Environmental Defenders Office

September 2025

Briefing note

Significant changes proposed for all development assessment in NSW risk increasing environmental, community impacts and corruption risks: Environmental Planning and Assessment Amendment (Planning System Reforms) Bill 2025

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OVERVIEW

On 17 September 2025, the NSW Government introduced the Environmental Planning and Assessment Amendment (Planning System Reforms) Bill 2025 (**the Bill**) into the NSW Parliament.

The Bill proposes amendments to the State's primary planning legislation, the *Environmental Planning and Assessment Act 1979* (**EP&A Act**), as well as the *Environmental Planning and Assessment Regulation 2021* (**EP&A Regulation**) and other legislation.

The NSW Government's stated intention for the Bill is to "*deliver more homes through a modern, faster, and fairer planning system for NSW*".[1] However, amendments made by the Bill apply to **all** development across NSW, not just housing.

Concerningly, the Bill:

1. **Reorients the planning system to simply promoting development, shifting focus away from the wellbeing of the community and the environment in decision making**
2. **Purports to relate to housing, but will affect ALL types of development**
3. **Diminishes environmental and bushfire risk considerations in decision making under the EP&A Act**
4. **Introduces a new streamlined assessment pathway ("targeted development assessment") that is unconstrained and expressly prohibits consideration of environmental impacts and the public interest (including the principles of ecologically sustainable development)**
5. **Undermines anti-corruption safeguards recommended by the Independent Commission Against Corruption**

Each of these matters is discussed in more detail below.

[1] https://www.nsw.gov.au/ministerial-releases/planning-system-reform-to-help-build-nsws-future

It is highly concerning and unusual that the Government has introduced into the Parliament such a significant Bill amending a complex regulatory framework without public consultation and with no detailed explanatory material. When changes like this are conceived in a rush and pursued without broad consultation, there are likely to be unintended consequences for communities, for the environment, and for the operation of the planning framework itself.

Overall, EDO views this Bill as a retrograde step which is not evidence-based and moves the NSW planning system away from a modern, fit-for-purpose, and forward-looking framework. It also goes explicitly against the recommendations of the *Independent Review of the Biodiversity Conservation Act 2016* which recommended aligning NSW legislation with nature positive outcomes and giving primacy to biodiversity considerations,[2] and the Independent Commission Against Corruption (**ICAC**) recommendations regarding accountability, transparency, and probity in the NSW planning system.[3]

KEY ISSUES

1. The Bill reorients the planning system to simply promoting development, shifting focus from the wellbeing of the community and the environment in decision making

Significant changes to the objects of the Act

The Bill makes significant changes to the objects of the EP&A Act which seek to shift the balance of the Act (and therefore the planning system), and are a very concerning indicator of the Bill's priorities. In short, the Bill shifts the Act's objects from foregrounding the wellbeing of the community and the environment in decision making to simply promoting development. It does this by:

- removing key references to environmental protection and conservation:
    - It is proposed to replace *"(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources"* with *"(a) to promote land uses that improve the social and economic welfare of communities".*
    - It is proposed to narrow the scope of *"(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats"* by replacing it with *"(d) to provide for the conservation of threatened species of native animals and plants and ecological communities and their habitats".*
- promoting unmoderated resource use by removing object "*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development, and conservation of the State's natural resources"* and introducing *"(c) to promote productivity through the development and management of the State and its resources".* Consequently, the focus of the object is

[2] *Independent Review of the Biodiversity Conservation Act 2016 – Final Report*, August 2023, https://www.parliament.nsw.gov.au/tp/files/186428/Independent%20Review%20of%20the%20Biodiversity%20Conservation%20Act%202016-Final.pdf

[3] NSW Independent Commission Against Corruption, *Anti-Corruption Safeguards and the NSW Planning System*, February 2012, https://www.icac.nsw.gov.au/media-centre/media-releases/2012-media-releases/icac-recommends-changes-to-the-nsw-planning-system-to-minimise-corruption-risks

no longer the community but is the nebulous concept of "productivity"; the management and development of resources no longer needs to be proper; and the conservation of the State's natural resources is no longer considered at all;

- deleting the inclusion of "*protection of the health and safety of [building] occupants"* as part of "*the proper construction and maintenance*" of buildings (now termed "the built environment");

- removing explicit references to "*increased* opportunity for *community* participation in environmental decision making". The importance of community participation in environmental decision making, to improve the quality of decisions, promote transparency and accountability, and reduce corruption risks, are well known. Undermining this, as the Bill proposes to do, is a backwards step;
- removing the object of promoting the sharing of responsibility for environmental planning and assessment between different levels of government in the State. The sharing of responsibility for environmental planning and assessment between different levels of government is critical to ensuring that the NSW planning system is informed by community participation, local knowledge and place-based approaches.

According to the Government, the Bill "*modernises the objects of the Act to reflect contemporary planning priorities*". However, with the exception of the proposed new object (e) ("*to promote resilience to climate change and natural disasters through adaptation, mitigation, preparedness and prevention"*), the proposed changes to the objects are retrograde steps which sideline communities, remove key mentions of protecting the environment and conserving natural resources, which are under increasing stress, including from the impacts of development, and propose unmoderated exploitation of resources.

2. The Bill purports to relate to housing, but its proposed changes will affect ALL types of development and infrastructure (not just housing)

Amendments have broad application

The NSW Government's premise for introducing the Bill is the need for more houses, however the proposed changes will apply to all development across NSW, including mining, petroleum, industrial developments and infrastructure. Notably:

- Changes to the objects of the Act (see above) and matters for consideration (section 4.15 and section 5.5 – see below) will have implications for assessing and determining applications for all types of development under the Act.

- There are no constraints on the types of development that could be declared "targeted assessment development" for the purposes of the Act. Targeted assessment development is a streamlined assessment pathway which will be exempt from considering certain matters for consideration – see below.

- There are no constraints on the delegation of functions to the Development Coordination Authority, meaning it may play a role in providing advice or exercising functions in relation to any type of development application or planning proposal on behalf of all NSW Government agencies. We note Development Coordination Authority means the Planning Secretary (per proposed section 2.11E). The Housing Delivery Authority also lacks similar constraints.

3. Environmental and bushfire risk considerations in decision making under the EP&A Act will be diminished (along with the role of specialised agencies such as the Environment Department)

Matters for consideration will be altered, including the impacts of development that must be considered

The Bill proposes changes to section 4.15 of the Act and the *Environmental Planning and Assessment Regulation 2021* to alter matters for consideration when determining a development application. These changes are not limited to housing; they will apply to all Part 4 development, including those that carry substantial risks and impacts that must be properly understood before a decision is made (noting that housing developments can also have substantial impacts).

In particular:

- The Bill seeks to change section 4.15(1)(b) of the Act to require consideration of only <u>significant</u> likely impacts of a development (rather than the current requirement to consider likely impacts). This introduces a significant amount of uncertainty into the regulatory framework. Rather than providing certainty, as is the stated intention for this amendment, the amendment creates uncertainty through changing from a settled position to opening the door to competing arguments about what constitutes a significant impact. It will certainly lead to proponents arguing that certain material impacts do not need to be considered as they are not "significant". There do not appear to be any further changes to guide what is intended to be a "significant" likely impact.
- Regulations will be able to declare factors that are of relevance, or that are not of relevance, for the purpose of certain matters of consideration, including in relation to the likely impacts of the development, environmental impacts, the suitability of the site for the development and the public interest (proposed new s4.15(1A)). Not only could this narrow the scope of factors required to be considered by decision makers, it introduces further uncertainty and increases the possibility for significant politicisation in the planning framework. This will also undermine the quality of decisions – where matters can arbitrarily be deemed relevant or irrelevant under regulations, with no parliamentary oversight, and (as is raised in the second reading speech) in response to specific issues. This creates uncertainty, politicisation, the undermining of public confidence in the planning system, and material corruption risks.

- Concerningly, under the above new regulation making power, the Bill proposes a change to the *Environmental Planning and Assessment Regulation 2021* (a new clause 65A) to provide that impacts of other development for which consent is not sought in the development application cannot be considered, meaning that consideration of indirect impacts of development is likely to be restricted (see Schedule 2, clause [3]). This change will seriously undermine the ability of a consent authority to consider the real impacts of a development. It allows for proponents to arbitrarily carve up developments to prevent their full impacts being assessed, and makes understanding cumulative impacts more difficult.

These changes seek to overturn longstanding and well understood practice in environmental impact assessment which requires the likely impacts of a development (including indirect impacts) to be assessed and considered by a decision maker when determining whether a proposed development

should be granted development consent. Where the full impacts (including indirect) of a development cannot be assessed and considered by a decision maker, the quality of the decision, and the appropriateness of a development for a particular site or in a particular context cannot be accurately gauged. It is likely to lead to approval of proposals with significant indirect impacts which are not considered at all.

We are also concerned that the proposed amendment is inconsistent with matters prescribed for consideration under State Environmental Planning Policies (**SEPPs**). For instance, clause 2.20(2) of the State Environmental Planning Policy (Resources and Energy) 2021 requires the consent authority to consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development. These emissions, although an inevitable impact of fossil fuel projects, are also impacts from other developments (in Australia and overseas), and may be caught by the proposed amendment.

Duty to consider environmental impacts will be altered

The Bill also makes changes to the requirements on determining authorities to consider environmental impacts when determining a Part 5 infrastructure application. The duty to consider environmental impacts will be amended to:

- remove the words "to the fullest extent possible" from the requirement to take into account all matters affecting or likely to affect the environment by reason of that activity
- allow a determining authority to consider environmental impacts "in a manner that is proportionate to the nature and risk of the activity". No legislative guidance is provided as to what this means. This introduces considerable uncertainty into the system.

These changes have the potential to limit the extent to which environmental impacts need to be considered in Part 5 applications.

Requirements for making environmental planning instruments will be altered

The Bill proposes a number of changes to the making of environmental planning instruments (**EPIs**) (e.g. SEPPs or Local Environmental Plans), which in practice allow EPIs to be varied (e.g. rezoning, changes to height or setback restrictions) to allow development that would otherwise be non-compliant with the EPI. These changes override important processes that require local council and specialised agency input into land use planning. Specifically:

- The Bill removes the requirement to consult with the head of the Environment Department before making an EPI that would adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats (by omitting s 3.25 of the EP&A Act).
- The Bill allows for the expedition of amendments to planning instruments by inserting a new section 3.22(1)(d) for matters the Housing Delivery Authority considers necessary or convenient to enable the carrying out of state significant development (**SSD**) declared under section 4.36(3). As noted below, these changes can increase corruption risks.

Consultation and concurrence requirements of specialised agencies will be removed

The Bill removes various requirements for specialised agencies or Ministers, including the Environment Minister or Environment Agency Head, Fisheries Agency Head and Minister for Agriculture, to input into

decision making under the EP&A Act, concerningly including decisions that relate to threatened species and ecological communities, biodiversity impacts and marine parks and reserves (see Schedule 3 of the Bill). In most instances these requirements will be exercised by the Development Coordination Authority or Planning Minister. While the Development Coordination Authority may engage experts or use the services of other departments, there is no legislative requirement for the Development Coordination Authority or Planning Minister to seek specialised input.

Specific considerations for bushfire prone land will be removed

The Bill removes designation, consultation and development consent requirements for certain bushfire prone land (by removing sections 4.14 and 10.3 from the Act), including removing the prohibition on granting development consent on bushfire prone land unless it meets certain requirements. This reduces expert input and increases the risks of developments being inappropriately and dangerously sited. This is contrary to the new object (e) regarding climate change resilience and adaptation (although unfortunately consistent with the proposed removal of the health and safety of building occupants from the objects). The second reading speech says the bill "*will place consultation and mapping requirements for bushfire-prone land from the planning Act in planning instruments so that they can be updated more readily*". While that may be the intention, the Bill simply omits current requirements and there is no further detail on how they will be replaced.

This amendment does not align with the *National Climate Risk Assessment*[4], released the week before the Bill was introduced, which detailed escalating climate risks including bushfires across NSW and Australia more broadly. Removing the designation and consideration of bushfire prone land from the legislation, with no clear replacement, may worsen these risks, including safety and security risks, and amplify climate impacts on vulnerable communities and ecosystems in NSW.

Changes to 'no environmental impact' modification applications

The Bill proposes to treat modification applications that have 'no environmental impact' in the same way as modifications involving minor error, misdescription or miscalculations – under section 4.55(1) of the EP&A Act. Such modification applications are exempt from consultation/concurrence requirements. A modification application falls within the scope of section 4.55(1) if the consent authority is satisfied the proposed modification has no environmental impact. Because there would be no consultation requirements, there is no opportunity for the community to put evidence before the consent authority regarding potential environmental impacts to inform that decision.

Further, a proposed new s 4.55A provides that a consent authority must not refuse modifications under s 4.55(1) if not dealt with promptly (it must determine the application, and can set conditions, but is ultimately unable to refuse an application). This type of provision risks poor decision-making.

[4] National Climate Risk Assessment | Australian Climate Service

4. The Bill introduces a new streamlined assessment pathway ("targeted development assessment") that is unconstrained and expressly prohibits consideration of environmental impacts and the public interest (including the principles of ecologically sustainable development)

Targeted assessment development

The Bill creates a new development assessment pathway, "targeted assessment development". Any development or class of development (again, not limited to housing, and not limited to developments with minor impacts) can be declared by a SEPP to be targeted assessment development (noting the Minister must undertake public consultation before recommending the making of a SEPP that declares targeted assessment development).

The consequences of a development or class of development being declared targeted assessment development is to switch off a range of important environmental assessment and oversight requirements. Specifically:

- When considering applications for targeted assessment development, consent authorities will expressly be prohibited from considering fundamental and important matters (proposed new s4.15(1C) and (1D)), including:
  - the likely impacts of that development, including environmental impacts,
  - the suitability of the site for the development, and
  - the public interest, which under NSW case law includes the principles of ecologically sustainable development and climate change impacts.[5]
- The Bill also provides that provisions under the Act relating to targeted assessment development prevail to the extent of an inconsistency with other provisions of the Act.
- The minimum community consultation period for targeted assessment development is 14 days or as otherwise specified in a SEPP. Without constraints on the types of development that could be declared targeted assessment development, this is not appropriate.

This pathway, ostensibly intended to be akin to the existing complying development scheme, is of significant concern because there are no legislative safeguards setting criteria and limiting the developments or classes of development that can fall within this pathway. The second reading speech for the Bill states that it "*will streamline the process by turning off unnecessary steps if the issues have already been addressed through up-front strategic planning or have been addressed through development controls or codes*". However, there is nothing in the legislation that gives effect to this, by limiting the power to declare targeted assessment development. The power is so broad that a complex, controversial and environmentally risky development could be declared to be targeted development under the legislation as proposed.

[5] See for example *Minister for Planning v Walker* (2008) 161 LGERA 423; [2008] NSWCA 224; *Aldous v Greater Taree City Council* (2009) 167 LGERA 13; [2009] NSWLEC 17; *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7.

In addition, the creation of an additional assessment pathway in this manner increases, rather than decreases, the complexity of the planning system. This is counter to ICAC recommendations that steps should be taken to reduce the complexity of the planning system.[6]

It is imperative that, if this assessment pathway is to be created, substantial legislative safeguards are placed around it, and the community ought to be consulted.

5. The Bill undermines anti-corruption safeguards recommended by ICAC

The Independent Commission Against Corruption (**ICAC**) has noted repeatedly that there is significant risk of corruption in the NSW planning system and that robust accountability, transparency, and oversight is necessary to mitigate that risk:

> *"the degree of subjectivity and flexibility in the planning system (including the potential for established controls to be overridden), combined with the high value of increases in development yield, makes the area an enduring target for those prepared to use corrupt means to achieve a favourable result".*[7]

Its report *Anti-Corruption Safeguards and the NSW Planning System* recommended 6 key corruption prevention safeguards to be integrated into the NSW planning system and a number of specific recommendations to support those safeguards.[8] The Bill is inconsistent with a number of those safeguards and recommendations, in particular those relating to providing certainty, balancing competing public interests, ensuring transparency, and reducing complexity.

The Bill introduces significant new powers and bodies without appropriate oversight or safeguards, as set out below.

Decision making will be centralised in new State Planning-led authorities

The Bill seeks to legislate two new authorities, the Housing Delivery Authority and Development Coordination Authority, and vest or provide for delegation of significant powers and functions in them.

- ***Development Coordination Authority:*** The Bill allows for decision making to be concentrated in a new Development Coordination Authority (which is the Planning Secretary), overriding the important role of local councils and other specialised government agencies in land use and planning decisions.
- ***Housing Delivery Authority:*** The Bill legislates the role of the Housing Delivery Authority, which is to comprise the Planning Secretary and two members appointed by the Minister. There are no legislative requirements for these two members to have specific skills or experience. The Housing Delivery Authority will also have broad powers, including (as noted above) to direct amendments to EPIs (e.g. rezoning).

[6] Principle 4 and Recommendation 10 of *Anti-corruption safeguards and the NSW planning system*.
[7] Independent Commission Against Corruption, *The exercise of discretion under Part 3A of the Environmental Planning and Assessment Act 1979 and the State Environmental Planning Policy (Major Development) 2005,* December 2010, https://www.icac.nsw.gov.au/media-centre/media-releases/2010-media-releases/icac-recommends-reforms-to-part-3a-of-the-nsw-planning-legislation.
[8] *Anti-Corruption Safeguards and the NSW Planning System*, pp 5-7

Under proposed amendments to section 2.4 of the Act, any function of the Minister, Planning Ministerial Corporation or the Planning Secretary can be delegated to either the Housing Delivery Authority or Development Coordination Authority. Additionally, a Minister or public authority may delegate a function under another Act to the Development Coordination Authority or a member of staff of the Department of Planning, Housing and Infrastructure if the function to be delegated is related to a function of the Development Coordination Authority (proposed s 2.11I).

The centralising of functions into a single body (and, in relation to the Development Coordination Authority, one individual) in this manner is contrary to ICAC recommendations regarding the importance of providing adequate opportunities for competing public interests to be considered, and transparency in this being done.[9]

Removal of planning panels and changes to constitution of local planning panels

The Bill seeks to abolish the Sydney district and regional planning panels. These, along with the Independent Planning Commission (**IPC**), were established to bring independence into the decisions around significant or complex developments in the aftermath of the controversial Part 3A planning powers,[10] which through its broad discretion to Ministerial decision makers and lack of transparency and accountability, significantly undermined the integrity of and public trust in the NSW planning system.

The second reading speech states that the Bill proposes that "*regional planning panel functions will be handed back to councils and local planning panels*". However, the Bill also introduces powers for the Planning Secretary to constitute a local planning panel or for a local planning panel of two or more areas to be specified in Schedule 2, Part 3A of the Act (in addition to existing powers for the Minister to direct a council to constitute a local planning panel). These changes directly impact the role of local councils in appointing local planning panels, and mean that the Planning Secretary will have more say on who makes local planning decisions.

Expedited amendment of EPIs rezoning without oversight

The Bill proposes to allow for amendments to an EPI without compliance with the usual checks and balances included in the legislation if the Housing Delivery Authority considers it "*necessary or convenient to enable the carrying out of development declared to be State significant development*". This is an extremely broad discretion, and for it to be exercisable without procedural safeguards, and at the direction of a body which itself has very little accountability or oversight mechanisms around it, is a significant risk.

In its March 2021 *Report on the Investigation into the conduct of councillors of the former Canterbury City Council and others*, the ICAC noted, with respect to planning proposals - largely proposals to rezone land for the purpose of a particular development - that "the corruption risks associated with planning proposals are significant" including because of "the capacity to make large windfall profits from an LEP amendment".[11]

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[9] For example, Recommendations 6 and 7 of *Anti-corruption safeguards and the NSW planning system*.

[10] *The exercise of discretion under Part 3A of the* Environmental Planning and Assessment Act 1979 *and the State Environmental Planning Policy (Major Development) 2005*, Recommendation 13.

[11] Independent Commission Against Corruption, *Report on the Investigation into the conduct of*

With respect to corruption risks associated with broad discretion in planning decisions, the ICAC has observed that:

> *"It requires no great leap of faith to suggest that anyone who has discretion to grant development approval, to rezone or to depart from stated requirements – whether they are elected officials or professional officers, and regardless of their level and political persuasion – is at risk of corrupt approaches. The greater the departure from the previous norm, the greater the corruption risk.*[12]

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councillors of the former Canterbury City Council and others, March 2021, https://www.icac.nsw.gov.au/media-centre/media-releases/2021-media-releases/icac-finds-former-canterbury-city-council-councillors-and-senior-staff-corrupt-recommends-tighter-planning-safeguards-in-nsw, pp 194-195.

[12] *The exercise of discretion under Part 3A of the* Environmental Planning and Assessment Act 1979 *and the State Environmental Planning Policy (Major Development) 2005*, p 6.