Summary of EDO NSW Recommendations

Recommendations relating to the draft Planning Bill 2013

Objectives – Planning Bill, Part 1	
Overarching object	*Recommendation 1:* The overarching object of the planning system should be the achievement of ecologically sustainable development (**ESD**) (requires amendment to clause 1.3).
Ecologically Sustainable Development principles	*Recommendation 2:* ESD should be defined according to the recognised principles in existing NSW and Australian legislation and policies, including: • the integration of economic, social and environmental considerations in decision-making; • the precautionary principle; • intergenerational equity; • conservation of biological diversity and ecological integrity as a fundamental consideration; • improved valuation, pricing and incentive mechanisms, including the polluter pays principle (per clause 1.3(2)).
Environmental protection object	*Recommendation 3:* There should be specific references to 'the protection and conservation of native animals and plants' and 'the provision of land for public purposes' in the general environmental protection objective.
Operationalising the objects	*Recommendation 4:* The legislation should clearly state that all decisions, powers and functions under the new Act and relevant subordinate instruments must be exercised consistently with the principles of ESD.
Community Participation – Planning Bill, Part 2	
Community Participation Charter	*Recommendation 5:* The Community Participation Charter must be enforceable, with all planning authorities required to comply with the Charter's broad principles including in the making of Community Participation Plans.
Mandatory processes and accountability	*Recommendation 6:* The clause which states Part 2 of the Act is 'not mandatory', and restricts legal challenges, should be removed (clause 10.12).
Mandatory notification and consultation requirements	*Recommendation 7:* Mandatory notification and consultation requirements for strategic planning and development assessment should reflect best practice. The Act should include: • minimum requirements at the *strategic planning* stage,

	including: ○ notification of the preparation of strategic plans and local plans; ○ publicly available information (including environmental studies and sectoral strategies); ○ decision makers must take into account submissions made on draft plans; ○ decision makers must provide reasons for decisions about strategic plans (per Part 3; and Schedule 2 Part 1); • minimum requirements at the *development application and assessment* stage, including: ○ notification of development applications (**DAs**); ○ publicly available supporting information, including all information supporting a DA; ○ decision makers must take into account submissions made on DAs; ○ decision makers must provide reasons for decisions when determining DAs (per Part 4; and Schedule 2 Part 1). Recommendation 7a: The provisions pertaining to copyright of documents should clearly indemnify all persons *including councils and community members* where documents are published or accessed for planning purposes, such as commenting on DAs (per Schedule 2, clause 2.24).
Minimum exhibition periods	*Recommendation 8:* Minimum mandatory exhibition periods should be as follows: Strategic Planning level • 60 business days (12 weeks) for draft strategic plans (including Local Plans and their planning control provisions). • 60 business days (12 weeks) for draft strategic (environmental) impact assessments. Development Assessment level • 45 business days (9 weeks) for State Significant Development (**SSD**), State Infrastructure Development (**SID**) and Public Priority Infrastructure (**PPI**). • 35 business days (7 weeks) for impact assessable development proposals (other than SSD, SID or PPI). General procedure • All notification and exhibition periods should be expressed in business days. *Recommendation 9:* Where a minimum exhibition period is provided, the legislation should explicitly state that members of the public (and public authorities) may make comment during these periods, and may inspect and copy any documents for that purpose.
Review of Community Participation Plans	*Recommendation 10:* There should be express provision for the proposed independent review of Community Participation Plans, with this process to be mandatory and regular.

Strategic Planning – Planning Bill, Part 3	
General	*Recommendation 11:* There should be a requirement that strategic plans: • are based on the best scientific information available (including baseline environmental studies, strategic environmental assessment, and environmental accounts); • identify and protect valuable and sensitive natural areas from development; • ensure cumulative impacts are properly assessed and considered in plan-making; • integrate national, state and regional natural resource management (**NRM**) targets and agency expertise; • set out rigorous and objective requirements for process, outcomes and implementation of Strategic Environmental Assessment; • use Strategic Environmental Assessment to complement, not replace, site-based assessment; • include a comprehensive range of environmental and sustainability performance indicators by which the new planning system will be assessed.
Strategic Planning Principles	*Recommendation 12*: Balance economic, social and environmental values (through amending Principle 1 and deleting Principle 10 under clause 3.3). *Recommendation 13:* There should be additional Strategic Planning Principles to achieve environmental and NRM outcomes, and the sustainability of natural and built environments. In particular, strategic plans should: • aim to *achieve ecologically sustainable development* when making, amending and implementing plans – including by applying relevant ESD principles in decision making; • aim to *maintain or improve environmental outcomes* in the area – including through the integration of national and state NRM targets, and regional Catchment Action Plan (or equivalent) targets; • take into account, and mitigate, the *cumulative impacts* of past, present and likely future development in the area – including by establishing the carrying capacity of the landscape (with respect to environmental qualities, waste etc); • take into account the likely *scientific impacts of climate change* on the area – including identifying and planning for an effective hierarchy of mitigation and adaptation responses in urban, rural and coastal areas; • provide for *urban sustainability* (open space, 'green infrastructure', public transport), *building efficiency* (water, energy, materials) and *social inclusion* (walkability, design, affordable housing) that can be tailored to local needs.
Community participation	*Recommendation 14***:** There should be specific minimum consultation, notification and information access requirements for Community Participation Plans and the Minister's 'gateway

	determination' for Local Plans (per Part 1 of Schedule 2 and clause 3.7).
Making, amending or repealing plans	*Recommendation 15:* Appropriate studies (environmental, social and economic) must be completed prior to the preparation of draft strategic plans, including local plans, where not previously done or current (per Part 3). *Recommendation 16*: Decision makers must give reasons for decisions, particularly in exercising functions to make, repeal or amend strategic plans or local plans (per Part 3). Ministerial discretion to avoid compliance with plan-making procedures to 'expedite' matters should be removed (per clauses 3.9 and 3.14). *Recommendation 17:* NSW Planning Policies, regional and subregional plans should be subject to independent review at regular, specified intervals.
NSW Planning Policies	*Recommendation 18:* NSW Planning Policies should: • be disallowable statutory instruments and subject to judicial review; • maintain or improve protections in current State Environmental Planning Policies (**SEPPs**) and set minimum environmental standards. *Recommendation 19:* There should be specific reference to NSW Planning Policies relating to: • the integration of natural resource management (**NRM**) targets and environmental protection outcomes into the planning system; • urban sustainability, climate change mitigation and adaptation (through amending clause 3.4(2)).
Regional Growth Plans	*Recommendation 20:* Regional Growth Plans should: • be called Regional Development Plans; • require the inclusion of more specific environmental targets (such as a 'maintain or improve environmental outcomes' test); • be based on NRM catchment boundaries where possible.
Subregional Delivery Plans	*Recommendation 21:* Subregional Delivery Plans must include a range of community and environmental protections, and governance safeguards, including: • an active commitment to delivering ESD; • best practice consultation processes, in accordance with the Community Participation Charter; • transparent and evidence-based decision making; • integrated environmental and NRM outcomes; • built-in urban sustainability, design quality and climate change responses; and • clear membership procedures, expertise and obligations for Subregional Planning Boards (see Planning Administration Bill recommendations below). *Recommendation 22:* The aim of integrating environmental targets

	from other laws and policies in Subregional Delivery Plans should be given clearer effect. *Recommendation 23:* The formal status and requirements for Sectoral Strategies should be clarified. *Recommendation 24:* The environmental data that informs Sectoral Strategies must be integrated into performance assessment of planning outcomes (including indicators in annual reports, audit reports, legislative reviews, and the annual State budget). *Recommendation 25:* Growth Infrastructure Plans should be required to include 'green infrastructure' commitments and integrate this into broader infrastructure planning and funding.
Local Plans	*Recommendation 26:* Spot rezoning should be limited to exceptional circumstances that maintain or improve environmental outcomes (see clause 3.25). *Recommendation 27:* Reduction or standardisation of zones must maintain or improve existing environmental and heritage protections in current SEPPs and Local Environmental Plans. *Recommendation 28*: There should be clear and objective criteria for the Minister in exercising functions relating to 'gateway determinations' for planning proposals (per clause 3.21). *Recommendation 29:* There should be an additional environmental zone (or zones) to ensure there is no loss of existing E3/E4 and equivalent protections. *Recommendation 30:* There should be more clarity around how binding planning controls will maintain or improve existing environmental and heritage protections in the new zones. For example, provisions to protect and manage special ecological attributes in residential locations should be in binding planning controls, not merely part of non-binding development guides (see clauses 3.11 and 3.27(2)). *Recommendation 31:* Zoning revisions must be based on thorough and informed public consultation, and scientific studies that fully value environmental benefits and services. *Recommendation 32:* There should be minimum environmental protection criteria for zones in new standard instruments (and strategic plans). Local councils should be permitted to include additional controls for environmental conservation purposes that suit local needs. *Recommendation 33:* Enterprise zones should have limited application and be subject to mandatory environmental, urban sustainability and building efficiency requirements. *Recommendation 34*: There should be clarity around how local heritage will be protected by suburban character zones.

	Recommendation 35: Specific timeframes should be provided for reviews of Local Plans so that they cover ten years and are reviewed every four years (compared to 'regular and periodic review' as per clauses 3.15 and 3.9(4)). *Recommendation 36:* Standard Instrument provisions should be developed to address climate change for coastal local government areas (including buffer zones, restrictive zoning, setbacks and other resilience measures). *Recommendation 36a:* Planning control provisions in Local Plans should not be permitted to suspend or modify Nature Conservation Trust Agreements, private Conservation Agreements, wildlife refuges and conservation property vegetation plans without the landowner's consent (per clause 3.26).
Development Assessment and approval – Planning Bill, Part 4	
General – equitable rights	*Recommendation 37*: There should be equitable rights between developers and the community, and strict limits on development outside established strategic planning processes. This includes: • strictly limiting rights to spot rezoning and rights to vary standards to circumstances that where a proponent can clearly demonstrate that a proposed development will *maintain or improve environmental and social outcomes* based on relevant studies; • limiting proposals that depart from standards and require rezoning to go through a transparent and objective process, including community consultation and a right to be heard; • encouraging third party (community) participation in all review and appeal mechanisms proposed for developers (whether for spot rezoning or other decision review rights); • instead of an automatic appeal right for code-assessable development after 28 days, such rights could be triggered by requiring developers to notify council of an intention to appeal if a project is not determined within a further period (such as 14 days).
Complying development	*Recommendation 38:* A development that does not comply with development guide provisions, should not qualify as complying development (per Division 4.3). *Recommendation 39:* A 'deemed approval' of non-compliance with standards should not be permitted (per clause 4.8).
Code assessment	*Recommendation 40:* Codes must only apply to genuinely low risk, low impact development; and code assessment should be excluded from a range of sensitive areas, such as: • environmental protection zones, or other environmentally sensitive areas (for example, where development would affect areas of high conservation value, listed threatened species, endangered ecological communities or critical habitat); • areas of Aboriginal cultural and heritage significance;

	• areas protected by existing SEPPs (such as koala habitat, littoral rainforest, wetlands, sensitive coastal areas etc). *Recommendation 41:* Clear requirements for public consultation must apply to all code-assessable development, and the formulation and amendment of codes themselves. These requirements include: • *Participation* – the Community Participation Charter must be applied to code-making and code amendments. • *Notification* – the community should be consulted early on when and how code-assessable project notification and information should be provided (for example, on-site signage, direct to neighbours, online access, web-based automatic notification). • *Local, rural and regional needs* – If a NSW planning policy sets code standards, it must allow tailoring for local needs. *Recommendation 42:* Objective rules and standards for code development and content should be developed. This should include: • *Enactment* – Development assessment codes should be promulgated as legislative instruments and subject to judicial review. • *Achieving ESD* – All codes must be consistent with an overarching aim of achieving ESD and decision makers should be required to apply ESD principles (among other criteria) when making codes. • *Low environmental impact* – Codes should be limited to genuinely low risk, low impact development. This threshold should be based on the relevant planning authority being satisfied (based on relevant, up-to-date studies) that development approved under the Code: o will have no significant adverse social or environmental impacts, *and* o will maintain or improve environmental values in the area the code affects. • *Cumulative impacts* – Codes must include provisions dealing with: o the cumulative impacts of multiple developments (code-based or otherwise); o interfaces and 'edge effects' across different areas and zone boundaries (for example, between built-up corridors and more sensitive areas); • *Efficiency* – Codes must include mandatory, leading practice sustainability and efficiency requirements for residential, commercial and industrial developments, including for retrofitting existing buildings – via an updated and expanded Building Sustainability Index (**BASIX**). • *Facilitating green innovation* – Adopt processes and standards that facilitate, encourage and reward green innovation (for example, simpler, cheaper or faster approval of projects that demonstrate leading environmental sustainability). • *Enforceability* – There should be a range of strong enforcement powers that can be exercised by councils and members of the public to ensure codes are complied with. • *Regular review* – There should be regular, independent

	review of codes to ensure processes, participation, outcomes and governance are effective.
Merit assessment	*Recommendation 43:* Developments should either be fully code assessed or fully merit assessed if they fall outside the code. *Recommendation 44:* There should be additional criteria for decision makers exercising merit assessment functions (per clause 4.19) including: • the suitability of the site for the development (and appropriate alternative options); • the cumulative impacts of past, present and likely future developments in the area; • climate change impacts – in particular: o the development's likely *contributions* to climate change; o the likely impacts of climate change *on the development*; o the need for relevant conditions to address both mitigation and adaptation. • the public interest, specifically including relevant principles of ESD that should apply. *Recommendation 45:* The proposed 'public benefit' qualification to the 'public interest' test should be deleted (in clause 4.19(2)(d)).
State Significant Development	Recommendation 46: All State Significant Development (**SSD**) should be 'impact assessed' development that is subject to an Environmental Impact Statement (**EIS**) and mandatory consultation during assessment. *Recommendation 47:* Decision makers for State and Regionally Significant Developments should be required to consider the provisions of Local Plans where the development will have an impact. *Recommendation 48:* There should be clear and objective criteria for the Minister in exercising powers to 'call in' development as SSD (per clause 4.29). *Recommendation 49:* The recommendations listed above in relation to merit assessment decision-making criteria (see Recommendation 44) should also be adopted for State and Regionally Significant Developments. *Recommendation 50*: There should be clear legislative requirements for assessing SSD, with best practice standards for public consultation, independent environmental assessment, and review. *Recommendation 50a*: The Bill must not enable SSD that is partly prohibited (clause 4.30), or allow partial consents (clause 4.16) as these may circumvent clear staged assessment and rezoning processes that should require holistic environmental assessment.

	Recommendation 51: Concurrences and referrals (including Species Impact Statements and approvals listed in Table 1 of Part 6, Division 1) must be: • reinstated for State Significant projects, and • retained for any proposal involving a significant environmental or heritage impact.
Strategic Compatibility Certificates	*Recommendation 52:* Strategic Compatibility Certificates should have strictly limited application, and be subject to rigorous upfront community consultation and environmental safeguards (per Division 4.7).
Environmental Impact Assessment	*Recommendation 53*: There should be mandatory accreditation of environmental consultants who prepare Environmental Impact Assessment (**EIA**) reports as part of a two-tiered process: • first, for code-based assessment; • second, for major projects (public and private), including independent appointment of accredited assessors (see Appendix). *Recommendation 54*: EIA processes should be strengthened by: • requiring assessment of the cumulative impacts of multiple projects, the potential impacts of feasible alternatives, and climate change impacts; • requiring decision makers to reject reports that are unsatisfactory or incomplete; • replacing public authority self-assessment with an impartial, arms-length approach (see Infrastructure and EIA, Recommendation 56 below); • improving transparency of EIA processes as part of upfront community engagement before decisions are made; • adopting best practice standards for Strategic Environmental Assessment (see Strategic Planning Recommendations 8 and 11 above); • external peer-review and auditing of EIA reports and subsequent project outcomes; • requiring the Minister to report annually on the effectiveness of EIA systems; • ensuring that EIA is linked with comprehensive baseline data and environmental accounting systems, providing sufficient resources and time to address data gaps.
Modifications	*Recommendation 55:* The existing checks and balances that apply to modifications (EP&A Act section 96) should be carried over to the new Act (per clause 4.38). In addition to requiring the development is 'substantially the same', these legal safeguards include: • ensuring that modifications involve 'minimal environmental impact' (or further consultation with concurrence agencies), • satisfying consultation and notification requirements (for the public and concurrence agencies), • consideration of submissions, and • limitations on modifications that affect threatened species and critical habitat.

Infrastructure and environmental impact assessment – Planning Bill, Part 5	
General	*Recommendation 56:* Assessment and approval for State development should be independent through: • including infrastructure projects in new requirements to accredit consultants who undertake EIAs in the new planning system; and/or • requiring assessment and approval of infrastructure projects at arms-length from the proponent (state agency), such as by a regional planning panel or other body. *Recommendation 57:* Staged or 'concept plan' processes must include further public consultation and review at a later stage. *Recommendation 58*: The Minister must only be allowed to amend strategic plans and Local Plans and to 'expedite' matters that give effect to infrastructure plans (as well as strategic plans and matters of State or regional significance) in strictly limited circumstances, based on objective criteria and following consultation with the relevant local community.
Environmental Impact Assessment for infrastructure projects	Recommendation 59: The general duty to consider environmental impacts of relevant development should be strengthened by: • a contextual reference stating that this duty arises 'For the purposes of attaining the objects of this Act relating to achieving ESD and the protection and enhancement of the environment…'; • a requirement to 'examine and take into account *to the fullest extent possible all matters* affecting or likely to affect the environment…'. • requiring that the '7-part test' be carried out where threatened species may be in or around the site (per clause 5.3). *Recommendation 60:* Environmental impact assessment for infrastructure should: • carry over all existing factors to be taken into account in assessing environmental impacts (see *Environmental Planning and Assessment Regulation 2000*, clause 228); • strengthen the consideration of new threatened species listings where relevant, in accordance with evidence based decision-making and adaptive management; • clarify that where the determining authority and the proponent who provides the EIS are in fact the same agency (clause in clause 5.4(1)(a)), that independent scrutiny and additional accountability requirements should apply; • the minimum exhibition period for an EIS should be increased from 28 days to 45 business days (per Part 1 of Schedule 2); • require the determining authority to give reasons if it disagrees with any findings or recommendations following a review by the Planning Assessment Commission or the Director-General (per clause 5.4(1)(c)-(d)); • require the Director-General to make an examination of the EIS public 'as soon as practicable' (per clause 5.8(3)).

	• consider any effect of proposed development on wilderness areas (per Schedule 5, clause 5.4); *Recommendation 61:* It should be clear that the meaning of 'significantly affect the environment' includes but is not limited to threatened species (per clause 5.5(1)). *Recommendation 62:* There should be a requirement (rather than discretion) to impose conditions to reduce the adverse effects of high-impact development after an EIS if it is determined that the development will adversely affect the environment (per clause 5.6). *Recommendation 63:* A notice provided to the proponent in writing as to the determining authority's reasons for actions should also be made public (per clause 5.6(1)).
State Infrastructure Development	*Recommendation 64*: State Infrastructure Development (**SID**) procedures should be strengthened as follows**:** • the term 'infrastructure' should be defined; • the requirements for a SID project application should be specified (per clause 5.12); • the requirement that all SID projects require an environmental impact statement (**EIS**), in accordance with the Director-General's requirements and the regulations should be retained (per clause 5.13) (see also Recommendation 56); • the minimum exhibition period for an EIS should be increased from 28 days to 45 business days (per clause 5.14, Part 1 Sch. 2); • public exhibition provisions should be accompanied by explicit provisions stating that any person (including a public authority) may make a submission on the development (per clause 5.14; cf EP&A Act, s 115Z(4)); • the Director-General should be required to consider relevant issues raised in public submissions when exercising their discretion to provide copies of public submissions on an EIS to 'appropriate' public authorities (per clause 5.14(4)(c)); • an agency/proponent's preferred SID report should be made available to the public whether or not the Director-General considers that significant changes are proposed (per clause 5.14(6)); • the Director-General's EIA report to the Minister should include a copy or accurate summary of public submissions, and any response from the proponent to the issues raised in those submissions (per clauses 5.14(5) and 5.15(2)); • when deciding whether or not to approve SID, the Minister should be required to consider public submissions on the proposal (per clause 5.16(2)); • the Minister's power to determine that no further EIA is required for the development, or any particular stage, should be subject to appropriate checks and balances (including an environmental impact threshold or criteria, and independent advice or recommendations) (per clause 5.19); • the process for requesting and granting a modification of the Minister's SID approval should refer to the potential

	environmental impacts of the change (per clause 5.20(2)-(3)); • the requirements to publish information (per clause 5.2) should be retained and strengthened as follows: o there should be specific timeframes or 'as soon as practicable' requirements to publish documents; o there should be a requirement to publish submissions made on SID proposals and their EISs, including from government agencies; o reasons for *approval*, not just *refusal* of SID should be published, consistent with obligations under the Community Participation Charter (see clause 2.1(1)(g)).
Public Priority infrastructure	*Recommendation 65:* The declaration of Public Priority Infrastructure (**PPI**) proposals should be limited and based on objective criteria and governance standards including: • tightening up the types of development that can be classified as PPI (compared to 'generally of the kind' under clause 5.23(2)(a)); • requiring the advice of the Planning Assessment Commission prior to a declaration (per clause 5.23(2)(b)). *Recommendation 66:* A project definition report for PPI should: o be exhibited *before* the Minister declares a development as PPI, and for at least 45 business days (instead of 28 days); o require the proponent to avoid, minimise or mitigate any adverse impacts of the development, 'to the extent practicable', including having regard to reasonable alternatives to the proposal, or alternative ways of constructing or operating the infrastructure; o specifically address *cumulative impacts* in combination with other existing or likely future development, and *climate change impacts* including mitigation and adaptation responses (per clause 5.26). *Recommendation 67:* PPI should not be exempt from a range of provisions, such as the Act's objects, strategic plans, concurrence requirements and appeals (clause 5.27).

Concurrences, consultation and other legislative approvals – Planning Bill, Part 6	
Review of concurrences	*Recommendation 68:* The Government's four-month review of concurrences should be extended and subject to broad consultation on the ambit and policy rationale for the concurrence reforms. *Recommendation 69:* Existing concurrences designed to protect environmental values (such as biodiversity, heritage or pollution prevention) should be retained for any proposal involving a significant environmental or heritage impact. *Recommendation 70:* The protection of Aboriginal cultural heritage and other heritage values should be clarified and prioritised.

Concurrences generally (including for major projects)	*Recommendation 71:* Concurrence requirements for major projects (State Significant Development, State Infrastructure Development and Public Priority Infrastructure) should be reinstated (per Division 6.1) for at least native vegetation, aquifer interference approvals and heritage impacts – and potentially others pending the review above.
	
	Recommendation 72: There should be no bar that prevents authorities from issuing environmental protection directions, orders and notices relating to Public Priority Infrastructure breaches (through removing clause 6.4).
	
	Recommendation 73: Specific concurrence protections for threatened species should be retained and improved (including for major project assessment). These protections should include:
	• the need to obtain concurrence from the Environment Minister or delegate when a development is likely to significantly affect threatened species;
	• application of the current 7-part test, setting out the factors which determine whether a project will significantly affect threatened species etc;
	• a comprehensive list of factors to determine the basis of consultation about threatened species, or whether concurrence should be given (see Part 6, Division 6.2 generally), including:
	  ○ the principles of ESD
	  ○ submissions received on the development application
	  ○ species conservation statements.
	
	Recommendation 74: The Minister's broad discretion to dispense with concurrence and consultation requirements that protect environmental values (under Part 6 of the Bill, other Acts and Local Plans) should be removed (per clause 6.9).
	
	Recommendation 75: Restore the Environment Department's expert role for threatened species concurrences, along with other concurrence agencies appointed in a Local Plan.

One stop shop	Recommendation 76: The Director-General's powers and

	discretions to determine matters (as a one stop shop) should be removed, and a unit should be established (within an independent Planning Assessment Commission) to work on concurrences, which draws on external agencies for personnel and is still bound to make decisions according to their respective legislative frameworks.
Infrastructure and Biodiversity contributions – Planning Bill, Part 7	
Growth Infrastructure Plans	*Recommendation 77:* There should be increased consultation period for draft Growth Infrastructure Plans, particularly if the 28 days may overlap with consideration of other plans. *Recommendation 78:* Growth Infrastructure Plans should be required to include climate change risk assessment, mitigation and adaptation responses – embedded in long-term infrastructure planning.
Biodiversity offset contributions	*Recommendation 79:* There should be a distinction between direct biodiversity offset contributions and indirect biodiversity contributions. *Recommendation 80:* There should be rigorous legal criteria for offsetting including: • a scientific assessment approach that maintains or improves biodiversity outcomes; • a like-for-like approach to offset impacts on specific species and communities; • a bar on their use in 'red-flag' areas that are too valuable to be destroyed and offset; • legal protection for offset areas in perpetuity. *Recommendation 81:* Consideration should be given to making the BioBanking Scheme mandatory for certain developments.
Planning Agreements	*Recommendation 82:* There should be third party merit appeal rights in relation to development that is the subject of voluntary planning agreements (through amending Division 7.4 and Part 9).
Green Infrastructure	*Recommendation 83:* Infrastructure planning needs to properly value 'green infrastructure' and integrate this into broader infrastructure planning and funding at all levels.
Building and subdivision – Planning Bill, Part 8	
Sustainability targets	*Recommendation 84:* There should be *mandatory* urban sustainability goals at strategic and local planning levels applying to areas such as energy and water use, construction, transport, waste reduction, biodiversity and bushland protection. *Recommendation 85:* There should be a timetable for meeting specific sustainability targets; with monitoring, auditing and reporting processes to apply to all types of built development (including industrial, commercial and residential) to achieve goals and targets.
Update BASIX	*Recommendation 86:* The Building Sustainability Index (**BASIX**) should be immediately updated and expanded, and linked with code

	assessment. In particular: • strengthen minimum requirements of BASIX to reflect technological advances; • extend its operation to commercial and industrial sites; • raise standards for multi-unit dwellings that are currently subject to lesser targets; • establish mandatory sustainability requirements in law for retrofitting existing buildings (in particular commercial and industrial); and • set minimum baselines, but remove the prohibition on councils and other consent authorities from imposing more stringent water and energy use limits.
Merits review, appeals and enforcement – Planning Bill, Parts 9-10	
Merit review and appeal rights	*Recommendation 87:* There should be more equitable review rights for third parties (community members). Third party merits appeal categories should be expanded as follows (per Division 9.3): • where development controls are exceeded (for example, if development is approved that exceeds code-based; standards); • in relation to major projects, whether or not the Planning Assessment Commission holds a public hearing (per clause 9.6(3)(a)); • decisions to approve development modifications; and • to provide more equitable time periods for objectors to bring merits appeals. *Recommendation 88:* There should be an explicit, expanded role for the public in conciliation, arbitration, and review processes (per Division 9.2). *Recommendation 89:* Remove review rights for developers where rezoning applications are refused (otherwise, equitable third party review rights should be provided in these circumstances). *Recommendation 89a:* Require SSD consents to be deferred pending any appeals (clause 9.13).
Open standing	*Recommendation 90:* The general privative clause which states that various parts of the Act are 'not mandatory', and restricts legal challenges, should be removed (clause 10.12).
Enforcement	*Recommendation 91:* Compliance and enforcement policies and statistics should be published in a consistent and comparable form. *Recommendation 92:* Leading practice innovative compliance and enforcement tools and orders should be including in the new planning scheme (for example, as available under the *Protection of the Environment Operations Act 1997*). *Recommendation 92a:* The offence for providing false or misleading information (clause 10.22) should be clarified to apply to: • 'negligent or reckless' inaccuracies of information provided; • 'approvals' under Part 5, Division 5.1 (development that

	does not require consent); and • information provided in the course of post-approval reporting obligations or investigations.

Recommendations relating to the Planning Administration Bill

Planning authorities	*Recommendation 93:* There should be clear membership categories for Subregional Planning Boards and other planning authorities. *Recommendation 94:* Safeguards for Subregional Planning Boards (and other planning authorities) should include: • Requirements for transparent procedures, timely notification and accessible information; • Local rather than State members should predominate membership; • State-appointed members should be drawn from particular agencies (such as Local Land Services, Planning Department, Housing, Environment and Heritage) and require community representation; • the requirement that Deputy Chairs be a State appointed member should be removed (per Schedule 5, clause 5.4); • limitations on the Minister's ability to remove members from office to governance grounds (clause per Schedule 5, clause 5.7(1)); • provisions making disclosures of pecuniary interests available for free and electronically (subject to appropriate safeguards); • prohibit or strictly limit the circumstances in which a member may deliberate or take part in a decision if they have declared a pecuniary interest (Schedule 5, clause 5.17(6)).
Monitoring and environmental auditing	*Recommendation 95:* Require that monitoring and environmental audit reports are made public (Part 9). *Recommendation 96:* Require objective criteria for monitoring and auditing conditions (clause 54). *Recommendation 97:* Require independent certification of monitoring data (clause 55(c)).
Planning Assessment Commission	*Recommendation 98:* Clarify the application of the 'public interest' test to justify private hearings (Schedule 2, clause 2.3(4)).

Non-legislative recommendations

Terminology	*Recommendation 99:* Guidance material for the community should include clear information on changes to terminology and the operation of instruments and decision makers in the new system, as compared with the current system. *Recommendation 100:* Information and training should be provided, including as part of e-planning initiatives, to assist all members of the community in engaging with the new planning system.
Targets	*Recommendation 101:* The setting of a target for code assessable matters – currently 80% within 5 years – should be based on an objective determination of low risk and low impact. *Recommendation 102:* The determination of what constitutes low risk, low impact – and hence the target – should be determined as part of the first tranche of planning reforms and based on extensive community consultation (see also Recommendation 42).
Resourcing	*Recommendation 103:* Significant additional time, resourcing, expertise, training and oversight will be essential to do best practice public engagement properly, and ensure community buy-in. This includes additional resources for effectively engaging sectors of the community who may not currently engage effectively – for example, Indigenous and culturally and linguistically diverse communities. The NSW Government needs to consult further on the detail of how this will be achieved.
Parallel consultation processes	*Recommendation 104:* Current consultation processes on the Sydney Metropolitan and Lower Hunter regional plans should be extended, and not finalised until the Planning Bill is passed and NSW planning policies are in place.