Nature in the balance

Environmental protections at risk under the proposed new planning system for New South Wales
Contents

Planning and the environment 4
Ecologically sustainable development 5
Coastal protection 6
Replacing environmental planning instruments 8
Environment protection zones 10
Environmental approvals, licences and permits 12
New code assessable development 14
Community voice in environmental and planning decisions 15

Copyright: © 2013
Nature Conservation Council of NSW
The Nature Conservation Council of New South Wales (NCC) is the peak environmental organisation for NSW, representing more than 100 member societies across the state. Our members have a strong interest in planning and development issues and are strongly committed to securing positive environmental and social outcomes in their local area.


Reproduction of this publication for educational or other non-commercial purposes is authorised without prior written permission from the copyright holder provided that the source is fully acknowledged. Reproduction of this publication for resale or other commercial purposes is prohibited without prior written consent of the copyright owner.

Citation: Nature Conservation Council of NSW (2013), Nature in the Balance, Environment protections at risk under the proposed new planning system for NSW.

2/5 Wilson Street, Newtown NSW 2042
Phone: 02 9516 1488
Email: ncc@nccnsw.org.au
Website: www.nccnsw.org.au
The NSW Government claims the new planning legislation it intends to introduce into parliament will “protect the environment and enhance people’s way of life”.¹

However, under the proposed changes set out in the government’s White Paper and Exposure Planning Bill:

▶ Decision makers will no longer be required to exercise their powers in accordance with the principles of ecologically sustainable development

▶ Existing State Environmental Planning Policies (SEPPs) and Local Environment Plans (LEPs) will be replaced, and there is no mechanism for ensuring existing environmental protections will be carried over into the new system

▶ New ‘code assessable’ development will allow development to be approved within 25 days, with no community consultation and no merit assessment

▶ Developers will have new rights of review for rezoning applications, and will be able to apply for strategic compatibility certificates from the Director-General to override existing local planning provisions, tipping the system in favour of developers

▶ There will be broad, unfettered discretion and lack of accountability for decision makers, such as the Minister for Planning and Director-General

These changes represent the most significant backward step on public participation and environment protection in more than a generation, placing our natural environment and communities at risk.

This report highlights the important role of the planning system in protecting our natural assets and identifies the significant threats to the environment and communities if the proposed planning system is introduced.

Broken Promises

The O’Farrell Government promised to “return local planning powers to local communities” and provide “greater certainty, transparency, timeliness and merit-based decision making”. *

These promises were made in response to wide-spread community concern and dissatisfaction with the NSW planning system, particularly in relation to the former Part 3A of the Environmental Planning and Assessment Act 1979 (EPA Act). Part 3A vested significant discretionary power in the Minister for Planning, introduced provisions that enable developers to bypass environmental approvals and limited third-party appeal rights.

While the impetus for the review may have been to address such community concerns, the process appears to have been overtaken by strong pressure from developer interests to fast-track development assessment processes, and government’s desire for cheap housing development and growth at all costs. Community rights and environmental and heritage protection have taken a back seat.

* Putting the Community Back Into Planning – The NSW Liberal and National Parties’ plan to reform the state’s planning system, September 2009.
Land-use planning and development is intrinsically linked with environmental protection, nature conservation and natural resource management.

This is because actions that may affect the environment and our natural resources are regulated, either directly or indirectly, through the planning system. The impact of planning and development on the environment is therefore a key consideration for decision makers in preparing planning instruments and determining development applications.

Conversely, land-use planning has the potential to support the protection and sustainable management of wildlife habitat, water resources, farmland and urban settlements.

The planning system has an important role in helping us to address many of our most pressing environmental challenges, including:

- loss and fragmentation of native vegetation and wildlife habitat
- conversion and loss of strategic agricultural land
- degradation of rivers, wetlands and water catchments
- urban sprawl, traffic congestion and urban air pollution, and
- carbon pollution and impacts of climate change

The planning system is not simply about development approval and delivery of housing. It is about planning for the future, protecting and managing our important and valuable natural resources, and supporting communities and people’s way of life.

New South Wales needs a planning system that will provide positive and balanced environmental, social and economic outcomes for our state, now and into the future.
Ecologically sustainable development

The NSW Government is proposing to remove the principles of ecologically sustainable development from our planning laws. This is a major step backwards for environmental protection and is inconsistent with environment and planning policy in Australia and internationally.

The current position

One of the current objects of the EPA Act is to encourage ecologically sustainable development. Ecologically sustainable development (ESD) is defined as the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

- the precautionary principle
- inter-generational equity
- conservation of biological diversity and ecological integrity
- improved valuation, pricing and incentive mechanisms, including the polluter pays principle

ESD is the standard terminology used in over 60 NSW statues, including the Mining Act, Coastal Protection Act, Local Government Act, Water Management Act and Native Vegetation Act.

Moving away from ecologically sustainable development

The NSW Government proposes to replace the existing definition of ‘ecologically sustainable development’ with a new, narrower definition of ‘sustainable development’.

The Exposure Planning Bill provides that one of the objects of the Act is “economic growth and environmental and social well-being through sustainable development”. Sustainable development is to be achieved by the “integration of economic, environmental and social considerations, having regard to present and future needs, in decision making about planning and development”.

This new, narrow definition of sustainable development is a significant step away from the established principles of ecologically sustainable development that have underpinned environmental planning and development decisions in NSW since the late 1990s.

In particular, the Exposure Planning Bill makes no reference to the precautionary principle, a central tenet of environmental policy and case law in NSW for more than two decades.

The move away from the principles of ecologically sustainable development is not consistent with other environment and planning legislation in Australia, for example, section 9 of the Planning and Development Act (ACT) 2007, Chapter 1 of the Sustainable Planning Act 2009 (Qld) and section 3A of the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

A balancing of economic, environmental and social considerations

The National Strategy for Ecologically Sustainable Development provides that an ecologically sustainable approach to development requires us to consider, in an integrated way, the wider economic, social and environmental implications of our decisions and actions for Australia, the international community and the biosphere.

The term Sustainable Development was first defined in the 1987 Brundtland Commission report, Our Common Future. The concept was further elaborated through a series instruments at the 1992 Earth Summit held in Rio de Janeiro. The Rio declaration outlined the key principles of sustainability including the precautionary principle, the conservation of biological diversity, intergenerational equity and the promotion of improved valuation, pricing and incentive mechanisms (including the polluter pays principle).

Subsequently, the Australian Commonwealth and State and Territory governments adopted the National Conservation Strategy for Australia and the Intergovernmental Agreement on the Environment (1992), which refers to the internationally accepted principles listed above. The term ecologically sustainable development was adopted in Australia.

See: www.environment.gov.au/about/esd/publications/strategy/
The NSW coast is under increasing pressure from population growth and urbanisation.

The Australian Bureau of Statistics reports on the increasing density on Australian coasts:

“The expansion of coastal urban development places increasing pressure on the natural environment through the effects of land clearing, waste disposal and pollution. Building along the foreshore and on sand dunes can affect the coastal landscape, coastal processes, and the natural movement of sand. Structures built on the coastline can increase erosion, leading to the need for beach replenishment … As well as increased erosion, coastal communities are also vulnerable to rising sea levels, tropical cyclones and a loss of wetlands”.

The NSW State of the Environment Report 2012 found that “estuaries and coastal catchments are coming under increasing pressure from coastal development and their condition is highly variable”.

Without effective long-term strategic planning, and robust monitoring and enforcement of coastal development can have significant impacts on the coastal landscape, for example:

- **Loss of wildlife** due to habitat loss, increased traffic, displacement of native species by feral animals and weeds

- **Loss of aquatic species and fish breeding grounds** in rivers, lakes and oceans from nutrients and pollutants in water

- **Decreased water quality** from increased polluted run-off containing chemicals and nutrients from garden and household uses, golf courses and roads; sewerage overflow and wastewater outfalls; and an increase of acid sulphate soils

- **Change of water flow and increased flooding** due to increased sedimentation, increased hard surfaces and loss of permeable surfaces.

While NSW has made efforts to provide specific protection to its coastal areas (through the NSW Coastal Policy and Coastal Protection Act 1979), the coast is still at risk from inappropriate and poorly planned development (see the Case Study - Concreting the Coast). More recent changes to the NSW planning system, such as the controversial Part 3A, have allowed large-scale, high-impact development to proceed as state significant development, overriding important local controls and important environmental approvals. In moving ahead, the NSW planning system must provide mandatory and meaningful environmental protections for the state’s vulnerable coastal areas and ensure adequate enforcement and compliance with development controls to prevent further irreversible damage to these fragile landscapes.
CASE STUDY

Concreting the Coast: development and land clearing pressures on the NSW coast.

In 2003, the Total Environment Centre toured the NSW coast to inspect development and land clearing sites and get local community feedback on the planning and development problems. More than 450 inappropriate or controversial development and land clearing activities were surveyed and 130 community groups consulted.

The resulting report Concreting the Coast, Development and Land Clearing Pressures on the NSW coast found that the coast was fast losing its coastal dune complexes, heathlands, forests and wetlands – some of the most species-rich habitat in NSW. The result has been loss of wildlife, degraded water quality, changed flow and increased flooding danger, erosion of soil, beaches and dunes, overstretched infrastructure such as sewerage and waste facilities, loss of fish breeding grounds and tourist attractions, and loss of residential amenity as coastal villages blend into each other through sprawling kit-home estates.

The report identified a range of problems and trends common to most coastal council areas that were frustrating attempts to achieve ecologically sustainable planning outcomes and meaningful coastal protection:

- Planning lacks cumulative, long-term view
- Strategic planning is usually driven by developer demands and not land-use capability
- Planning instruments (including Local Environment Plans and Development Control Plans) are inadequate
- Public participation is inadequate
- Developments were changed to higher-impact development after consent was obtained
- Development consent conditions were often broken
- Environmental Impact Statements and Species Impact Statements were tokenistic and biased
- There was rarely action taken against illegal land clearing
- State regulations, policies and plans are based on non-mandatory and flexible guidelines rather than setting firm, unambiguous regulations.

The report recommended several ways to achieve effective and sustainable planning and development on the coast, including:

- All planning and development should be based on a mandatory state-wide coastal planning ‘blueprint’ that sets unambiguous rules for development based on the land’s natural capability
- State Environment Planning Policy 71 Coastal Protection (SEPP 71) should be strengthened
- Coastal native vegetation needs to be protected through legislation that includes tight rules on clearing for development including pre-emptive clearing and clearing of weeds, bushfire control and on rural-zoned lands
- Public land must be retained and expanded. More national parks and reserves are needed, corridors linking protected land should be strictly protected, buffer zones should be made around sensitive and protected areas and there should be no rezoning and development of environmentally protected Crown or council lands.

For more information, download a copy of Concreting the Coast at www.tec.org.au/docman/func-startdown/26
Replacing environmental planning instruments

The NSW Government proposes to replace existing environmental planning instruments, including State Environmental Planning Policies and Local Environment Plans, with a new suite of documents including NSW Planning Policies, Regional Growth Plans, Sub-regional Delivery Plans and Local Plans.

There is a real concern that important environmental protections in these instruments will be weakened or lost during this transition process.

**What do State Environmental Planning Policies protect?**

State Environmental Planning Policies (SEPPs) contain environmental controls that play an important role in protecting some of our most vulnerable species and habitats, for example:

**SEPP 14**: Coastal Wetlands. This restricts the clearing, draining, filling or construction of levees on mapped coastal wetlands without the consent of the Director-General.

**SEPP 19**: Bushland in Urban Areas. This restricts disturbance to urban bushland without consent from the council.

**SEPP 26**: Littoral Rainforest. This restricts activities that harm littoral (coastal) rainforest without the consent of the Director-General.

**SEPP 44**: Koala Habitat Protection. Development on core koala habitats is controlled subject to a management plan.

**SEPP 71**: Coastal Protection. This regulates significant coastal developments near sensitive coastal zones, within 100 metres above the high water mark of the sea, a bay or an estuary.

Other SEPPs regulate the impacts of certain types of development on the environment, for example:

**SEPP** (Building Sustainability Index: BASIX) 2004 – establishes standards for sustainable residential development.

**SEPP No 62** (Sustainable Aquaculture) aims to encourage sustainable aquaculture.

**SEPP No 55** (Remediation of Land) aims to provide for a statewide planning approach to the remediation of contaminated land.

**What do Local Environment Plans protect?**

Local Environment Plans (LEPs) play an important role in environmental protection and natural resource management. For example, the Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument) contains several compulsory and model provisions intended for environmental protection, including:

- Environmental protection zones (Zone E1-E4 in the land-use table of the Standard Instrument)
- Restrictions on exempt and complying development in environmentally sensitive areas (clause 3.3 of the Standard Instrument)
- Protection afforded to heritage conservation (clause 5.10 of the Standard Instrument)
- Provisions relating to acid sulphate soils (Model Provision 7.1)
- Natural Resources Sensitivity and Natural Hazard mapping.

Other strategic environment and planning policies

In addition to SEPPs and LEPs, there are other existing policies that protect natural landscapes and resources. For example, Regional Strategies are in place for eight areas of regional NSW (including the Central Coast, Far North Coast, Mid-North Coast, Illawarra and South Coast) and have been prepared in partnership with state and local government, communities and business. These strategies play an important role in identifying and protecting high-conservation areas. Catchment Action Plans also play a role in protecting our natural resources.

There is opportunity to provide an improved link between these policies and plans made under the planning system, and it is important that the planning system does not override the environmental outcomes that these plans are trying to achieve.

**No guarantee that existing protections will be maintained in the new system**

There is significant potential to achieve environmental outcomes through strategic planning. Despite the government’s assurances, there is no legal mechanism ensuring important environmental protections will be maintained in the new planning system. There is a real risk that decades’ worth of environmental protections in existing environmental planning instruments and other policies will be overridden as the new system is put in place, without substantial improvements. It is important existing protections are retained, and where necessary improved, in the new planning system.
CASE STUDY

Real risks, real impacts.

Our existing State Environmental Planning Policies play an important role in protecting some of our most vulnerable species and habitats, including:

Coastal wetlands. It is estimated that the NSW coastal wetland system covers 188,000 hectares.8

Our last remaining patches of littoral (coastal) rainforest. It is estimated that the total amount of littoral rainforest in NSW is less than 1600 hectares.10

Our declining and vulnerable koala populations. The Threatened Species Scientific Committee (Cth) has estimated that the NSW koala population in 2012 was about 21,000, down one third from 31,400 in 1990.9

Sydney’s drinking-water catchment. Sydney’s drinking-water supply catchment of about 16,000 square kilometres supplies drinking water to more than 4.5 million people in Sydney, the Blue Mountains, Illawarra, Shoalhaven and the Southern Highlands.11
Many natural areas across New South Wales have been protected by environment zones for almost 30 years. Environmental protection zones help protect areas of high ecological, scientific, cultural or aesthetic values, and protect an overriding public interest.

The current position
Under the existing Standard Instrument (Local Environment Plan) there are currently four Environment Protection Zones that provide a varying degree of environmental protection for sensitive areas:

E1 National Parks and Nature Reserves: For existing national parks, nature reserves and conservation areas and new areas proposed for reservation that have been identified and agreed by the NSW Government.

E2 Environmental Conservation: For areas with high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. The zone provides the highest level of protection, management and restoration for such lands while allowing uses compatible with those values.

E3 Environmental Management: For land where there are special ecological, scientific, cultural or aesthetic attributes or environmental hazards/processes that require careful consideration/management and for uses compatible with these values such as dwelling houses, bed-and-breakfast accommodation, eco-tourism facilities, farm-stay accommodation, home businesses and information and education facilities. Other more intensive uses, such as intensive plant agriculture and intensive livestock agriculture, are not permitted.

E4 Environmental Living: For land with special environmental or scenic values. Accommodates low-impact residential development. Any development is to be well located and designed so that it does not have an adverse effect on the environmental qualities of the land. In 2012, the Department of Planning and Infrastructure proposed a new E5 environmental protection zone for protection of community land in councils’ ownership that has high ecological value as public conservation land.

These important environment protection zones are at risk.
Under the new planning system, councils will be asked to re-write their Local Environment Plans, and there is no guarantee existing environment protections, including current environmental protection zoning, will be carried across into the new LEPs. The case study on page 11 illustrates that long-standing Environment Protection Zones are still at risk.

Why are Environment Protection Zones (E-zones) important?
E-zones allow us to identify and manage environmental values at a spatial level. This is important for the proper conservation and management of biodiversity and natural resources, including endangered ecological communities, critical habitat and wildlife corridors.

E-zones trigger a science-based assessment of potentially destructive developments in fragile areas. These assessments are essential for ensuring the broader public interest is also considered, and not just the landowner’s bottom line.

E-zones trigger community consultation. If your neighbour wants to clear some forest beside your house, or council plans to clear your local bushland for a sports field, you would expect to be notified and allowed to comment. E-zones give you these basic rights when it comes to destructive developments in natural areas.

E-zones help land owners know if any laws apply to the natural areas on their property. If a landowner is required to talk to council about their plans, this is when they’ll learn of any other protections and what their options are. Without E-zones – without the need to talk to council first – most landowners see this as a green light and will clear an area, even if it’s illegal under several laws.
The future of environment protection zones

The government’s White Paper proposed reducing the number of environment protection zones across the state by combining E1 and E2 zones into one Environment Protection and Hazard Management Zone and rolling E3 zone and E4 zones into broad rural and residential zones. On 19 September, 2013, the Minister for Planning and Infrastructure announced the full range of current land zonings would remain as they were.12

CASE STUDY

Environment Protection Zones at risk on the Far North Coast.

In September 2012 the Minister for Planning and Infrastructure announced that the department would review the application of Environmental E2 and E3 zones and environmental overlays on the Far North Coast.

More than 27,000 hectares* of the Far North Coast’s forests, wetlands and wildlife habitats are at risk if they fail to be protected by important Environment Protection Zones. The NSW Government will decide the fate of these important natural areas, despite the fact that local councils want to protect these areas by zoning them with Environment Protection Zones under their local plans.

Areas at risk include:

Subtropical Rainforest at Mooball (Tweed Shire): This area is listed as an endangered ecological community and is likely habitat for numerous threatened fauna species, including several species of large owl, and dozens of threatened flora species including numerous orchids, trees, shrubs and vines.

Paperbark Forest – Wardell (Ballina Shire): This wetland near the township of Wardell is under pressure as an ideal location for intensive agriculture such as cropping of tea-tree oil, sugarcane or turf farming. The removal of E-zones could leave this forested wetland vulnerable to destruction for intensive cropping, or a new sports field.

Saltmarsh – Brunswick Heads (Byron Shire): These precious saltmarshes and Swamp-Oak forests along the Brunswick River are situated in a mosaic of different agricultural practices, including sugarcane cropping, grazing, and timber harvesting.

Blackbutt Forest – Piggabeen (Tweed Shire): This old-growth Eucalypt forest lies adjacent to medium-density residential development in the rapidly expanding Tweed Heads area. The removal of E-zones could leave this forest vulnerable to clearing for further residential subdivision or tourist accommodation.


*Total area of E2 & E3 zoned lands to be excised in affected shires. Source: Tweed, Byron, Ballina, Lismore & Kyogle Draft LEPs
Environmental approvals, licences and permits

Despite its important role, the planning system is not the only mechanism for protecting the environment in NSW. There are a range of other environmental laws that relate to specific matters, for example, water management, threatened species, cultural heritage or native vegetation.

In some instances these laws require environmental approvals, licences or permits (‘environmental approvals’), for example:

- Under the **Fisheries Management Act 1994**, permits are required to carry out aquaculture, dredging or reclamation work, to cut, remove, damage or destroy marine vegetation, set netting or create an obstruction across or within a bay, inlet, river or creek.

- Under the **Heritage Act 1977**, approval is required to carry out an act that will impact on an item listed on the State Heritage Register or subject of an interim heritage order.

- Under the **National Parks and Wildlife Act 1974**, a permit is required to carry out an act that will impact on an Aboriginal heritage site.

- Under the **Protection of the Environment Operations Act 1997**, a permit is required to undertake certain high-impact activities, such as chemical production, intensive livestock activities, logging operations, coal mining, sewerage treatment and waste disposal.

These permits and approvals are issued by the relevant expertise agencies, including the Office of Environment and Heritage, Department of Primary Industries, and Environment Protection Authority.

Historically, the planning system facilitated the integration of development approval and the issuing of environment licences by requiring the consent authority to liaise with the environmental approval agency to obtain the general terms of any approval proposed to be granted.

**More recently, the planning system has sought to override these important environmental approvals.**

### Overriding important environmental approvals

When the former Part 3A of the *Environmental Planning and Assessment Act* was introduced, it sought to override important environmental approval requirements. The draft planning legislation goes even further by:

- **Continuing to override important environmental planning approvals for major projects.** For the purpose of public priority infrastructure, state infrastructure development or State Significant Development, the *Exposure Planning Bill* lists environmental approvals that are no longer required or approvals that must be issued consistently with development approval issued under the planning legislation.

- **Requiring environmental approvals to be issued by the Director-General of Planning and Infrastructure, and not the specialised agencies.** With respect to development requiring consent (other than State Significant Development or complying development), proposals to introduce ‘one-stop referrals’ now have the Director-General of the Department of Planning and Infrastructure acting in the place of the approval body that would issue the environmental approval.

While we support efforts to improve the development assessment process to reduce delays and increase certainty for developers and the community, this does not mean that the fundamental aspects of the development assessment, including robust environmental assessment and concurrence from integrated approval agencies, should be removed. **Fast approvals that deliver poor-quality, high-risk or unsustainable development are not in the public interest.**

As the Productivity Commission noted in its benchmarking report on Australian Planning Systems:

> “… a combination of several benchmarks is often needed to reflect system performance. For example, while longer development approval times may seem to be less efficient, if they reflect more effective community engagement or integrated referrals, the end result may be greater community support and preferred overall outcome.”

---

12 | *Nature In the balance*
**Why are robust environmental approval processes important?**

While we recognise the desire to improve the efficiency of the concurrence and referral process, the outcome is going to be poorer outcomes for the environment. Specifically:

- Provisions that override environmental approvals for public priority infrastructure, State infrastructure development and State Significant Development are contrary to the basic tenet that development that is likely to have the most impact should be subject to the highest scrutiny.

- Environmental approvals are often subject to prescribed assessment criteria. By overriding environmental approvals, assessment of development impacts may not be subject to the same level of scrutiny as intended by those permits and approvals. To ensure no weakening of environmental protection, the consent authority must ensure its level of assessment matches that required in the relevant environmental protection legislation.

- Centralising the assessment of environmental approvals in the Department of Planning and Infrastructure is contrary to a whole-of-government approach to planning, and fails to draw on the expertise of specialised government agencies.
New code assessable development

One of the most significant and controversial elements of the government’s planning reforms is the proposal to introduce a new development stream for Code Assessment. The White Paper makes the following points about Code Assessment:

- Code assessable approvals will be delivered in 25 days.
- If the development complies with the code, council can assess the development without consulting further with the community.
- If development complies with the code, the council cannot refuse the code assessable application.

What are the implications for the environment and communities?

The government’s White Paper suggests that code assessment will be for low-impact development only, however there is no provision in the Exposure Planning Bill that reflects this.

While codes are expected to deal with matters such as overshadowing, privacy, height and how the building will look from the street and public areas, there is no mention in the White Paper that there will be any assessment of the environmental and social impacts of proposed development.

Some developments that may be considered ‘minor’ in a highly developed urban area may have significant impacts in environmentally sensitive areas such as waterways, lakes, coastal forest, heath, woodlands and wetlands.

Councils will be forced to approve development despite concerns that it or the community may have, including, for example, concerns about public health and safety. This is contrary to statements that local planning powers will be returned to councils and communities under the new planning system.

Examples of development types for code assessable development

- Villas, townhouses or row houses (20 or less in an appropriate zone)
- Mixed-use development
- Residential flat building in a town centre in planned precincts
- New commercial building in a town centre
- Additions to a house in a heritage conservation area
- Tourist accommodation in tourist precinct
- Small bar in a commercial area
- Child and aged care facilities in planned precincts
- Land subdivision

Community voice in environment and planning decisions

The government’s planning White Paper says that the ‘community will be at heart of the planning system’. However, the Exposure Planning Bill substantially restricts opportunities for communities to be involved in environment and planning decisions.

**Loss of community voice**

Despite an emphasis on improved community participation in the White Paper, there are various features of the government’s new planning system that seek to undermine community participation:

- The Community Participation Charter will be largely unenforceable. The Exposure Planning Bill states that compliance with the Community Participation Charter is ‘not mandatory’.
- Expanded complying and code assessable development will exclude the community from commenting on the large proportion of development proposals.
- The Minister has significant discretion to make, amend or repeal strategic planning instruments and local plans, and in some instances can determine the requirements for community participation, or that no community participation is required.
- There are restrictions on third-party and judicial appeal rights.

**Tipping the system in favour of developers**

At the same time that community rights are being reduced, there are a number of mechanisms available to developers to override strategic plans and local plans. These include new rights of review for rezoning applications and new provisions that allow proponents to apply for strategic compatibility certificates.

Far from increasing certainty, these proposals have the potential to be misused by developers and undermine any certainty and community buy-in that would have come out of effective strategic planning.

**Why is community participation important in environment and planning decision making?**

- Genuine and meaningful public participation has the benefit of empowering local communities.
- Utilising local knowledge can improve decision making by assisting decision makers to identify public interest concerns.
- It also promotes community ‘buy-in’ of decisions that can reduce potential disputes and can help to ensure fairness, justice and accountability in decision making.
- In addition to evidence-based strategic planning, it is often the community voice that contributes to the protection of the environment and natural areas.
A positive and healthy future for the environment and our communities

The White Paper and Exposure Planning Bill, taken together, represent the most significant backward step in public participation and environment protection in more than a generation.

At a time when NSW is facing unprecedented environmental challenges, we should be looking, now more than ever, to strengthen the laws that protect our important natural assets to ensure they are not destroyed and are available for future generations.

The NSW planning system must be part of a positive and healthy future for NSW.

You can read more about our vision for a balanced and fair planning system in our report Our Environment, Our Communities – Integrating environmental outcomes and community engagement in the NSW planning system (see endnote 7).

For more information, please visit www.nccnsw.org.au

2 See sections 4 and 5 of the Environmental Planning and Assessment Act 1979 and section 6(2) of the Protection of the Environment Administration Act 1991.
13 As an indication, 90 integrated development approvals were issued under the Heritage Act in 2011-12.