



EDO NSW White Paper Submission

Executive Summary

EDO NSW welcomes the opportunity to comment on *A New Planning System for NSW – White Paper* and the draft legislation. As EDO NSW was specifically created to provide the link between the community and planning laws in NSW, we see the current reform process as an opportunity to genuinely reform and improve planning laws and write a new Act. This means retaining fundamental principles and processes, while not repeating or perpetuating mistakes of the past.

Our focus in the NSW planning review centres on two issues – **community participation** and **protection of the environment**. We believe both these aspects are critical to public confidence in the new system. If the Government is to restore public trust and integrity to the planning system, the legislation will need to ensure a more equitable balance of rights and safeguards for the community and environment. It will need to move beyond the White Paper's economic 'growth' focus, and demonstrate the Government's commitment to ecologically sustainable development.

There are a number of elements of the proposed scheme that have the potential to improve planning in NSW. However, as currently drafted, the proposed legislation falls well short of delivering on the commitment to restore the community's confidence in the planning system and the sentiments in the White Paper.

The **objectives** of the new scheme as proposed are unbalanced. Instead of integrating economic, social and environmental factors throughout the legal decision making framework (the essence of *ecologically sustainable development*), the White Paper reforms imply a false choice – between economic prosperity on one hand, and environmental values and community rights on the other. Growth, prosperity and sustainability must be measured against a triple bottom line.

EDO NSW welcomes the commitment to improved **community participation** in strategic planning, and the inclusion of a Community Participation Charter in the legislation. How this is done over the coming years will be absolutely critical to the success of the reforms. As proposed, the new processes will hopefully encourage engagement and lead to increased community input at an earlier stage. However we have real concerns that faith in the new system will start to erode through the sheer magnitude of consultation processes required over the next few years; the limited scope in the planning hierarchy for local plans to influence neighbourhoods; and the absence of checks and balances. Accountability and review rights must apply equitably throughout the planning process.

We welcome the commitment to establish a clear **strategic planning** hierarchy, with community engagement emphasised during the development of all levels of strategic plans. If this is done properly – with a significant investment of time, resources and expertise – it may well reduce land use conflicts at the local level. However, again the provisions of the Bill that allow the Minister to override local plans, or to allow developers increased flexibility to bend the rules, have the potential to seriously undermine the strategic planning process. A



community that puts significant effort into the development of their local plan would be understandably disillusioned to learn later that their efforts can be overridden.

Establishing 5 different risk-based assessment tracks for **development assessment** is appropriate. The integrity of this process will depend on the appropriate categorisation of development in practice. Non-compliant development must be merit assessed. There must also be safeguards so that development in sensitive environmental and heritage areas will not be exempt, complying or code-assessable. The new system must ensure that the largest projects with the most significant potential impacts are subject to rigorous and comprehensive assessment, and not exempted from environmental or heritage assessment requirements. The new legislation must not reinstate the most dubious fast-tracking aspects of the former Part 3A.

We welcome the intent to better integrate **infrastructure** and strategic planning, and we make a number of recommendations about community consultation on infrastructure plans, and ensuring appropriate objective and transparent processes are applied to the environmental impact assessment of infrastructure projects. We further emphasise the importance of green infrastructure and improved urban sustainability requirements.

Finally, and most importantly, there is a fundamental imbalance in relation to **merits review and appeal rights** as proposed. While there are expanded rights for proponents and developers, community review and enforcement rights are restricted by the draft legislation. Under the guise of giving the community new upfront engagement rights, existing review rights are being removed. This is not a fair trade-off. In a new and untested system, it is absolutely essential to ensure that there are checks and balances in the legislation to guarantee due process and accountability. Absence of these safeguards has the potential to undermine the integrity of the proposed system.

This submission makes just over 100 **recommendations** for establishing best practice planning and putting balance back into the system. Our recommendations are evidence-based and drawn from extensive community feedback – through workshops, seminars and our legal advice line; from legal research and our technical experience with the system and the Court; and from EDO NSW's substantial body of planning law reform work in recent years. We put these recommendations forward to constructively assist in amending the draft legislation before it is introduced to the NSW Parliament.