



# ***NSW Planning Law Changes***

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## About EDO NSW

- Independent, not-for-profit Community Legal Centre
- Helping the community use the law to protect the environment since 1985.
  - Casework, Outreach, Law reform, Scientific advice services
  - Aboriginal engagement, Pacific capacity-building programs
  - Member of the Environmental Defenders Offices of Australia (EDO).



# Seminar Overview: Planning Law Update

- **Outline**
  - Background to the reforms
  - Aims & Themes: 2017 Planning Bill
- **Analysis**
  - Positive changes, some concerns
  - What's missing?
  - 5 key areas of change
  - How Bill relates to other reforms
- **Conclusion**
  - How to get involved.



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# Background

- **Previous attempt at reforms: 2011-2013**

- Independent Review Panel reports
- Green and White Paper
- Draft Planning Bills 2013
- Did not pass Parliament.

- **Since then: 2014-2016**

- White Paper ideas remained
- Minor Act reforms (e.g. penalties)
- Department of Planning & Environment
- *Greater Sydney Commission Act 2015*
- Codes, SEPPs, Regional Plans to “Make It Happen”.



# Aims of the Planning Legislation Update

- **“Promote confidence in our state’s planning system” via:**
  - Community participation
  - Strategic planning
  - Probity and accountability in decision-making
  - Simple and fast processes
- Dept’s *Planning News* (Feb. 2017)
  - “Making it simpler to build a home and enhancing community participation in key decisions will be now easier through a package of red tape-busting reforms released for consultation by the NSW Government.”

# Aims of the Planning Legislation Update

- **“Promote confidence in our state’s planning system”** via:
  - Community participation
  - Strategic planning
  - Probity and accountability in decision-making
  - Simple and fast processes

## Community Participation

Effective community participation in planning at the strategic stages

## Strategic Focus

Increased emphasis on strategic planning as the basis for all planning outcomes and to remove duplication

## Streamlined Approval

Faster and less complicated Development Approval as issues are resolved strategically

## Provision of Infrastructure

Linking planning and delivery of infrastructure to strategic planning for growth

2012 Green Paper

## Themes of the Update (Dept of Planning)

1. Enhancing **community participation**
2. Completing the **strategic planning** framework
3. Better processes for **local development**
4. Better processes for **State significant development**
5. Facilitating **infrastructure** delivery
6. Fair and consistent **planning agreements**
7. Confidence in **decision-making**
8. Clearer **building** provisions
9. Elevating the role of **design**
10. Enhancing the **enforcement** toolkit

# This time around: a less ambitious agenda?

If passed, the Environmental Planning & Assessment (Amendment) Bill 2017 will:

- **Restructure**
  - Objects and order of *EP&A Act 1979*.
- **Require**
  - Community Participation Plans
  - Local strategic planning statements
  - Minimum exhibition periods
  - Statements of reasons for decisions
- **Reform**
  - Decision-making roles:
    - Local Planning Panels
    - PAC → Independent Planning Commission
  - No more Part 3A major project modifications
  - Developers' rights to 'internal review' expanded.



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# Some positive changes

(environment & community perspective)

- **Engagement:**

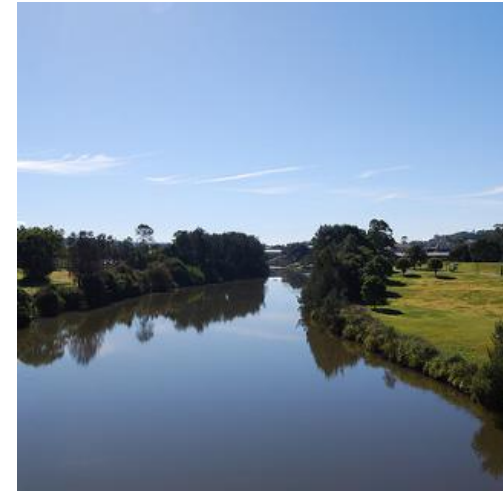
- Community Participation Plans
- Clearer minimum exhibition periods
- Statements of reasons.

- **Enforcement:**

- Limiting (retrospective) project modifications
- New tools and orders.

- **Accountability:**

- Ending Part 3A modifications
- Modification decisions must take original consent into account
- Local Planning Panels?
- Model Codes of Conduct.



## Some negatives

Several changes may undermine the aims of probity, accountability and public confidence:

- **‘Streamlining concurrences’:**
  - Planning Dept able to override environmental agency advice
- **Community Merit Appeal rights:**
  - Still curtailed
- **Developers’ internal review rights:**
  - Further expanded (equity?)
- **No ‘review’ role for Planning Assessment Commission?**
  - Early reviews can flag problems and improve outcomes



# What's missing?

- **Aim of Ecologically Sustainable Development**
  - Make 'to achieve ESD...' the overarching object
  - Embed principles in decision-making
  - Support with State goals, targets and environmental accounts
- **Climate Change**
  - No response in Act or Bill
  - Need object on reducing emissions & adaptation
  - Embed in decision-making
- **Boosting public confidence**
  - Independent Environmental Impact Assessment
  - Keeping conditions up-to-date
  - More equitable rights to Merit Appeals
  - Private Certifier governance.

[edonsw.org.au/CC2016](http://edonsw.org.au/CC2016)



## A little deeper: Key issues

- 1.** New Objects and restructure
- 2.** Community Participation Plans, Minimum exhibition periods
- 3.** Local Planning Panels
- 4.** Independent Planning Commission to replace the PAC
- 5.** Repeal of 'Part 3A' major project modifications
- 6.** Related reforms:
  - Biodiversity
  - Coastal
  - Crown lands
  - Sydney District Plans (GSC)
  - Complying development



# 1. New Objects and restructured Act

- **Changes**
  - Adds, removes, simplifies objects
    - e.g. good design, heritage.
  - Restructures, rennumbers Act (10 Parts)
- **Analysis**
  - ‘Good design’ for... what?
  - ‘Facilitate’ ESD?
  - Omissions and Emissions



## 2. Community Participation Plans (CPPs) & Minimum exhibition periods

### ● Changes

- Planning authority to prepare & exhibit CPP
- Participation principles or considerations (x8)
- Minimum public exhibition periods
- Statements of reasons for decisions.

### ● Analysis

- Planning authority must ‘consider’ principles
- CPP commitments not mandatory unless CPP say so
- Legal validity of CPPs can be challenged



# Minimum exhibition periods (cont.)

Draft Strategic Plans	Min. Exhibition
Community Particip. Plan	28 days
LEP proposal (Gateway)	28 (or specified)
Development Control (DCP)	28
Contribution Plan	28
Regional or District Plan	45

Development Applications	Min. Exhibition
Standard D.A.	14 days
'Designated Development'	28
State Significant Dev (SSD)	28
Enviro. Impact Statement (under Part 5) or State Significant Infra (SSI)	28
Modifications	As Per 'CP Plan'
(Excluding 24 Dec. to 10 Jan.)	

Currently 30 days

## What's missing?

- State Environmental Planning Policies (SEPPs)
- Part 5 local infrastructure



## 3. Local Planning Panels

- **Changes**

- 3-member Local Planning Panels replace ‘IHAPs’
- Panels not mandatory (?)
- Councils appoint Panels and refer matters
- Detailed governance in Bill and Codes of Conduct.

- **Analysis**

- Standardising panels: clarity v tailored approach?
- Support Codes of Conduct
- Need to clarify appt and ministerial directions.





# 4. From PAC to 'Independent Planning Commission'

[www.edonsw.org.au/Merits2016](http://www.edonsw.org.au/Merits2016)

- **Changes**
  - Evolving name and functions
  - No 'project review' role
  - Projects determined: set out in SEPP
  - 'Public hearings' held in 2 stages.
  
- **Analysis**
  - Public hearings continue to remove merit appeal rights (inequitable for communities)
  - 2-stage inquisitorial hearings may be better
  - But public confidence issues remain.



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“...gaining public confidence [in an inclusive justice system] requires ‘all manner of people’ to have confidence that they will be able to utilise the legal system.”

- The Hon Tom Bathurst AC,  
Chief Justice of NSW  
1 Feb. 2017

“...The limited availability of third party appeal rights under the proposed system means that an important disincentive for corrupt decision-making is absent.”

- ICAC Submission on the 2013 planning reforms



## 5. Repeal of Part 3A 'transitional' pathway

### ● Changes

- Switch off Part 3A 'transitional' modifications
- All Part 3A Projects become SSD or SSI
- Concept Plans continue for ongoing projects.

### ● Analysis

- Support:
  - removing Part 3A modification (too broad)
  - transitioning projects to existing system
- S. 96: more rigorous, transparent, consistent
- Future modifications *substantially the same?*



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## 6. Related Reforms

- **Significant reforms that affect the planning system**
  - *Biodiversity Conservation Act 2016*
  - *Coastal Management Act 2016*
  - *Crown Lands Management Act 2016*
  - District Plans; *A Plan for Growing Sydney*
  - Complying development (Codes SEPP 2008)



# Conclusion

- Submissions due to Department of Planning  
**Fri 31 March (extended)**
- Department has released 4 documents:  
[www.planning.nsw.gov.au/Policy-and-Legislation/Legislative-Updates](http://www.planning.nsw.gov.au/Policy-and-Legislation/Legislative-Updates).
  1. Summary of proposals
  2. Bill guide
  3. Draft Bill (EP&A Act Amendment)
  4. Stakeholder feedback to Jan 2017
- **Our resources:**
  - Briefing Note, Podcast and Submission at:  
[www.edonsw.org.au/Planning2017](http://www.edonsw.org.au/Planning2017)
  - Feedback welcome!



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# Thank you – and Questions

- Thanks also to our hosts and Pro Bono partners:
  - **McCabes Lawyers**
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