



Environmental  
Defenders Office

**Submission on Establishing the NSW Development  
Coordination Authority**

**25 February 2026**

## About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

**Successful environmental outcomes using the law.** With over 40 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

**Broad environmental expertise.** EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

**Independent and accessible services.** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

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## **Acknowledgement of Country**

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

### **A note on language**

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term First Nations. We acknowledge that not all First Nations will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. The EDO respects all First Laws and values their inherit and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.

## EXECUTIVE SUMMARY

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on consultation materials relating to the establishment of the Development Coordination Authority (**DCA**), namely:

- Consultation document titled ‘Establishing the Development Coordination Authority’
- Appendix A – A new framework for statutory inputs on DAs
- Appendix B – Proposed amendments to the EP&A Regulation

Following the assent of the *Environmental Planning and Assessment Amendment (Planning System Reforms) Act 2025* (NSW) (**Planning System Reforms Act**), EDO has ongoing concerns that the DCA, as established by the 2025 reforms, will reduce specialised expert input into planning decisions and transparency, resulting in poor decisions and worse outcomes for the environment and communities.

Specialised agencies and Ministers are best placed to consider issues relevant to their portfolio. They can provide frank advice, at arms-length from Department of Planning, Housing and Infrastructure (**DPHI**), which has development-centric objectives and lacks the breadth of expertise that other specialised agencies can contribute to planning decisions when needed. Whilst the consultation materials suggest that experts from other agencies will be recruited to DPHI to inform the DCA, there is no statutory requirement for the DCA, which is defined in the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) to be the Planning Secretary, to consider the advice of these experts.

In the absence of clear legislative obligations, robust and transparent processes must be established to ensure the DCA is able to maintain frank and transparent expert input into planning decisions. Transparency and accountability are fundamental to public trust in the planning system.

We are also concerned that changes proposed in the consultation materials expand the role of the DCA beyond that envisaged by the Planning System Reforms Act, which gives the DCA direct functions in relation to integrated development and specific consultation and concurrence roles only. It is now proposed to confer notification, consultation and concurrence requirements within existing environmental planning instruments (**EPis**) to the DCA (described as ‘statutory inputs’). The scope of these changes are substantial and will affect a significant number of EPis. These changes risk further weakening important safeguards for communities and the environment, and in the absence of any mandatory requirement for the DCA to consider expert opinion, will undermine public confidence in the planning system. It is also proposed that the DCA will now provide ‘advisory input’ in place of other agencies, including in relation to State significant development (**SSD**) and State significant infrastructure (**SSI**) assessment, and planning proposals and State significant rezonings.

While Appendix A is intended to be an explanation of the intended effect of proposed changes to EPis, it provides only a high-level explanation of the proposed changes. It does not outline specifically what new provisions will be included in the State Environmental Planning Policy

(Planning Systems) 2021 (**Planning Systems SEPP**) or provide specific information regarding which specific provisions of EPIs will be affected by the changes. It also does not clearly explain how the proposed new State Referral Provisions, which are also intended to provide guidance on what needs to be considered, will operate alongside these changes.

Similarly, Appendix B provides a general explanation of the proposed amendments to the Environmental Planning and Assessment Regulation 2021 (NSW) (**EP&A Regulation**), but specific detail is lacking.

Our submission provides feedback as follows:

- Overarching concerns
  - The status, role and processes of the Development Coordination Authority must be clarified
  - Specific changes to the EP&A Regulation, Planning Systems SEPP and EPIs require further consultation
- Comments on consultation materials:
  - Consultation document titled ‘Establishing the Development Coordination Authority’
  - Appendix A – A new framework for statutory inputs on DAs
  - Appendix B – Proposed amendments to the EP&A Regulation

Ultimately, we make three **key recommendations**:

1. The Planning Secretary should publish a clear policy statement outlining how they intend to carry out the functions of the DCA, including in relation to processes for obtaining expert input and publishing advice, particularly in relation to both ‘statutory input’ and ‘advisory input’.
2. The Government must undertake further public consultation on specific draft changes to the EP&A Regulation, Planning Systems SEPP and EPIs, as well as State Referral Provisions, to ensure stakeholders understand the entirety of the changes, and are able to identify any specific concerns or perverse outcomes.
3. The Government should undertake meaningful, effective consultation with the NSW First Nations community on the proposed reforms in accordance with principles of Free, Prior and Informed Consent, including on necessary minimum safeguards of indigenous governance and assessment and protection of Cultural Heritage.

The role of the DCA should not be extended without proper scrutiny, and it should not be able to operate unchecked with no clear transparency and accountability.

## OVERARCHING CONCERNS

### **The status, role and processes of the Development Coordination Authority must be clarified**

We are concerned that there is some disconnect between the status and role of the DCA as set out in the consultation document titled ‘Establishing the Development Coordination Authority’ (consultation document), and the provisions of Part 2, Division 2.3B of the EP&A Act.

The consultation paper states that the DCA “is a new authority within the Department”, however section 2.11E of the EP&A Act provides that ‘Development Coordination Authority’ means the Planning Secretary. We have ongoing concerns that while a new arm can be established within DPPI to centralise experts and/or coordinate the use of services of other departments to support the work of the Planning Secretary as the DCA, there is no legislative requirement for the DCA (i.e. Planning Secretary) to have specific expertise or to engage or follow the advice of specific experts. There is nothing to prevent the Planning Secretary acting unilaterally in exercising the functions of the DCA.

Similarly, section 2.11F provides that the DCA has the following functions—

- a) the functions under this Act delegated to the Development Coordination Authority,
- b) providing advice, recommendations and reports to the Minister, at the Minister’s request, on any matter, including a general or particular planning or development matter or the administration of this Act,
- c) other functions conferred or imposed on the Development Coordination Authority under this Act, including the regulations or other instruments under this Act, or another Act.

While some functions of the DCA are very clear, for example, where there is ‘statutory input’ required (e.g. in the case of integrated development where provisions of the EP&A Act have been amended to specifically refer to the DCA), there is ongoing uncertainty about exactly what role the DCA will have in other aspects of the planning system. The consultation paper indicates that the DCA will take on the role of providing ‘advisory input’ (for example, in relation to SSD and SII), however it is unclear what transparency there will be around these functions (e.g. will any advice of the DCA be made public).

EDO has ongoing concerns that the DCA, as established under legislation, removes the role of specialised agencies and Ministers to input into planning decisions. This is inappropriate as those agencies and Ministers are best placed to consider the issues relevant to their portfolio (e.g. biodiversity impacts, impacts on threatened species etc.) and can provide frank advice, at arms-length from the Planning Department. The centralising of functions into a single body (or, more accurately, having regard to the definition of the DCA, , 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.<sup>1</sup> Nothing

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<sup>1</sup> For example, 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>, Recommendations 6 and 7.

prevents the Planning Secretary from acting unilaterally in exercising the functions of the DCA. As the DCA is 'established' as a new arm of DPHI, internal governance and processes must address these concerns and ensure that the quality of expert input into planning decisions, and public accessibility to that expert advice is maintained.

To help clarify the status and functions of the DCA, and maintain the expert input quality and transparency, we recommend that the Planning Secretary publish a clear policy statement outlining how they intend to carry out the functions of the DCA, including in relation to processes for obtaining expert input and publishing advice, particularly in relation to both 'statutory input and 'advisory input'. The Environmental Planning and Assessment Regulation 2021 (NSW) (**EP&A Regulation**) could include an explicit requirement for this, for example as part of proposed new provisions setting out the process for statutory inputs. This could be similar to the *Secretary's Assessment Requirements*<sup>2</sup> issued under clause 4.47(4A)(b) of the EP&A Regulation, which currently set out the matters the Secretary of the Department should consider when acting 'stepping-in' and acting on behalf of an approval body under section 4.47(4A) of the EP&A Act (noting that the Secretary's 'step-in' functions are repealed by the Planning System Reforms Act and replaced by the Planning Secretary's role as the DCA).

**Key recommendation 1:** The Planning Secretary should publish a clear policy statement outlining how they intend to carry out the functions of the DCA, including in relation to processes for obtaining expert input and publishing advice, particularly in relation to both 'statutory input' and 'advisory input'.

### **Specific changes to the EP&A Regulation, Planning Systems SEPP and EPIs require further consultation**

The consultation materials, including Appendix A and Appendix B in particular, discuss proposed changes to the EP&A Regulation and Planning Systems SEPP in general terms. The scope of the changes is substantial and will affect a significant number of Local Environment Plans (**LEPs**) and State Environment Planning Policies (**SEPPs**). As further outlined below, both Appendix A and Appendix B provide a general explanation of the changes, but lack specific detail. We **recommend** further public consultation on specific draft changes to the EP&A Regulation, Planning Systems SEPP and EPIs, as well as State Referral Provisions, to ensure stakeholders understand the entirety of the changes, and are able to identify any specific concerns or perverse outcomes.

**Key Recommendation 2:** The Government must undertake further public consultation on specific draft changes to the EP&A Regulation, Planning Systems SEPP and EPIs, as well as State Referral Provisions, to ensure stakeholders understand the entirety of the changes, and are able to identify any specific concerns or perverse outcomes.

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<sup>2</sup> [https://s3-ap-southeast-2.amazonaws.com/shared-drupal-s3fs/master-test/fapub\\_pdf/Secretary's+Assessment+Requirements+-+25+February+2019.pdf](https://s3-ap-southeast-2.amazonaws.com/shared-drupal-s3fs/master-test/fapub_pdf/Secretary's+Assessment+Requirements+-+25+February+2019.pdf)

## COMMENTS ON THE CONSULTATION MATERIALS

### Consultation Paper titled ‘Establishing the Development Coordination Authority’

The consultation paper characterises the type of input the DCA will have into planning decisions as ‘statutory inputs’ and advisory inputs’.

- *Statutory inputs:* We understand that statutory inputs describe circumstances where input by the DCA is mandated in Acts, regulations, SEPPs and LEPs. Changes made by the Planning System Reforms Act require the DCA to have statutory input in relation to integrated development under the EP&A Act, and in relation to some concurrence and consultation functions under other Acts. We understand that further changes will be made (as proposed in Part 4 of the consultation paper) to update existing statutory input requirements and require those to be exercised by the DCA. These are substantial changes that will expand the role of the DCA beyond that originally created by the Planning System Reforms Act. Any provisions that require statutory input from a part of the NSW Government will be amended to instead require input from DCA.
- *Advisory inputs:* The consultation paper states that ‘advisory inputs cover other advice provided by experts within the NSW Government or other bodies that is used to inform assessments and decisions. These specialised inputs are not explicitly mandated in legislation, but decision makers still need these inputs to address considerations and requirements’. Examples of where advisory input is provided include SSD and SSI assessment, and planning proposals and State significant rezonings. The consultation paper indicates the DCA will provide integrated, in-house technical advice to inform DPHI assessment of SSD and SSI applications, planning proposals and State significant rezonings, and also provide ad hoc advice to councils where assistance is needed in applying state requirements.

The consultation paper also states that new State Referral Provisions will be introduced that set out the matters that need to be considered by DCA and other bodies when statutory input is requested.

In response to the consultation paper, we provide the following feedback

- As noted above, there is a disconnect between legislative provisions relating to the DCA and the explanation of the DCA in the consultation paper. While the policy intent is for a new authority within DPHI to support the functions of the DCA and provide expert ‘inputs’, there is nothing to ensure the effective functioning of this arrangement, including in the long-term.
- The changes proposed in Part 4 of the consultation paper are substantial changes affecting 812 provisions in 175 LEPs and SEPPs that will expand the role of the DCA beyond that originally proposed by the Planning System Reforms Act. While Appendix A does

provide further information, the specific changes are not explained. See more specific comments in relation to Appendix A below.

- We are concerned that the proposal to establish new State Referral Provisions that will set out a single set of matters for consideration for the DCA fails to accommodate the nuance needed in decision making with respect to different impacts, and risks reducing important environment and community safeguards. For example, some EPIs have very specific matters of consideration (e.g. with respect to impacts on drinking water catchments, or threatened species) and single State Referral Provisions are unlikely to capture the breadth of matters needed to be considered across a range of different input points. Again, further consultation on specific changes is needed so that stakeholders can interrogate these changes in more detail.
- Because ‘advisory input’ is not mandated, it is more difficult to understand the specific changes that are expected here. Where existing processes exist in relation to ‘advisory input’ (for example, in relation to obtaining agency input in relation SSD and SSI), it would be useful to articulate more clearly what specific changes might be made (e.g. will advisory input of the DCA still be made publicly available during the assessment process in the same way agency input currently is?). Clear, published materials explaining advisory input processes is needed, as recommended above.
- In relation to advisory input into SSD and SII, the consultation paper states:
  - “DCA will work directly with assessment teams in DPHI to provide advisory inputs on SSD and SSI applications. DCA will provide expert advice to inform:
    - Secretary’s environmental assessment requirements (SEARs)
    - review of environmental impact statements, including a proposed mitigation measures
    - conditions of consent”.

Again, this expands the role of the DCA beyond that originally envisaged by the Planning System Reforms Act and provides the DCA/Planning Secretary with a level of discretion in relation to both statutory and advisory inputs that will undermine public confidence in the planning system and pose concerning probity risks.

We have significant concerns about the impact these changes will have on transparency and accountability in the development assessment process. It is important that public access to expert advice is maintained and the DCA should publish information regarding the officers consulted, the nature of their expertise and the advice provided by those officers. Transparency is essential for public confidence in the planning system and also as a key safeguard against corruption. The Independent Commission Against Corruption has consistently emphasised its importance in this respect. For instance, in its report *Anti-corruption safeguards and the NSW Planning System*, it identified transparency as one of six key corruption safeguards:

*“Transparency is an important tool in combating corruption and providing public accountability for planning decisions. A transparent planning system ensures the public has meaningful information about decision-making processes as well as being informed about the basis for decisions”.*<sup>3</sup>

- The consultation paper also states that DCA will be responsible for issuing Biodiversity Development Assessment Report (**BDAR**) waivers for State significant projects that are unlikely to have a significant impact on biodiversity values. Presumably this function will need to be delegated from the Planning Agency Head who has this function under section 7.9(2) of the *Biodiversity Conservation Act 2016* (**BC Act**). We note EDO has already raised concerns about the amendment made by the Planning System Reforms Act (yet to commence) that will remove the Environment Agency Head from being involved in the decision under section 7.9(2) of the BC Act. This is a key decision relating to impacts on biodiversity value that must be informed by expert input from a qualified ecologist.

### ***The proposed reforms amplify concerns about inadequate protection of Aboriginal Cultural Heritage in NSW***

We have significant concerns about the impact of the proposed changes on the assessment and protection of Aboriginal Cultural Heritage in NSW.

We note there is some uncertainty about how the changes apply specifically to Aboriginal Heritage Impact Permits (**AHIPs**). Appendix A states “Development with the potential to harm or desecrate Aboriginal objects and places will continue to require approval by experts in the DCA under the integrated development provisions in the EP&A Act **and** an Aboriginal heritage impact permit (AHIP) from Heritage NSW (under the *National Parks and Wildlife Act 1974*) (emphasis added).

However, there is no apparent policy justification for the transfer of regulatory functions under the *National Parks and Wildlife Act 1974* in relation to Aboriginal Cultural Heritage to the DCA: AHIP processes are already integrated under the EP&A Act and NPW Act frameworks. Further, this would duplicate existing streamlined pathways for AHIPs (e.g., SSD/SSI pathways, which already (and concerningly) reduce scrutiny of development impact on Cultural Heritage).

Under current planning frameworks, the NSW National Parks Wildlife Service (**NPWS**) and Heritage NSW provide specialist regulation and oversight of Aboriginal Cultural Heritage. Centralising these functions in the Planning Secretary (DCA) removes independent Cultural Heritage expertise and risks a structural conflict with the Department’s pro development mandate. Furthermore, it isolates these regulatory functions from the protection and management statutory functions of NPWS and Heritage NSW.

In our view, the proposed changes will further weaken protections of Aboriginal Cultural Heritage in NSW. This is despite long standing calls from Aboriginal peak bodies and industry groups for modernised, standalone legislation that *strengthens* Aboriginal control and governance over

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<sup>3</sup> *Anti-Corruption Safeguards and the NSW Planning System*, p 6.

Cultural Heritage.<sup>4</sup> The proposed reforms ignore these calls and will instead centralise decision-making in a non-specialist agency lacking in Indigenous governance.

Nor is there any transparency in the Cultural Heritage assessment process: the proposed reforms provide no requirement to demonstrate how Aboriginal Cultural Heritage concerns, agency objections, or community objections are to be considered in decisions made by the DCA. By contrast, existing processes require consultation, Aboriginal Cultural Heritage Assessments, and cultural authority engagement. These safeguards do not appear to have been incorporated in the DCA framework.

To address these concerns, we urge the Department to delay progress on the proposed changes until it has undertaken meaningful and effective consultation with First Nations consistent with accepted principles of Free, Prior and Informed Consent, as reflected in Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples<sup>5</sup> and the EPA's public commitment to Aboriginal Peoples in NSW.<sup>6</sup>

Should the proposed changes be progressed despite this, we recommend that the DCA be required to publish all cultural heritage assessments, objections received from the Aboriginal community and advice received from NPWS and Heritage NSW.

**Key Recommendation 3:** The Government should undertake meaningful, effective consultation with the NSW First Nations community on the proposed reforms in accordance with principles of Free, Prior and Informed Consent, including on necessary minimum safeguards of indigenous governance and assessment and protection of Cultural Heritage.

## Appendix A - A new framework for statutory inputs on DAs

The consultation paper proposes changes to EPIs to establish a framework for 'statutory inputs' on development applications. The proposed changes will amend, revoke or consolidate 812 existing provisions across 175 EPIs, through amendments to the Planning Systems SEPP.

While Appendix A is intended to be an explanation of the intended effect of proposed changes to EPIs, it provides only a high-level explanation of the proposed changes. It does not outline specifically what new provisions will be included in the Planning Systems SEPP or provide specific information regarding which specific provisions of EPIs will be affected by the proposed changes. It also does not clearly explain how the proposed new State Referral Provisions, which are also intended to provide guidance on what needs to be considered, will operate alongside these changes.

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<sup>4</sup> See, for example, the analysis of the NSW Cultural Heritage protections in the Juukun Gorge Inquiry: Joint Standing Committee on Northern Australia, *A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukun Gorge* (Commonwealth of Australia, 18 October 2021) at [5.4]ff.

<sup>5</sup> Article 19 provides: *States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*

<sup>6</sup> EPA [Statement of Commitment to Aboriginal peoples | EPA](#)

As outlined above, we recommend further public consultation on specific draft changes to both the EP&A Regulation, Planning Systems SEPP and EPIs to ensure stakeholders understand the entirety of the changes, and are able to identify any specific concerns or perverse outcomes, prior to any changes being enacted.

Below we highlight examples where we have specific concerns, or seek further information about the specific changes proposed. This list of examples is not exhaustive, and there are other parts of Appendix A which also lack detailed information about the specific changes intended to be made.

## **The protection of the natural environment and management of resources**

### ***Biodiversity, threatened species and their habitats***

Appendix A provides:

*“Some consultation requirements in LEPs relating to specific species and locations will be removed where they duplicate protections under the Biodiversity Conservation Act 2016. Accompanying site-specific assessment requirements will be retained and strengthened to ensure councils do not grant consent to development unless they are satisfied that potential on those specific species and locations can be adequately managed”.*

However, it fails to explain:

- what specific consultation requirements are being referred to;
- how the provisions duplicate protections in the *Biodiversity Conservation Act 2016*; and
- how site-specific assessment requirements will be retained and strengthened, and whether they will be retained in the LEP itself.

This is a clear example of how Appendix A fails to provide a clear explanation of the proposed changes. Based on this information stakeholders are unable to determine whether the proposed changes will maintain protection of the natural environment and management of resources.

We have reviewed a cross section of current LEPs and found that they contain specific requirements to meet the environmental and community needs of the local area. These include provisions setting out specific matters that a consent authority must consider when deciding whether to grant concurrence to a development application. For example, many LEPs contain a clause relating to ‘Natural resource sensitivity—biodiversity’. One example of this type of clause is clause 7.4 of Wingecarribee Local Environment Plan 2010, which provides:

#### *7.4 Natural resources sensitivity—biodiversity*

- (1) The objective of this clause is to maintain terrestrial and aquatic biodiversity, including—*
- (a) protecting native fauna and flora, and*
  - (b) protecting the ecological processes necessary for their continued existence, and*
  - (c) encouraging the recovery of native fauna and flora, and their habitats.*

*(2) This clause applies to land identified as “Regional Wildlife Habitat Corridor” on the Natural Resources Sensitivity Map.*

*(3) Before granting development consent for development on land to which this clause applies, the consent authority must consider any potential adverse impact of the proposed development on the following—*

- (a) the native ecological community,*
- (b) the habitat of any threatened species, population or ecological community,*
- (c) any regionally significant species of fauna, flora or habitat,*
- (d) habitat elements providing connectivity.*

*(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*

- (a) the development is designed, sited and managed to avoid any potential adverse environmental impact, or*
- (b) if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Based on the information in Appendix A it is unclear whether these types of provisions in LEPs will be affected by the proposed changes.

Conversely, we have been unable to find examples of provisions in LEPs that contain “consultation requirements... relating to specific species” as referred to in Appendix A.

Appendix A also provides:

*“The proposed SEPP will include a requirement to obtain the concurrence of the DCA before undertaking development on land in identified koala corridors in southwestern Sydney. This will replace existing consultation requirements in SEPP (Precincts —Western Parkland City) 2021 and Campbelltown LEP 2015”.*

We note SEPP (Precincts —Western Parkland City) includes specific matters of consideration, including, for example, in the case of Appendix 10 Appin (Part) Precinct Plan (a) the protection of the koala population in the Appin (Part) Precinct, and (b) the maintenance and delivery of the koala corridor; and in the case of Appendix 11 Gilead (Part) Precinct Plan (a) the protection of the koala population in the Gilead (Part) Precinct, and (b) the maintenance and delivery of the koala corridor, which is the land identified as “Koala Corridor” on the *Koala Corridors Map*.

From the information in Appendix A, it is unclear whether the proposed new SEPP provisions will apply only to these two specific areas and whether the same matters for consideration will apply.

In the absence of further information, our key concern is that removing and consolidating existing LEP provisions risks a reduction in protections for the environment, particularly where regionally

specific requirements may be consolidated into a single SEPP provision. In line with our overarching recommendation, further consultation on the specific changes proposed is required.

### **National Parks**

Where Appendix A discusses a requirement to consult with the DCA for development in the alpine resort areas of the Kosciuszko National Park, this is presumably referring to the existing requirement in clause 4.27 of State Environmental Planning Policy (Precincts—Regional) 2021. Again, this is an example where consultation materials must be much more specific about the changes proposed (e.g. if the intention is to repeal clause 4.27 of State Environmental Planning Policy (Precincts—Regional) 2021 this should be clearly explained, together with a clear explanation of whether this provision will be directly replicated in the Planning System Reforms SEPP or if a differently worded provision will be included).

Similarly, Appendix A is clearly referring to specific instances regarding consultation requirements for land adjoining the Blue Mountains National Park and the Wianamatta Regional Park, however these specific instances are not mentioned specially (we presume it is referencing provisions such as clause 6.44 of SEPP (Precincts—Western Parkland City) 2021 in relation to Wianamatta Regional Park), and new consultation requirements are not outlined.

It is also unclear what role the existing National Parks and Wildlife Service (NPWS) guidelines titled *‘Developments adjacent to National Parks and Wildlife Service lands Guidelines for consent and planning authorities* will have under the new framework.

More detailed information is needed to help stakeholders understand the specific changes.

### **Waterbodies, waterways and water resources**

#### *Sydney Drinking Water Catchment*

Appendix A provides:

*“The SEPP will include a requirement for councils to obtain the concurrence of DCA before granting consent to development in the Sydney Drinking Water Catchment. This will replace the existing consultation requirement in SEPP (Biodiversity and Conservation) 2021.”*

We understand this to be referring to clause 6.64 of SEPP (Biodiversity and Conservation) 2021 which provides:

- (1) *Development consent must not be granted to development on land in the Sydney Drinking Water Catchment unless the consent authority has obtained the concurrence of the Regulatory Authority.*

- (2) For the Act, section 3.18(3), the Regulatory Authority must consider the following matters in deciding whether to grant concurrence—
- (a) the NorBE Guideline,
  - (b) whether the development will have a neutral or beneficial effect on water quality.

It is unclear, based on the information in Appendix A, whether these matters of consideration will be carried over directly into the Planning Systems SEPP and apply to decisions of the DCA.

#### *Total catchment management*

Appendix A provides:

*“It is proposed to remove the requirement for consent authorities to consult with downstream and adjacent councils before granting consent to development in regulated catchments like Sydney Harbour and the Georges River. In practice, this unnecessarily duplicates consultation, advice and approvals that occur under the integrated development provisions in the EP&A Act, Water Management Act 2000 and the Fisheries Management Act*

We understand this refers to clause 6.10 of SEPP (Biodiversity and Conservation) 2021, which provides:

*“In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact”.*

It is unclear how this duplicates consultation, advice and approvals that occur under the integrated development provisions in the EP&A Act, Water Management Act 2000 and the Fisheries Management Act, particularly where clause 6.10 requires consultation with councils, and it is unclear how those latter requirements apply specifically to councils. Similarly, the DCA is intended to centralise NSW Government input into decisions, and won't take on the role of providing council input into decision making, as currently required by clause 6.10 of SEPP (Biodiversity and Conservation) 2021.

### **Conservation of Aboriginal cultural heritage and items and areas of State heritage significance**

#### ***Aboriginal cultural heritage***

Appendix A states:

*“The proposed SEPP will include a requirement to consult with local Aboriginal communities for development in an Aboriginal place of heritage significance. The new consultation requirement will replicate section 5.10(7) of the Standard Instrument LEP. It will replace a confusing array of provisions scattered across many EPIs, which are similar in purpose but vary in wording and how they are applied. This change will make responsibilities clearer, respect cultural practices, and reduce confusion, strengthening overall management of this issue.”*

Again, it would be useful to understand exactly what the new SEPP provision will require and which specific provisions in which EPIs will be replaced. It is also unclear whether section 5.10(7) of the Standard Instrument LEP will be retained given it is intended to be replicated in the SEPP. Such matters should be the subject of meaningful and effective consultation with the NSW Aboriginal community, as recommended above.

## **Management of risks to people, property and the environment from hazards**

### ***Changes to consultation requirements for developments on bushfire prone land***

*Appendix A states:*

*“The proposed SEPP will include a new requirement to consult with DCA on development that is complex or has high bush fire exposure. This requirement will replace the existing referral provision under section 4.14 of the EP&A Act”.*

We note that the Planning System Reforms Act made changes (not yet commenced) to section 4.14 of the EP&A Act to remove the existing consultation requirement so we are pleased to see that a new requirement to consult with DCA will be incorporated into the Planning Systems SEPP. Given the scope of proposed changes *Planning for Bush Fire Protection (PBP)*, we strongly encourage public consultation on the proposed changes to the PBP before they are finalised.

## **Appendix B - Proposed amendments to the EPA Regulation**

Appendix B provides an explanation of the proposed amendments to the EP&A Regulation.

We acknowledge that the term ‘approval body’ will be replaced throughout the EP&A Regulation with reference to DCA. This aligns with recent changes to s 4.47 of the EP&A Act, which give the DCA the power to issue general terms of approval for integrated development. We also acknowledge that provisions relating to the step-in powers of the Planning Secretary will be repealed to align with the removal of these powers from the EP&A Act.

In relation to other changes proposed to be made to the EP&A Regulation we provide the following feedback on the proposed changes:

- ***Provisions will establish the process for consent authorities requesting statutory inputs on development applications and on modification applications***

These proposed changes appear to be focused on the process for requesting statutory inputs, including timeframes, requesting additional information and amending, rejecting and withdrawing DAs. As noted above, it would be beneficial for the Planning Secretary to publish information on how they intend to carry out the functions of the DCA, including in relation to processes for obtaining expert input and publishing advice, in relation to both ‘statutory input and ‘advisory input. The Regulations could require the Planning Secretary to publish such a statement.

- ***The Planning Secretary will no longer be required to consult with other State agencies on the environmental assessment requirements for designated development and State significant development (SSD).***

This change is part of the broader proposal outlined in the consultation materials for the DCA to provide State government input into designated development and SSD in place of individual agencies. As outlined above we have broad concerns regarding the potential reduction in expert input and lack of clear transparency and accountability measures. Designated development and SSD, by their nature, can have significant impacts on the environment and communities, and robust environmental assessment processes are needed to ensure good decision making and retain public trust in the planning system.

- ***Applicants will be able to seek review of a DCA decision or determination. New provisions will set out the process, requirements and timeframes for seeking a review of a DCA decision or determination.***

It is proposed to make this change within existing clauses 244-246 of the EP&A Regulation. These provisions currently allow for a review of a consent authority's decision or determination.

More detail is needed to understand exactly how the new provisions allowing review of a DCA decision or determination would operate, including exactly what role the DCA would have in the review process and how it compares to existing review processes for integrated development. We would be concerned about creating review processes that have the potential to undermine the expert input of the DCA by allowing that input to be overridden without justification.

*Thank you for the opportunity to make this submission.  
Please do not hesitate to contact our office should you have further enquiries.*