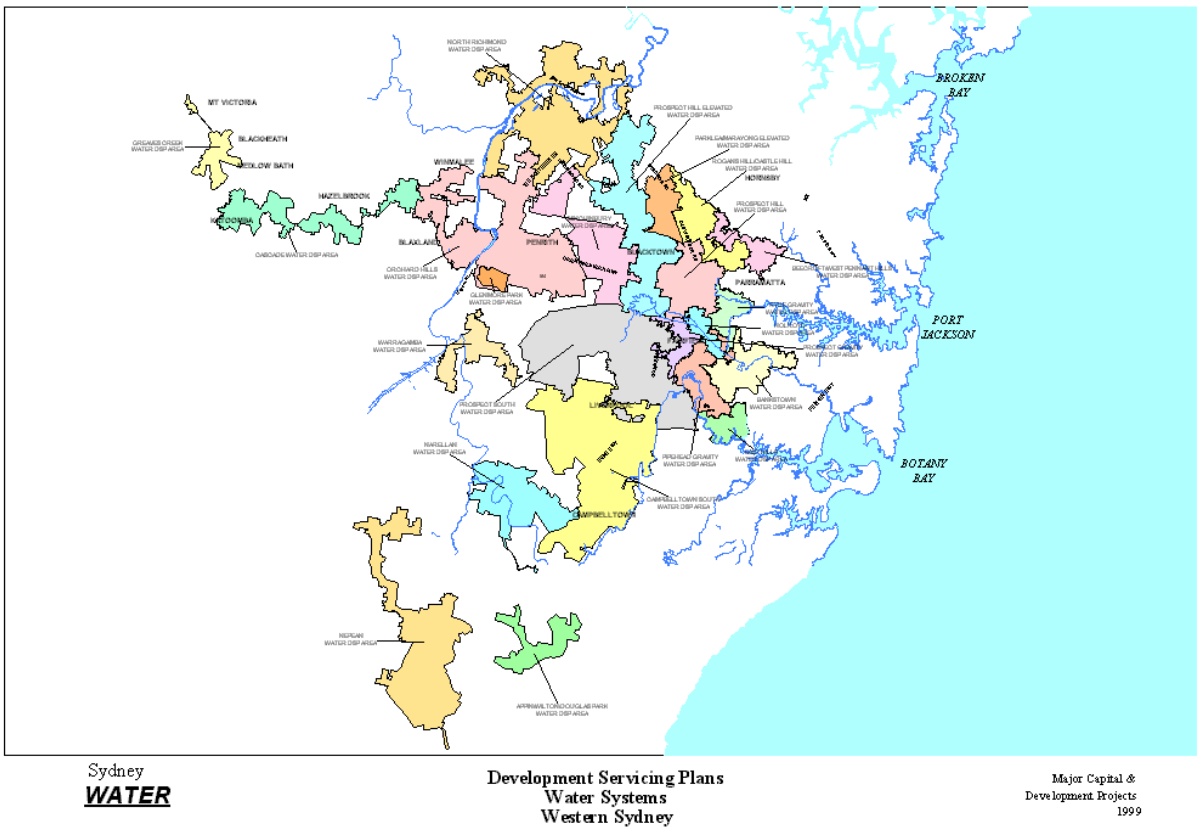
colour. That includes the CBD. There is no charge. There is a calculation but there is no sewer charge in that area at all because the cost that we calculate is less than that, roughly $1500 per customer so we don't charge people for getting a new customer.

I am not going to show you everything in Sydney. I will just show you the central and the Western area. Now you can see there are a number of pockets in Western Sydney. It is partly because these are the release areas and the process of developing of Sydney is to go through phases and therefore we keep going out and therefore we have blocks of land that get released over a period of time.

This is the sewer for Western Sydney.



Now sewer charges are the higher charges because it has got two components. One is the system and the other one is the treatment. STP is an expensive asset. Not only that, the ocean outfall is the most cost effective disposal of waste water and even sometimes you have to put in $2-300 million to do it. Working out per unit of cost, that is still by far the cheaper system to provide waste water disposal. However, in the West we have mainly inland waste water treatment and that means you treat on the spot and you have to discharge much more critical standards into the rivers and you can see that in this area the charges are higher.



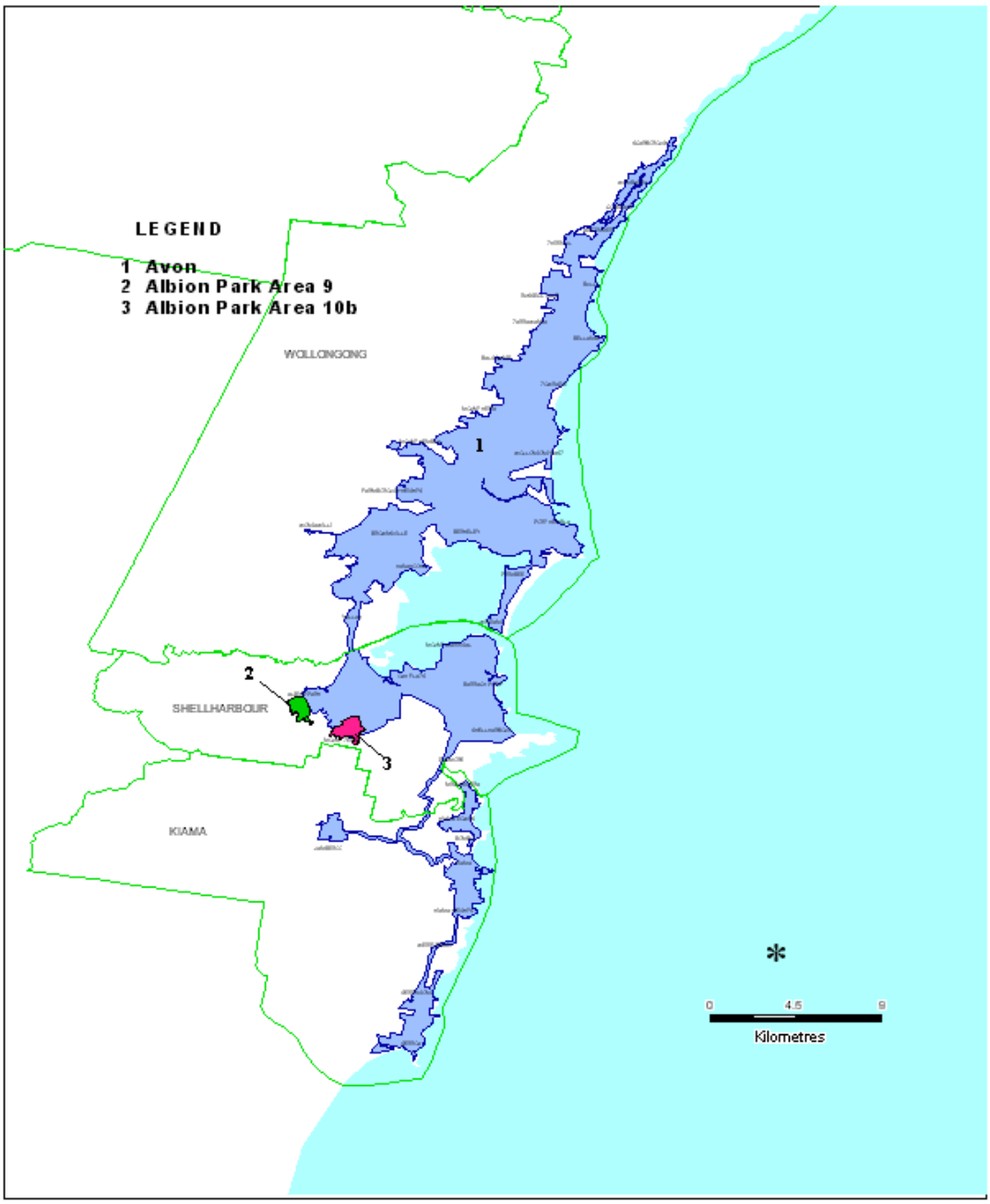
So what's the bottom line? On average we charge around $4,300 per residential lot. I think it is likely to come down after the next review. There are about 5% of land developments including the Rouse Hill in this particular case, that pay more than $6,000 per residential lot and we think that is still a reasonable requirement for the level of service that we provide.

That is the chart that you could see. Now the darker these are the more expensive they are. So in most cases you would find that the Western area pays a much higher charge than the rest.

We have been listening to our customers and there have been complaints. Certainly a number of land developers have been very concerned at the introduction of a new charge. Some developers may have been holding land for the last 10 or 15 years and suddenly a charge came in and that affected the net value of their landholding. But like taxes and other things, there hasn't been a period of information and warning when the charges come. We are, the requirement of our own legislation and by the legislation of the IPART must implement a charge so it has been in place for about 3½ years now. We have held meetings with representatives of the UDIA, and the Institution of Surveyors on the calculation of charges and there have been resolutions of a number of issues. We have agreed to disagree on a few other things and I think we keep on working in that process.

What are the issues that we have been talking about? Now I don't think you can see this too well but we recognise that we are a monopoly and therefore we have to be open about the way we do things. So this is the process where if you don't like our charges, you want to complain, you want to put in an objection, you follow this process. This process is approved by the Tribunal and has been through the process of consultation of all the stakeholders when

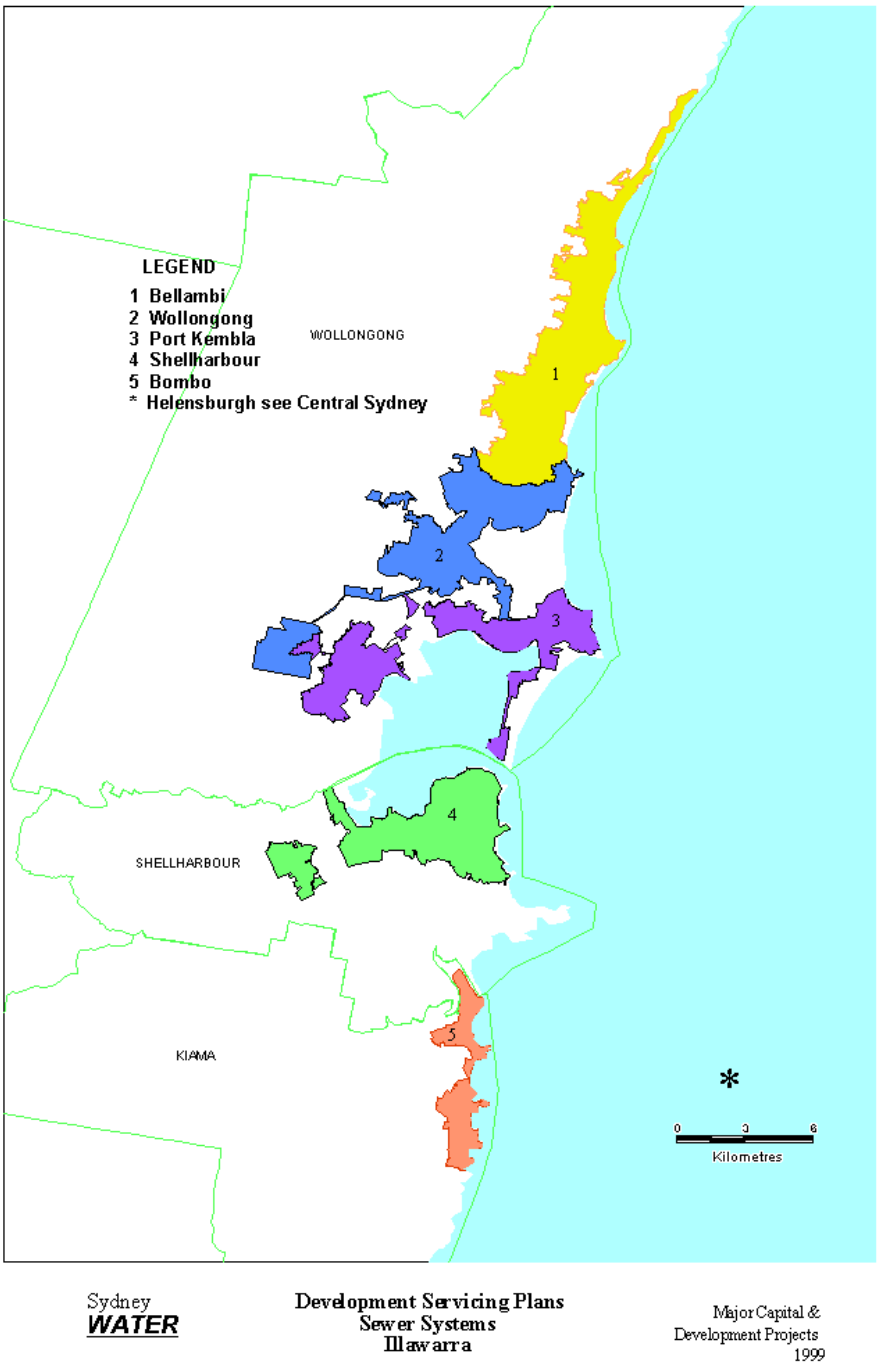
the determination was made. Essentially if you don't like a charge you write to us. You give us the basis of your complaint and we will review your objection, and we will respond to you in writing whether we will make any changes or accommodate your objection or whether we take our original position. If we do not entertain your objection you can ask for independent mediation or arbitration and the determination of that arbiter or mediator will be final. The catch here is the cost will be split 50/50 between the complainant and Sydney Water. So that is basically how this process works.



Sydney WATER

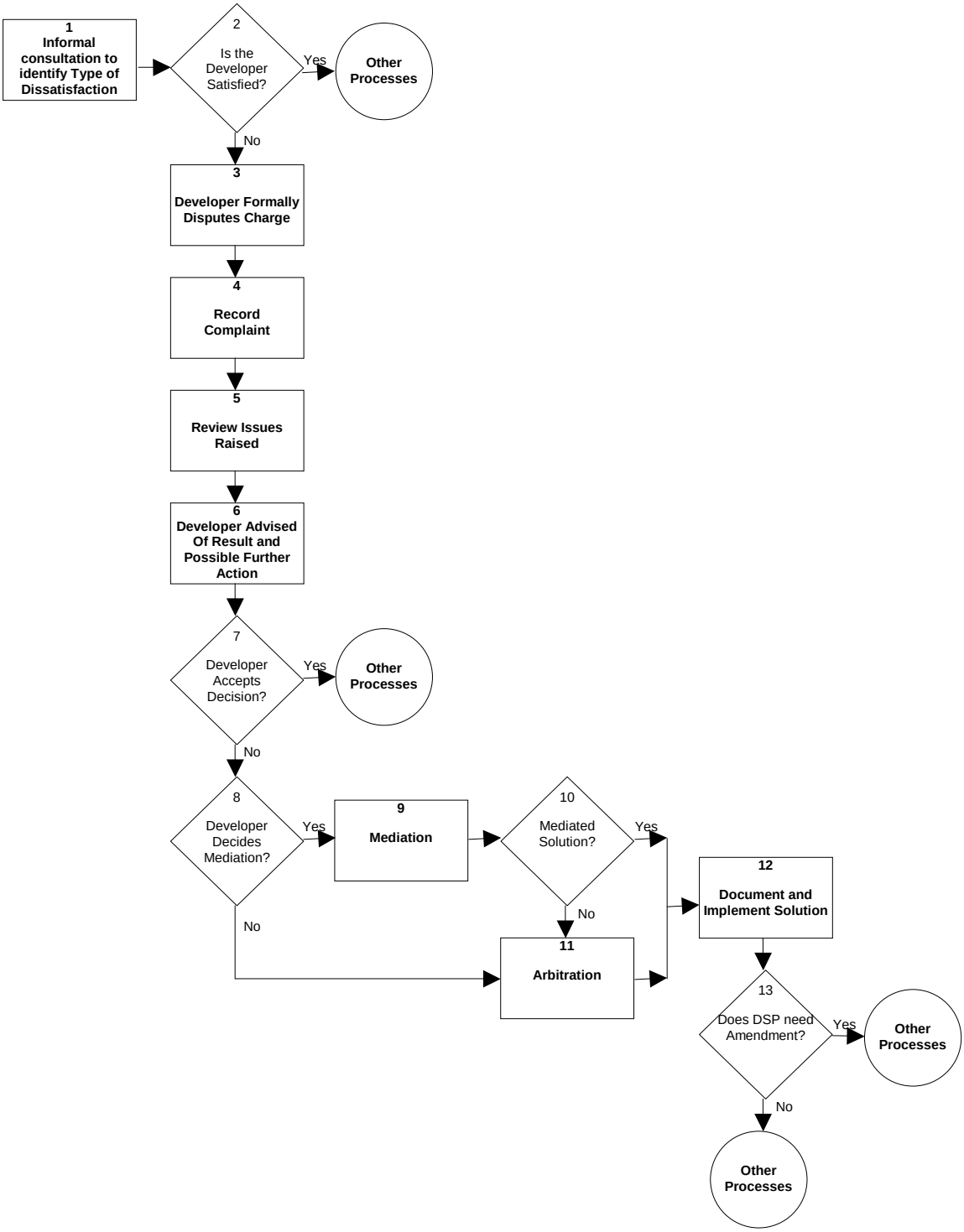
Development Servicing Plans
Water Systems
Illawarra

Major Capital & Development Projects 1999



Apart from the specific location issue which we have now and then, your representatives have been working for you and they have raised issues about asset valuation, rate of return and so on. So we are going through this process and we hope we will be able to reach agreement on that matter.

APPENDIX –DISPUTE RESOLUTION AND ARBITRATION PROCESSES



I think that is about it that I would like to cover since I am running out of time. As you are aware there is always this angel protector for you, called IPART. They will be looking over our shoulder and they will revise the rules of the game. That will protect your interests. Thank you very much.

DEVELOPER CONTRIBUTIONS & CHARGES IN NSW

MICHAEL PARKINSON:
(Secretary, Cumberland Group)

Our third speaker is Peter Price who is Principal of Alan Price & Associates in Nowra. He also runs a company called Economic Planning Advocacy that specialises in Development Contribution Assessment. I would like you to give Peter a warm welcome.

PETER PRICE:
(Economic Planning Advocacy)

We heard from DLAWC this morning and they mentioned a court case that involved Warringah Council and Ardell. I very strongly recommend that you get a copy of this. You can get it off the web easily enough from the Land & Environment Court. The Cumberland Group have offered to do copies for those people who are interested so I guess if you leave your card out here you are going to get a copy. This is an excellent decision. It's by a good judge who went through the exercise very soundly. As Bob Monteith read to you this morning that extract is included in this document. They're trying to avoid it. They want it to go away. I suggest you don't let them make it go away.

Q: What's it called?

A: It's a Land & Environment Court decision. You can go to the Attorney General's web page and then link across to the Land & Environment Court. It is Warringah Council –v- Ardell. The reference is New South Wales LEC7.

Developer Charges is an area that is of interest to everybody. I think one of the difficulties in development these days is that the goalposts are continually shifting and I always find it important that you have got to go back and look at the history. For instance, if you have got a problem with Section 94 you should go back and read the Act and the Regulations every time because quite frankly, I am sick and tired of Government deciding what they think is the answer. I have always said that Councils for instance, operate on about 90% say so and about 10% law. You have got to keep going back to where it all starts.

The Commonwealth Housing Study back in 1978 said about Sydney Water that for a lousy 2% increase in their annual charges which at that time was far less than inflation, they could abandon Development Charges and they recommended that they do so. That is about as far as it went.

"Paying for Growth" is an excellent document I can refer you to. It is an American document. What it said was the trouble with Developer Charges is they started off as an incremental charge and it has become a whole new financing system, and that is the problem in New South Wales. At a recent Housing Industry, well it wasn't that recent, it was last

November, at the Housing Industry Conference the guys from the other States are terrified. They have got pressure to introduce Developer Charges, they see what a disaster it is in New South Wales and they don't want a bar of it. In Victoria they are trying to work out how to wind the little bit they have got back. It is absolutely out of control in this State. One of the good summaries on this is also by the Planning Research Centre. A document by Garry Cox and if you – you should've seen probably, the Planning Research Centre Review of Contribution Plans – which just lets you know how bad the system is. So that is really just the history.

I think it is important that we talk in terms of development because it is a tax on development not on developers. And while a local Government Engineer from Wagga said in the early 80's at a Local Government Engineers Conference, it was the goose that laid the golden egg, that attitude is well embedded into the system and that is where it all started. As I said the Cost of Housing Study said it should be removed. In 1994 in a submission to IPART that's the Independent Pricing & Regulatory Tribunal, DUAP said that the up-front charges impacted upon those people who could least afford it. Now affordability is one of those things that is written to all the Acts and Regulations and is talked about but nobody ever does anything about it. It is actually a requirement that IPART consider it when making their pricing determinations. I have to tell you I have yet to have heard it discussed in any way shape or form.

There are a few good things. The law is relatively well established and we do have some good case law. This is despite the fact that there have been some pretty terrible decisions and I have had one or two of them. The planning principles are well articulated and I think the work that has been done now by DUAP and if you haven't seen it you should get a copy of it. The Review of Section 94. It is a report of the committee. It was an excellent committee, good cooperation, wide range of views, an excellent document. It is going to be followed up by some practice notes on Nexus – something Councils don't know much about – and it is something that you should be participating in.

I have to say though that at the end of the day it is all about the money. I mean as Bill Clinton said "It's the economy stupid", well I have to say It's the money stupid". That is what it is all about. It is all about getting as much, and if it is not a big sum they think there is something wrong. I have had a decision where we spent 10 days in Court. The decision of the Commissioner was that he thought $5,000 per Lot was about the right sort of money. That's the thinking that is embedded in the system. If you come up with a small number there is something wrong. The big money quite frankly is in the demographics. It is in the way they do the apportionment and it is the way they assess the design or provision standards. That is, you know, so many square metres per person as an example.

I guess this heading is really an appeal to surveyors. Surveyors who I work with and it is a very good relationship to work with surveyors because quite frankly, they are one of the few professionals – planners to some degree but surveyors more-so because they are much more directly connected – are good advocates in Section 94 areas because they have the essential training. They have got good local knowledge and there is lots of local knowledge you need to understand the system. I have worked with economists and with actuaries and this sort of thing. The real difficulty is if they don't understand the way the system works the numbers are meaningless. Good mathematical concepts. You need to have good mathematical concepts. This is the real difficulty about going to the Court - I have to tell you that lawyers

do terrible maths. The only thing they understand is the dollar. They don't understand much about mathematical concepts. I think surveyors have good networks for support advice, and I think ideally you need to be prepared to make the effort to challenge unfair practices and there are various ways of doing this.

The difficulty about the whole thing is that the whole Developer Charge thing is politically motivated. It is almost now utterly devoid of equity. There have been lots of articles by planners in planning magazines and if you belong to the Environment Law Association you get their journal and there are lots of articles there talking about equity. It just doesn't get to first base. Section 94 is a confined set of rules designed to keep you on the rails so that you pay something and if authorities can make it happen they will make you pay the most. The important things are nexus, apportionment & reasonableness, and some of these don't actually occur in some plans. I have been working with Sutherland Council. Their plan is absolutely devoid of Nexus. They have worked out how to collect the money but they don't actually know where they are going to spend it. They haven't got a clue. Now I have done a deal with them and we are going to come up with a number that is far less than what they started with and the developers will walk away happy. But I still don't know where they are going to spend the money. And they have got the same problem with their previous plan. They do it in 5-year lumps. And at 1st July 1998 they had $30million in the kitty and they only started to think about where they were going to spend the money in February 1998. And they only exhibited the proposal as to where they were going to spend it in March 1999. So nexus is almost foreign to some councils. And of course accountability of the same category.

Now one of the solutions lies in the way the manual has been developed. It is now quite a good document but of course it didn't have any status when it went to Court. The judges looked at it and put it to one side basically because it was just a manual. That is going to be changed. The Review Committee have recommended that the manual be given legal status by having it called up in the Regulations, so that is quite a useful first start. And there are some quite good changes. The first of those is that, the legal status of the manual. The second one is the concept of Developer Agreements. Now this is more appropriate for large greenfield developments whereby the idea is that you will enter into an agreement with Council in advance of what facilities are going to be provided and you will sign off on them. Now this provides a level of certainty for both parties, and of course in many instances in the major developments people are preferring to do the actual work themselves. You know, on their own estates if they can, and that can be accommodated by a Developer Agreement, and it has been recommended by a number of sources and the Councils involved in the review process thought it was a good idea.

The last one is ADR which is Alternative Dispute Resolution. Now we are looking for this just for Section 94. What we have been plugging for, what the Urban Development Institute have been plugging, for quite some time is to try and get Section 94 hived off from the consent so you can proceed with your development and argue about Section 94 afterwards instead of having to go to Court or whatever and argue about the whole concept effectively, just to get Section 94 fixed, and in the meantime you are wasting time. Now the idea is that arbitration and mediation would become available so that you could have your Section 94 arbitrated separately from the Consent. You can be getting on with your work and the Section 94 can be argued about.

Now the Councils have got a lot of objections to this and quite frankly, most of them were

meaningless and they were recognised as meaningless by DUAP. So it has become a higher level of probability that we will be able to move in that direction. What we are hoping is that the Court won't be too fussed about it. This is subject to a discussion with the Chief Judge because clearly, it will impact to some extent on their jurisdiction. We need to work out some way of developing case law based on these decisions. But of course it is all based on commercial arbitration which is the Commercial Arbitration Act. It will be no different to what is operating in the commercial world at the moment.

I have had one arbitration. It was a fairly unusual case from the point of view that the Council didn't have a Section 94 Plan and they had actually written a condition that said "payment of the Section 94 contribution when we work it out". Well of course that was entirely illegal and then they coerced the client, who had a shopping centre, into an agreement that when they worked it out they would then pay it and it had an arbitration clause tacked onto it. Well naturally enough we ended up with a pretty silly number. $1.4million and we went to arbitration and the answer was $500,000. I thought it was quite a good process. We can get arbitrators who are engineers, who are architects, who have got some understanding of the technical processes. And if they are Grade 1 Arbitrators in particular they can be really quite helpful. The process is quite informal. We went to the arbitration without lawyers which is another damn good reason. We sat opposite each other, we had a chat about a few things, the Council that is, the experts came in, most of it was done in writing. The hearing took about a day and a half which included an on-site inspection. So I was quite pleased with that. I can't say that there was any significant advantage in time. It took forever to get the submissions and then get a response out of Council and work through the process so at least we had quite precisely defined issues by the time we got to the actual hearing.

With regard to IPART which Thang mentioned, IPART is the Independent Pricing & Regulatory Tribunal. I have to say the industry is not all that chuffed about IPART at the moment. They are not displaying what I would call a high degree of independence from the point of view, Thang mentioned they are reviewing the guidelines at the moment, and we found out a couple of days ago that they have actually got a paper doing the rounds of the Government Agencies. Do you think the people like UDIA and the Institution and others who are also sitting on the Water Industry Forum have been given a copy? Of course they haven't, and we are unlikely to get one unless we kick up a bit of a stink which is exactly what we are going to do.

What IPART did is they first of all went to the agencies and said look we want you to devise a system to work out Developer Charges and none of them could agree. I think the main problem they had was with DLWAC quite frankly. But that is another story, so in the end they formed a water industry forum that comprised of all the agencies. That's Sydney Water, Hunter Water, Gosford and Wyong who are covered over the Water Supply Authorities Act. They got in the UDIA and the Institution and the HIA and also the Total Environment Centre, of all people. Landcom and Department of Housing were also represented. Now we sat down for a few months and we devised a set of guidelines based on – the work was basically being done by Hunter Water. It is pretty much along the line of nexus's and apportionment. Except it used Net Present Value and the idea of that is that you treat the task of providing infrastructure the same way you would treat any project. You would look at the expenditures that had to be made. What was the value of existing assets and what expenditures had to be made in the future, bring them all back to a common date as at today's dollars, and then inflate them forward to whenever you need to pay them. So it is a sort of standard

commercial approach to assessing a project. That was the concept of NPV.

Now we tried to run this in a case recently without much success, but I know the Council in fact, despite the fact that they won the case, have decided to start using it. So I don't know what that means.

What this does though is it considers the ET share a part in future capital costs and I think Thang has already covered that. It uses the predicted capacity take out. That is if you have got an area with 5,000 Lots we need to know when those people are actually going to pay the money. Because if they are going to delay the payment there will be an interest component cost. The interest is 3% on existing and 9% of it is on the future. That's probably a bit of the waffle to you but it's quite an important principle. Now the other thing it does, it allows for double dipping. And that is that when the new owner comes in and they have paid full costs for all their infrastructure, they then begin paying rates. There's a reasonably high level of, a high component within those rates, that goes towards paying for other capital works. Renewal works and all that sort of stuff in other parts of Sydney and you need to take that out and amortise that amount and discount it off the contributions so there is no double dipping. It's a source of considerable discussion shall we say.

Dispute resolution by mediation and arbitration is provided by IPART. They have a reference straight to the Commercial Arbitration Act so we can go to mediation or arbitration. If you have a dispute with Sydney Water that's the course that you would take if you want to follow the legal or the disputation path and I have to tell you that it is likely to happen. The determination for metropolitan areas as Thang mentioned, covered Sydney Water, Hunter Water, Gosford and Wyong.

Our concern and the industry at this stage is represented by – I have actually been engaged by IPART on behalf of a little fund they have got to work on the negotiation process with Sydney Water. A colleague of mine Chris Taylor who is an economist has been engaged by Landcom. Landcom are also represented on the Committee and a Planner, Dimity Podger from Hassall has been engaged by Lendlease and they also sit on the committee as well. So there are 6 of us there hammering away trying to get somewhere with the current methodology used by Sydney Water. Our view is quite frankly, they are the worst. The total lack of transparency is a major concern to us. We need a lot more information and to be fair, it is agreed that a lot more information is going to be provided. Because while the majority will be not be interested for one minute, there will be certain people and I guess I am one of those, who will be engaged by somebody. It might be a planner or an engineer or a surveyor somewhere who will be asked by the client, "Look I really want to know what I am paying for" and they need information. The way it is proposed, and this is in fact something else that DUAP are looking at is that we need two levels of information. You need a Contribution Plan or a Development Servicing Plan out there with most of the information in them. But then you need a fairly good wad of information that backs that up. You need all the background information, because you can never put enough information for most people in the document. You really need to show them in an accountable way how you are calculating the sums.

Now we have got some fairly significant concerns. As I said, we made *very* strong submissions to IPART about the application of the methodology. The differences between the four authorities that are currently operating it in a mandatory way, are quite startling. I've spoken about Wyong. Wyong quite frankly have one of the better presentations. I don't like

their number very much but we are working on that. But their presentation in terms of the data they provide in the DSP clearly shows the type of assets that have been provided, where it has been provided, because you as surveyors can read this information quite clearly. In fact you can make planning decisions about how you are going to develop your client's estate if it is a fairly big estate based on the information in that Development Servicing Plan. And also then you can also see what you are paying for and whether or not what they have decided to do is reasonable.

As I said UDIA and SWC are in negotiations. We have had how many meetings Thang? About 6. And we are working through and they are feeding us information and we are coming back and forward at this stage. Unfortunately I think we are likely to go to arbitration because there are a couple of quite significant points that we won't be able to agree on, and as I said to you before, we are not very happy with IPART. We started this argument about four years ago. The IPART fellows said to us "Look, we have looked at the sums and we have added them up and we got the same answer". And I said "Terrific. The only problem is that we didn't talk about the principles. We know they can add up. We just think the principles are wrong." And I could demonstrate what the problem is, but I think it s probably a bit late in the day for that. Similarly with Wyong. We have had a lot of negotiations and they got into a bit of strife originally because despite the fact the guys at IPART thought they knew all about their own guidelines, they issued a computer model to Wyong to try so they could calculate the contributions. Of course they quite eagerly went away and did this, but of course the trouble is the model was flawed. So we had to complain about it and they sent it off to the actuaries and the actuaries said "Yes, that's flawed, you'll have to fix it. So that is how we saved the first $1,000. We saved the second $1,000 - well, it was essentially a mixture of all sorts of errors they made. Fixing up the apportionment and that sort of stuff. We are chasing the third $1,000 by looking at the way they do their revenue. One of the major problems with all the authorities is that the amount that they allow that you users are paying by way of rates, that ought to be used to offset the contribution that the developer makes which effectively goes into the price of the land. And at this stage we are saying that what is being allowed is about a tenth of what it ought to be.

One of the interesting aspects for those guys outside the Metropolitan Area is that IPART in fact issued a document called Pricing Policies for Water Authorities and that applies to every Council in New South Wales. Now it is not a mandatory document but it is a pretty strong recommendation, and it says in there in fact that, if the light-handed approach to regulation doesn't work they will in fact proceed to regulation. So I thought that was a pretty good message. The bottom line is that I think there are three Councils that have looked at this. Shoalhaven I think are the only ones that have done it successfully. They have only done it once for one small project. Dubbo had a go at it and that was a complete and utter stuff up because they got an academic to help them. Singleton had a go at it and unfortunately, when I went to examine what they had done, I found that they were using the old Wyong model that had the flaw in it, so they were in real strife. So they bailed out as well. So that is where it is at, at the moment.

Now the difficulty is that I would like to see it expanded to a mandatory system whereby the guidelines are the same for everybody. Once set of guidelines, but the trouble is, some Councils are waiting around for DLWAC to come up with a new set of guidelines. We have got this guy Sam Samra who is in DLAWC who has been trying to get his system implemented for years. This is his third attempt. There is a document going around at the

moment called Water Supply and Sewerage Development Charges for Country New South Wales. Now the trouble is it is the same stuff he trotted out in 1995. From our point of view IPART remains the preferred guidelines. So I have had these three discussion papers and this one actually finally say – oh well look, we will do it the IPART way for the capital cost. That is, work out of the cost of the assets, the hard cold assets. How much is that going to cost the Developer? But when we come to the revenue offset we are going to do it our own way. Well that's pretty interesting because the whole approach is flawed. In fact they don't even comply with the IPART guideline and in fact they had a test example in the document, and when I checked the calculation their answer is $3,503 and my answer is $537, and there is quite a bit difference. The reason is quite simple and I can show you if you are interested.

One major concession they are offering is that they are saying that they are going to change the Act to allow for arbitration of water and sewerage charges in country areas. Now this would be quite a good move as far as I am concerned because at this stage we have no right of appeal. As you recall because of the All Sands case which the Shoalhaven Council and the old PWD lost. It went to the Government and said oh look at these people, they take all our money, this is not fair, blah blah. We have had this system for years, which they *hadn't*. In fact they were still making it up. The new manual arrived the third day of the Court Case. They got the Government to change the law and take away our right of appeal. Now that is how we have been since 1993. Now they are hoping to give us back this arbitration.

Getting back to Contribution Plans quickly. PRC in 1994 found that most plans were flawed, but I think there is an opportunity with the new review to change that. And as I mentioned before there will be a nexus practice note coming out and we are also working on best management practice examples. That is looking at various development plans that are around the place, taking examples out of them and saying, here is a good example of doing this. There are some second generation plans around that are quite a substantial improvement on what we have been doing in the past.

With Development Service Plans we have got many issues with Sydney Water. We have got few issues with Hunter Water. We have got less issues with Gosford and Wyong, and basically the rest of New South Wales at this stage is untested.

Just to give you an idea of the sort of things that we are coming across, it was quite a revelation. I guess taking this sort of work has been part of my escape plan but it hasn't really worked. Out of the frying pan into the fire because I thought that most Councils would probably be like Shoalhaven. They have got a few tricks and we can sort that out. I'm finding out that there is more than one way of skinning a cat.

The demographic tricks are where quite a lot of the money is and certainly overstating the population growth is number one. They ignore vacancy rates in both houses and land. They just ignore them. When the fact is that even in the city you get 7% vacancy in houses. You don't get a lot of vacant land but you get 7% in vacant houses. Now all these little things add up.

In a number of places - it happened in Sutherland, it happened in Willoughby - using, using bedrooms as a defacto for population. I have to tell you that if you analyse the data you will find that there are in fact three times more bedrooms being created than there are people. Now if you use bedrooms as a defacto for population you are going to get three times the

number. Real simple.

Using worker population. Boy that was a beauty. That was Willoughby. They decided that they didn't have a big enough number to justify a new leisure centre so what did they do? They counted up the number of people that worked in Willoughby that they thought that came from Woop Woop, you know, down the road and up the road. They added that into the Section 94 Plan which gave them the required population that justified the new facility. How the hell they expected people to use this facility I don't know.

The really tricky one, and I have got a bit of a demonstration on this later, is the way that they do the conversions of the per capita rate to a per log rate. They use census data, and I have to tell you that the occupancy rates in one census date which might be say 1991 and the next census day was, it might be 1996, are always and generally different. They are generally going down. Now if you take the difference between the population and then the difference between the number of houses, you will find that the population is growing slower than the number of dwellings, and the same goes for the number of bedrooms. Now that would be no surprise to you but has quite an important bearing upon the rates, and what it means is they are using false conversion factors to derive higher contribution rates.

Now the apportionment tricks include rounding off factors, not excluding existing uses or demand. Camden Council are a classic. There was a town parcel, here was a block of land in the corner here that had existing use. They just took it out of the calculation. So their apportionment was about 40% out. Makes a big difference to the answer. We in fact it ended up being – there were other things they did. For it to come down from 1.4million to 500,000 meant they had quite a lot of things wrong with their plan.

One of the things that Sydney Water has agreed to look at is the concept of surplus demand. In a Developer Servicing Plan we need to identify, we need to get rid of the existing users and we need to get rid of the surplus capacity. So we say righto there are 50,000 people in this DSP. What capacity do we need for that DSP and cost it accordingly. And that hopefully, will be the basis of the new plans.

The real problem we have with Councils and Sydney Water in regard to the revenue offset is that the assumptions they make about the amount of money they have to use for that revenue offset is not verifiable by any of the current accounting practices. And we are able to go to their annual account and say righto here is your operational revenue statement. It tells me how much it has been operating in surplus, and the surplus you have got. But the sum of all those DSP's and what you have allowed should add up to that. Well of course it would be no surprise for you to know that it doesn't.

This is something I have seen in one Council but the fuzzy mathematics is the one that is really hard because we took this one to Court. Now the existing traffic was 100. And this was to work out an apportionment for a brand new road that everyone was going to get a benefit from. So the existing traffic was 100. The traffic volumes for new users was 75, so the total traffic on this road is going to be 175. This is obviously just using raw figures. Now the Council in the assessment says – well 75 extra cars, that is an increase of 75% - you should pay 75% of the cost. The logic of that is unbelievable. We worked on this for a day and they couldn't see that the answer was in fact 43% so guess what we paid? We paid 75%. Now they are the sort of tricks they get up to and blow me down why lawyers can't see the

mathematical concept. This is so basic. This is kindergarten maths material.

One of the problems we have with both SWC and DLWC is this. First of all the concept of whether we use a modern equivalent asset and that is what was the asset in the ground worth in today's dollars if we did it by contract? The alternative that they are looking at is a replacement value and that is if you are going to do it today, gee maybe you have got to go and dig up the roads and the front paths and it has got to go down the side of this house. It is going to be much harder to build today. Now we say that what we pay for is what's in the ground. Unless you are going to replace that within the 30 year time frame of the DSP we will pay the equivalent of what it is worth today. And that is at the 3% discounted rate of holding charge.

The other problem we have is an absolute doozey and this might trick you a little. The Sydney Water Corporation use the 1996 value of the asset but they put it in the calculation at the date of construction. Now what this does to the sum is something else. DLWC aren't as tricky as that. They just let it all hang out. They just say this asset is good for 40 years and they just say righto what is 3% on this asset for 40 years. That gives me a number, divide by the number of Lots. That's the answer. Now that's where most of the difference was in that calculation I showed you previously. The reason why it came down from $3,500 to $537 was principally because they were charging interest for 40 years when the asset only had 10 years of life left in it. The other asset only had 5 years of life in it, but these guys were building 40 year's interest into the calculation.

The other one I wanted to show you was – this is more relevant to Section 94 Plans. This is just a pretty simple example of: say, Year 1 you had a population of 10,000 and then 12,000 in year 5. You can go through and you can work out the occupancy ratios and stuff and come up with the number of occupied dwellings. You might have 5% of those dwellings that are vacant. Then you might have a couple of percent of the Lots are vacant as well. And that's the sort of numbers you will get. The important point is that what Councils normally do is when they go to work out the calculations they say righto we have got 2,000 people and we are going to spend X amount of dollars so you divided the dollars by 2,000 they get a per capita rate. And you come along and say I have got subdivision and we are going to charge you on a base of per Lot. So they said oh well the nearest occupancy rate we can use I suppose is either 2.6 or 2.9 so they multiply 2.6 by the per capita rate and that is what they charge you. The only problem is that for the five-year growth of 2,000, the number of dwellings and the number of total Lots in fact only went up by 1,200. Now when you divide that into that you get a factor of 1.6. That means they are over-charging you by at least 60% because they just don't have the growth. They have got relatively more lots for the population that they have generated. If they collect on every new lot, the rate they calculated using 2.6, they will end up with 60% more money. Pretty fundamental. There is a myriad of these things. I don't think there is any limit to what these guys can do.

Fun with grants. This is an absolute doozey and we lost this one too. We won the All Sands case and that has been a pretty important decision back in 1990. We had a recent one with Hastings, when they argued successfully that the grants belonged to them. You know, what do you think you developers are doing taking grants off? So what they did they worked out how much. Then down at the bottom they said oh well we have got to pay 30% of all this. They said oh look we are going to collect so much in grants. Oh beauty, it is not going to actually cost us that much. Fantastic. So they said because they are not tied that means that

the full cost of the capital works has been apportioned to develop a contribution. They had the Oxley Highway and the Trunk Road 5534 and you name it. They had the complete work schedule in the Section 94 Plan and they just divvyed it up around the place. But they said grants shouldn't be taken into account because they are not tied. Now this is despite the fact that when we examined the evidence, they had already collected $4million in contributions because it started in 1993, then by the time it got to Court…. And it was traceable to the Section 94 Plan. Still nothing. So what that means is these guys had actually predicted in their Section 94 Plan that they were going to get $500,000 every year in Grants. They said oh yeah but we just put that in there. That is just in the Plan. It doesn't mean that you are going to get any of it. But despite the All Sands principle, what is now happening is the RTA are going to give them $10million and I think 60% of $10million is about $6million they are going to get from Developers. Can tell the RTA that maybe they could save some money.

The thing that hurt really was with Willoughby where the same problem cropped up with the same judge. Guess what happened? We won. And he quoted what he said in the previous case. Can you figure that out? It happens.

Lots of fun with money, interests, funds in hand, I have mentioned those before, and refunds. We are currently chasing $700,000 in refunds. The Council said in 1996 in their plan, oh look we said we were going to do this, this and this in the previous plan. We are not going to do it any more – that's okay. And they expected to walk away. And the clients have said "Hang on a minute, we paid for those things. Aren't you going to give us our money back?" "Oh no, no we will find something else to spend the money on. We are talking $700,000 for 4 clients.

Dispute Resolution, I mentioned those before. The current situation is that you can mediate anything you want to. You get agreement. It is not much chop because the Council can never get the authority to agree on the decision that you make on the day. Appeal is only available for Section 94 at the moment. Arbitration is proposed for Section 94. It is available for Section 73, that is Sydney Water etc. And it is proposed for Section 64. The solution is really that successful challenges rely on information. We need lots of it. There are a number of consortiums being formed around the place to fight these matters. It is the only way to go I have to tell you because you share the costs and share the risks so you need to get help early. And the resolution really is what a truckie said to me once. He said "Listen mate, the only way through is work hard, work smart and don't let the bastards get you down". I think that's about right. Thankyou.

MICHAEL PARKINSON:

Thanks very much Peter. I would just like to introduce Charles Gerard the Executive Officer of the Institution, New South Wales Division. He would like to say a brief word about Institution matters.

CHARLES GERARD:

Thanks very much. Greetings. Just a couple of very quick words about membership of the Institution. I know most of the surveyors here are members but a number of you aren't, and I would like the ones who aren't members to think about some of the benefits. We have put out a little brochure that contains a number of benefits. In fact we identified 19 benefits. I am not going to labour you with all of those just now, but a couple of them are - some of the things we do for example – is the entry of young people into the profession which is very important for those of you who might be moving on some time in the future. We have got to have young people coming into the profession to take up those positions.

Also continuing professional development we are very active in, and we have just completed a round of twilight seminars that has been very well supported and covered a wide range of topics. So that is another thing that I would like to mention.

Complaints handling and disciplinary procedures. Something we don't like to think about very often, but the Institution there is active in looking at those matters and assisting members in facing those issues if they have to.

Another aspect in this day and age of deregulation is the advent of private certification, and you will have heard earlier today that just yesterday the Minister for Urban Affairs & Planning has signed off on Strata Certification as for private certification and members can now qualify for that particular part of their practise.

Last but not least is our excellence awards. I think as an ex engineer I find surveyors tend to hide their talents under the bedclothes or the bushel or whatever it is. Excellence awards is one way we can show Government and the community what we are doing. It is going to be on 28 October this year and that is another reason for being a member of the Institution to get out there and show what surveyors can do. I would point out that with the membership fees like everything else, unfortunately there is an impact with GST but we have examined that at great length and we have made some fairly positive suggestions as to how that increase can be managed if you want to manage it. Those suggestions are laid out in the May and June issues of Azimuth. Those of you who aren't members won't be getting Azimuth so if you don't know what it says give me a ring in the office and I will tell you.

Finally I would just like to point out my colleague, Di North, who is the Executive Officer of the ACS, the Association of Consulting Surveyors, is going to be out there with me at afternoon tea time and I will be out there signing up people for the Institution. She's out there signing up people for ACS and for ACS Search. Thanks very much Michael.

SESSION 4

"LTO / LIC ISSUES"

CHAIRED BY MARK GORDON

LTO / LIC ISSUES

Chaired by Mark Gordon

MARK GORDON:
(Cumberland Group Committee)

This session is entitled LTO and LIC Issues. The first speaker that we have for you this afternoon is David Norris. David is a Senior Plan Examiner in the Plan Registration Branch at the Land Titles Office and is the current Liaison Officer for the Cumberland Group of Surveyors. He joined the Land Titles Office in 1972 and has made a career in the examination of boundaries and cadastral plans. A Senior Plan Examiner since 1980, his latest project was preparation & editing for the Registrar General's Directions for Plans. Assisting David Norris is John Waldron who is sitting over there and is going to be pushing the buttons and Ian McCormack who is somewhere in the Audience and he is here to answer all your hard questions. Without further adieu I will invite David Norris to get up and talk about LTO Issues.

LTO ISSUES

DAVID NORRIS:
(Senior Plans & Titles Advisor, Land Titles Office)

I would like to thank the Cumberland Group for inviting the LTO along to their seminar again this year. It is always a pleasure to come along and talk to the surveying profession. This session is on what is happening in that pile of stone in Queen Square at the moment. Current issues, current happenings, and what is happening to you.

The most immediate and topical event of course is the GST. Some would say bugger. The volume of Deposited and Strata Plans being lodged for registration has been increasing since late March, purely because of the GST and the effect it is having on the minds of the developing fraternity. We anticipated this increase as a result of that introduction but the extent of the increase could not have been forecast. April and May of this year saw a 40% increase in plan lodgments. 40%. It was anticipated at a recent meeting of the Urban Development Institute that this high lodgement rate would continue through to the end of June when GST comes into effect. The Institute also advised that there is an increasing sense of urgency by both Developers and homebuyers to beat the July deadline. Everybody wants to get in. Despite the substantial increase in the productivity of the LTO it would not have been possible to register all the plans lodged within the time frame expected by the clients by the end of June. In early April our 12-day turnaround target was for DP's at 93% and Strata Plans at 97%. We were getting most of them done in the 12-day target. However by the end of May the turn around times had blown out to 60% and 90% respectively. A significant drop. We fully realise that this drop in performance directly impacts on the conveyancing committee, community and with the prospect of unanticipated and possibly substantial financial penalties through the imposition of GST on transactions after the end of June.

The LTO being the end user in the development process will again be perceived as the big bad wolf, the agency that caused the hardship.

Here are the lodgement rates for plans over the last five years. You can see the recent rapid increase in business levels to an unprecedented high of 62 per day. 62 plans every day. On one day 95 plans were lodged. So you guys are obviously emptying your offices.

The only solution was to implement some overtime. It was worked on Tuesday, Wednesday and Thursday of last week and again on the Monday, Queen's Birthday holiday, all day. This is almost without parallel but we did it anyway. As a result of the effort we did an extra 330 plans in that period and we were able to bring the target back up to 80% for Deposited Plans and 98% for Strata Plans within our 12-day turn around target. So we are getting there. We hope to get them all done before the end of the financial year so everybody is happy but there is no way we will get them all done I am afraid.

With the introduction of the new Schedule of Fees on 1 July the Lodgment Fee for Deposited Plans goes up to $590. The fee for the majority of land dealings and for each new Lot in the new Plan goes up to $58, an increase of $1.

One fee that will be affected by GST is the one for preliminary examinations. It is a service, not a statutory fee and therefore gets caught whereas everything else doesn't. The new fee will be $649 for a preliminary examination. The Schedule of these new fees is listed in Information Bulletin 55. It can be accessed on the LTO website under Information Bulletin surprisingly enough. There also were some copies outside in the entryway there but I think most of them have gone. The website for those of you who don't know it, www.lto.nsw.gov.au and everything is there for you to look at any time.

The other effect that will come in on 1 July is for ABN numbers. Surveyors who do their own lodgment of plans are reminded that they must supply their Australian Business Number for taxation purposes on lodgment. This will also apply to E-plan so if you are going to lodge it electronically you will still have to put your ABN number down. And for those who go the other way, they are going to get some of their money back. The ABN for the new government enterprise that includes the LTO is called LPI – Land & Property Information New South Wales – the number is that one there, 14330611086 so you can take a note of that so you can put that on your Tax Invoices no doubt.

A continuing project within the Land Titles Office has been the CIPP Project, the Continuous Improvement Program for Plans that we instigated a couple of years ago which we try our level best to increase the quality assurance of Deposit and Strata Plans right across the board. The prime aims for CIPP this year, and I will just quickly run down the list: to continue to foster the surveyor liaison program; to continue to run seminars for the surveyors and the legal fraternity; the review the impact of the compulsory lodgment of checklists, - not much good doing it unless we get some data back to find out what is happening; and what effect the compulsory lodgment of plan checklist has on the plan error rate, whether it really is doing anything. Hopefully it is. All evidence so far in the case that it is.

To assess the possibility of using the plan profile that each of you get in the mail as a tool to reduce plan processing times. I think people have spoken to you about what we would like to do at other occasions and I haven't got the time to run through it now as we are running behind time. But if you wish to talk to me about it afterwards feel free. Please come and see me or to one of the other LTO staff guys here. They will be happy to talk to you about it.

We also intend to introduce and continue to promote e-plan to our clients. E-plan is definitely the way of the future. And to expand the use of electronic business communication systems generally. So that you will get more and more of your requisitions if you are so unlucky to get one. Will come to you over the Internet by e-mail rather than by snail mail. Hopefully that will speed things up a bit.

You all received a copy of your individual plan profiles recently. The overall results for 1999 were very encouraging. It culminated an all time low error rate of 16% of all lodged deposited plans for the month of December last. 16%. That's really good going guys. Pretty good work.

It was disappointing therefore to find that January's figures escalated back up to 42%. As we all know everybody prefers to lodge their Deposited Plans in the LTO just before Christmas so they can go and have a clean slate and go off and lay on the beach at Surfers Paradise. Hopefully when they get back there will be a whole stack of registration notices on their desk. Unfortunately this year they have got a whole stack of requisitions instead. They cut a few corners obviously in December. The percentage of errors has dropped to 26% in March and 25% in April so it was definitely just a Christmas glitch.

The performance data for Strata Plans has improved from the 45% to 50%. That is every other Strata Plan was requisitioned. That was the last quarter of 199, to an average of 30% for the first quarter of this year. So that is a good improvement. We congratulate you all. And the figure improved to 24% for the first couples of months and the first weeks in April. So we are getting there. Well done.

A couple of other things I should mention and I am keeping this talk as quick and as sweet as possible. The Registrar General's Directions for Plans – all three volumes have now been out for some considerable period of time. We find them very useful. We believe that you find them very useful as well and we believe that the marked improvement in Plan quality and the large number of personal endorsements that we get confirm that you guys, the industry, has embraced the Directions as a quality improvement tool.

However we have to keep the things up to date and with policy changing just about every other day it is a big job. So the only way we can keep it updated is to do that electronically. We can't keep giving you each another copy of the Directions in hard copy every time there is a change. That would be a task herculean in scope. So the Directions are available on the LTO website. They will be continually updated on the LTO website. Please look at that website now rather than your hard copy because ultimately there is going to be a big difference between the two.

Now so that you know that we are updating things, all future editions in Azimuth will have a list of what we have done. How we have amended it, how we have updated it. Any suggestions about the Directions or any queries about what is in the Directions, its scope or its contents, or what is in there or what's not in there, direct them to Ian McCormack over there. The Admin Officer Practice and he will be more than happy to take any feedback you supply in his direction.

I now go on with a brief update on E-plan. Everybody knows about e-plan. Everybody is

probably bored to death from being told about e-plan. It is a good system. The people who are using it all swear by it. It is definitely the way of the future. It is the only way we will be able to continue to serve the members of the New South Wales population by prompt and accurate Registration Plans as we go through this 21st Century.

In May all Registered Surveyors received notice of the Proposed Implementation Plan. I will run through it again and stress that e-plan will always be an optional service. You don't have to use it. It is in your best interest that you do but you don't have to. The existing manual lodgment processes will remain. As you know electronic lodgment of pre-examination Plans has been available since October last year. We have had 85 Plans in since then lodged for examination over the Internet. And 75 surveyors are now registered on the website.

Stage 1 of the full evaluation, full implementation of e-plan, in October it will take place, is restricted to Government Authority Plans not requiring subdivision consent. So if you fit into that category and you do those sort of plans, in October you will be lodging them, or have the capability of lodging the Final Plan electronically. Not the pre-examination Plan, the Final Plan. These Plans require a minimum of signatures, which is why we can start off with them and will provide a test platform for the requestion to register document.

Stage 2 will take place in November and will extend the implementation to include Private Lease or Proposed Easement Plans, again not requiring a Subdivision Certificate. Neither Stage 1 or Stage 2 that I have just mentioned will require and do require the reproduction of the CT so we still don't have to worry about that aspect of it. So Stage 2 is Easement and Lease Plans.

Stage 3 takes place in December to match what Warwick Watkins said first thing this morning, where we want a complete electronic environment by the end of this year. It will provide for Strata Plans and all Deposited Plans except for Community Plans to be lodged electronically. Along with a request to register and we will have the optional CT problems resolved by then, we have been told. We have to. We have been told to. That's the target.

Stage 4 takes place in February 2001 and includes all the other types of Plans including Community Plans, all those Plans that are usually accompanied by a Complex Management Statement or Development Statement. And then everything will be done.

I have got 5 minutes and fortunately I will hopefully take 5 minutes. As outlined in the e-plan model referred to the profession for comment and published in the LTO website in August 1999, a component of full electronic lodgment of Plans is to be the Geometry File for the completed Plan. The purpose of the file is threefold. And I will just run through them: (1) To provide you surveyors with a quality check on the mathematics of the Final Plan in order to satisfy the accuracy provisions and the requirements of the Survey Practice Regulations. (2) To provide the Land Titles Office with evidence that the Plan is accurate as to both the closes and the areas; and (3) to facilitate the automated update of the New South Wales State Digital Cadastral Database. We will just be able to plug them straight in. The Land Information Centre is currently evaluating a simple software package developed and used by the Surveyor General in South Australia, and that's for the same purpose, to do exactly what I have just said. It is anticipated that the software will be made available for free download from the e-plan website so we will give it to you for nothing. You can put it into your systems and away you go. The E-plan Project Team is to meet with the Institutions Practice

Committee next Tuesday to demonstrate the use of the software, so you will get feedback from that quarter as well as to how well it works.

For those surveyors who have supplied an e-mail address it is proposed to forward a digital version of the e-plan model directly to you. This e-mail will also request supply of your ABN number so we can stick it on file and that will be for inclusion on the Tax Invoice to be issued following lodgments of the Plans. Very much like that mentioned in the last session.

Again surveyors are encouraged to apply for a user id for e-plan, a password, and make use of the test data lodgment facilities. So give it a go and have a look. You might find out it is not as hard as it sounds. I will leave it at that. We are a bit short for time. I am available and Alistair, John, Ian and Barry are available for questioning later on. Please feel free. Apart from that thank you for your time. We appreciate the great rapport that we have with the surveying profession. I hope to speak to you again shortly. Thank you.

PROPOSED REVIEW OF THE SURVEY PRACTICE REGULATIONS 2001

PAUL HARCOMBE:
(Deputy Surveyor General)

The Director General this morning talked about the restructuring that is happening at the top levels within the Department of Information Technology & Management. I would like to talk to you about something probably many of you deal with on a daily basis and an opportunity to be involved in its improvement. That is the remake of the Surveyors Practice Regulation.

The Review is part of a 5-yearly program where all regulations on our Statute Books are actually reviewed for their relevance. If they are not relevant and they are not current they will be removed. So it is a great system to make sure that we haven't got anything obsolete, and this is continuous improvement.

These Regulations have to be remade by the 1st September next year. That might seem like a long time away but we have to start now in terms of talking to you, the profession, talking to the stakeholders and getting that feedback about they can be improved. This is not associated with the review of the Surveyors Act although obviously the two are linked, but the idea there is to remove the ambiguity, the confusion, make things clearer and try and improve them.

A little bit of the history. The Regulation from 1933 to about 1990 existed for nearly 50-60 odd years without any major amendments. In 1990 when the subordinate legislation started, the sunset clause started, we did a number of things. We brought all the Crown Land Survey Directions into alignment so we had one standard for all surveys of Crown and Freehold Lands. We brought in the Ordinance 32 marking and we have brought the permanent marks in line with the Survey Coordination Act. 1996, the current Regulation, we maintained the clause numbers just to keep that continuity.

The program for the remake, we hope to have the initial consultation starting with you and also with another group back in April to get that input. By March of next year we have to have the draft Regulation prepared. That's done by the Parliamentary Counsel and we have to have Regulatory Impact Statement prepared which is about defining the cost, the benefits and why we need to continue with this Regulation. Then of course by May and August the process takes over and hopefully we will have a new Regulation commencing next September.

We have already started the consultation. We have met or took the opportunity at the APAS Conference earlier this year where we had 80 Private and Government Surveyors together and we have already started to identify some of the areas and these will be familiar to you, that need some improvement:

Clause 8: the zoning has given some people some difficulty. We need to look at the definitions of City and Country and more clearly relate those to Land User Zoning. We probably also need to have some sort of category for Rural Residential Surveys so we are going to deal with that one.

Remote Sensing methods, this is Clause 16. Originally it was designed to allow aerial photography or remote sensing for the water boundaries. We need some clarity there because GPS is obviously the way or a common tool now, and it should be referred to. We also need to update the Surveyor General's Directions so there is a Best Practice Guideline available to you on how to use real time DGPS.

Clause 18: Easements. Easements have been a pain. It is not clear if marking of corners is necessary, so there is a whole area of confusion there about the use of reference marks, the use of permanent marks. We want to clear that up as well and make it unambiguous.

Ident Surveys have been identified - Clause 28 – as needing some attention. It has been suggested that the location of improvements should be specified in the Regulation rather than being left to the discretion of the surveyor. We would like to hear what you think about that, and whether that needs to be tightened up or improved.

Clause 32: the Recording of Datum Line. It has been suggested that do we really need the co-ordinate schedule on the face of the Plan, be it in hard copy or electronic form, into the future. Or do we need it there as a means of tracking what the past, the surveyor did previously and a bit of an audit or a recovery trail. We would like your thoughts on that.

Clause 34: the Placement of Pegs. Should the Plan of Survey indicate if the peg has not been placed. How many times have you wondered what the surveyor did?

Clause 35: Reference Marks. There has been a fair amount of confusion with 37(3) with regard to this distance between reference marks. The 100 metres, the 300 metres. Where permanent marks only are used, should we have a second reference mark? Is 30 metres too far from a corner? Remember this went back to how far is near or how near is near. We put in 30 metres so that needs to be clarified.

Country Surveys. Obviously two reference marks may not be enough for a large survey. On the flip side, applying a prescriptive rule, we may all end up with too many reference marks

for Rural Residential. So we need to look at that and come up with a balanced approach on that one.

On the whole subject of Permanent and Reference Marks which are referred to in 6 clauses, can we more clearly prescribe and have those together in a way that makes more logical sense?

Clause 49, Electronic Records. We are in the era of e-plan, e-commerce. There is no doubt about that. It is here now and we would encourage you to take it up wherever you can. It really begs a question. Are paper records really still necessary and probably more importantly, will electronic records be acceptable to a court. So there are probably a few legal issues that we need to address.

Clause 59: There is no requirement to show offset areas. I believe there has been a convention for many years but there is potential for confusion and ambiguity. Maybe by specifying that you have to show it will remove that ambiguity and make things clearer.

Approvals: Under the current Regulation there are no references to approval for railway boundaries. There are a number of State Government Agencies that you have to deal with in terms of approvals for boundaries. Should we group all of those together so they are all there and fairly succinct?

Exemptions: At the moment exemptions can only be allowed under Clauses 18, 30 and 33. Should we broaden that to bring in a bit more flexibility without compromising these standards which I must stress, are the minimum standards. So there is that possibility as well.

With the new Regulation I mentioned that we have retained the clause numbers from 1990 through to 1996. I would ask you the question of how many of you here would be happy with a new set of clause numbers if it was made more logical. In other words if it was clearly set out, was a more logical way. Would it worry you if you had to deal with a whole new set of numbers? Hands up those who would be worried if we came up with a new set of numbers but the Regulations were clearer and more consistent and removed all the ambiguity? I'll take that as a yes. There is one.

So what next? Like these forums, we will be attending other group meetings around the State over the next few months. We will be talking about the Regulation. We will have a bit more time to talk about some in detail, some of the issues and concerns that you have. At this stage we are suggesting that all the submissions really from the group should come through the Survey Practice and Legislative Sub-committee. That's got to be in by December. Tomorrow we are having a session here together with the Committee so we will already start to look at some of those issues and better define the process.

So just to close off and I am mindful of the time, I thought I would just bring your attention this combined scale factor. Obviously under the new system of MGA we are getting lots of questions about when do I need to and how do I simply calculate the combined scale factor? It is there in the SCIMS output if there is a height for the mark. We have developed an Excel 5 Spreadsheet, which is available. We are going to put it on the web but in the meantime if you want to e-mail us at cmu@lic.gov.au we will give you a copy of that spreadsheet to make life a bit easier. So thank you for your time and I look forward to seeing you later outside.