

18 December 2018

Department of Planning
GPO Box 39
Sydney NSW 2001

Submitted online

Dear DPE,

EDO NSW welcomes the opportunity to provide comments on the DPE Community Participation Plan (**CPP**). As a community legal centre specialising in public interest environmental and planning law, a core part of our work is doing outreach and legal education to help build the capacity of people to engage in environmental and planning law processes. We therefore strongly support measures designed to improve public participation.

Thank you for the opportunity to meet with DPE officers to discuss the draft CPP. In addition to the feedback given at that briefing, we make the following comments on eight issues.

1. Enforceability and effectiveness of plans

We have commented extensively on improving public participation in planning law.¹ In our submission on the draft *Environmental Planning and Assessment Amendment Bill 2017* we stated strong support for the adoption of community participation plans and principles, but noted that there is no guarantee the principles will be implemented through the plans, as planning authorities are only required to have regard to the principles when formulating the plan, not implement them or show how their plan complies. This remains a concern and we welcome efforts to clearly state how the plans will effectively implement the principles.

2. Meaningful participation – responses to feedback

We strongly support references in the CPP to providing the community with feedback on how their submissions, comments etc have been taken into account in decision making (eg: p9, 10 and 11). This feedback loop has been absent or tokenistic in many planning consultations to date.

However, we note that new legislative requirements to provide feedback to the community have been inadequately implemented by some councils. For example, Tweed Shire Council recently provided reasons for a decision to community objectors by stating the Council had taken into account all relevant matters under the

¹ See our planning law reform submissions at:
https://www.edonsw.org.au/planning_development_heritage_policy

Environmental Planning and Assessment Act and community views were also taken into account. The statement of reasons did not specify the particular statutory provisions that were taken into account, or the relevant weight given and did not explain how community views were factored into the decision at all. We raised this concern with Council which responded that, in its view, the statement of reasons was compliant with the statutory requirements. This is a very concerning and disappointing outcome and indicates that decision-makers may pay lip service to the CPPs and may not engage with the spirit of the legislation.

3. *Links to other CPPs*

The document could include a schedule at the back listing other relevant authorities that would have their own CPPs and what types of processes are dealt with by which agency. This would help people who may go to the DPE CPP first to understand they may need to go to a Council CPP in relation to a project or DA, and the DPE CPP only covers certain types of project engagements. The **FAQ document** helps clarify this to some extent but it could be made clearer in the CPP. The FAQ also helps explain how existing Council engagement strategies can apply. This could also be noted in the CPP itself – for example to augment Table 1, p6.

4. *Mandatory requirements*

The section on mandatory requirements for exhibition should state in the title that these are '*minimum*' mandatory requirements (pp13 and 14).

Further, we remain concerned that the provisions of a CPP are only mandatory if a plan identifies them as mandatory. This is a potential weakness that could make the plan unenforceable and ineffective.

5. *Community participation objectives*

The DPE should work to remove or reduce barriers to participation, consistent with the objectives and principles that participation should be open, inclusive and easy (p8). For example, at a recent workshop on improving the Major Projects website, it was suggested that people will be required to register with an account to make submissions on major projects. There may be people who do not wish to register given the lingering mistrust in the planning system, and such a requirement would be a disincentive to engage and hinder the goal of restoring community confidence in the planning system.

6. *Innovative approaches*

In exploring flexible, adaptive and innovative ways to engage communities, it could be noted that independent third parties can play a role in public participation. As has worked well in the past, EDO NSW has delivered community workshops on planning proposals and reforms and has been a conduit of detailed feedback.

7. *Levels of engagement*

In Table 3 on different stages of consultation (page 10), it may be necessary to clarify what level of “feedback” is sought (if any) at the “Level 1: Inform” stage. Consultations have been run in the past where feedback is explicitly not sought at the “notification” stage. We strongly support early engagement and early feedback, but it may be useful to address community expectations to clarify up front how many stages/opportunities for feedback there will be in a project or reform etc. This may also help with managing consultation fatigue experienced by many communities and organisations.

8. Continual improvement in practice

Finally, the plan looks good on paper but must be put into practice, with clear evidence of a culture change in the DPE. Feedback on the plan and how the department is putting it into practice must inform continuous improvement.

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Yours sincerely,
EDO NSW



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