

NSW PLANNING SYSTEM REVIEW SUBMISSION GUIDE

In July 2011, the NSW Government established an independent panel to undertake a full review of the planning system in New South Wales.

On 6 December 2011, following two months of public consultation, the independent planning system review panel released an Issues Paper, entitled *'The Way Ahead for Planning in NSW?'*.

The issues paper sets out more than 230 questions regarding planning issues in NSW. The issues paper is available for [download](#) on the Planning System Review website: www.planningreview.nsw.gov.au.

The NSW Government describes the review as a *"once in a generation opportunity to completely review the system which guides how [planning] decisions are made"*.

No existing provisions are guaranteed. Fundamental aspects of the planning system, including public participation, third party appeal rights and the obligation to consider the public interest, are all up for review.

It is important that you have your say – and protect these fundamental rights!

This submission guide identifies the key issues for the environment and provides a guide to the key themes and questions raised in the Issues Paper.

To make a submission:

Lodge your written submission [online](#):



Post your written submission to:
NSW Planning System Review
GPO Box 39
Sydney NSW 2001

Submissions will be accepted until midnight, **Friday 17 February 2012**.



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This submission guide was prepared by the Nature Conservation Council of NSW (NCC), Total Environment Centre (TEC) and the Environmental Defender's Office NSW (EDO).

Our organisations support a planning system that protects and conserves nature, promotes sustainable local communities and responds to the global challenge of climate change.

SUMMARY OF KEY ISSUES

The following points are seen as fundamental to a planning system that provides for a sustainable, healthy and liveable lifestyle in NSW:

- Ecological sustainable development should be paramount, and strengthened with both a clear definition and clear and measurable objectives
- To achieve ecologically sustainable development, the planning system must maintain or improve environmental outcomes, including biological diversity and ecosystem processes
- Genuine, appropriate and timely public engagement and participation in strategic planning and decision making
- Priority focus on strategic and regional planning that integrates conservation and natural resource management (NRM), and the assessment of cumulative impacts
- Strategic and regional environmental assessment with defined criteria for decision making that ensures consistency with other environmental legislation
- Incorporate climate change into strategic planning and development assessment
- Independent, scientifically robust environmental impact assessment, including effective assessment of cumulative impacts
- Aboriginal cultural heritage and landscape values are maintained or improved
- Third party appeal rights must be maintained
- Transparency and accountability in decision making

GUIDE TO THE PLANNING SYSTEM REVIEW ISSUES PAPER

The Issues Paper of the NSW Planning System Review contains the following main themes:

Chapter A – Introduction (major recurring themes and questions)

Chapter B – Key Elements, Structure and Objectives of a new Planning System

1. Ecological Sustainable Development

Ecologically sustainable development (ESD) must be placed at the centre of our planning system, as both an overarching policy goal for development and a meaningful constraint on the discretion of decision-makers. The new planning legislation should contain appropriate definitions of key terms such as ‘ecological sustainable development’ and ‘environment’ to ensure that provisions intended to protect the natural environment operate effectively.

To make submissions with respect to Ecological Sustainable Development, other objectives and definitions refer further to Issues Paper Questions: A1, A2, B1, B2, B3 and B6.

2. Environmental Outcomes

To promote the achievement of higher level environmental policy goals, it is recommended that the new planning system provides for the identification of clear and binding environmental outcomes. These outcomes should be underpinned by robust, science-based methodologies and decision making tools including environmental impact assessments for both strategic plans and developments.

Examples of overarching policy goals include:

- Environments of high conservation value are maintained and improved
- Biodiversity, natural land forms and landscapes, ecosystems and the services they provide are maintained and improved, consistent with NRM legislation and Catchment Action Plans
- The functions and resilience of natural landforms and biodiversity are maintained and improved to assist adaption to climate change
- Reducing the environmental footprint, including reducing total and per capita water and energy consumption, in cities, towns and countryside

To make submissions on questions that relate specifically to environmental outcomes refer further to Issues Paper Questions: C11, C12, C13, D38, D42, D43, D44, D45, D46, D49, D50, D51, D52, D87, and D89.

3. Public Participation

Public participation plays an essential role in improving the quality of planning decisions and increasing community acceptance of those decisions, including major projects and regional plans. Public participation and engagement at all stages of strategic planning and development assessment processes must be enhanced, with statutory protection for public participation rights and specific processes.

To make submissions with respect to public participation and community consultation in the planning process refer further to Issues Paper Questions: A9, C3, D25, D26, D131, F3, F4, F5, F6, and F9.

Chapter C – Making Plans

4. Strategic Planning

Strategic planning plays a central role in achieving sound environmental outcomes. A new Act should accord priority to strategic and broad landscape-scale regional planning, developed in concurrence with agencies responsible for environment conservation and natural resource management. The circumstances in which strategic planning instruments may be overridden should be strictly limited, with checks and balances to ensure that rezoning decisions do not compromise strategic planning outcomes.

Environmental assessment should also form a mandatory part of the process of preparing strategic plans, to ensure that environmental considerations are embedded in the plan-making process when key decisions about the future of nature conservation and development are made. Strategic plans should be given the same status as environmental planning instruments and be subject to at least the same level of rigorous and accountable assessment.

To make submissions with respect to Strategic Planning refer further to Issues Paper Questions: A6, A7, A8, C1, C14, C15, C16, and C17.

Chapter D – Development Proposals and Assessment

5. Environmental Impact Assessment (EIA)

To improve environmental outcomes and build public confidence in the EIA process, there is a need to mandate minimum assessment requirements to ensure that EIAs address site, local and regional impacts; and are comprehensive, objective and conducted by independent accredited experts.

To make submissions with respect to the integrity of environmental impact assessments refer further to Issues Paper Questions: A21 and D36.

6. Concurrence and Integrated Development

Former Part 3A and the new State Significant Development and Infrastructure provisions remove a range of checks and balances that required agency concurrence (agreement) for major projects.

The new planning system should ensure that relevant agencies are fully engaged in the assessment and decision making processes (e.g. the Office of Environment and Heritage, the Department of Primary Industries and the Environmental Protection Authority). The expertise of environmental and natural resource agencies is integral in managing the impacts of development on the environment and natural resources. This is especially true for major projects, where the environmental impacts are likely to be largest.

There is also an important role at both the strategic planning and development assessment stages for those agencies responsible for transport, infrastructure and utilities.

To make further submissions on integrated development and the need for the concurrence roles of other agencies refer to Issues Paper Question: C27, D58, D59, D60, D61, and F5.

Chapter E – Appeals and reviews; enforcement and compliance

7. Accountability for Decision Makers

The new planning system will need to include robust checks and balances to ensure that planning decisions are lawful, impartial and based on best practice planning principles. Merits review for objectors and open standing to enforce breaches were hallmarks of the *Environmental Planning and Assessment Act* in 1979. Judicial review is a fundamental element of our system of democratic government, and an essential check on executive power.

These public rights have served NSW communities well and must be maintained. In addition, the new planning legislation must not include privative clauses which operate to oust the proper role of the courts in examining the lawfulness of planning and approval decisions.

To make further submissions with respect to the accountability of decision makers and objector appeal rights refer to Issues Paper Questions: E1, E2, E3, E4, E5, and E6.

Chapter F – Implementation of a new Planning System

8. Ensuring probity and making use of information technology

The Planning System Review recognises that increasing public understanding and ownership of a new system will be key to its successful implementation and ongoing effectiveness. The Minister has also indicated that the use of information technology is to be integral in establishing a new planning system.

To make further submissions with respect to the use the implementation of the new planning system and use of information technology refer to Issues Paper Questions: F1, F2, F7, F8 and F9.

For more information, visit the following websites:

Planning System Review:

www.planningsystem.nsw.gov.au

Nature Conservation Council of NSW

www.nccnsw.org.au

Environmental Defender's Office

www.edo.org.au/edonsw

Total Environmental Centre:

www.tec.org.au

For more information, or to provide feedback, please contact:

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