

The background features a large, semi-transparent graphic of the letters "EDO". The letters are composed of overlapping circles and rectangles in shades of orange and red, creating a layered, 3D effect.

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

Newcastle, 21 May 2013



# ABOUT EDO NSW

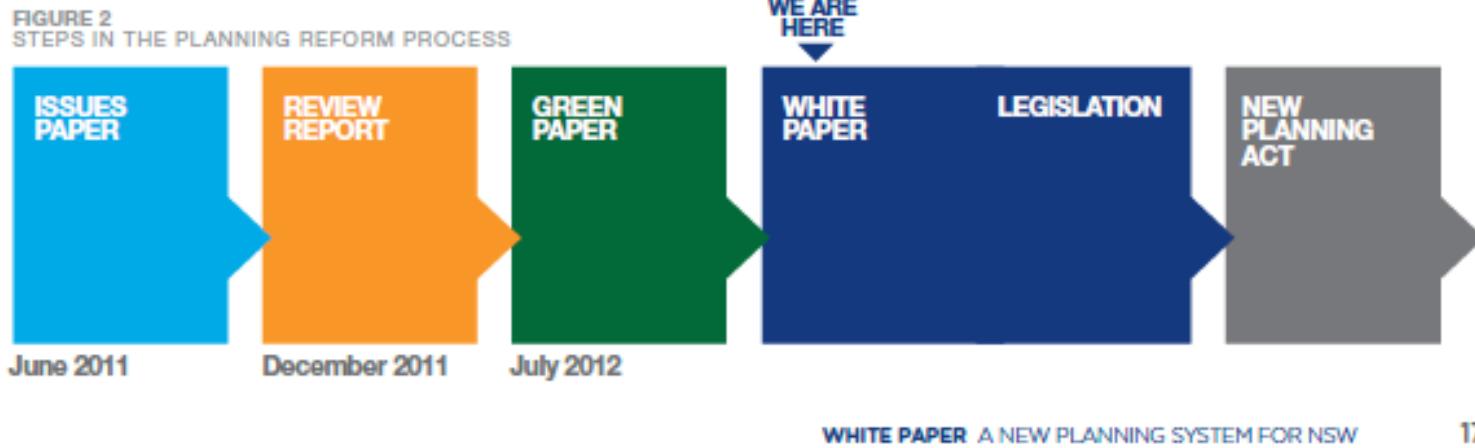
- **Community legal centre specialising in public interest environmental & planning law**
- Established 1985 (formerly known as the Environmental Defender's Office)
- Independent from Governments
  - Funded by Law Society of NSW, some Govt grants, private donations
- Our services are for the whole of 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?



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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*

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# Key themes of the White Paper

There are five elements of reform:

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

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*?

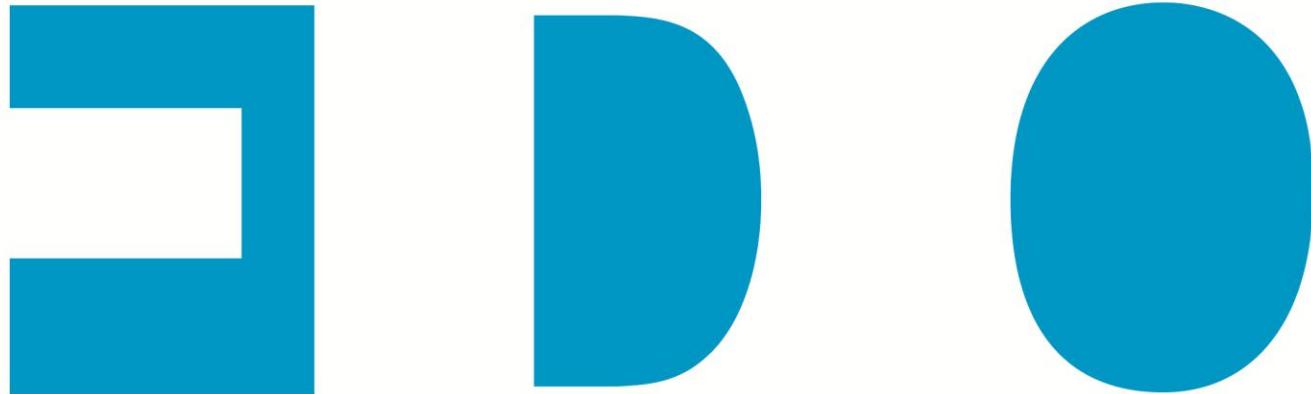
- Current Planning Act includes ‘ESD’ as 1 of 10 objects.
  - 5 core principles
  - found in many state, national & overseas laws
- White Paper & Planning Bill remove all ESD references.
- replaced with narrower ‘sustainable development’:
  - *Sustainable development is achieved by the integration of **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.

# **A NEW PLANNING SYSTEM FOR NSW – WHITE PAPER**

*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.

# **A NEW PLANNING SYSTEM FOR NSW – WHITE PAPER**

*Strategic Planning*

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# 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.*

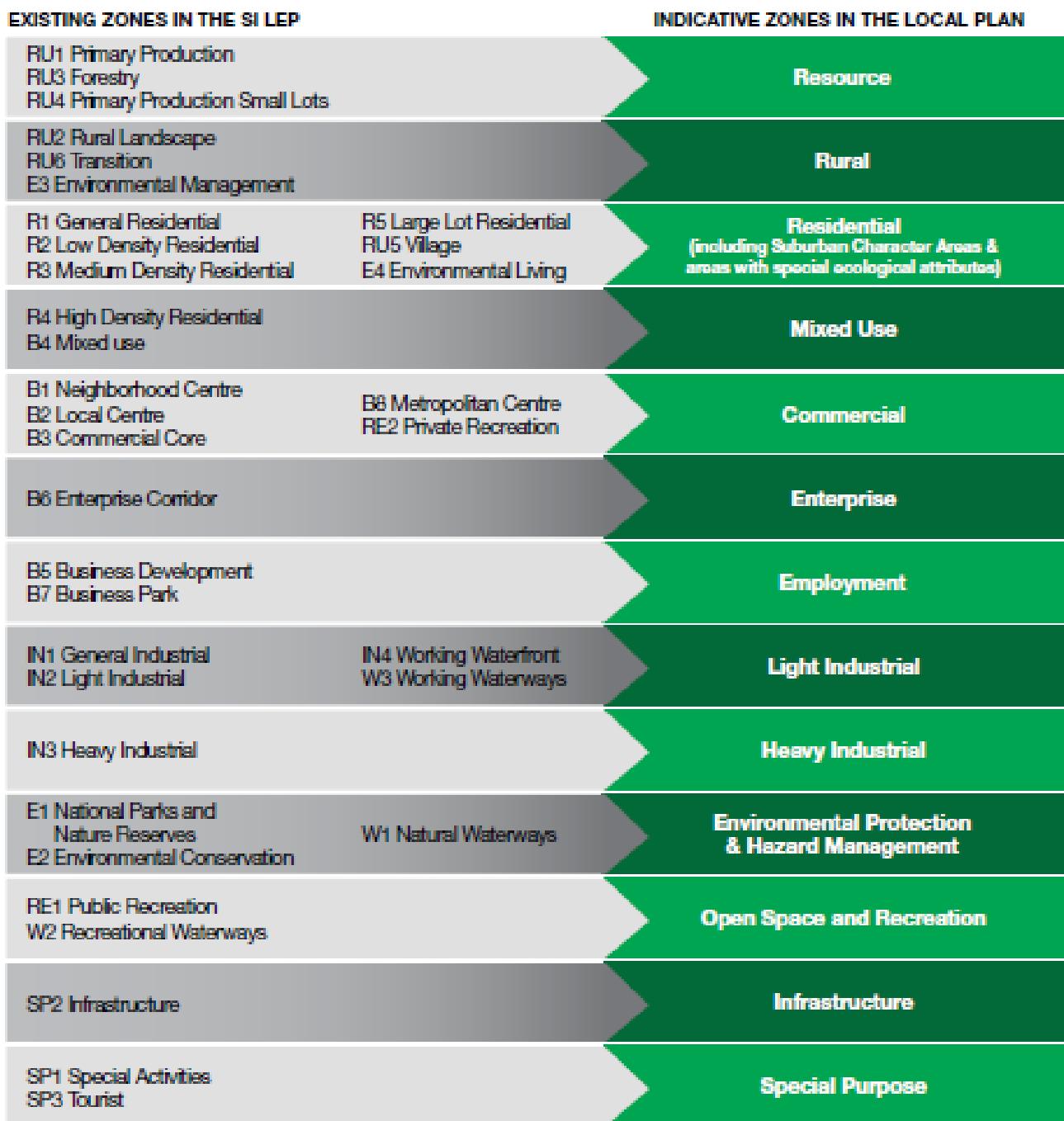
# Chapter 5 - Strategic Planning



# 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.

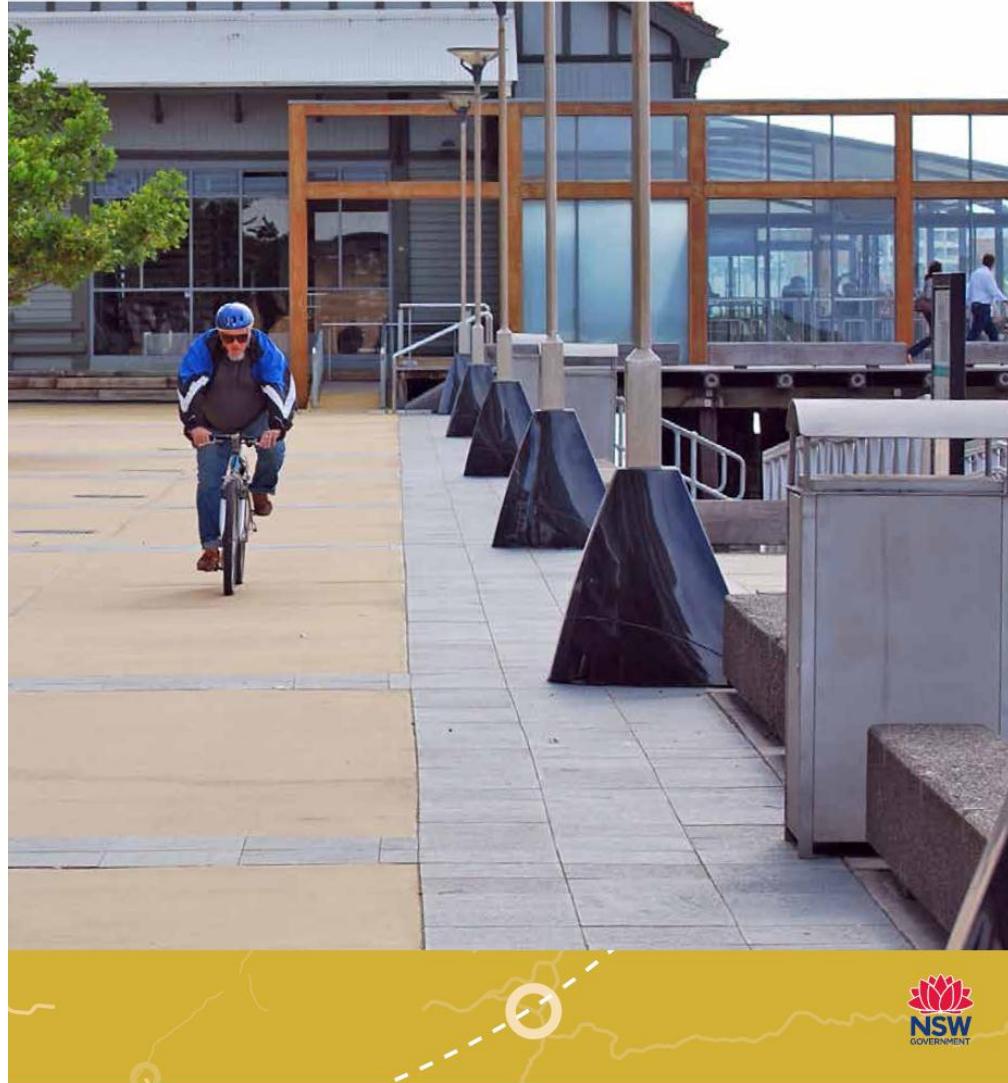
FIGURE 24  
NEW INDICATIVE ZONES (PRELIMINARY ONLY)



## Example of current subregional planning

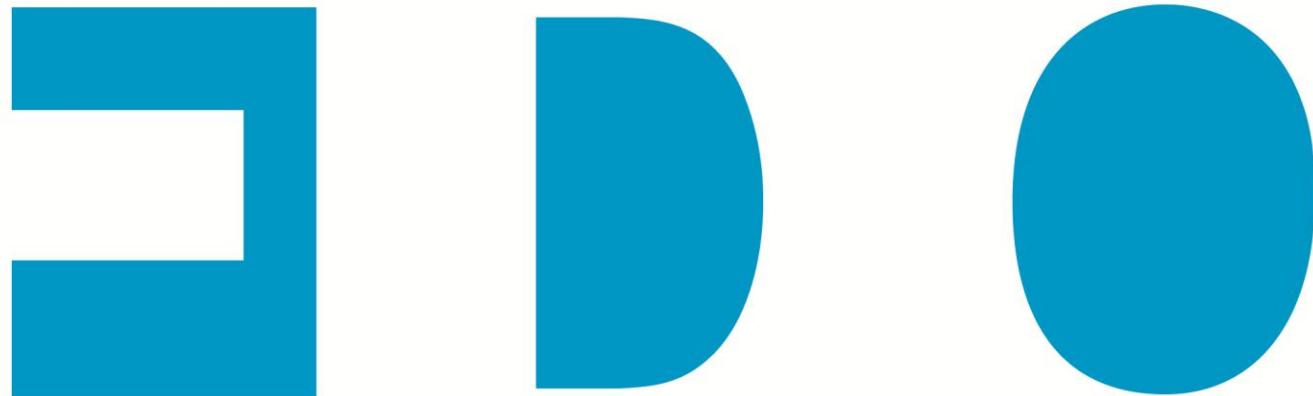
### The Lower Hunter over the next 20 years: A Discussion Paper

March 2013



# **A NEW PLANNING SYSTEM FOR NSW – WHITE PAPER**

*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

# A NEW PLANNING SYSTEM FOR NSW – WHITE PAPER

*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?*

DO

DO

# 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](http://www.planning.nsw.gov.au)
  - *White Paper*
  - Draft legislation
  - FAQs
  - ‘Meeting in a Box’ toolkit
- [www.edonsw.org.au](http://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.

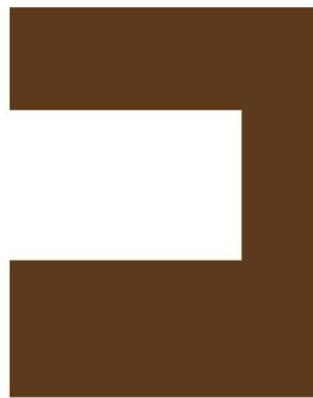
## Things to think about – planning reforms

- 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



DO

## 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](http://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>