



environmental defender's office of new south wales

Improving the NSW Planning System - 2007 reforms

The Department of Planning has released a Discussion Paper entitled Improving the NSW Planning System which outlines the next tranche of proposed reforms to the NSW planning system. The purpose of this document is to provide an outline of these reforms, to highlight the key issues and to assist community groups and members of the public in writing their own submissions. The full discussion paper can be found [here](#).

The reforms purport to cover the full gamut of planning. Significant reforms are proposed to plan-making, development assessment, exempt and complying development, ePlanning, private certification and strata management. The Discussion Paper makes over 90 key recommendations. The main thrust of the reforms is a move away from a 'one size fits all' approach to a tailored assessment system that depends on the scale, risk and complexity of local environmental plans and development proposals.

The key proposed reforms include:

Plan-making

- The establishment of a gateway system for the making of environmental planning instruments. This will involve an upfront assessment of the suitability of an LEP against set criteria, including whether the plan is consistent with regional strategies. This assessment will determine whether an LEP should proceed or not.
- Plans will be streamed into different categories to determine the level of assessment, community consultation and agency referrals. Minor amendments will require little assessment, while state significant land use changes will require detailed assessment and community engagement.
- The number of SEPPs and REPs will be reduced by 50%. There will be a stronger focus on regional and subregional strategies.

Development Assessment

- Planning panels will be established at three levels- state, regional and local - to determine some development applications instead of councils and/or the Minister for Planning. Current appeal rights are to be maintained.
- Planning arbitrators will settle disputes concerning developments that are worth less than \$1m. An appeal to the Land and Environment Court will be still be available after an arbitrator has made a decision.
- The Department of Planning will issue community consultation guidelines that incorporate community consultation principles and standard notification

procedures for developments.

- The government is to continue its review of concurrence requirements to reduce “unnecessary referrals”. Concurrence and referral guidelines will be prepared for those concurrences that remain.
- A Statement of Environmental Effects will be reinstated as a mandatory requirement that must be attached to development applications.

Exempt and complying development

- Exempt and complying development will be expanded to cover 50% of all developments. Guidelines are to be prepared to extend and standardise exempt and complying development. A Complying Development Experts Panel (CDEP) is to be established to advise on complying codes policy. The panel will include experts working within local government.

e-Planning

- e-Planning will be progressively introduced across NSW to provide online DA exemption and complying codes, DA lodgement, submissions, etc. The government plans to provide online DA tracking in 80 per cent of councils within 2 years.

Private certification

- A major reform of private certification is proposed. The reforms purport to address perceived and actual conflicts of interest by limiting the number of certificates that can be issued by private certifiers to any one client in a calendar year. Auditing will also be broadened and mandatory training for certifiers will be introduced.

Certification may also be extended to subdivision.

Key issues for consideration

How will community participation be tailored to individual plans/ development applications? Will some types of development or plan-making not require any public consultation, or a more limited form? Also, no detail is provided on the proposed community consultation guidelines. These will need to be sufficiently robust to ensure genuine participation by the community. Does the making of these guidelines mean that public participation rights will be taken out of the legislation?

The EDO believes that public participation should remain as a fundamental right and a central part of the planning system.

Are planning panels a good alternative to council or minister-made decisions? Are they more independent? Are they better placed to make such decisions? What is the appropriate membership of these panels? How can a broad membership be achieved?

The EDO believes that there is a need to ensure that membership of these panels also includes environmental and social expertise.

What is the appropriate threshold that should be used to define a development as exempt or complying development? Why has a percentage based approach rather than

purposive approach been adopted?

There is a need to ensure that only developments with a negligible environmental footprint are considered exempt or complying development. The EDO does however support the mandatory listing of solar panels as complying development.

What is the importance of concurrence in the planning system? How does it lead to better decisions? The Discussion Paper proposes a reduction of concurrence requirements. What criteria will be used to determine which concurrences are unnecessary?

The EDO believes that it is important that checks and balances are maintained in the planning system and therefore appropriate consultation should take place with other government departments. This is especially important in terms of threatened species, native vegetation, critical habitat and water resources.

Is private certification an accountable and transparent system of accreditation? Are the problems with the current system able to be rectified or are they an indication that the whole concept of private certification is problematic?

The Department of Planning is accepting submissions until the 8th of February 2008. The EDO is keen to engage with the community and key stakeholders on the proposed reforms. For any further information please call Robert Ghanem on (02) 9262 6989.

