



EDO NSW Workshop: A New Planning System for NSW – White Paper

Newcastle, 21 May 2013



ABOUT EDO NSW

- Community legal centre specialising in public interest environmental & planning law
- Established 1985 (formerly known as the Environmental Defender's Office)
- Independent from Governments
 - Funded by Law Society of NSW, some Govt grants, private donations
- Our services are for the whole of NSW, offices in Sydney & Lismore (Northern Rivers)
 - Legal Advice and Casework
 - Policy & Law Reform
 - Community Legal Education (Outreach)
 - Aboriginal, Scientific and International programs.
- Today's presenters: **Rachel Walmsley & Nari Sahukar** (Policy & Law Reform team)

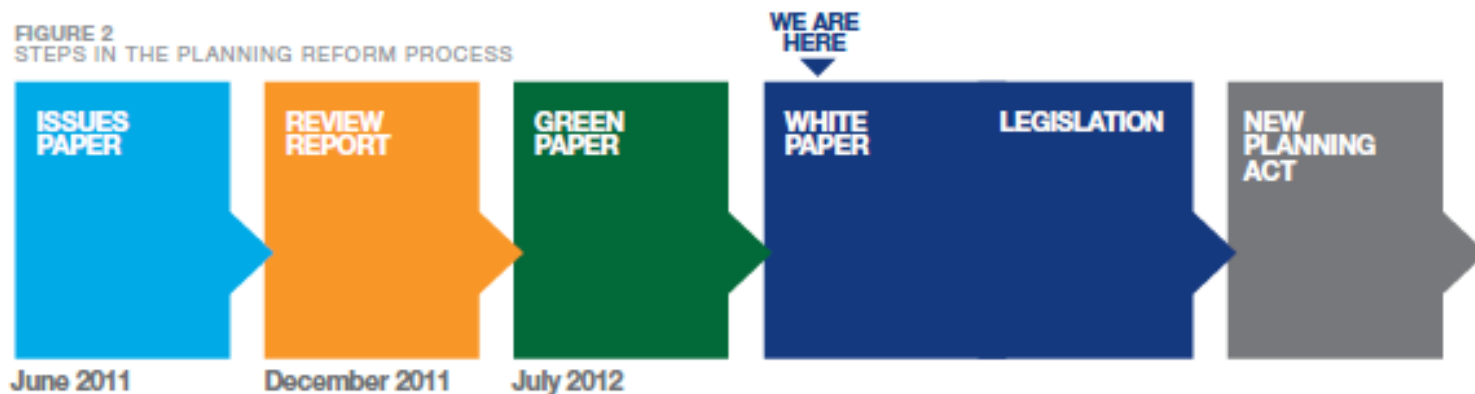
Seminar outline

1. How did we get here?
2. White Paper: Themes, aims & objectives
3. Community participation
4. Strategic planning
5. Development assessment
6. Infrastructure and building assessment
7. Having your say?

Questions

Introduction – How did we get here?

FIGURE 2
STEPS IN THE PLANNING REFORM PROCESS



WHITE PAPER A NEW PLANNING SYSTEM FOR NSW

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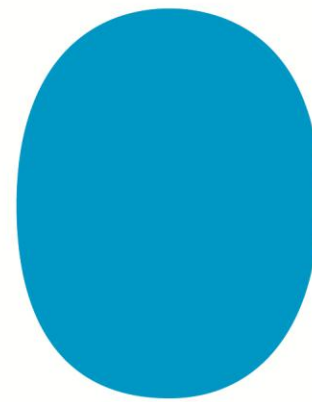
- The NSW Govt Planning *White Paper* follows more than 18 months of policy development and consultation...
 - Last stage: *Green Paper*
 - Now: consultation on *White Paper* and Bills
 - Next stage: (revised) Bills into Parliament → new *Planning Act*.

Green Paper Feedback Summary: Community issues

- 1500+ submissions to the Govt's *Green Paper* (875 from community)
- Key community issues noted:
 1. Ecologically sustainable development (central)
 2. Community engagement (essential)
 3. Upfront engagement AND consultation on Development Apps
 4. Public Participation Charter (detail)
 5. Enterprise Zones (overdevelopment)
 6. Independent & expert panels (oppose)
 7. Code based assessment? (low-impact or low-risk only)
 8. Private Certifiers (conflicts)
 9. Infrastructure provision
 10. Developer levies
 11. Regional Planning Boards

A NEW PLANNING SYSTEM FOR NSW – WHITE PAPER

Themes, Aims and Objectives



Key themes of the White Paper

There are five elements of reform:

- | | |
|---------------------------------------|---|
| 1. Delivery Culture | Enhancing our ability to positively work together to enable good outcomes while building the expertise, leadership and engagement skills of the planning industry |
| 2. Community Participation | Involving the community early when preparing strategic plans on the key decisions that will shape our cities, towns and neighbourhoods |
| 3. Strategic Focus | Preparing good policies upfront to guide growth and development and achieve balanced planning decisions |
| 4. Streamlined Approval | Making the assessment of proposals faster and simpler by removing duplication but maintaining rigour |
| 5. Provision of Infrastructure | Ensuring planning and delivery for development and supporting infrastructure occur at the same time |

EDO NSW – some best practice principles

- **Achieving ESD as the overarching objective**
 - Ecologically Sustainable Development and its 5 core principles.
- **Aim to achieve environmental outcomes**
 - To better value, and ‘maintain and improve’ the environment.
- **Genuine public participation throughout the system.**
- **Comprehensive strategic planning in law.**
- **Better environmental impact assessment**
 - Independent, high integrity, comprehensive.
- **Climate change readiness**
 - Impact assessment, mitigation (reduce CO₂), adaptation.
- **Improved accountability and enforcement.**

Overview of proposed reforms – April 2013

- **White Paper**
 - **Ch 1. Introduction**
 - Ch 2. The new planning system
 - Ch 3. Delivery Culture
 - **Ch 4. Community participation**
 - **Ch 5. Strategic planning framework**
 - **Ch 6. Development assessment**
 - Ch 7. Provision of Infrastructure
 - Ch 8. Building Regulation and Certification
- **Exposure Draft Legislation**
 - Planning Bill 2013
 - Planning Administration Bill 2013

Ch 1 - Aims and Objectives

- White Paper ‘key objective’ (p 15) →
- 9 objects in the draft Bill:

Objectives of the new planning system

The key objective of the planning system is to promote and enable economic growth and positive development for the benefit of the entire community, while protecting the environment and enhancing people's way of life. It is about enabling development that is sustainable.

Issue in Objects (Draft Bill)	Brief details
Sustainable development	Economic growth & environ./social ‘wellbeing’
Community participation	Early & ongoing – strategic planning & decisions
Infrastructure	Coordination, planning, delivery, integration
‘Timely delivery...’	...of business, employment & housing
Environment protection	eg threatened species & heritage (built/cultural)
Agricul. & water resources	‘Effective management’
Building safety & design	Health, safety & amenity in design/performance
‘Timely & proportionate...’	...Development Assessment (relative to impacts)
Shared responsibility...	for planning & growth mgmt b/w levels of govt.

What about *Ecologically Sustainable Development*?

- Current Planning Act includes 'ESD' as 1 of 10 objects.
 - 5 core principles
 - found in many state, national & overseas laws
- White Paper & Planning Bill remove all ESD references.
- replaced with narrower 'sustainable development':
 - *Sustainable development is achieved by the integration of **economic, environmental and social considerations**, having regard to **present and future needs**, in decision-making about planning and development.* (clause 1.3(2))
- Missing: Precautionary principle, Biodiversity and ecological integrity, Polluter pays principle.

Chapter 1 - Aims and Objectives

- Potential Strengths

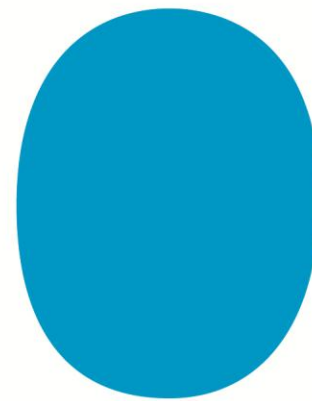
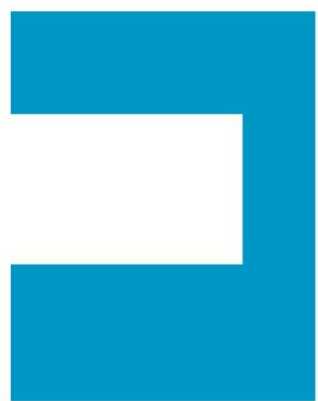
- Some acknowledgement of ‘triple bottom line’.
- Refers to ‘integration’ of considerations and ‘present and future needs’.
- An environmental protection object still included.

- Concerns

- New, narrow definition of *sustainable development* is a significant step backwards for environmental protection in NSW planning decisions.
- 9 objects, not formally ‘weighted’ or prioritised (excessive discretion?)
- Broad commitments not backed by sufficient detail for good development.

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Community Participation



Chapter 4 - Community Participation

What is proposed?

- **Community Participation Charter**
 - 7 principles, included in Bill
- Charter to be implemented through **Community participation Plans and Guidelines**
- Community participation at **strategic planning stage**, rather than the development assessment stage.

Chapter 4 - Community Participation

- Potential Strengths

- Recognition of role of the community in a Charter.
- Key role of community in strategic planning
- Mandatory minimum exhibition periods – not over Christmas

- Concerns

- How will the Charter be enforced?
- Community participation at **strategic planning stage**, and significantly reduced once strategic planning is complete
- Community capacity to engage?

Review and appeal rights

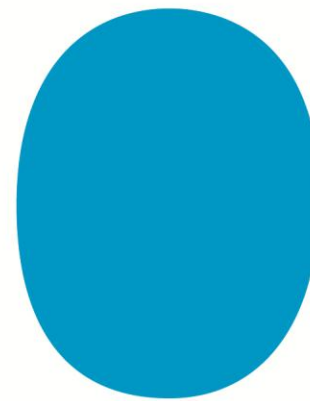
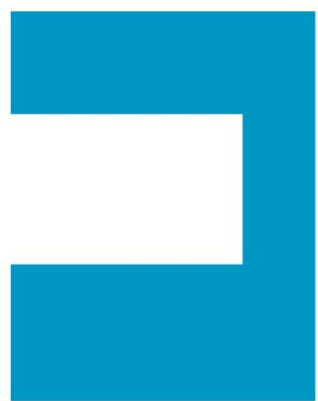
- ‘Open standing’ rights for any person to challenge a breach of the Act remain

BUT...

- Review rights continue to favour developers and community rights to challenge decisions will significantly limited.

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Strategic Planning



Strategic Planning principles

Principle 1:

Strategic plans should promote the State's economy and productivity through facilitating housing, retail, commercial and industrial development and other forms of economic activity, having regard to environmental and social considerations.

Chapter 5 - Strategic Planning



FIGURE 1
RELATIONSHIP BETWEEN NSW 2021 AND OTHER STRATEGIC PLANS AND REFORMS



Chapter 5 - Strategic Planning

- **Potential Strengths**

- Benefits of good strategic planning
- Strategic emphasis, ‘evidence based’
- Upfront engagement
- Consistency and coherence

- **Concerns**

- Specific concerns about enforceability of environmental protections in plans
- High risk strategy – removal of checks and balances
- Time to do plan properly versus “can do” delivery?
- Strategic planning vision of the White Paper may be undermined by contradictory clauses in the Bill.

FIGURE 24
NEW INDICATIVE ZONES (PRELIMINARY ONLY)

EXISTING ZONES IN THE SI LEP

INDICATIVE ZONES IN THE LOCAL PLAN

RU1 Primary Production RU3 Forestry RU4 Primary Production Small Lots		Resource
RU2 Rural Landscape RU6 Transition E3 Environmental Management		Rural
R1 General Residential R2 Low Density Residential R3 Medium Density Residential	R5 Large Lot Residential RU5 Village E4 Environmental Living	Residential (including Suburban Character Areas & areas with special ecological attributes)
R4 High Density Residential B4 Mixed use		Mixed Use
B1 Neighborhood Centre B2 Local Centre B3 Commercial Core	B8 Metropolitan Centre RE2 Private Recreation	Commercial
B6 Enterprise Corridor		Enterprise
B5 Business Development B7 Business Park		Employment
IN1 General Industrial IN2 Light Industrial	IN4 Working Waterfront W3 Working Waterways	Light Industrial
IN3 Heavy Industrial		Heavy Industrial
E1 National Parks and Nature Reserves E2 Environmental Conservation	W1 Natural Waterways	Environmental Protection & Hazard Management
RE1 Public Recreation W2 Recreational Waterways		Open Space and Recreation
SP2 Infrastructure		Infrastructure
SP1 Special Activities SP3 Tourist		Special Purpose

Example of current subregional planning

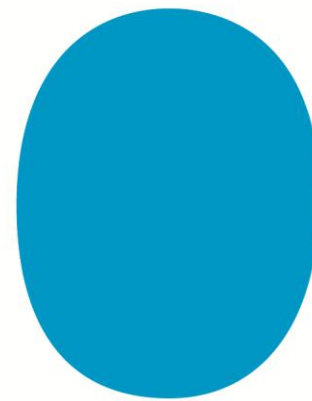
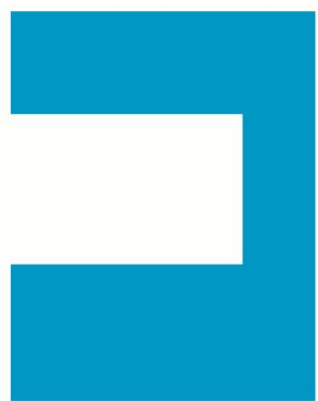
The Lower Hunter over the next 20 years: *A Discussion Paper*

March 2013



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Development Assessment



Chapter 6 - Development Assessment

- **Aim:** Speed up development assessment and approval
- Some familiar assessment tracks:
 - **Exempt** and **complying**
 - **Merit-assessed**
 - **EIS** (merit assessed + environmental impact statement required)
- BUT major shift to '**code assessment**' + when you can **have a say**.
 - range of residential, commercial, industrial developm't (if zone permits)
 - Criteria set upfront (consultation); then 'notice only' for neighbours.
 - Council must approve in 25 days if meets performance criteria in LP.
 - 5 year target: 80% *code-assessed* or *exempt/complying* (23% now)
 - Remaining 20% merit assessed (higher-impact & EIS devmt)

Major projects and approvals under other laws

- In addition to the 5 basic assessment tracks:
- **State Significant & Regionally Significant Development** to continue
- Critical State Significant Infrastructure → **‘Public Priority Infrastructure’**
 - Planning Minister approves PPI (by declaration).
 - Assessment & exhibition will focus on how, not whether, project proceeds.
 - No challenges of merits, legal errors & enforcement proceedings - generally
- **Reducing ‘concurrences’/approvals** under other laws
 - 4-month internal Govt review.
 - Planning Dept ‘one-stop-shop’ will coordinate remaining concurrences.
 - Major projects still exempt from many concurrence requirements.
 - Eg: heritage permits, coastal protection, land clearing, water use

Chapter 6 - Development Assessment

- **Potential Strengths**

- Aim of proportionate risk-based assessment (tracks)
- Still considering accreditation of consultants?
- More nuance on ‘concurrences’ than Green Paper?

- **Concerns**

- 80% code target: ltd consultation, no evidence of ‘low risk’?
- Concurrences overridden for large projects: proportionality?
- Centralised one-stop-shop puts speed over expertise?
- Decision making: will *public benefit* test skew public interest?
 - No specific ‘cumulative impact’ reference
 - No specific consideration of ESD principles

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Infrastructure and Building Regulation



Chapter 7 - Infrastructure & Chapter 8 - Building Regulation

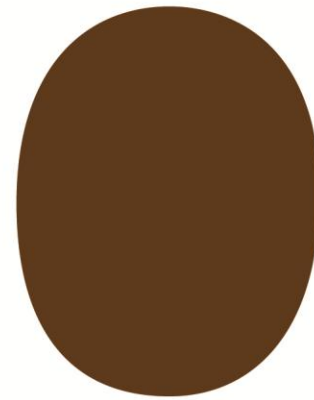
- **Potential Strengths**

- improved integration of infrastructure and planning, and
- improvements in building certification and compliance

- **Concerns**

- Same level of community consultation on infrastructure planning?
- Use of biodiversity offset funding?
- Lack of urban sustainability and building efficiency requirements

HAVING YOUR SAY?



How can I have a say?

- Submission on *White Paper* and Bills due
Friday 28 June
- Send an online submission (including attachments)
 - Use the online feedback tool to comment on specific parts
 - Post a submission to:
 - New Planning System
 - GPO Box 39, Sydney NSW 2001.
- Start a conversation with friends or a neighbour group
- Go to Planning Department seminars
- Contact your Local Council: holding community forums?

Materials to help you make a submission

- www.planning.nsw.gov.au
 - *White Paper*
 - Draft legislation
 - FAQs
 - 'Meeting in a Box' toolkit
- www.edonsw.org.au
 - Key issues paper
 - Videos to explain the major White Paper changes.
 - Fact sheets on the current planning system.
 - Fact sheet on how to write an effective submission.
 - Our submission will be completed 2 weeks before due date

Writing an effective submission - GENERAL

- Introduce yourself or your group. What is your background and experience?
- Explain why are you interested in and how you will be affected by the proposed changes.
- Personalise the submission – it's OK to sign *pro forma* submissions, but should personalise a bit.
- Talk about how the proposed changes will affect you, the environment, and other industries in the area.
- If possible, make recommendations.

Responding to a large document like the White Paper and draft Bills

- Outline your key concerns.
- Identify any errors or omissions.
- Don't rely on the White Paper alone – refer to the Bills.
- Use evidence or case studies – including reports that have been prepared by others.
- Draw on your local knowledge.
- If you're short of time don't try to cover the whole document.
- Split sections up with your community group.

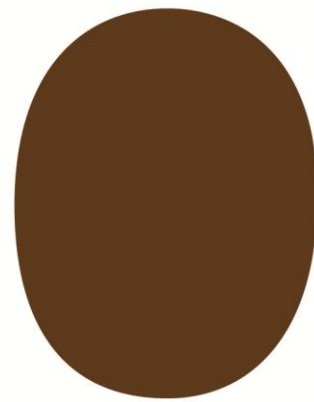
Things to think about – planning reforms

- How will the government consult with the community in preparing these strategic plans?
- What will you need from the government to allow you to effectively participate in the strategic planning stage e.g. 3D models of plans, online materials, public meetings?
- What do you think other members of the community might need to allow them to effectively participate in the strategic planning stage?

Involving the Department and local council

- Try to arrange to speak to or meet with the Department if you have a particular issue to raise.
- Register for the Department's workshops.
- Talk to your local council about their submission.

MORE INFORMATION



Free initial legal advice, fact sheets, and updates

- EDO NSW runs a free Environmental Law Advice Line
 - Monday - Friday
 - 2pm-5pm (a solicitor will call you back)
 - 02 9262 6989 or 1800 626 239
- Fact Sheets are available on our website:
 - www.edonsw.org.au
- For updates on environmental law and policy, sign up to our weekly eBulletin

Support our work

- Your support for EDO NSW will help us to:
 - Provide legal advice and representation;
 - Promote changes to environmental laws; and
 - Provide community legal education.
- Donations are tax deductible
- <http://www.givenow.com.au/edonsw>