

Minister for Planning, Minister for Housing &
Special Minister for State
The Hon Anthony Roberts MP
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Thank you for the opportunity to comment on the Proposed NSW Planning Law changes and updates 2017.

The Environmental Planning and Assessment Act 1979 continues to favour developers and big business, and fails to deliver positive outcomes for the environment and communities.

I generally support proposals that will improve community participation and strategic planning. However, I oppose proposals that will override important environmental protections, reduce transparent decision making and limit local planning powers.

I am concerned about the expansion of review and appeal rights to developers without comparable rights for the community with the draft Bill reinforcing existing disparities.

I am also concerned about the requirement to obtain signoff for local strategic planning statements (from the Department of Planning and Environment) reinforces an already top-down plan-making process. The proposed system is too directive and doesn't give councils adequate opportunity to incorporate local knowledge and expertise in plan-making, eroding the input, characteristics and amenity of local communities.

While there are some commendable updates to the legislation such as a proposal to enhance community participation; promote strategic planning; and increase probity and accountability in decisions making, there are still major concerns that the Government has not adequately addressed.

In order to ensure that these objectives are not degraded by fast-tracking inappropriate development, I would like you to consider areas which should be amended.

New Objects of the Bill

Ecologically Sustainable Development (ESD):

Strengthen the current object of 'facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations'. The ESD object should be rewritten to 'achieve' ESD by 'implementing' ESD principles in decision-making, or acting 'consistently' with them. It should refer to 'effectively integrating short and long term considerations, not simply 'relevant' considerations, not unlike the wording within the Biodiversity Conservation Act 2016 (NSW). In this way, environmental factors would be highlighted in any decision-making rather than only included as a reference.

Recommendation 1: I recommend that ESD be the over-arching Object of the Act, not one of many. This primary object needs to require decision-making consistent with ESD principles.

- Objects for the protection of habitats of native animals and plants are omitted and need to be included. The NSW Government needs to set clear long-term goals to protect the state environment.
- The Object to promote '*timely delivery ofhousing opportunities*' reflects NSW Planning's push for faster processing of development applications and expanding the number of complying developments. This is at odds with the good planning outcomes, including the new objects to promote 'good design' and the management of natural and built heritage. This should be rewritten to be consistent with ESD principles, current environment and heritage protections, and council LEPs.

Community Participation

- I support the adoption of community participation plans and principles. However, there is no guarantee the principles will be reflected in a community plan, as planning authorities are only required to consider the principles when formulating the plan, not implement them or show how their plan complies.
Recommendation 2: This is a good move that needs more work to ensure a community participation plan is enforceable and effective. Plan obligations should be mandatory by default.
- **Recommendation 3:** Exhibition periods for proposed SEPPs and amendments should be mandatory and not at the Minister's discretion. Similarly, exhibition requirements for any form of strategic plan should include the requirement for due consideration to be given to public submissions before finalisation, and the reasons for divergence to not only be given, but community comment and appeal mechanisms to be included.
- Decision makers within Councils will be required to give public notice of the reasons for certain decisions made with regard to development approvals, including how the community views were taken into account.
Recommendation 4: This is a good step in building transparency, however, the process must be seen as authentic and truly accountable. The community again must be given full disclosure of information with a mechanism for comment or appeal.
- Importantly, this prior requirement does not apply to exhibiting or amending State Environmental Planning Policies (SEPPs). It is within the SEPPs that the State Government allows the greatest number of complying developments, such as the Draft Medium Density Code to allow medium density housing such as terraces, townhouses or small blocks of flats as complying development within R2 residential zones.
Recommendation 5: This community notification, exhibition and consent must apply to all development applications under a community engagement plan. To exclude the most intrusive and contentious areas from such a regime is not transparent and can foster corruption.

Local Strategic Planning Statements

Recommendation 6: The community's role in preparing local planning statements should be clarified. There are no mandatory community participation requirements relating to the statements in the draft Bill.

The current proposal to have the Planning Department (or the Greater Sydney Commission) endorse each council's statement before it is published poses a real risk of top-down determinism, where local preferences and priorities are subservient to State priorities. This must be amended.

Efficient approvals and advice from NSW agencies (concurrences)

I do not support new 'step in' powers for the Secretary of the Department of Planning and Environment. Such a move would concentrate too much decision-making power in the Planning Department where expert environmental advice or co-approval of decisions is warranted.

This amendment to the Bill would permit the Planning Secretary to determine which agency should prevail in the event of a conflict, without reference to any decision-making criteria.

Recommendation 7: Remove these 'step in' powers that would allow the Planning Secretary to make arbitrary decisions to push through with the approval without expert information. This amendment would override good policy requirements in a provision that prioritises speed of approval over rigorous decision-making processes.

Development Assessment:**Limiting misuse of modifications, and considering original reasons**

This is an excellent amendment which I support. **More clarification on how this will operate is required** if it is aimed at encouraging greater compliance with approved development consents, including a limit to the number of times a modification can be proposed.

Complying Development

I agree with the changes for notification however there is still no allowance for comment or appeal by Council or neighbours.

Recommendation 8: Neighbours should have a legal right to make a submission for any amendment or issue they have with a complying development. This would improve community confidence in the complying development regime. Similarly, larger scale complying developments should also require public exhibition for community comment.

Powers and resources for councils

I support changes to empower councils to issue temporary stop work orders in order to investigate whether a development is being constructed in line with the complying development certificate, and to recover costs.

Local Planning Panels

The proposed Local Planning Panels (which will comprise two experts and a community representative) have concerning aspects. Clarification is needed as to whether the Planning Minister will be able to impose panels on councils. There are no clear criteria on how to replace councillors with a panel, or the basis for this decision. Clarification is needed to prevent arbitrary decisions and political interference.

Recommendation 9: I do not support the situation where the Minister can impose a panel on a Council. If a Council wants to add a panel, its members must bring a range of expertise to the panel. More detail on how community representatives are to be identified and how to ensure independence of panel members that will act in the public interest.

Independent Planning Commission (IPC)

The area of concern is that Public hearings will continue to remove merit appeal rights to the Land and Environment Court, which is a much more rigorous review and assessment of a development than through the Commission.

I object to the introduction of additional internal review rights for proponents, with little transparency or equivalent rights for the community or public interest. This exacerbates the existing difference in rights between developers and residents which reduces public confidence in NSW Planning and makes decision-making less inclusive and less robust.

Recommendation 10: In line with ICAC's recommendations, community access to the Court as an impartial expert body should be strengthened, not restricted. Further, the Bill should not expand internal reviews to major projects, to the exclusion of local participation and community objections.

Code-based assessments

I remain concerned with the ever-expanding list of code-based developments. This increasing mode of developments result in detrimental cumulative impacts on the environment and the amenity of residents.

State Significant Developments

Recommendation 11:

- **Strengthen the role of expert environmental agencies in assessing major projects.** Ongoing exemptions for major projects from inter-agency referrals and ‘concurrent’ approvals do not provide transparency, or public assurance that projects with the greatest impacts receive the greatest scrutiny.
- **Ensure equitable access to justice.** I do not support the expansion of developers’ rights to seek internal reviews of decisions about complex ‘integrated’ developments or major projects. This will allow closed-door negotiations on controversial projects at the expense of local participation. Unfortunately, the draft Bill reinforces existing disparities, so that community appeal rights continue to be curtailed while proponents’ review rights continue to be expanded.

Elevating the role of Design

I strongly support references to good design, heritage and cultural protection in the revised objects of the Act. The objects should clarify that promoting ‘good design’ is intended to create healthy, inclusive, adaptable and sustainable communities.

Good design also means recognising and prioritising the role of ‘green infrastructure’ such as urban bushland, parks and gardens, waterways, cycleways, street trees and biodiversity corridors.

Conclusion

Overall these proposed changes to the EP&A Act have some worthy and supported amendments to increase community participation, however these must include not only strategic engagement with the community, but also at an individual project level. It is only when ‘the rubber hits the road’ that the community can fully appreciate the effect of many strategic developments. These amendments, as proposed, need to be reworked to avoid restricting and reducing community rights at the local and neighbourhood level.