



NSW Business Chamber & Sydney Business Chamber

Planning Legislation Updates

Submission to proposed amendments to the *Environmental Planning and Assessment Act 1979*

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Introduction and Overview

The NSW Business Chamber and the Sydney Business Chamber (collectively “the Chambers”) welcome the opportunity to comment on proposed amendments to the *Environmental Planning and Assessment Act 1979* (“the Act”).

The NSW Business Chamber is one of Australia’s largest business support groups, with a direct membership of more than 20,000 businesses, providing services to over 30,000 businesses each year. Tracing its heritage back to the Sydney Chamber of Commerce established in 1825, the NSW Business Chamber works with thousands of businesses ranging in size from owner operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises.

The Sydney Business Chamber is a division of the NSW Business Chamber and represents Sydney’s leading corporations as well as organisations from the government and not-for-profit sectors. On behalf of members, the Sydney Business Chamber advocates for Sydney to be a competitive and sustainable global city. The Sydney Business Chamber strives to identify, develop and promote the major issues that contribute to economic activity and growth in Australia’s global city, Sydney. This is achieved on behalf of business by representation and collaboration with governments at the local, state and federal level.

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Our Position

The Chambers have been longstanding advocates for a planning system that promotes economic growth and prosperity. Accordingly we support the proposals contained in the *Planning Legislation Update* as we believe they will contribute to a planning system that is more efficient, that enjoys the confidence of the community, and is better focused on long-term solutions to NSW’s land use challenges.

While the Chambers largely support these proposed amendments, we do believe wider reform is required to modernise planning across the state.

Regional and metropolitan NSW have undergone significant changes since the Act was first introduced. While not unknown to communities at the time of the Act’s introduction, as NSW has grown and continues to grow the challenges of housing affordability, transport congestion and ensuring there are employment opportunities close to where people live have increased markedly.

While the Act has undergone a number of amendments to help meet these challenges, the planning system remains highly complex and unsuited to best meet the needs of NSW and its growing population.

The NSW's Business Chamber **2016 Red Tape Survey** found that businesses ranked the Department of Planning and Environment and local councils as the top two most complex NSW based agencies to deal with. This complexity is driven by a range of factors but the underlying legislative and regulative frameworks of these agencies contribute significantly to these complexities.¹

The Chambers appreciate that the Government's previous attempt to achieve wider reform of the planning system² were not successful and that the reforms currently proposed represent an "*evolution not revolution*"³ of the system. While we are in broad support of implementing these reforms, by the Government's own admissions, they represent reform that is *achievable* within the system and not necessarily what is *desirable* in terms of ensuring that the system is functioning at its optimal level. The Chambers will continue to call on the Government to pursue further reform to ensure the planning system in NSW best supports growth, investment and employment.

Enhancing Community Participation

The Chambers welcome the emphasis on more effectively targeting community participation at the front end of projects. In particular, the requirement for stronger consultation on state significant developments, the new requirement for all planning authorities to develop community participation plans, and a greater focus on consulting with those community members actually affected by a development prior to a development approval being made.

The Chambers note that the Department will be developing "*up to date engagement tools*" which may include "*new guidance materials, online tools and applications, and case studies of effective and innovative ways to engage with the community*".

While the Chambers support this approach, we note that nothing in the update deals with the traditional "self-selected" approach to consultation (whereby any community member can select to put forward a view on a proposed development, despite not being directly affected by that development).

The Chambers' strongly support a range of consultation methods being utilised by proponents and planning authorities. The Chambers' note the experience of the New Democracy Foundation in working with Canada Bay Council in developing "*citizen's panels*"⁴. Learnings from this process, such as utilising a randomly selected consultation group (as opposed to a self-selected group) and providing the group with a clear level of authority, should be considered as mechanisms to help local councils improve their consultation with the public.

¹ <http://www.nswbusinesschamber.com.au/Issues/Business-Surveys/Annual-Red-Tape-Survey>

² <http://www.legislation.nsw.gov.au/bills/f779d670-218a-606a-a98d-8874159f0807>

³ Former Minister for Planning, The Hon. Rob Stokes MP <http://www.smh.com.au/nsw/nsw-planning-laws-overhauled-to-boost-housing-supply-20170108-gtnpmf.html>

⁴ <https://www.newdemocracy.com.au/ndf-work/185-city-of-canada-bay-policy-panel>

The Chambers also note the concerns that were raised in relation to these provisions when they were first put forward as part of the 2013 planning reform package. It is unclear from the summary of proposals whether a lack of consultation could be utilised as a mechanism by an opponent of a development to appeal development consent once granted. Clarification on this point prior to these reforms progressing would be appropriate.

Completing the Strategic Planning Framework

The Chambers have been strong supporters of the establishment of the Greater Sydney Commission (GSC). The Chambers believe that the creation of District Plans by the GSC will help to address the traditional disconnect between Local Environment Plans (LEPs) and metropolitan and state strategic plans.

Similarly, the Chambers strongly support the alignment of councils' integrated planning requirements with LEP development and review processes. Integrated planning and reporting requirements were introduced as part of the *Local Government Amendment (Planning and Reporting) Act 2009*. These provisions require councils to articulate an interlocking series of short, medium and long term plans that not only focus on what services and priorities councils should be delivering for their community but how those services and priorities can be funded. While it had been originally intended that these plans would be linked and aligned to council's LEP, this intention had never met reality. Aligning councils longer term economic, environmental and social objectives with the fundamental vehicle to achieve these objectives (the land use planning system) is long overdue and we welcome the proposal to pursue it.

The Chambers note that the implementation of this change "*will be staged over coming years to align with current regional and district planning processes*". The Chambers are aware that many regional councils lack both the resources and skills (on an individual basis) to develop and maintain, to an adequate level, their planning frameworks. The Chambers would support the Department considering how such plans could be developed through Regional Joint Organisations (RJOs) or supported through additional resources directed towards regional councils.

The Chambers also support the proposal for Councils to undertake a five-yearly LEP check to assess whether substantial revisions to the LEP are required. This strikes the correct balance between ensuring LEPs are adequately dynamic to respond to changing circumstances, while also providing adequate certainty to the community.

The Chambers also welcome the proposal to require Development Control Plans to follow a standard format to reduce complexity. This reform builds on the amendments contained within the *Environmental Planning and Assessment Act 2012* which required a consent authority to give a DCP's provisions less weight and significance than those of an environmental planning instrument. Those amendments confirmed that where an aspect of a proposed development does not comply with the provisions of an applicable DCP, a consent authority is required to apply the DCP flexibly and allow alternative solutions, so that otherwise permissible development may be carried out.

The Chambers support the interpretation of a DCP's purpose as providing guidance on the application of environmental planning instruments and that its provisions are not statutory requirements. Confirming this through the introduction of a standard form would be greatly welcomed.

Better processes for local development

The Chambers are supportive of initiatives that encourage front end consultation between development proponents and affected landowners to help resolve differences early so that applications are processed more quickly.

The effectiveness of the initiatives put forward in the update will however be dependent on how they are implemented and the nature and form of incentives attached. The Chambers welcome the proposal to initially pilot this reform with a group of councils to test out administrative and incentive mechanisms. The Chambers would welcome further consultation with stakeholders following these pilots to ensure the implemented incentives and regulations are appropriate and effective.

The Chambers have consistently argued for improvements to the process of concurrence from state agencies to local developments. While we appreciate a concurrence can provide an appropriate check on local development, this should not be used as a proxy justification for an inefficient approvals process. In circumstances where multiple concurrences are required, development can be significantly (and often unnecessarily) delayed.

The proposed concurrence workflow, if implemented properly, will help deliver a far more customer-centric approach to concurrences. The Chambers note the work of Service NSW in developing its Easy to do Business Initiative⁵ which should be utilised by the Department as a model in implementing the new concurrence workflow. Similarly, the Chambers support the provision of the powers to the Secretary of the Department of Planning and Environment to step in to address delays and to provide a ruling in circumstances where there is a conflict in concurrences between agencies.

The creation of a transparent digital platform for transactions has been regularly promised and never delivered for NSW planning. As noted above however, Service NSW has provided a pathway by which the Department can be guided in terms of implementing such a service. Such a platform would significantly improve information sharing and contribute significantly to the modernisation of the planning system.

While outside the scope of this review, the Chambers remain concerned with the performance of councils in terms of approval processes related to local events, business signage and other subordinate licensing approvals. The development of any digital platform should not just provide a platform for proponents to make applications but also provide an opportunity for agencies across Government to monitor council performance and where standards are not met step in and make immediate improvements.

The Chambers support the inclusion of initiatives to improve the complying development pathway to help ensure that developments that are low impact and meet existing

⁵ <https://www.service.nsw.gov.au/news/easy-do-business-pilot-program-launches-parramatta>

standards are not unnecessarily delayed. This is an important part of the solution to increasing housing supply, which is much needed in metropolitan NSW.

With that said, the Chambers note that the Government “*proposes to establish a compliance levy to support councils in their role in enforcing complying development standards*”. While the Chambers appreciate councils’ resource constraints, we note that there is no indication in the update to indicate where and why such a new levy is required (other than councils having resource constraints). As a first step, the Government should more closely examine the extent to which there is non-compliance with standards amongst complying developments and whether a general levy is justifiable. In any investigation of a levy, consideration should be given to a performance incentive for developers that would reduce their contribution to the compliance levy where they have demonstrated compliance over time.

We further note that while the measures identified in the Update will help increase the use of complying development as a proportion of overall development (and thus impact positively on approval timeframes) no specific target for complying development has been set. We note that from 2013 -2015 there was a 17% increase in the use of complying development. A target to measure the success of these initiatives in further growing the use of complying development would be useful.

State Significant Development

The Chambers support better processes for State Significant Development (SSD) to reduce complexity and improve assessment times. Removing duplicative conditions will help to minimise project proponents’ compliance costs without effectively removing any conditions of approval.

The proposal to provide the Minister with the power to vary or revoke monitoring or environmental audit requirements in existing approvals is sensible given the Minister already has power to impose new conditions. The ability to vary or revoke conditions should help to ensure projects are not caught with legacy conditions that are out-of-date and irrelevant.

Facilitating Infrastructure Delivery

The Chambers welcome the proposal to formalise the current practice of agencies consulting on development activities to ensure that any activity will not unnecessarily impact on future infrastructure development/delivery. Appropriate levels of co-ordination and communication with local and federal government agencies should also be prioritised as part of this process.

Fair and consistent planning agreements

The commitment to provide a clearer policy framework for planning agreements is long overdue. Planning agreements have been a feature of the NSW planning system for more than 10 years, and can be an important tool in ensuring new development is supported appropriately by new facilities and services. The experience of utilising planning agreements has however been mixed. Ensuring that there is sufficient

transparency in the negotiation of agreements and that the infrastructure to be supported by the agreement appropriately meets the needs of the community is essential.

The Chambers also note the proposed changes to review Special Infrastructure Contributions (SIC), local infrastructure guidelines and guidelines under 94A.

Since the introduction of rate-pegging in 1977 (which placed an annual cap on any increase in local councils' rates income), NSW councils have had to source an ever increasing proportion of their revenue from local fees and charges. For many councils this has meant utilising development levies as a "cash cow" revenue stream to fund local infrastructure.

At a principle level, the Chambers believe that while developers do need to contribute a proportion of funding to new infrastructure, they should not be left to fund it all. The current system raises significant questions in relation to inter-generational equity. Developers will ultimately pass on infrastructure costs to final purchasers of a property, however the infrastructure that has been contributed to can be enjoyed by the entire community.

The Chambers support the rationalisation of local and state level contributions so that a broader base including state agencies, councils, developers and the wider community contribute to the provision of new infrastructure under a single contribution framework.

Further to this, the Chamber strongly supports removing "upfront" developer contributions in favour of requiring contributions to be made at final settlement or at the completion of works.

Confidence in decision making

Utilising Independent Hearing and Assessment Panels (IHAPs) or similar panels can help to take the politics, or the perception of politics, out of development determinations. This mechanism enhances the faith of both participants of the planning system, and the community at large, in the integrity of decision-making. The Chambers support the addition of ministerial powers to direct a Council to establish a planning panel as a means to address the quality and timeliness of decision making or to address issues related to conflicts of interests or corruption.

In addition, aligning the framework around IHAPs and local planning panels (LPPs) to address inconsistencies across LGAs is sensible and will enhance the legibility of the process. The Chambers recommend that the framework include standard guidelines for what circumstances would necessitate a development decision being made via a planning panel, as well as guidelines for the timeframes these panels should operate within. Councils should then make clear its interpretation of these guidelines by clarifying what circumstances would direct a planning panel. This would provide more clarity to proponents about timeframes and ultimately reduce the need for ministerial involvement.

The Chambers broadly support the proposal to raise the current threshold for "*regionally significant development*" from \$20 million to \$30 million. The Chambers note that the effect of this change would remove the determination of such developments away from

Regional Planning Panels (RPP) and towards local councils or a LPP. Our support of this change is contingent however on the Minister having appropriate powers to re-appoint the RPP where the performance of the LPP (on the grounds of quality / timeliness of decision making) or the council has been called into question.

Enshrining the ability of the Planning Assessment Commission to determine projects and renaming it the Independent Planning Commission will further clarify the role of the Commission to users of the system. Removing unnecessary duplications of assessment will also save time in SSD determinations, which has the potential to realise economic and social benefits sooner, given the nature of these projects and their importance to the state. This initiative alone will not however meet the NSW Government's aim to half SSD assessment times, so other initiatives will need to be considered and implemented to meet this objective.

Elevating the role of design

While NSW, and Sydney in particular, is bearing the brunt of rapid population growth, accommodating this growth need not come at the expense of quality design in our built environment.

The Chambers support the development of a new design object in the Act and a range of both regulatory and non-regulatory tools to help embed quality design in the system.

We do however express caution in that any new design framework requires clearly stated objectives but sufficient flexibility so those objectives can be met through multiple means. Design guidelines have been introduced in some jurisdictions as a process to improve design quality and outcomes in the built environment through the setting of minimum requirements for various design elements. However where such requirements have become too prescriptive they can have a chilling effect on innovative design. Accordingly, the Chambers support, beyond the delivery of new design policies, the establishment of design panels to encourage new innovations and ideas from across industry and the community.