

# **Improving the Coordination between Local and Regional NRM Planning**

Facilitation Paper

Australian Local Government Association

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This Report has been prepared on behalf of:

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1	Introduction .....	2
2	Tools for the Better Coordination of Local and Regional Planning .....	5
2.1	Context .....	5
2.2	An Overview of Local Government Planning .....	7
2.3	Principles & Guidelines for Good Planning Governance .....	10
2.3.1	Overarching Principles for Good Planning Governance .....	11
2.3.2	Operational Guidelines for Good Practice in Planning Systems .....	13
2.4	Tools for Facilitating Better Coordination between Regional and Local Planning .....	14
2.4.1	Plan Making .....	15
2.4.2	Plan Implementation .....	19
2.5	A Final Word on Resources .....	21
	Appendix 1 – Background Information about Regional NRMs .....	23
	Regional NRM Organisations .....	23
	The Origins of Regional NRM Organisations .....	23
	The Role of Regional NRM Organisations - The NSW Example .....	25
	The views of the current local government NRM facilitators .....	27
	Appendix 2 - Principles & Guidelines for Good Planning Governance .....	29
	Overarching Principles for Good Planning Governance .....	29
	More Detail about Operational Guidelines for Good Governance Planning .....	30
	Good Practice in Plan Making .....	32
	Plan Implementation .....	37

# 1 Introduction

SGS Economics and Planning Pty Ltd (SGS) were commissioned by the Australian Local Government Association (ALGA) to provide advice about better integration of local government and regional planning activities.

As part of the regional Natural Resource Management (NRM) arrangements, 8 local government NRM facilitators have been employed in a partnership arrangement between the Australian Government and local government associations. This arrangement is a project to strengthen the relationship between Councils and the regional NRM organisations.

In recent years there has been a growth in regional environmental initiatives aimed variously at natural resource management issues such as the protection of water catchments / water quality, biodiversity, and sustainable forestry. More often than not, the rise of these initiatives has been promoted by Australian Government offers of special funding to state and / or local government towards achieving the initiatives. Example programs operating on this basis include:

- The Natural Heritage Trust;
- The National Action Plan (for Water Quality and Salinity); and
- The Australian Government Water Fund.

As well as these initiatives sponsored by the Australian Government, the States and Territories have also independently introduced various mechanisms that operate at the regional level to influence planning and land management outcomes. These mechanisms may not directly relate to natural resource and land management but they do allocate significant resources for regional planning for sustainable development. Examples include:

- In NSW, the Department of State and Regional Development's creation and sponsorship of regionally based economic development boards and corporations;
- In Victoria, Regional Development Victoria (RDV) which, amongst other things, prepares regional economic and community development strategies and policies; and
- In Queensland, the Department of State Development's creation and sponsorship of regional development organisations.

Dedication of additional Australian Government, State and Territory funds to sustainable development in Australia's regions is certainly welcome. However, there are always risks when crafting programs around single purpose objectives to operate at one level, without having careful regard for the constitutional division of responsibilities between all three spheres of government in Australia. These risks can materialise as discord between objectives operating at different levels of government, and duplication in reporting, accountability and operational responsibilities.

Local government, both in its own right and through regional associations of Councils, clearly has an established and pre-eminent role in land and natural resource management. This role is established through local government's mandated functions in statutory land use planning and its direct management of key environmental reserves and assets, including some streams and waterways. Meanwhile, the regional natural resource management (NRM) organisations which have developed under the programs noted above are accountable for outcomes which may pre-

empt or otherwise constrain the functions of local government. Some NRM organisations are undertaking regional planning exercises which, in many respects, cover the same ground as the planning efforts of Councils. Moreover, the channels of communication and co-ordination between Councils, regional associations of Councils and the NRM organisations are often poorly defined.

In a recent survey of these issues the ALGA found that engagement by Councils in regional NRM planning processes was limited. Whilst 96% of Councils said they were aware of or were participating in regional NRM planning processes, the *degree* of participation varied greatly. Some 73% of Councils said they attended regional NRM briefings, but only 12% reported inputting local information into a regional NRM plan. And whilst most Councils believed the regional NRM plan in their area does address local issues to some extent, very few believed that local issues are addressed well by the regional NRM plan.

These survey results suggest that better co-ordination of the established planning roles of local government with the strategic planning process of regional NRM organisations needs to be found.

### The Purpose and Scope of this Paper

This paper is part of a wider exercise mentioned above, under which 8 local government NRM facilitators have been employed in a partnership arrangement between the Australian Government and the local government associations. This partnership's mission is to strengthen the relationship between local government and the regional organisations.

To that end, and according to the brief for this project, this paper:

*'...is to outline the current opportunities and barriers that exist in improving the integration of local government planning processes and those undertaken by the regional NRM groups.'*

More specifically, the brief also requires:

*'...the development of a paper and a set of tools to assist NRM facilitators to achieve better integration between local government planning activities and those undertaken by the regional NRM organisations.'*

Against this background, this paper presents a 'think piece', with the intention of setting out some principles to guide an effective collaboration between local Councils, regional groupings of Councils and regional NRM organisations.

As well as identifying principles which might guide the design of co-ordination arrangements, this paper also proposes the 'software' required to promote co-operation and genuine team-work at the regional level. Such devices include discussion forums, standing advisory committees, regular briefings of key decision makers, project bulletins and so on.

## Method & the Structure of the Paper

This paper has been developed on the basis of a 'desk top' research exercise. Apart from drawing on SGS experience in the planning field at all levels of government, research has been conducted via web / literature searches and reviews, and telephone interviews with the majority of the 8 local government NRM facilitators.

The study has progressed in four stages:

- Background research and identification of key issues;
- Nomination of potential 'key principles' for guiding integration;
- Feedback from the ALGA on the identified key issues and proposed key principles for guiding better local and regional integration; and
- The preparation of the final paper, including the nomination of key tools and processes to assist the implementation of the key principles.

To keep the main paper succinct, Section 2 contains the essential aspects of this paper. The section sets out:

- An outline of the context for this paper by providing an overview of findings from the ALGA survey, and the nature of current relationships between regional NRM organisations and local government;
- A brief discussion of the planning that local governments do;
- A framework of overarching principles and operational guidelines for an appropriately integrated planning system which operates across a number of layers of government; and
- In line with the framework, a series of tools and mechanisms which could be adopted to facilitate the better integration of regional and local planning processes.

There are then two Appendices which contain substantial supporting context, detail and further information about matters discussed in Section 2:

- Appendix 1 outlines the origins, nature and role of regional NRMs and sets out the views of current regional NRM facilitators; and
- Appendix 2 provides detail in support of the principles and guidelines framework used to develop tools and mechanisms for better integration.

## 2 Tools for the Better Coordination of Local and Regional Planning

### 2.1 Context

#### The ALGA Survey

The introduction to this paper briefly recalled some of the results from the recent ALGA survey.

Highlights from this survey include:

- As stated in the introduction, 96% of Councils said they were aware of or were participating in the regional processes; however the degree / quality of participation varied greatly. Whilst 73% had attended briefings, only 12% reported inputting local information to a regional plan;
- The primary reason cited for this lack of input of local information was a lack of resources, with 56% of Councils highlighting a lack of human or financial resources to effectively participate;
- Half of the responding Councils have an officer dedicated to natural resource management issues;
- Most Councils believe the regional plan covering their jurisdiction does address local issues to some extent, but very few believe local issues are addressed well;
- More work is required to promote the Biodiversity Toolbox for Local Government as a useful resource for local government as only 36% of participating Councils were aware of its existence.

The conclusion to be drawn from this is that local government's ability to effectively participate in and contribute to regional NRM processes is hampered by a number of factors, including resource constraints. As such, a very limited amount of local information is finding its way into regional plans. There is, nonetheless, a high degree of general participation in regional planning processes, which indicates that local government is finding the time to be involved at some level. Thus it may in fact be the *type* or *quality* of participation that is the key to better local contributions to regional NRM plans.

#### The Current Relationship between Regional NRM Organisations and Local Government

In general, the development of regional NRM plans in all jurisdictions has so far progressed more or less according to the following formula:

- Preliminary consultation with a broad number of regional and local stakeholders;
- Action plan development by the regional NRM organisation; and
- Final consultation with regional and local stakeholders for comment and review, before seeking State or Territory government approval.

In this process, local government is merely one of a very broad range of stakeholders consulted. There is no direct requirement for existing plans and planning processes, for example those made and implemented by local government, to be taken into account.

A more detailed overview of the intended and actual relationships between regional NRM organisations and local government across all jurisdictions provides some insights about expectations and practice of formal and informal representation of local government in regional NRM processes. Table 1 below summarises arrangements for each jurisdiction:

**Table 1. Formal and Informal Relationships Between Regional NRM Organisations and Local Government**

	Council input into the development plans (ALGA Survey)	Legislation (about constitution of the Regional Boards)	Bilateral Agreements (Federal-State)	Regional NRM Agreements (State/Territory - Local Government -)	Facilitators Views
NSW	60%	'the board of an authority is to consist of such members as are appointed by the minister'	LG Reps to be represented on CMA Boards	'the Agreement acknowledges the need for local Government representation on the Natural Resources Advisory Council'	LG is represented well.
Victoria	12%	'An Authority must consist of not more than 15 members appointed by the minister after consulting with the Minister administering the Agricultural Industry Development ACT 1990'	LG Representation on CMA Boards should be persons with experience and knowledge of LG.	NA	LG needs better representation..
Queensland	?	'the Minister must consult with the Local Governments and interest groups the Minister considers appropriate about the membership of the proposed committee'	Do not specify type and position of LG Rep.	NA	LG is represented well.
Northern Territory	15%	'matter affecting the environment which is, in the opinion of the Minister,'	Do not specify type and position of LG Rep.	NA	LG needs better representation..
South Australia	3%	The NRM Council consists of 9 members appointed by the Governor on the nomination of the Minister....1 must be nominated from a panel of 3 persons submitted by the LGA'	Do not specify type and position of LG Rep.	NA	LG needs better representation..
Western Australia	15%	'The Conservation commission comprises 9 members appointed by the Governor on the nomination of the Minister.'	Do not specify type and position of LG Rep.	NA	4 of the 6 regions have a dedicated LG representative.
Tasmania	27%	The Council consists of not more than 16 persons appointed by the Minister'	Do not specify type and position of LG Rep.	'Important to note that consultation does not necessarily result in a change in accordance with feedback provided'	LG is represented well.

Table 1 reveals a number of things:

- As already discussed, the ALGA survey found that, apart from in NSW, input of local information to the development of regional plans is perceived to be very low.
- Most of the NRM bilateral agreements between the Australian Government and State / Territory governments give very little if any specification of or guidance for how local government representation should be achieved.
- Most of the State and Territory legislation creating regional NRM organisations has vested significant power for determining the constitution of NRM boards in each jurisdiction's supervising Minister. However, in some cases (e.g. Queensland and SA), consultation with local government about Board membership is required.
- In NSW and Tasmania, where further agreements have been or are being developed between State government and regional NRM organisations, there is some movement towards better specification of how local government should be represented in regional NRM processes.
- Finally, there are mixed views amongst NRM / local government facilitators in each jurisdiction as to the quality of local government representation in practice, with 4 (NSW, Queensland, WA

and Tasmania) indicating or implying that local government is represented relatively well and 3 (Victoria, NT and SA) indicating or implying that local government needs better representation.

The table also suggests that the better outcome for input of local information in NSW may have something to do with the early development of the NSW NRM plan occurring under the former Catchment Management Board (CMB) model. It may be that some aspects of the former CMB model (including the developing 'culture' of engaging local government at the regional level) flowed into the commencement of the new model, but without any proscribed requirements for local government representation and engagement, it may be that these aspects have not been sustained.

### The Context in Summary

In summary, the current context in which the integration of regional NRM processes with local government is being attempted highlights the following:

- The regional NRM process is a new and evolving layer of planning which is responding to the 'top down' NRM policy imperatives of Australian and State / Territory government;
- This new layer of planning has been introduced into a system of existing planning processes and plans which operate at the local government level;
- Whilst there is some intention that local government be represented in and provide input to regional NRM processes, at present the degree and quality of this representation and input is quite limited;
- The mechanisms for integration of local government in regional NRM processes are very inconsistent across the nation;
- There appears to be a lack of understanding and clear demarcation of the respective planning functions of regional NRM organisations and local government; and
- A number of improvements could be made to current arrangements that could enhance the integration of regional and local planning processes.

## 2.2 An Overview of Local Government Planning

Having set out the current context from the point of view of the regional NRM planning process, this sub-section provides an overview of local government planning. This overview 'fills out' the context by explaining the planning and land management processes that local government uses, and pointing out where local government planning processes can contribute to and integrate with regional planning. This will demonstrate how certain aspects of existing local government planning processes dovetail with the objectives of regional NRM planning processes.

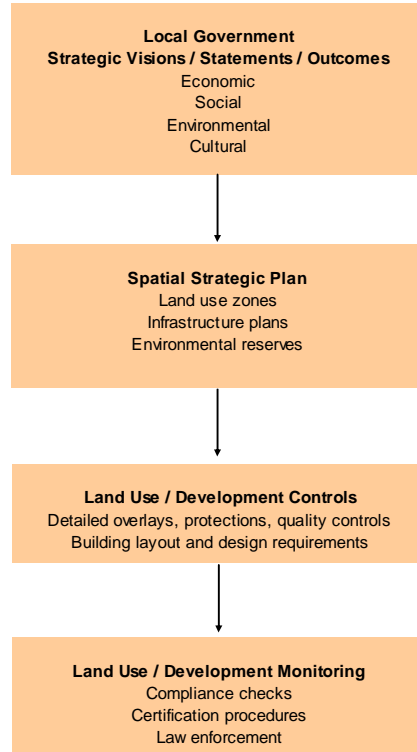
### The focus of local government planning

Put very simply, local government planning is focussed upon three elements:

- Strategic planning;
- Land use control and monitoring;
- Development control and monitoring.

The above processes are summarised in Figure 1.

**Figure 1.** Simple outline of local government planning processes



*Strategic planning* refers to broad, longer term direction setting for a local government area. Insofar as strategic planning relates to land and resource management, strategic planning turns its mind to finding a balanced way of managing the following priorities:

- The social and economic demographics of the local government area, i.e. matters such as expected population growth, employment, infrastructure and services needs and constraints in response to expected population growth;
- The environmental and cultural qualities of the local government area that are worthy of enhancement and protection;
- Economic development needs i.e. existing commerce and industry, strengths & weaknesses of, opportunities for and threats to future commerce and industry, existing and future 'hard' and 'soft' infrastructure requirements; and
- Prevailing major policy directions such as prescribed 'State Planning Policy' or general principles of sustainability.

Local government strategic plans usually express broadly worded 'strategic visions', such as the Municipal Strategic Statements that are a compulsory part of Victorian local government planning schemes, or Desired Environmental Outcomes that have the same role in Queensland. These

visions appear upfront in planning schemes to guide the development of greater detail for how the strategies are to be achieved.

In turn, *spatial* strategic plans respond to these strategic visions by 'marking out' how land throughout the locality should be used and managed in future so as to accord with the stated visions. Spatial strategic plans also, as a general rule, appear upfront in planning schemes and visually describe broad 'zones' of land use and management. Usually, these plans show areas such as:

- Where future residential, industrial, commercial and rural land use is to take place;
- Where land is reserved for the provision of existing and future infrastructure (roads, water supply etc) and services (schools, hospitals, shops, recreation areas etc); and
- Where land is reserved to protect environmental qualities (rivers, streams, water catchments, coastal zones, vegetation, scenic amenity).

Strategic plans are periodically reviewed and local government policies – including planning policies – are adjusted accordingly.

It can be seen that parts of this strategic planning phase of the local government planning process closely relates to the land / resource management objectives pursued by regional NRM organisations, particularly with regard to determining areas of land that should be reserved to manage and protect environmental qualities. As such, in a best case scenario, a local government's strategic visions relevant to environmental and natural resource management should align with those of the region, and vice versa. More discussion of how this can be achieved is to be found in Section 4.

*Land use control and monitoring* refers to the detailed process of ensuring that existing and proposed land use within a locality accords with the strategic plan. As well as having marked out general land use zones, Councils will specify other controls and mechanisms in greater detail within the planning scheme. For example, the Council may break a zone up into sub-zones where 'overlays' apply. Overlays can specify different qualities such as the density of residential land use allowed, or other specific land use management controls at the very local level.

Public and private agencies and individuals come forward to local government with ideas / applications to use parcels of land in certain ways. A proposed land use is approved or refused depending upon the degree to which the proposed use respects the general and more detailed requirements of the Council's planning scheme. An approved use receives a permit, and the permit can nominate any special conditions that apply to the land use.

Land uses existing at the time a planning scheme is made are, in general, allowed to continue 'as of right'. However, changes in the *future* use of such land are subject to the same processes as those that apply to proposed new uses.

Local government will also, from time to time, monitor land uses by conducting compliance checks to ensure that permission conditions are being met. Laws and by laws protect planning objectives and deliberate breaches of planning policy and permissions can be dealt with by the courts. These monitoring procedures are often used where there is an environmental quality at risk because of a particular use. A common example is that of industrial uses located next to streams or within

water catchments. Permission for such uses often comes with conditions relating to how site runoff or discharges are to be managed.

Again, here it is possible to see how regional NRM and local planning objectives may dovetail.

*Development control and monitoring* is closely related to land use control and monitoring. However, development control refers to standards and outcomes required of the built form. As such, matters such as building heights, layouts, setbacks and environmental design requirements are specified in planning schemes – generally or as overlays. Planning permission and building approval is granted with or without conditions for proposed buildings that respect development controls. Monitoring occurs through certification processes and compliance checks. This aspect of local government planning is more removed from the regional NRM context than others, although it can still be important, for example where an approved building design imposes a standard that achieves an environmental outcome (such as grease traps for ‘scrubbing’ grease from industrial discharges into water systems).

In short, existing local government planning systems and techniques have a lot to offer the achievement of objectives set at higher levels of government – regional, state or national. What is required to make the most of this potential is a framework of principles and guidelines for good planning governance, in order to guide the integration of planning systems across all levels.

## 2.3 Principles & Guidelines for Good Planning Governance

The following principles and guidelines provide the framework for developing tools which can be used to improve the relationship and coordination between local and regional planning.

In this section, we make reference to a set of ‘*overarching principles*’ and ‘*operational guidelines*’ which promote good planning governance, with a particular emphasis on the integration and cooperation of different levels within any planning system. These derive from previous SGS projects<sup>1</sup> which, in various contexts, have debated and distilled the fundamental elements necessary to achieve good planning governance.

The *overarching principles* relate to planning governance arrangements at the macro level. Several of these principles are applicable to other spheres of public policy, but may need special interpretation in the context of planning, bearing in mind that outcomes from planning depend upon a very long term amalgam of well managed public and private interests which is virtually impossible to unwind if mistakes are made.

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<sup>1</sup> For example, SGS (2005) Renewal Corporations – Policy Template (prepared for the Property Council of Australia); SGS (1999) Liveable Communities – A National Policy Agenda (prepared for the Royal Australian Planning Institute); SGS (1998) Managing Urban Systems (prepared for the Centre for Developing Cities, University of Canberra)

The *operational guidelines* relate more to good practice in the day to day administration of the planning system, dealing respectively with the processes of 'plan making' and 'plan implementation'.

### 2.3.1 Overarching Principles for Good Planning Governance

Recent debate in Australia about effective planning governance - which includes the work of the national Development Assessment Forum (DAF) and the critiques of a new generation metropolitan strategies (e.g. Melbourne 2030) - has crystallised some fundamental principles for good planning governance. The principles can be summed up in terms of:

- Subsidiarity;
- Democratic policy making; and
- Separation of policy making and policy implementation roles.

#### Subsidiarity

The concept of subsidiarity concerns the sharing of power, the default position being that decisions should be made at the lower level in a hierarchy of communities (that is, local government in the current context) unless it can be shown that such decisions will compromise the legitimate interests of higher order communities (metropolitan, regional, state, national). Subsidiarity is the idea that a higher authority (for example, a regional planning body) should have only subsidiary functions, i.e. is engaged in performing only those tasks which cannot be performed effectively at a more immediate or local level.

How this principle translates into practice is best demonstrated by identifying a hierarchy of planning issues which aligns with the spatial hierarchy of community (see Table 2 in Appendix 2 for an illustration of this). Ideally, each community of interest in this hierarchy should be represented by an appropriate planning agency, which would have more or less unfettered discretion in the matters falling within its jurisdiction, pursuant to the subsidiarity principle. Agencies might provide inputs to the decisions made by higher level or lower level agencies, but would not have the power to veto or otherwise compromise decisions which give the best outcome for the respective levels of communities of interest.

#### Democratic Policy Making

Policy determination within each of the spheres of responsibility for national, state, regional and local agencies should engage and involve the communities of interest in question. Indeed, policy formulation should be accountable to these communities in the sense that they have the ultimate power to overturn, rescind or roll back decisions taken by the relevant institutions.

The mechanisms by which communities express a democratic verdict on the planning issues at hand will depend on the sphere of community which is making this decision. At the local level, direct participation by affected households and individuals and 'one on one' consultation of stakeholders is often practical and warranted as a means of democratic accountability, as well as periodic elections of Councillors. Moving up the hierarchy of communities of interest, the implied level of delegation to elected members increases. Input from affected parties is increasingly

mediated through formal structures designed to avoid capture by particular interest groups. Affected groups have less 'control' in a day-to-day sense precisely because their interests should not prevail over the greater good within the sphere of community in question.

### Separation of Roles

Having determined policy on a democratically accountable basis, such policy ought to be enforced dispassionately by an arm's length executive body. Otherwise, the planning system becomes open to accusations of complexity and inconsistency (which creates investment uncertainty), or worse, of creating one set of rules for some and one set for others.

By making a clear separation between policy formulation and enforcement, policy makers have a clear incentive to 'get the plan and its attendant rules right'. This, in turn, provides an incentive to undertake rigorous strategic planning with appropriate consultation methods.

Having said this, it is not always possible to establish technical rules to cover all prospective planning scenarios. Indeed it is often necessary to establish decision guidelines which require interpretation at the time of development assessment or plan implementation. To the extent that such interpretation entails policy formulation (i.e. deciding what is important and not important from the perspective of the wider community on a case by case basis), such interpretation should be in the hands of democratically elected decision makers.

As mentioned above, Appendix 2 contains Table 2 which demonstrates how planning policy operates in line with these overarching principles at various levels of community.

### Applied to the Regional / Local Planning Context

When applied to the regional NRM / local government planning context, these principles suggest the following directions:

- To achieve subsidiarity, a clear understanding of what local government planning can do / should do / is already doing to achieve and support NRM outcomes, and, based on that understanding, where regional NRM organisations can best provide leadership, coordination and address gaps across the region;
- To achieve democratic policy making, ensuring that there is adequate inclusion of the views of the communities subject to a regional NRM plan, if not by direct, effective and sincere consultation with local communities then by direct, effective and sincere consultation with elected local government representatives;
- To achieve separation of roles, finding and developing an arm's length mechanism for implementing regional NRM plans and policies. This could include leveraging the existing agents of plan implementation at the local government level i.e. local government planning departments / professionals, and / or a regional level executive body of planning professionals.

## 2.3.2 Operational Guidelines for Good Practice in Planning Systems

The operational guidelines set out below are designed to achieve the overarching principles from above. It is useful to divide the guidelines into two related but separate elements which reflect the nature of all planning systems. That is, all planning systems can be analysed in terms of two primary elements:

- Those parts of the system to do with the *making of plans*; and
- The processes and procedures by which *plans, once made, are implemented*.

Thus, separate operational guidelines for plan-making and plan implementation are considered in this paper.

In Appendix 2, there is substantial detail about plan-making and plan implementation and what represents good practice from a planning system design point of view. The guidelines set out below are based on that detail. To understand the basic philosophy behind these guidelines, one should refer to Appendix 2.

### Good Practice Guidelines for Plan-Making

Set out below is a series of guidelines for achieving good practice for plan-making. When making plans, planning systems should:

- *Identify the State or Territory planning department as the principal agency for co-ordinating all levels of government initiatives that have the potential to impact significantly on development, environment and land use outcomes.*
- *Incorporate an intergovernmental protocol or a statutory provision which clearly outlines the roles and responsibilities of the various levels of government in planning and which describes the matters which constitute national, State, regional and local interests.*
- *Promote the preparation of regional plans and policies through effective collaborative processes which substantively involve constituent Councils in all key policy debates.*
- *Make maximum use of local planning schemes for the implementation of environment and land use / development plans and policies, as opposed to the proliferation of separate planning instruments made under separate pieces of legislation.*
- *Require the same public consultations for proposed regulatory initiatives affecting land use, environment and development outcomes, regardless of the statutory origins of these initiatives.*
- *Wherever possible, provide for a two stage consultation process, so that interested parties may comment on the terms of reference for major planning initiatives as well as draft plans.*

- *Provide for independent review of public submissions regarding significant planning initiatives.*
- *Make provision for a "fast track" plan amendment process to deal with a predetermined range of "minor" planning matters including marginal changes to standards.*
- *Make maximum use of performance based formulations in the structuring of land use, environment and development controls.*

### Good Practice Guidelines for Plan Implementation

Set out below is a series of guidelines for achieving good practice within a planning system when implementing plans. When implementing plans, planning systems should:

- *Require a "single application and referral" approach to development assessment as opposed to the operation of several separate decision making systems.*
- *Except in unusual circumstances, require local government to perform the application registration and co-ordination role in this single application approach. That is, local government would have responsibility for direct referral of applications or advising development proponents of those agencies which have a referable interest in the proposal and, after due consideration by all interested parties, would issue a single comprehensive decision.*
- *Encourage referral agencies to include their permission criteria in planning schemes or other published plans (so that proposals meeting the criteria can be approved by local government under delegation), and establish strict timelines within which higher agencies must respond to referred applications.*
- *Explicitly limit Ministerial interventions in development assessment processes to matters of "state significance". Tests for such significance should be included in legislation and/or formal protocols between State and local government.*

## 2.4 Tools for Facilitating Better Coordination between Regional and Local Planning

Having set out a framework of overarching principles and operational guidelines for good planning governance, what follows below is a series of suggested tools for facilitating better coordination between regional and local planning. These tools are set out using the framework of principles and guidelines as a prompt. Many of the tools can be implemented readily within the current regional NRM system. However, as well as listing specific tools that may be used henceforth, some suggestions for broader reform of the NRM system have also been included.

Comment [as1]: Focus the paper on this chapter as this is the part that facilitators will use most – the appendices are useful for when dealing with those who need further information on planning or the regional processes. It would also be good to include a section on the benefits of integrating the two planning processes, what can be achieved etc

## 2.4.1 Plan Making

The following tools promote the achievement of each of the principles and guidelines for good practice in *plan making*. Where appropriate, some suggested considerations for reform are also noted.

*Identify the State or Territory planning department as the principal agency for co-ordinating all levels of government initiatives that have the potential to impact significantly on development, environment and land use outcomes.*

In the current context, via bilateral agreements, State and Territory governments are already recognised as the most effective vehicle coordinating Australian Government – State / Territory – Regional responses to NRM objectives. The weakness at present is that there is little evidence that any State or Territory government is effectively coordinating *all levels* of government initiatives. As such, State and Territory planning departments should be encouraged to:

- Begin or continue to develop frameworks for coordinating all initiatives that have the potential to impact upon development, environment and land use outcomes, regardless of what level or source initiatives are derived from.

A suggestion for broader reform in this regard is:

- To consider the development of trilateral agreements for the advancement of NRM outcomes, to include all three levels of government in Australia with roles and responsibilities effectively defined (e.g. Australian Government to fund and facilitate, State to coordinate, Local to implement).

*Incorporate an intergovernmental protocol or a statutory provision which clearly outlines the roles and responsibilities of the various levels of government in planning and which describes the matters which constitute national, State, regional and local interests.*

Following on from the first principle, in the short term the States and Territories should be encouraged to:

- In conjunction with local government and regional NRM organisations, advance the development of State – Regional – Local intergovernmental protocols / agreements which clarify roles and responsibilities for the development and implementation of planning policies, formally recognising and describing a clear hierarchy of objectives which openly respects priority interests in the achievement of planning outcomes.

A suggestion for broader reform in this regard is:

- To give legislative effect to intergovernmental protocols and agreements so that they may be enforced as part of an integrated planning system subject to direction from a single Act.

*Promote the preparation of regional plans and policies through effective collaborative processes which substantively involve constituent Councils in all key policy debates.*

In the current context, whilst there is some intention to prepare regional plans and policies through collaboration with local government, the evidence is that this intention is currently given little effect. More effective collaborative processes could be achieved if the following steps are taken:

- Develop a forum through which regional NRM organisations and Councils can come to a better understanding of one another's planning processes and objectives. This understanding would be given practical effect by focussing on areas where the two levels can cooperate to achieve common processes and objectives;
- Begin or continue to develop formal agreements that include effective local government representation in regional NRM organisation planning processes;
- In providing for more effective local government representation, consider the involvement of local government planning professionals in the practical development of regional NRM plans.

A suggestion for broader reform in this regard is:

- To either ensure that future or renegotiated bilateral agreements make specific reference to the role of local government in assisting the achievement of NRM outcomes, or better still, as previously suggested, negotiate trilateral agreements between all three levels of government.

*Make maximum use of local planning schemes for the implementation of environment and land use / development plans and policies, as opposed to the proliferation of separate planning instruments made under separate pieces of legislation.*

As explained in the discussion of the current context, local government planning schemes are the primary means of implementing planning outcomes. In some jurisdictions, for example in Victoria, planning schemes are consolidated 'one stop shop' documents which contain all State and local government policy and controls that can impact upon land use. The layer of detail currently missing from the vast majority of local government planning schemes is regional planning policy in all its guises, including regional NRM policies. As such, the following steps should be considered:

- Where appropriate and possible (i.e. where environmental / natural resource management issues are at stake) bring the strategic visions / statements / objectives of Councils and regional NRM organisations into formal accord, so that local planning controls in planning schemes can be structured to achieve common objectives;
- By agreement between regional and local levels, make provision for the inclusion of collaboratively made regional planning policies directly into local government planning schemes.

A suggestion for broader reform in this regard is:

- Make legislative provision for the inclusion of regional planning policies directly within local planning schemes, prescribing mechanisms for the making of regional planning policies and rights of recourse where regional planning policy is disputed.

*Require the same public consultations for proposed regulatory initiatives affecting land use, environment and development outcomes, regardless of the statutory origins of these initiatives.*

At present, the consultation arrangements for the making of regional NRM plans could best be described as 'loose', for these arrangements do not compel regional NRM organisations to pay detailed attention to public or local government representations or submissions about regional plans. When Councils make plans, greater compulsion to pay detailed attention to consultation is generated by the availability of appeal rights and independent merits review of planning decisions in certain circumstances. Short term steps that should be considered in the regional NRM context include:

- Continue to monitor current regional NRM planning consultation arrangements to determine how effective these are in achieving satisfactory outcomes from the perspective of local government and the general public;
- Develop a better understanding amongst regional NRM organisations of the consultation strategies employed by local government. Best practice elements of these strategies should be voluntarily replicated by regional NRM organisations as a means of developing integrity of process;
- Where objectives common to local and regional plans exist, consider integrating local and regional planning consultation processes.

A suggestion for broader reform in this regard is:

- Should regional plans be given regulatory force – such as via direct inclusion in local government planning schemes – make legislative provision for the development of regional planning policy to be subject to the same rigour of consultation as local government planning.

*Wherever possible, provide for a two stage consultation process, so that interested parties may comment on the terms of reference for major planning initiatives as well as draft plans.*

Multi-stage consultation processes already exist in the current context. It appears that some regional NRM organisations hold a series of forums, beginning with an initial introduction of the NRM planning process and what that process is setting out to achieve (sometimes leading to the development of formal terms of reference, sometimes not). It is then often the case that regional NRM organisations bring their draft plans back to the consultation table to receive comment and gauge reaction.

The primary limitation in the current context relates to the *efficacy* of this multi-stage process. The ALGA survey indicated that despite this process, very few Councils thought that local

government contributions, comments and reactions made their way into final drafts. As such, steps to improve performance against this principle include:

- Continue to monitor the efficacy of the current process as other tools / reform are implemented to ensure these initiatives are translating into better outcomes from the perspective of local government;
- Commit at all levels to the continual improvement of coordination, communication and incorporation of comment regarding the development of regional NRM plans.

*Provide for independent review of public submissions regarding significant planning initiatives.*

This principle relates to the earlier principle which would subject all significant planning initiatives to the same consultation processes. When Councils make plans and planning decisions, public submissions are called for. In certain circumstances, particularly where a Council has a strong self-interest in a change of planning policy, these public submissions can end up being independently reviewed, primarily as a measure of rigour and probity. This mechanism is aimed at protecting the public perception of integrity in plan making. At present, whilst regional NRM organisations may, and often do, call for public submissions about plans, these submissions are not independently reviewed in any circumstances. In line with earlier suggestions, regional NRM plans should:

- Consider similar, independent means of protecting the public perception of integrity in the regional planning process, particularly in cases where there is strong public resistance to a proposed regional NRM plan or project.

A suggestion for broader reform in this regard is:

- In line with bringing regional planning policy into the mainstream planning system, ensure via legislation that regional planning processes are subject to the same independent review of public submissions (in specified circumstances) as all other planning processes.

*Make provision for a "fast track" plan amendment process to deal with a predetermined range of "minor" planning matters including marginal changes to standards.*

If regional planning policy was to become more formally integrated within the mainstream planning system, there would be a need to ensure that marginal changes to regional NRM plans and policies would not have to face the same level of procedure as more significant changes. This allowance is becoming more common at the local government level, where updates to planning guidelines and performance-based codes relevant to land use can be made quickly. The only suggestion for the regional NRM context in this regard is:

- When formally integrating regional planning within the mainstream planning system, do not lose sight of the need to make allowance for 'fast tracking' minor amendments to regional plans and policies (but also ensure that what constitutes a 'minor amendment' is clearly defined).

*Make maximum use of performance based formulations in the structuring of land use, environment and development controls.*

This principle would apply where regional plans and policies find their way directly into a regulated plan or local government planning scheme. Put simply, this principle means that when striving to achieve specific NRM outcomes, regional NRM plans should focus on guiding rather than precisely prescribing methods and mechanisms for achieving NRM outcomes. For example, local government planning schemes these days are more commonly focussed on assessing how a particular land use or development performs to achieve desired outcomes, as opposed to imposing highly specific controls. This allows room for land users to come up with mechanisms for meeting the requirements of plans on a site specific basis. Regional NRM organisations should:

- In consultation with local government, continue to develop and improve their understanding of performance-based planning;
- To assist implementation at the local level, develop plans and policies that 'suit' the performance-based planning systems of local government.

## 2.4.2 Plan Implementation

The following is a list of suggested tools to promote the achievement of each of the principles identified in the previous section as pertinent to good practice in *plan implementation*. Where appropriate, some suggested considerations for reform are also noted under each principle.

It is important to note that these principles would really only apply if and when regional NRM plans and policies were incorporated into regulated plans or local government planning schemes.

*Require a "single application and referral" approach to development assessment as opposed to the operation of several separate decision making systems.*

According to this principle, local government (responsible for implementing all layers of planning policy applicable to a locality) would manage and coordinate planning decisions regarding proposed land uses. An example of how this could work towards the inclusion of regional NRM considerations in local planning decisions is:

- The local government planning scheme would state what types of proposed land uses in which areas of the locality would trigger referral to a regional NRM organisation for consideration against regional NRM objectives. An example here might be a proposal to build and operate a quarry in a sensitive part of a regional water catchment;
- While the local government authority would be considering other aspects of the proposed use, such as building design etc, the regional NRM organisation would call for and consider information relevant to its considerations;
- After consideration, the regional NRM organisation would inform the local government of whether it approves of the proposed land use (with or without conditions) or refuses the proposed land use.

The main purpose of referral processes of this nature is to coordinate all planning decision-making so that an applicant for a proposed land use gets an efficient decision from a 'one stop shop'. So, to further this principle in the context of regional NRM planning, the following is recommended:

- Work to achieve agreement between State, regional and local planning agencies for the establishment of a referral process for regional NRM objectives and agree on the categories of land use that could attract referral to regional NRM organisations;
- With or without the direct incorporation of regional planning policies into local government planning schemes, introduce a formal process of referring certain proposed land uses to regional NRM organisations for assessment against regional NRM objectives.

A suggestion for broader reform in this regard is:

- Where necessary, establish legislative provision for the incorporation of regional NRM objectives and organisations in existing referral processes.

*Except in unusual circumstances, require local government to perform the application registration and co-ordination role in this single application approach. That is, local government would have responsibility for direct referral of applications or advising development proponents of those agencies which have a referable interest in the proposal and, after due consideration by all interested parties, would issue a single comprehensive decision.*

How this principle would operate in practice is self-evident. The benefit of this principle is the efficient management of plan implementation from the point of view of all interested parties. Regional NRM organisations would make plans knowing that the constituent Councils in their region would be obliged to 'look out for' regional NRM objectives. Councils would have the benefit of having full control over the management of the planning process and would be able to advise proponents of land uses with certainty about which planning policies and agencies could influence the outcome of a planning decision. A recommended tool here is:

- Develop an understanding amongst regional planning organisations and Councils of the dual benefit of a 'one stop shop' plan implementation process.

*Encourage referral agencies to include their permission criteria in planning schemes or other published plans (so that proposals meeting the criteria can be approved by local government under delegation), and establish strict timelines within which higher agencies must respond to referred applications.*

Once again, how this principle would operate in practice is self-evident. It very much would be the ideal if regional NRM objectives were explicitly incorporated within a regulated plan, preferably a local government planning scheme. This would provide the best notification of regional NRM considerations to land use proponents and Councils alike. Prescribing time limits within which decisions should be made by referral agencies is a simply a further means of bringing efficiency and certainty to the planning process. A recommended tool to promote this principle is:

- Work towards agreement for the inclusion of regional NRM objectives directly within local government planning schemes, or failing that, within a regulated plan which can be implemented by local government.

A suggestion for broader reform in this regard is:

- Legislate for the inclusion of all regional NRM planning policy into local government planning schemes as a means of implementing regional NRM objectives in the most efficient and effective way – i.e. by local government and by explicit inclusion in the mainstream planning system.

*Explicitly limit Ministerial interventions in development assessment processes to matters of "state significance". Tests for such significance should be included in legislation and/or formal protocols between State and local government.*

This principle does not directly apply in the current context, but could become more relevant if regional NRM plans find their way into the mainstream planning system. Most jurisdictions allow for State or Territory governments to 'intervene' in the implementation of local plans in certain circumstances (where matters of State significance are at stake). If State, regional and local planning policies become effectively integrated in a single regulated plan, the need for such interventions should be quite limited. A regional NRM organisation might argue for a similar 'interventionist power' where matters of regional significance are at stake. To limit the need for this, recommended tools here are:

- Establish a commitment from all levels of government to continually improve the effective integration of all planning policy made at any level that can impact upon land use outcomes;
- Establish clear agreement between all levels of government about tests for matters that could trigger higher level interventions in the implementation of plans i.e. matters of State or regional significance.

A suggestion for broader reform in this regard is:

- Legislate to prescribe tests for matters of State or regional significance that would warrant higher level interventions in the implementation of plans.

## 2.5 A Final Word on Resources

A cynical reader of this paper may come to the conclusion that the ideas within this paper are all very well but will come to nothing without the allocation of further resources to the task of better integrating local and regional planning.

In fact, the context discussion in Section 2 demonstrates that there are plenty of resources already available for planning at all levels. Insofar as the specific task at hand is concerned, the establishment of local government regional NRM facilitators will go a long way towards establishing the means and mechanisms outlined above.

What this paper is actually advocating for is a more *effective* use of existing resources, primarily via a collaborative effort across all levels of government towards the implementation of the good planning governance principles set out within this paper. Many of these principles and the tools promoting these principles could be achieved without a need for significantly more resources. For example:

- Existing mechanisms and forums (such as regional co-operations of Councils) could be used to work towards the suggestions in this paper;
- Better local government representation in regional NRM processes could be achieved by agreements at the regional – local level;
- Existing State planning legislation could be modified by a handful of amendments to bring regional planning policy into the mainstream planning system;
- Local government regional NRM facilitators could train and guide representatives at both levels in techniques that would generate ‘win-win’ outcomes for regional NRM and local planning.

This is not to say that more resources for planning would not be welcome – they always are. However, adding more resources without thinking about how to make better sense and use of the current context would not necessarily lead to better outcomes.

Councils have tried and true mechanisms in place for making and implementing plans successfully. Regional NRM planning processes – in fact all planning processes – would be well served by working within these existing mechanisms as far as possible.

# Appendix 1 – Background Information about Regional NRM

## Regional NRM Organisations

The following discussion outlines the origins and role of regional NRM organisations arising from Australian Government programs which are the primary focus of this paper. However, as outlined in the introduction to the paper, it is important to be aware of State and Territory mechanisms that can also influence planning and land management outcomes. This section of the paper presents the regional NRM organisations as one prime example of well resourced planning organisations operating in the same 'space' as local government. No matter the type of organisation, the principles for good planning governance should apply across the board.

### The Origins of Regional NRM Organisations

The Australian Government funds three major programs for addressing Natural Resource Management (NRM) issues, the:

- Natural Heritage Trust (NHT);
- National Action Plan for Salinity and Water Quality (NAP); and
- The Australian Government Water Fund.

#### *The National Heritage Trust*

The NHT was established by the Australian Government in 1997 to help restore and conserve Australia's environment and natural resources. The Trust aims to deliver natural resource outcomes including improved water quality, less erosion, improved estuarine health, improved vegetation management and improved soil condition. This initiative has been delivered through the regional model and has been implemented in 56 regions.

#### *The National Action Plan for Salinity and Water Quality*

The NAP addresses two major NRM issues facing Australia's rural industries, regional communities and the environment – salinity and water quality. The stated aim of the NAP is for all levels of government, community groups, individual land managers and local businesses to work together to address salinity and improve water quality. The NAP builds on the first phase of the Natural Heritage Trust (NHT). Around Australia, 21 priority regions affected by salinity and water quality problems are targeted under the NAP.

#### *The Australian Government Water Fund*

The Australian Government Water Fund is a \$2 billion Australian Government program to invest in water infrastructure, improved water management, and better practices in the stewardship of Australia's water resources. The Fund supports water projects that will improve Australia's water efficiency and environmental outcomes. Projects that help to achieve the objectives, outcomes and actions of the National Water Initiative receive assistance from the Fund, which has three programs:

- o Water Smart Australia;
- o Raising National Water Standards; and
- o the Community Water Grants programmes.

This paper focuses on the NAP and the NHT, as it is primarily the delivery of these programs that have led to the establishment of regional NRM organisations.

### Implementing the NAP and the NHT

The NAP and NHT programs operate on the basis of bilateral funding agreements between the Australian Government and each State or Territory. In short, these agreements are partnership arrangements with both levels of government contributing financially and towards implementation of the NRM objectives of the NAP and the NHT.

At present, bilateral agreements for the NAP have been established for all States and Territories, except for the ACT Government.<sup>2</sup> South Australia was the first state to sign a NAP bilateral agreement in 2001, and the most recent agreement was signed by Queensland in 2004.

Bilateral agreements for the NHT have been established for all States and Territories, with Western Australian and Victoria the first to sign in December 2002, and Queensland signing the last NHT bilateral agreement in March 2004.

The bilateral agreements acknowledge that the Australian Government and each State and Territory are jointly responsible for delivering the objectives of the NAP and NHT, and the agreements pave the way for the development of action plans in the regions.

The NAP and NHT objectives are therefore currently implemented at 3 levels:

- The Australian Government level;
- The State / Territory level;
- The Regional level; and
- Local (Envirofund).

At the Australian Government level, the Department of Agriculture, Fisheries and Forestry and the Department of the Environment and Heritage – cooperating through the Australian Government's 'Natural Resource Management Team' - are the lead agencies for delivery of the NAP and the NHT across Australia. The primary task of the Australian Government is coordinating the implementation of the NAP and the NHT bilateral agreements and monitoring outcomes.

Various State and Territory government agencies have responsibility for delivering the NAP and NHT objectives at the State and Territory level, as follows:

- In New South Wales, the Department of Natural Resources;
- In the Northern Territory, the Department of Infrastructure, Planning, and the Environment;
- In Queensland, the Department of Natural Resources, Mines and Energy
- In South Australia, the Department of Water, Land and Biodiversity Conservation;

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<sup>2</sup> Currently in negotiation.

- In Tasmania, the Department of Primary Industries, Water and Environment;
- In Victoria, the Department of Sustainability and Environment;
- In Western Australia, the Department of Agriculture; and finally
- In the Australian Capital Territory, Environment ACT.

In turn, through cooperation between the Australian Government and State and Territory governments, most State and Territory jurisdictions been divided into regions and regional NRM organisations have been established to achieve the coordination and implementation of the NAP and NHT objectives at the regional level. Thus, the NAP and NHT objectives are jointly implemented by regional NRM organisations in each State and Territory.

Finally, the Australian Government's Envirofund operates at the local level. The Envirofund is the local action component of the NHT. Through the Envirofund, local communities bid for and undertake local projects aimed at conserving biodiversity and promoting sustainable resource use. Grants of up to \$50,000 (GST inclusive) can be applied for to target local issues.

## The Role of Regional NRM Organisations - The NSW Example

Whilst each State and Territory jurisdiction has adopted its own approach to establishing regional NRM organisations, the best way of demonstrating the intended role of regional NRM organisations is by way of example. As such, the NSW arrangements are outlined below.

Two state level bodies have been created to oversee / guide natural resource management decision-making in NSW. These are the:

- Natural Resources Commission; and
- Natural Resources Advisory Council

The *Natural Resources Commission* was established by the *Natural Resources Commission Act 2003 (NSW)* to provide the NSW government with independent advice on natural resource management issues across the state. Its core functions are to:

- Set NRM standards and targets for NSW;
- Review and recommend for approval 'Catchment Action Plans' prepared by Catchment Management Authorities (see below); and
- Audit the implementation of Catchment Action Plans.

The Commission reports to the Premier and the Minister for Natural Resources. Commissioners are appointed by the Government and are supported by an executive.

The *Natural Resources Advisory Council (NRAC)* has responsibility for delivering the views of stakeholders currently engaged with natural resource management to the NSW Government. The specific functions of the NRAC are to provide a high level forum for stakeholders to advise the NSW Government and to broker agreements between the representative stakeholder groups on contentious natural resource management issues. There is extensive representation of stakeholders on the NRAC including from Catchment Management Authorities, the Local Government Association of NSW, and the Shires Association of NSW.

The main regional vehicles for delivering natural resource management in NSW are Catchment Management Authorities.

In NSW, there are thirteen Catchment Management Authorities (CMAs). CMAs are statutory bodies established under the NSW *Catchment Management Authorities Act 2003 (CMA Act)* to:

- Achieve NSW obligations and objectives under the NAP and NHT bilateral agreements; and
- Ensure that regional communities have a say in how natural resources are managed in their regions.

The CMAs each have a regionally constituted board that reports to the NSW Minister for Natural Resources. Each CMA board consists of a chairperson and up to six board members, who together provide a range of experience, skills and knowledge in areas such as primary production, cultural heritage, biodiversity conservation, business administration and governance. At present, the only means of encouraging direct local participation on the board is via the need for, as far as practicable, the appointed board members to reside within a CMA's region.

The second reading speech for the *Catchment Management Authority Bill 2003* indicates an explicit mandate for CMAs to undertake planning in line with the NAP and NHT:

*The intention of these new arrangements for catchment management is to ensure the smoother and faster delivery of natural resources funding to regional communities, particularly those funds from the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust; provide CMAs with block funding of the plans they have prepared so that they can get on with delivering those funds to the community; and streamline the current complex committee structure... (emphasis added)*

Under the *CMA Act*, NSW CMAs are allocated a series of specific functions, one of which is:

*To develop catchment action plans and to give effect to any such approved plans through annual implementation programs.*

Thus the primary purpose of the CMAs is to plan for and implement natural resource management in their respective catchments. They are also the primary vehicle for the delivery of funding from the NSW and Australian governments to help land managers manage, improve and restore natural resources. They are responsible for involving regional communities, local government, State Government agencies, industry and individuals in addressing natural resources issues facing their catchment region. To achieve this, CMAs produce Catchment Action Plans (CAPs).

However, the second reading speech also indicated that:

*In addition to preparing catchment action plans and implementation programs, the other functions of CMAs will include consultation with local government and catchment communities, recommending and managing incentive programs to implement catchment action plans and achieve environmental improvements... (emphasis added).*

It is how CAPs and the equivalent plans of regional NRM organisations in other jurisdictions should be developed to achieve better local government consultation, participation and contributions, that is of central interest of this paper.

## The views of the current local government NRM facilitators

Interviews were conducted with 7 local government NRM facilitators to gauge more detailed perceptions of current arrangements between regional NRM processes and local government across each jurisdiction, and how these could be improved.

The facilitators were asked the following questions:

- Please describe your current role, and how you are currently trying to achieve that role;
- What are the current limitations / difficulties that are preventing a better coordination of regional and local planning efforts?
- Have you any ideas or solutions that you think may assist better coordination of regional and local planning efforts?
- What should (the facilitation paper) contain to make it most useful / practical for your efforts in facilitating the better coordination of regional and local planning efforts?

The following summarises the responses to each of these questions:

### *Current role and attempts to achieve that role*

The responses here indicated a strong emphasis on communication, through common answers such as:

- Improving communication between local-regional bodies;
- Facilitating participation of local government in regional NRM projects;
- 'Brokering information'.

### *Current limitations / difficulties preventing better coordination of regional/ local planning efforts*

There was a broad range of responses to this issue, as follows:

- The need to better align local government planning and NRM plans;
- Poor recognition / appreciation of local government's role in planning;
- Lack of understanding at the regional level about how planning roles are shared amongst the three spheres of government, including how the regional plans fit in with other plans;
- Confusion about the NRM system and reforms to the system (where reforms are being effected e.g. NSW);
- Limited local government representation on NRM boards and a need to understand how best to achieve good quality local government representation at Board level;
- Limited resources are available to the coordination task, out of proportion with the importance of the task.

### *Ideas or solutions for better coordination of regional and local planning efforts*

Responses to this focussed upon strengthening formal agreements, mechanisms for representation / communication and better understanding of planning roles at the regional and local level, as follows:

- The development of trilateral agreements instead of bilateral agreements, to more formally and effectively incorporate local government into the delivery of national NRM outcomes;
- A better understanding of local government plans and planning processes, by regional NRM organisations, and vice-versa;
- Better mechanisms for representation of local government at NRM Board level and incorporation of local planning information;
- Formal agreements which address better communication by specifying how communication should occur;
- Allowing the passage of time to let the regional NRM system 'settle down' before considering further reforms.

*What should the paper contain to make it most useful / practical for facilitating better coordination of regional and local planning efforts?*

As would be expected, the responses here reflect issues raised in the preceding discussions.

Suggestions included:

- Better knowledge of the local government planning role, for the benefit of improving the understanding and appreciation of this role amongst regional NRM organisations;
- Suggested mechanisms that can be used to enhance the integration of regional and local planning processes;
- Recommendations in support of
  - Greater recognition of what local government can contribute to regional NRM processes;
  - The development of trilateral agreements for national NRM outcomes, and strengthening the enforcement of bilateral agreements in the meantime, to ensure that local government interests are adequately considered, where required;
  - More resources to support the coordination effort;
  - A greater role for local government in the implementation of regional NRM plans; and
  - Patience, and an understanding that better integration of regional NRM processes and local government processes will take time.

## Appendix 2 - Principles & Guidelines for Good Planning Governance

### Overarching Principles for Good Planning Governance

As outlined in Section 2, the overarching principles for good planning governance are:

- Subsidiarity;
- Democratic policy making; and
- Separation of policy making and policy implementation roles.

To demonstrate how these principles are attempted in current practice, Table 2 sets out a hierarchy of communities and planning powers that operate at each level.

**Table 2.** Hierarchy of Communities and Planning Powers

Sphere of 'community'	Relevant planning issues – areas of unfettered competence	Typical planning institutions	Typical planning mechanisms
National	<ul style="list-style-type: none"> <li>• Determination of national NRM and other such performance targets (e.g. water / energy consumption per capita, greenhouse gas emissions etc) in line with international obligations</li> <li>• Strengthening connections between and within Australia's system of cities</li> <li>• Designating and encouraging national specialisations in Australia's system of cities</li> <li>• National heritage protection</li> </ul>	Australian Government departments. COAG. Other purpose designed national commissions (e.g. National Competition Council)	National voluntary guidelines. Incentive payments to States and Territories through bilateral agreements. Targeted major infrastructure investment Statutory plans covering the national capital.
State	<ul style="list-style-type: none"> <li>• Implementing State / Territory obligations for delivery of Australian Government - State agreements (e.g. NRM agreements)</li> <li>• Design and maintenance of State wide land use and development regulation system</li> <li>• Maintenance of administrative and judicial review processes</li> <li>• Oversight of planning institutions</li> <li>• Development planning and development determinations for sites or projects of Statewide significance (e.g. CBDs, major ports etc)</li> </ul>	State Department of Planning & Minister's Office	Planning and environment legislation. Administrative appeals courts or tribunals Planning schemes – zoning and ordinance provisions. Statements of planning policy which are binding on lower order planning authorities. Guidelines. Targeted major infrastructure investment.

Sphere of 'community'	Relevant planning issues – areas of unfettered competence	Typical planning institutions	Typical planning mechanisms
Regional / metropolitan	<ul style="list-style-type: none"> <li>• Protection of NRM and environmental assets that have regional significance</li> <li>• Determination of urban growth boundaries</li> <li>• Designation of major regional activity centres suitable for significant residential, retail, commercial civic and cultural intensification</li> <li>• Designation and management of major transportation corridors</li> <li>• Identification and development of key employment nodes in the metropolis (for example, current and future airports)</li> <li>• Formulation of land release schedules in growth areas, where these have the capacity to affect the cost of providing education, public transport, health and other services funded by the State</li> <li>• Maintenance of efficient land supply for housing, including reasonable flow of redevelopment sites in built up areas</li> </ul>	Metropolitan Planning Commission Regional Planning Authority	Regional plans and forums for developing plans. Planning guidelines and statements of policy which are binding on local planning authorities and other lower order authorities. Planning schemes – zoning and ordinance provisions
Local	<ul style="list-style-type: none"> <li>• Neighbourhood structure planning</li> <li>• Regulation of housing development and redevelopment within applicable State and regional guidelines</li> <li>• Regulation of development in all lower order activity centres</li> </ul>	Local Municipal Councils	Development regulation and assessment Planning schemes – zoning and ordinance provisions Local planning Guidelines and policies

## More Detail about Operational Guidelines for Good Governance Planning

As discussed in Section 2, there are two elements:

- Those parts of the system to do with the *making of plans*; and
- The processes and procedures by which *plans, once made, are implemented*.

The following discussion provides a deeper exploration of these elements and the guidelines that support them.

### Plans and Plan Making

Local government planning schemes are common place in Australian planning systems. But they certainly do not represent the limit of the “plans” that can affect the use and development of land.

Regional plans, State planning policies and metropolitan “overlay” plans may also be enforced in a locality.

Furthermore, “plans” are not confined to instruments made under the ‘planning legislation’ as such. Laws dealing variously with emission control, protection of habitat and waterways, heritage conservation, access to and impacts on State highways, environmental health, liquor licensing and so on can be used to make effective land use plans, albeit that these may be focussed on a particular policy sector i.e. health, environmental management etc. Regional NRM policy is a sound example of this type of plan.

The institutional processes by which plans are made are also important. Relevant issues include the level of autonomy enjoyed by local government (or other planning authorities such as regional NRM organisations) in plan making, and the mechanisms for co-ordinating the activities of agencies that can make plans and policies that impact on land use and environmental outcomes.

Given the current context of regional NRM planning - which reflects a low level of substantive involvement of local government in regional plan making - the discussion in this section is focussed upon guidelines for good practice in plan making.

#### Plan Implementation – the Development Assessment Process

Plans are most commonly – and effectively - implemented via development assessment processes. The vast majority of development assessment decisions in Australia are made by Councils, in accordance with ‘locally made’ local government planning schemes, primarily directed at achieving a Council’s strategic planning policy.

However, in recent years, State and regional agencies have also come to play a significant role in certain development assessment decisions. Further, higher level plans and policies can these days be layered into local planning schemes, setting priorities for and influencing development assessment decisions made at the local level.

Regional NRM plans are, at present, not implemented via a development approval process. Regional NRM plans are funding focussed i.e. these plans exist as a precondition to the receipt of funding for projects that advance regional NRM objectives.

However, plans for achieving regional NRM objectives can impact upon local government planning, for example, where decisions are made at the regional level about catchment management that may implicitly restrict the range of land uses within a catchment. Conversely, plans made at the local government level could positively contribute to regional NRM objectives by assisting regional bodies to achieve resource condition targets, such as water quality. As such, discussion in this section addresses some fundamental elements of plan implementation that might assist the achievement of the dual aims of better integration between regional and local planning and the achievement of regional NRM objectives.

## Good Practice in Plan Making

As noted, the legislative and administrative instruments by which land use and development outcomes may be influenced are many and varied. Each of these instruments may be regarded as a “plan”. In identifying a good practice model for plan making, several issues arise, including;

- Integration and co-ordination between plans covering the same geographic and/or topic area;
- The reconciliation of State, regional and local interests in plan making;
- The accessibility and transparency of plans from the perspectives of both development proponents and community members generally;
- The involvement of the public in the plan making process;
- The capacity to amend plans quickly in response to changing circumstances;
- The extent to which plans should confer compensatory development rights on property owners; and
- The development control philosophy underlying the structure and format of plans.

Terminology tends to vary across Australian jurisdictions, but most systems feature at least the planning instruments listed in Table 3.

### “Horizontal” Integration in Plan Making

It is evident from Table 3 that there is great potential for overlap and duplication between the various instruments which may be deployed to address a particular land use or development issue over a common or shared geographical area. Also of concern is that instruments designed for a particular purpose may have unforeseen development control implications elsewhere in ways which are inconsistent with already adopted government policy. For example - and this is a good example with regard to the relationship between regional NRM plans and local government plans - surface run-off catchment controls enforced under environment protection legislation may reduce development potential in designated urban growth areas upstream.

Most States & Territories now operate some form of regulation review process to limit the potential for legislative duplication and conflict. But those agencies responsible for regulatory review tend to rely on single sector-focussed cost benefit analyses. These analyses generally do not have the expertise or analytical perspective to detect overlap and contradiction with respect to the *spatial* outcomes of proposed legislation. This is certainly the case in the regional NRM context.

Of course, the Cabinet process is supposed to provide the ultimate forum for resolving the potential tensions between various “plans” dealing with the same topic or geographic area. But this step occurs very late in the policy development process. Furthermore, central agencies which have responsibility for co-ordinated policy development across departments and regions may also lack the planning expertise to see and deal with policy tensions of a spatial nature.

State Planning Departments are probably in the best position to co-ordinate legislative initiatives with the potential to impact significantly on land use and development outcomes. However, as we can see in the regional NRM context, this in itself does not necessarily guarantee coordination at the regional and local level.

**Table 3.** Typical planning Instruments

<i>Council town planning schemes</i>	Generally recognised as the principal tool for regulating local development outcomes in Australia. Can be based on prescriptive zoning regimes or more performance based approaches (or various combinations of the two). The "local" aspects of planning schemes often feature several layers of control, for example broad land use zoning supplemented by structure plans and more detailed precinct development plans. It is also common for Councils to operate a set of policies to guide the exercise of discretion under these various plans.
<i>Regional planning strategies</i>	Most metropolitan areas in Australia are covered by regional plans which set broad growth directions, development constraints and population / employment distribution targets. Regional plans, such as those developed by regional NRM organisations, may also be found outside the major cities particularly in areas faced with sensitive environments and/or strong growth pressures. Regional plans set the framework within which local planning schemes are developed (but may or may not be directly referred to in local planning schemes). Regional plans are usually expressed through a combination of outline development plans, and sectoral or thematic policy statements.
<i>State planning policies</i>	These are formal declarations of policy dealing with development constraints and outcomes deemed to be of State-wide significance. No particular geographic or scale limits need apply to such statements. They can range from, say, State-wide tree clearing controls to the adoption of national NRM, building or development standards.
<i>Statements of Environment Protection Policy</i>	These are often made under separate legislation dealing with national obligations and state policies of environmental control (i.e. protection of air quality, water quality and noise). By establishing NRM benchmarks or emission performance standards for particular activities within particular environmental settings, these policies are powerful determinants of land use outcomes in their own right.
<i>Requirements under specific pieces of infrastructure legislation.</i>	Legislation dealing with the provision and maintenance of State and national highways commonly empowers the State road authority to set and enforce policies regarding the type and intensity of development in relevant "feeder corridors". Similar provisions may be found in other infrastructure corporation legislation, for example, ports and railways as well as companies involved in the provision of power, telecommunications, gas, water and sewerage services.
<i>Habitat preservation legislation</i>	Most States have introduced legislation requiring a moratorium on development if endangered species are encountered.
<i>Cultural heritage legislation</i>	This provides for interim or permanent protection of buildings and places found to have historic, aesthetic, educational or other cultural significance, at the international, national, State, regional and local level. Again, such legislation is commonly separate from mainstream planning legislation.
<i>Coastal protection legislation</i>	This "single issue" legislation can establish littoral buffer zones, height limits and other major constraints on development potentials in coastal areas judged to be sensitive to over-development.
<i>Health regulations</i>	Health regulations can enforce de facto control by stipulating mandatory separations between various classes of land use. They can also influence land use mix by dictating specific design requirements for particular types of public access buildings.

## Vertical Integration in Plan Making

As discussed in terms of the subsidiarity principle, policy discretion in local plan making will necessarily be constrained, where appropriate, by the interests of the “wider” community whether this is regional, state-wide or national in character. For example, it would not be appropriate for local planning objectives to prevail over national conventions on ecological sustainability and NRM initiatives, or for key State resources like high quality agricultural land or mineral reserves to be compromised by local development preferences.

However, the manner in which the custodians of these wider community interests intervene in local planning can have important implications for the efficiency of the planning system as a whole. If national, State and regional interests are not reasonably well articulated in advance (at least in principle if not in detail), and if higher level planning agencies are seen to intervene “on a whim”, either in the introduction of overriding policies / plans or by the “calling in” of particular development applications, local government and the community generally can lose confidence in the integrity of the planning system. As we have seen, the ALGA survey and its finding of perceptions of a low level of local input to regional NRM plans, points in the direction of low levels of confidence in regional NRM plans at the local government level.

The negative feedback effects of unstructured pursuit of higher level planning interests and outcomes can include poorer quality community input to planning schemes (why put the effort in when the plan can be easily overridden?) and lesser consistency in decision making by Councils. All this increases uncertainty in land use and environmental planning processes and therefore the risks limiting the achievement of good planning outcomes.

This “vertical” integration issue directly concerns the way in which regional NRM planning policies and plans are often developed and enforced. Most Australian planning systems have moved on from “dual control” arrangements where separate regional authorities developed their own planning schemes, often with land use and development controls specified at the same, or similar, level of cadastral detail as the planning schemes of constituent Councils. However, it seems that regional planning is still being perceived as undertaken without the substantive involvement of local government. This risks the emergence of regional plans developed through largely non-inclusive, technocratic processes by State or Territory controlled regional agencies and which are “handed down” as an overarching policy framework for local government.

The non involvement of local government in such processes leaves the regional policy framework inherently unstable. Without local government “ownership” of these plans, Councils have no particular incentive to “make them work” in their day to day decision making. In response, State Governments may resort to various arbitrary implementation measures perhaps featuring a degree of coercion (for example, setting population targets with threats of funding sanctions if these are not met). If anything, such responses tend to provoke further passive resistance to imposed regional policy positions.

Whilst circumstances in particular regions may warrant otherwise, a collaborative approach to regional planning, without heavy handed intervention by way of a separate State authority, would seem preferable. Better still, in line with the overarching principle regarding alignment of planning authorities with the hierarchy of spatial communities of interest, regional policies and plans would

be prepared by a suitable regional authority which has its own democratic mandate, perhaps including delegates from all the constituent councils on its decision making body. This avoids both the power struggle with a State Government in a top down planning mode, and the tensions which local councils inevitably face in implementing plans and controls which address interests that extend beyond the local community.

### Accessibility and Transparency

As well as the need for plans that are vertically and horizontally integrated, these plans must be readily intelligible to users of the planning system. Members of the community are entitled to a convenient mechanism by which they may appreciate the totality of what is planned for their area.

Similarly, efficiency is served if the proponents of a development or particular land use can gain an understanding of the totality of the constraints and opportunities attaching to a particular site without having to refer to a host of unconnected policy documents.

The local government planning scheme offers greatest potential for the consolidation of all relevant plans and policy statements. It is already generally regarded as the corner stone of many planning systems and is readily accessible to the community and developers alike.

Conceptualising these schemes as an omnibus for all relevant land use and development policies (as opposed to a narrowly focussed, *local* planning policy) has other advantages. If State and regional agencies were required to work through amendments to Council planning schemes, rather than the creation of separate planning instruments, they would have to contend with routine, 'bottom up' reviews of their policy proposals. Placing a local community filter on policy proposals is valuable in its own right and would also promote horizontal co-ordination.

### Community Involvement in the Making of Plans

Genuine public involvement in the plan making process is critical to an efficient and effective planning system. In a democratic society, people have a right to participate in government decision making, especially where those decisions will have a significant bearing on their quality of life.

From an efficiency perspective, a thorough going process to secure community input during the plan making stage should reduce the likelihood of tension during the plan implementation stage.

"Meaningful" public involvement in plan making could be defined in terms of the following general principles:

- There should be no arbitrary distinctions between planning instruments with respect to when public involvement is mandated. Thus, for example, the making of regional NRM planning policy should be subject to the same advertising and public input requirements as, say, the making of local planning schemes;

- Interested parties should have an opportunity to shape the terms of reference for major reviews and amendments of plans rather than being presented with *fait accompli*; and
- Persons making submissions to State and local government agencies regarding proposed plans or plan amendments should have access to an independent review process.

### Flexibility in Amending Plans

As indicated in the discussion above, local planning schemes can and should be seen as the key building block in the planning system. They should integrate local and wider community aspirations for land use and environment outcomes.

A corollary of this role is that planning schemes ought to be relatively “stable” policy documents, offering a degree of certainty to the community. All interested parties should have the security of knowing that any major changes in direction in the planning framework that applies to their area will be subject to thorough going public consultation as outlined in the foregoing subsection.

Nevertheless, it is important to have a level of reasonable flexibility in the plan making process, so that a locally applied planning framework may be readily adjusted, without major policy shifts, as unforeseen circumstances arise.

A great deal of flexibility can be built into planning frameworks by adopting a performance based rather than prescriptive regime for land use and environmental regulation. If properly drafted and administered, this approach would avoid the need for formal scheme amendments to accommodate minor changes in plans and policies.

Further flexibility can be introduced into the system by differentiating (by regulation or within legislation itself) plan and policy changes which should be dealt with and without full scale statutory processes.

### The Structure and Format of Plans

Plans may be *prescriptive*, i.e. spelling out both what and how certain outcomes are to be achieved, or *performance based*, i.e. stating the outcome required but allowing a community of interest or individuals to nominate the method by which such objectives may be achieved. Performance oriented planning systems can be supplemented by “deemed to comply” provisions. Proponents who are unwilling or unable to devise their own solutions to required outcomes may adopt a conservative “default” prescription set out in the planning document.

Moving planning controls onto a performance oriented basis has been promoted in Australian planning circles for over 20 years with only partial success. Implementation difficulties have arisen because of lack of clarity in the definition of performance requirements (i.e. which often results in a lapse back towards prescription) and a lack of training on the part of professionals charged with assessing performance against required outcomes.

Notwithstanding these difficulties, performance oriented planning systems still offer considerable potential in terms of:

- Innovation in practices across the range of agencies, professionals and communities involved in achieving planning outcomes; and
- Greater focus by planners on their core business; i.e. defining environmental constraints and opportunities and setting desired outcomes.

## Plan Implementation

As mentioned previously, land use plans are most commonly implemented via development assessment processes applied at the local government level. In essence, the process involves assessing proposed land uses against existing plans to determine the degree to which the proposed use accords with the plan. Based on this assessment, a planning authority makes a decision on planning grounds either approving the proposed use (with or without conditions) or refusing the proposed use.

The philosophy at the heart of development assessment is the concept that, in general, only those uses that support or promote stated planning and policy objectives should be permitted. As such, legislated and administrative processes for the assessment of development proposals can relate to

- Planning permit applications;
- Building permit applications; and
- Licence applications (e.g. to sell liquor, to make certain discharges into the environment, to run particular types of health care facilities etc.).

Particular types of development, or development proposals affecting particular areas, may be subject to enhanced evaluation and assessment procedures under Australian Government or State law (i.e. Environmental Impact Assessments), or, indeed, regional plans.

In the current context of regional NRM planning, it is not the case that regional NRM plans are implemented via development assessment processes at the local government or even the regional level. Nonetheless, there are some guidelines for good practice in plan implementation that are of interest in the quest for better integration of regional NRM and local government planning and the achievement of regional NRM objectives. These guidelines relate to the:

- Multi layering of approval processes;
- Role of 'referral agencies'; and
- Circumstances warranting the intervention of 'higher' authorities in a planning decision.

### Multi-layering of Approval Processes

Applications for a planning permit, lodged with the local council, are often the first formal step in a long list of approval hurdles faced by development proponents. In some planning systems, it is not uncommon for proponents to be required to re-present information in successive rounds of decision making. Different emphases may be required in the way this information is marshalled, leading to considerable additional expense in proposal documentation as well as lengthy delays in decisions. Regional NRM planning has thus far actively avoided adding to this burden by not subjecting proposed developments to yet another formal process of regional approval.

However, it may be that a regional NRM plan may, in practice, have a significant influence upon approval processes. This would be the case where a local government would approve a particular land use, but for its knowledge that such a use is out of step with a regional NRM objective. A difficulty can emerge here. If regional NRM objectives are not explicitly incorporated within local government planning schemes but can nonetheless influence local government decision making about planning, then regional NRM objectives act as an 'invisible' layer in the planning process.

There is another issue here. There is an argument to suggest that the most effective way to achieve regional NRM objectives would be to, in some form or other (e.g. as statements of regional planning policy provisions up front in planning schemes) explicitly integrate those objectives into local government planning schemes so that they are given explicit consideration by development and land use proponents and planning authorities alike.

Efficiency would be well served if the planning requirements of all levels – State, regional and local government - were integrated and considered concurrently. Moreover it would be useful if development and land use proponents had a single point of contact for advice regarding all planning requirements, as well as information about concurrent and sequential planning decision making processes and the type of information which will be required by these various decision makers. Councils may be the best placed to provide this "one stop shop".

#### Referral Procedures

An extension of the above argument is that there are further efficiencies to be gained by operating the planning decision making process from a single point of coordination (e.g. local government) with referrals of applications for land use and development permission to other interested parties, for consideration of how a proposed land use or development may or may not meet those parties' plans and policies. At present, several jurisdictions have developed systems that do exactly this with regard to State or Territory government departments, and there is an argument that this system could also operate at the regional NRM level. That is, regional NRM organisations could become referral agencies in circumstances where regional NRM objectives require detailed consideration.

A further strength in this is that, several assessments of whether a land use or development should proceed can be undertaken concurrently rather than sequentially, reducing the time required for planning decision making.

Under such a system, referrals could be made by the Council, operating in accordance with regulations and guidelines, and monitored by the State or Territory government concerned. Alternatively, a land use or development proponent could have the responsibility for making referrals after advice from local government.

It is important that the number of referrals is minimised. Only agencies with a genuine interest should be entitled to review a proposal. As stated above, as far as possible, referral agencies should include their permission criteria in planning schemes or in other published plans so that maximum delegation of these decision making processes to local government can occur.

Moreover, referrals must be handled expeditiously and fairly, with appropriate disciplines being applied by all players. For example:

- Agencies should adhere to reasonable deadlines in providing their approval conditions or requests for additional information; agencies failing to comply with these timelines should be deemed to support the proposal as submitted; and
- Land use and development proponents should have access to independent and authoritative arbitration should they feel the information requests made of them are unreasonable.

#### 'Higher' Authority Interventions in the Development Assessment Process

This planning principle primarily relates to State or Territory Ministerial intervention in development assessment processes, which is often criticised for cutting across the established role of local government. It sends a signal to all stakeholders that a local planning scheme may not be the pre-eminent guide to future development, notwithstanding the extensive public input to the construction of such schemes.

Accordingly, higher authority intervention can undermine wider community confidence in the planning system and should be used sparingly. This is an issue for any system which would propose the formal integration of regional NRM objectives into planning decision making. It would not be desirable to give regional NRM organisations the power to intervene in and override local government planning decision making processes. Only the State or Territory level of government should have this power, and would be charged with shepherding State and regional matters of significance in certain, well defined circumstances. Thus, effective planning legislation would limit such interventions to matters of "state or regional significance" and would provide some guidance as to how such significance might be judged. Ideally, these tests would be fleshed out in a state-regional-local government protocol.

Having said this, it must be remembered that the way in which regional NRM processes are currently designed to operate is on a project by project basis, with projects required to be justified only by and within the regional NRM plan. Thus, regional NRM objectives stand outside what might be called the mainstream planning system, and *prima facie*, the achievement of those objectives is not formally dependent upon the mainstream planning system. That is, regional NRM organisations already have an independent opportunity to 'intervene' in planning outcomes in their regions, arguably without being accountable to communities of interest to the same degree as local and State / Territory governments are. Whether this is a satisfactory circumstance is at the heart of the debate: either, regional NRM organisations should be more accountable to and representative of the community of their region (e.g. via the presence of locally elected representatives on regional NRM boards) or regional NRM objectives should be explicitly incorporated into the mainstream planning system, where accountable and representative decision making processes are in place.