



SYDNEY COASTAL COUNCILS GROUP INC.

councils **caring for the coastal Environment**

SUBMISSION

Planning Legislative Updates

March 2017

To: Department of Planning and Environment

Prepared by: Sydney Coastal Councils Group Incorporated (SCCG)

Date: March 2017

Contact details: Sydney Coastal Councils Group Inc.
Level 9, Town Hall House, 456 Kent Street
SYDNEY NSW 2001
t: +61 2 9246 7791
e: info@sydneycoastalcouncils.com.au

© SYDNEY COASTAL COUNCILS GROUP INC.

The Sydney Coastal Councils Group is pleased to allow the reproduction of material from this publication on the condition that appropriate acknowledgement of the source, publisher and authorship is made.



www.sydneycoastalcouncils.com.au



SCCG Submission – Planning Legislative Updates

Established in 1989, the Sydney Coastal Councils Group (SCCG) is a regional organisation of Councils with twenty-seven years of experience in leading sustainable coastal management. The SCCG comprises eleven Member Councils who represent approximately 1.5 million Sydneysiders and over 600 km of coastline, and is the peak body representing metropolitan coastal councils.

The [Sydney Coastal Councils Group Strategic Plan 2015 – 2019](#) sets out three guiding principles which encapsulate the core ambitions of the SCCG, namely to:

1. Restore, protect and enhance the coastal environment, its associated ecosystems, ecological and physical processes and biodiversity.
2. Facilitate the sustainable use of coastal resources, now and in the future.
3. Promote adaptive, integrated and participatory management of the coast.

Our member Councils are fundamentally charged with urban and environmental planning of their local area, including managing the coastal zone (as defined in the *Coastal Management Act 2016*) and activities that may impact the coastal zone. The proposed changes to NSW planning legislation will have direct impacts and indirect influences on the health and resilience of our coast; but also on the way we use our coastal resources, and the mechanisms we employ to manage this exchange in a sustainable way. The New South Wales planning framework provides a critical set of rules and boundaries within which that exchange takes place.

The SCCG leads the sustainable management of the urban coastal environment. Its vision is to see resilient coasts, engaged communities, local leadership and have a regional impact. To achieve this the SCCG is a strong advocate for sharing responsibility and enhancing the necessary partnerships for coastal planning and management between governments of all levels, regional bodies, industry and communities. We consider collaborative working, promoting transparency and the encouragement of participation are key actions to ensure positive outcomes for our coastal environment.

The SCCG formally requests that all issues, concerns, opportunities and recommendations included in this submission are considered and feedback from the Department of Planning and the Environment (DoPE) is provided via a publicly available report addressing all submissions. This is crucial to ensure transparency and evidence-based policy is developed.

1 GENERAL COMMENTS AND HIGHLIGHTS

- The *Environmental Planning and Assessment Amendment Bill 2017* (the Amendment Bill) was published as a consultation draft on 10 January 2017. Comprising 115 pages and 12 Schedules, the Amendment Bill is not a minor proposed change. As described in the accompanying *Bill Guide*, *Summary of Proposals* and *Stakeholder Feedback* documents; the Amendment Bill seeks to make significant changes to the NSW planning framework, akin in scope to the previous Green (2012) and White Papers (2013) on a proposed New Planning System for NSW.

- The SCCG generally supports the objectives of the Amendment Bill (as stated in the Summary of Proposals), namely to:
 - Enhance community participation,
 - Promote strategic planning,
 - Increase probity and accountability in decision-making, and
 - Promote simpler, faster processes for all participants.
- The Amendment Bill also seeks to make consequential changes to the *Land and Environment Court Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, the *Building Professionals Act 2005* and a number of other Acts and policies as mentioned in Schedules 11 and 12.
- It is noted that changes proposed in the Amendment Bill must also be read in conjunction with proposed changes to the *Greater Sydney Commission Act 2015*, as well as the exhibited draft District Plans for Sydney and overarching strategy - *A Plan for Growing Sydney* for the Greater Sydney Region. It is hoped that issues raised that are relevant to both will be read together, and that the Greater Sydney Commission (GSC) and the Department of Planning and Environment (DoPE) will work collaboratively in this regard. (Our submission on the District Plans for Sydney is [here](#)).
- Changes are proposed to every Part of the existing *Environmental Planning and Assessment Act 1979* (the Act), including in s.5 the Objects that form the backbone of the planning system. Critically, proposed changes to the Objects of the Act are not well justified nor are any reasons for changes proposed provided in the supporting documents to the Amendment Bill.
- New objects of the Act should include specific references to mitigation of, and adaptation to climate change; as well as specifically address planning to reduce the effects of natural hazards. Linkages to the *Coastal Management Act 2016* should also be made explicit in the objects of the Act.
- The need for an additional layer of local strategic planning has not been made clear and the SCCG questions the need for a local strategic planning statement.
- The need for simpler, faster planning and development application processes is recognised but must be balanced against the uncompromising need to ensure ecologically sustainable development outcomes.
- In the interests of transparency, the SCCG recommends that the reasons/justifications, for the *Consequential or Statutory Revision Amendments* made in each Schedule, be made publicly available.
- Furthermore, whilst appreciative of the normal process for reviewing, updating or making new legislation¹, the SCCG recommends that a copy of the Regulatory Impact Statement (or Better Regulation Statement) be made available at this time to enable complete and timely public scrutiny of the planning legislative updates. Under the Better Regulation Guide this kind of analysis will be required as the proposed changes represent a significant regulatory reform.
- Updates to, and new provisions of the Act will likely require Councils to expand their existing operations. Consideration must be given to how implementation of these reforms

¹ Normal processes for regulatory proposals require a RIS or BRS to be tabled at the time a new Bill is introduced into Parliament (refer <https://www.finance.nsw.gov.au/better-regulation/regulatory-impact-assessments>)

will work 'on-the-ground' and whether a training, capacity building and additional funding package is necessary to deliver the best practicable outcomes.

2 DETAILED COMMENTS

- As the Amendment Bill is split up into 12 Schedules² the SCCG will make comment against each Schedule in turn, noting that each Schedule relates to a proposed new Part of the [amended] Act (refer Table 1). It's also noted that each Schedule contains two distinct parts. The first part sets out the principal amendments that are intended to give effect to the stated objectives of the legislative updates (see Figure 1 of the Summary of Proposals). The second part of each Schedule contains *Consequential or Statutory Revision Amendments*. This submission will focus on the upfront section of each schedule that identifies the *Principle Amendments*.
- A comparison of the overall structure of the Act as it is today and is proposed to be can be seen in Table 1 below:

Table 1 showing existing and proposed (after amendment) structure of the *Environmental Planning and Assessment Act 1979*.

Existing	Proposed
Part 1 – Preliminary	Part 1 – Preliminary (including community participation)
Part 2 – Administration <ul style="list-style-type: none"> Part 2A – Other Planning Bodies 	Part 2 – Administration
Part 3 – Environmental Planning instruments <ul style="list-style-type: none"> Part 3B – Strategic Planning 	Part 3 – Planning instruments
Part 4 – Development assessment and consent <ul style="list-style-type: none"> Part 4A – Certification of Development Part 4C – Liability and Insurance 	Part 4 – Development assessment and consent
Part 5 – Environmental Assessment <ul style="list-style-type: none"> Part 5.1 – State Significant Infrastructure 	Part 5 – Infrastructure and environmental impact assessment
Part 6 – Implementation and enforcement	Part 6 – Building and subdivision
Part 7 – Finance <ul style="list-style-type: none"> Part 7A – Liability in respect of contaminated land 	Part 7 – Infrastructure contributions and finance
Part 8 – Miscellaneous	Part 8 – Reviews and appeals
	Part 9 – Implementation and enforcement
	Part 10 – Miscellaneous

2.1 Schedule 1 – Preliminary (new Part 1)

- Principal amendments to this Part relate to changes to the objects of the Act (s.5). These changes are identified in Table 2 below:

Table 2 This table shows the existing ten objects of the Act (s.5) and compares them directly to the proposed eight objects in the Amendment Bill.

Environmental Planning and Assessment Act 1979	Environmental Planning and Assessment Amendment Bill 2017
5 Objects	5 Objects of Act
The objects of this Act are: (a) to encourage: (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,	The objects of this Act are as follows: (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources, (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social

² Including Schedule 11 (Consequential amendment of other Acts and Instruments) and Schedule 12 (Repeal of Acts)

<ul style="list-style-type: none"> (ii) the promotion and co-ordination of the orderly and economic use and development of land, (iii) the protection, provision and co-ordination of communication and utility services, (iv) the provision of land for public purposes, (v) the provision and co-ordination of community services and facilities, and (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and (vii) ecologically sustainable development, and (viii) the provision and maintenance of affordable housing, and (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment. 	<p>considerations in decision-making about environmental planning and assessment,</p> <ul style="list-style-type: none"> (c) to promote the timely delivery of business, employment and housing opportunities (including for housing choice and affordable housing), (d) to protect the environment, including the conservation of threatened and other species of native animals and plants, (e) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage), (f) to promote good design in the built environment, (g) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, (h) to provide increased opportunity for community participation in environmental planning and assessment.
---	--

- While the Guide to the Bill describes these objects as being 'updated' using the colour code (in the Bill Guide); in reality, some objects are new, and some are lost or have been rewritten or incorporated with others to have different meanings. As a result, there are proposed to be eight new objects to the Act.
- Current objects to encourage land for public purposes, utilities, community services and facilities are removed. Objects (iii), (iv) and (v) have been lost from the Act but no discussion or justification for those changes can be found in the Amendment Bill or supporting documents. Whilst the SCCG is concerned as to the loss of the object "*the provision of land for public purposes*" (s.5(a)(iv)), the stated objects of the *Coastal Management Act 2016* allow for the identification and acquisition of land for coastal management purposes in the coastal zone (s.3(l)). This object is particularly relevant to the dynamic, ambulatory coastal zone, given the present unresolved uncertainty over land ownership and the extent of the public domain at the beach and foreshore. It gives coastal managers the ability and certainty to take action (when necessary) in the public interest. It is unclear as to how the power to acquire land will work under the auspices of the *Coastal Management Act 2016*; and indeed, whether the *Coastal Management Act 2016* relies upon provisions in the *Environmental Planning and Assessment Act 1979* (or *Land Acquisition (Just Terms Compensation) Act 1991*) to facilitate property acquisition.
- For the purposes of integration and consistency, it's the proposed objects in the Amendment Bill should dovetail with the objects of the *Coastal Management Act 2016*. This linkage should reinforce the critical overlap between land use planning and coastal management (see Table 3 below) recognised by the NSW Government in the development of the coastal reforms over the last few years.
- **It is recommended that the DoPE add a new object that makes linkages to sustainable coastal management explicit e.g. "To support the objects of the *Coastal Management Act 2016*".**

Table 3 The 13 Objects of the *Coastal Management Act 2016*

Coastal Management Act 2016
<p>The objects of this Act are to manage the coastal environment of New South Wales in a manner consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State, and in particular:</p> <p>(a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and</p> <p>(b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and</p> <p>(c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and</p> <p>(d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and</p> <p>(e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and</p> <p>(f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and</p> <p>(g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and</p> <p>(h) to promote integrated and co-ordinated coastal planning, management and reporting, and</p> <p>(i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and</p> <p>(j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and</p> <p>(k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and</p> <p>(l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and</p> <p>(m) to support the objects of the Marine Estate Management Act 2014.</p>

- Linkages should be made transparent between the NSW planning framework and both the *Local Government Act 1993* and the *Marine Estate Management Act 2014*. For example, one question immediately arises - does the NSW marine estate align with the coastal zone (as defined by the *Coastal Management Act 2016*)?
- In addition, foreshore and urban development activities were identified as an increasing high risk to the health, diversity and productivity of the NSW marine estate (refer MEMA, *Hawkesbury Shelf Marine Bioregion Threat and Risk Assessment report*, 2015). Although focused on State Environmental Planning Policies (SEPPs) specific to the Sydney region, improving land use planning was one of eight suggested management initiatives arising out of that process (MEMA, *Discussion paper Hawkesbury Shelf Marine Bioregion Assessment suggested management initiatives*, 2016).
- The SCCG recommends that specific weight be given to how all aspects of the planning system address the pervasive threat of climate change. In this regard, it would be prudent to incorporate a specific object that recognises the crucial role land use planning has in mitigating greenhouse gas emissions and in promoting land use planning and development that is resilient in the face of a changing climate. **The SCCG recommends a new object in the Amendment Bill that seeks: “to promote appropriate land use planning that mitigates and adapts to the potential effects of climate change in accordance with the best available science”.** As we know with increasing certainty that human actions are responsible for current warming, empowering decision-makers with a specific objective to address climate change will have a big influence on how those decision-makers exercise their powers.

- **Natural (or human induced) hazards are not addressed at all in the Amendment Bill.** On a related note, recent reviews of land use planning and natural resource management legislation in New Zealand have identified deficiencies in the way natural (and human induced) hazards are addressed in specific objects (or purpose) of the Act. That country's exposure to a wide range of natural hazards has necessitated a specific section of the *Resource Management Act 1991* that ensures land use planning has capability to appropriately deal with natural hazards. Australia has a full suite of natural hazards to deal with (e.g. bushfires, cyclones, storms, landslides and floods etc.), all of which would benefit in multiple ways from a greater focus in the upfront section of the Act. There are significant cost savings from reductions in exposure and vulnerability to be gained from integrating disaster risk reduction measures into the land use planning system. Further evidence of the benefits of this approach is showcased in the Productivity Commission's inquiry into natural disaster funding (2014) which notes that, crucially:

- Australia is exposed to natural disasters on a recurring basis. Effective planning and mitigation of risks is an essential task for governments, businesses and households.
- Regulations affecting the built environment have a significant influence on the exposure and vulnerability of communities to natural hazards. While building regulations have generally been effective, there is a need to transparently incorporate natural disaster risk management into land use planning.

Significantly, the above report states "*Land use planning is perhaps the most potent policy lever for influencing the level of future natural disaster risk.*" In that regard, there is every reason for this review to be proactive in managing the risks posed by natural hazards.

- The SCCG supports the new object to *promote good design in the built environment*. However, it is unclear how the development and implementation of the draft *Architecture and Design Policy for NSW* or the subsequent *Design-Led Planning Strategy* will link with the planning system, and what statutory weight (if any) they may have. Furthermore, the SCCG note that use of the qualifier 'good' in front of 'design' allows for measurement and tracking of progress of how the updated Act meets its objectives.
- Proposed new object 5(d) should also make reference to the habitat of threatened species.
- As a general note, use of qualifiers like 'good', 'proper', or 'appropriate', or 'timely' at the beginning of each stated object allows for any subsequent reviews of legislation to be based on real progress toward meeting the objects of the Act. This is consistent with best practice development of regulatory proposals and subsequent evaluation as mandated by the NSW Department of Premier and Cabinet³ and the Department of Finance, Services and Innovation Better Regulation initiative. In this regard, proposed new object 5(b) should use the word 'achieve' or 'implement' rather than 'facilitate'.

³ Evaluation of programs, projects and policies in NSW Government is set out in the *NSW Government Program Evaluation Guidelines*
http://www.dpc.nsw.gov.au/programs_and_services/policy_makers_toolkit/evaluation_in_the_nsw_government

2.2 Schedule 2 - Administration (new Part 2)

- This schedule of the Amendment Bill contains provisions relating to the administration of the legislation, planning bodies⁴ and community participation. This schedule proposes an Independent Planning Commission (IPC) to replace the current Planning Assessment Commission. Also new are the provisions relating to Community Participation Plans. Principal amendments are made that replace entirely the existing Parts 2 and 2A with entirely new parts and accompanying Schedules⁵. The SCCG supports the move to simplify and streamline these Parts of the Act, and commends the clarity achieved in the Amendment Bill. In particular, Divisions 2.1-2.5 set out a clear hierarchy of planning decision-making and advisory bodies from State-wide to local, and appear sufficiently flexible to cope with the changing demands of the planning system.
- Relevant skills -The SCCG notes that the IPC has certain functions as set out in Schedule 2, cl.2.9 of the Amendment Bill that may be broader than just a consent authority. SCCG requests that consideration be given to adding additional skills to the list of skills set out in cl.2.8(3) of the Amendment Bill, including coastal science or management expertise. Notwithstanding, there may be opportunity to link this high-level planning body with the members and functions of the NSW Coastal Council (established under s.24 of the Coastal Management Act 2016)⁶. It is probable that the IPC will consider planning issues, applications or other matters that contain issues relevant to the coastal environment. It would therefore be prudent that there would be provision for the IPC to call on established coastal expertise via the NSW Coastal Council. Expertise on the NSW Coastal Council could include:
 - a) coastal physical sciences, including geomorphology,
 - b) coastal engineering,
 - c) coastal land use planning,
 - d) coastal ecology,
 - e) social science,
 - f) economics,
 - g) local government management,
 - h) property law,
 - i) dispute resolution,
 - j) traditional and contemporary Aboriginal use and management of coastal zone.
- The same expertise (as above) should be drawn upon by the Sydney Regional and District Planning panels established under Division 2.4 of Schedule 2 of the Amendment Bill.
- The skills identified as coastal engineer or coastal geomorphologist (see Part 4, of Schedule 2 (cl.20)) are considered generally appropriate in this narrow context (coastal protection works only) considered by the Sydney Region or District Planning Panels. Note that the *Coastal Management Act 2016* defines coastal protection works as including beach nourishment and different kinds of protection structures like revetments and seawalls etc. However, cl.20(2) could be phrased such that it becomes flexible

⁴ *Planning bodies* are defined to include the Independent Planning commission, a Sydney District planning panel, a regional planning panel, and a local planning panel.

⁵ Schedules to Part 2 include: Schedule 1 – Community participation requirements, Schedule 2 – Provisions relating to planning bodies, Schedule 3 – NSW Planning Portal

⁶ The NSW Coastal Council is also mandated to have links with the *Marine Estate Management Act 2014* via a member appointed by the Minister administering that Act.

enough to take advantage of the different types of coastal expertise listed above. This would enable each relevant planning body to call on expertise that, for example, could assist with the promotion of an environmentally friendly seawall (like an enhanced oyster reef that offers some sort of coastal protection co-benefit) and facilitate green infrastructure. **Specifically, the special provisions that apply for coastal protection works for District or Regional Planning Panels should also be applicable to the IPC.**

- Division 2.6 – Community Participation - SCCG supports that these new provisions apply across the board to all planning authorities.
- In the preparation of Community Participation Plans a planning authority is to *have regard* to a number of principles (cl.2.23(2) of Division 2.6 of Schedule 2). While the intent of each of these principles is to be applauded, the specific wording only requires that planning authorities 'should' have regard to implementing those principles. SCCG recommend that the word 'should' in this clause be removed and replaced with a word that provides more certainty. This would make the proposed plans more enforceable and effective. An example of this is provided in
- Table 4 below:

Table 4 Principles of community participation as set out in cl.2.23(2) of the requirement to produce Community Participation Plans.

Principles of community participation
(a) The community has a right to be informed about planning matters that affect it.
(b) Planning authorities should encourage effective and on-going partnerships with the community to provide meaningful opportunities for community participation in planning.
(c) Planning information should be in plain language, easily accessible and in a form that facilitates community participation in planning.
(d) The community should be is given opportunities to participate in strategic planning as early as possible to enable community views to be genuinely considered.
(e) Community participation should be is inclusive and planning authorities should actively seek views that are representative of the community.
(f) Members of the community who are affected by proposed major development should be <u>are</u> consulted by the proponent before an application for planning approval is made.
(g) Planning decisions should be <u>are</u> made in an open and transparent way and the community should be provided with reasons for those decisions (including how community views have been taken into account).
(h) Community participation methods (and the reasons given for planning decisions) should be <u>are</u> appropriate having regard to the significance and likely impact of the proposed development.

- Deleting the ambiguity and uncertainty in these statements enables planning authorities to then measure the success of community participation against these stated principles. Periodic reviews of these plans would then be assessed against simple success criteria and amended accordingly.
- Of critical importance to the success of the new community participation provisions will be the capability and capacity for planning authorities to deliver these outcomes. Fruitful community participation in planning exercises can be costly in terms of both time and resources, and the Amendment Bill makes no mention of how these new provisions will be supported, funded, nor how any potential skill shortfalls will be made up. The SCCG requests that specific consideration be given to attaching a funding package to give credence to these new provisions and allow for best practice, robust community participation planning to occur. While new guidance material may be useful (p.9, *Summary of Proposals*) the on-the-ground successful implementation of these new principles is critical in ensuring that we move beyond good intentions.
- The SCCG supports the consolidation and updating of online planning information (including the NSW Planning Database and NSW Planning Portal) and requirements in

2.3 Schedule 3 - Planning instruments (new Part 3)

- Schedule 3 proposes the addition of a new strategic plan by LGAs. This is to be called the *local strategic planning statement* (refer Figure 1 below). This proposed additional layer, while a step in the right direction, needs to be clearly defined and scoped. Links to, and overlap with Community Strategic Plans (under the *Local Government Act 1993*) need to be explicitly defined so the additional layer does not duplicate or place unnecessary burden on the limited capacity of local government.
- The SCCG supports the promotion of a five-yearly review of strategic land use planning documents (and State Environmental Planning Policies or SEPPs).

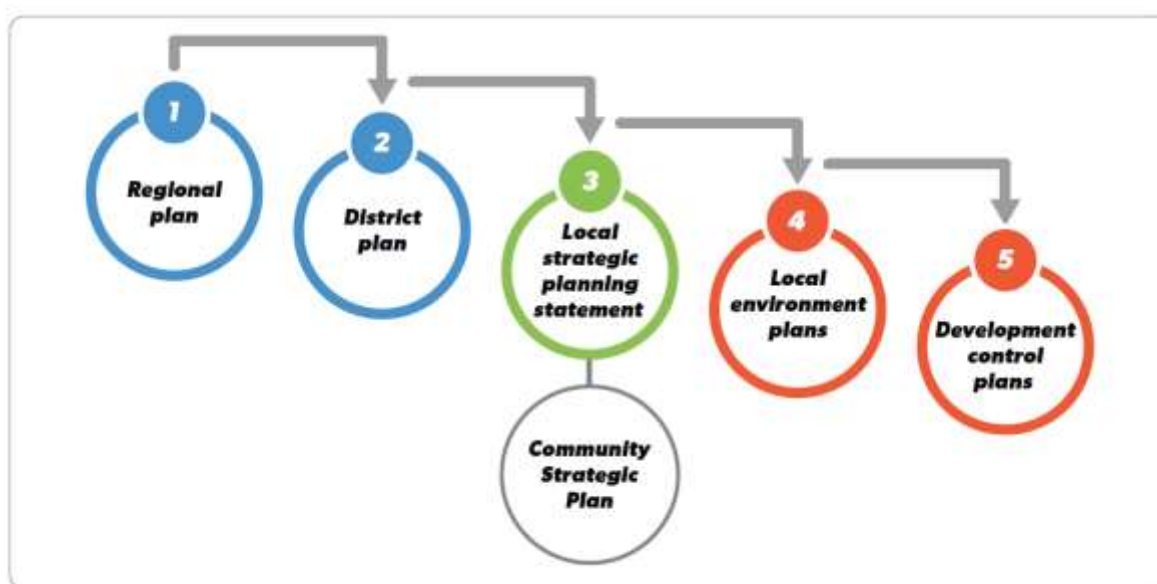


Figure 1 proposed hierarchy of strategic and local planning.

- Development Control Plans (DCPs) provide Councils with the ability to guide planning, design and development in their local area. Provisions within DCPs are therefore an important aspect in the identity of a local area.
- The SCCG supports the proposal for a standardised format for DCPs to enable people to look at all planning controls in the same place at the same time via the Planning Portal, provided that council funding, resourcing and timeframes are taken into account, and that Councils can include localised conditions above and beyond the standard format where applicable. This is a crucial step in simplifying the planning framework and improving user experience.
- The SCCG would like to take this opportunity to highlight the special nature in planning controls for some of our coasts and waterways. For example, the coastal zone is defined and managed through reference to the Coastal Management SEPP (exhibited 2016); the management of Sydney Harbour is subject to a number of SEPPs that have a specific planning function e.g. the *Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005*, and *SEPP (Sydney Drinking Water Catchment) 2011*; and Botany Bay is subject in part to the *Three Ports SEPP* etc. The use of SEPPs to manage these kind of special areas highlights the need to take a holistic view of strategic planning and (where relevant) consolidate existing strategic planning documents, particularly those where multiple agencies are involved. For example, it would be very useful to clarify

and consolidate consent responsibilities in Sydney Harbour. There are also key links between the application of the Codes SEPP (that controls exempt and complying development) to land and development within the coastal zone and the need to ensure the continued protection of environmentally sensitive areas. As well as the need to update and implement recommendations of the review into the minimum requirements set out in BASIX relating to building sustainability. To assist in addressing these questions, the SCCG requests that it be invited to participate as a key party to this year's SEPP review program (Stage 2), especially for SEPPs that have either direct or indirect influence on the coastal zone, biodiversity or marine areas.

- The SCCG notes that local plan-making authorities can make LEPs that deliver planning outcomes for the coastal waters of the State. While this has always been allowable under s.53 of the Act, very few LGAs have taken up this opportunity. There is now an opportunity for the DoPE to clarify how submerged lands are dealt with in the planning system and to use these legislative updates to promote the integration of land use, coastal and marine planning through initiatives like Marine Spatial Planning (MSP). This would also explicitly enable the integration between agencies with overlapping responsibilities for management, planning and enforcement of rules within the coastal zone (e.g. the Marine Estate Management Agency, local government, relevant state government agencies like Roads and Maritime Services and Crown Lands, as well as the Commonwealth).

2.4 Schedule 4 - Development assessment and consent (new Part 4)

- There are a number of new and improved processes to simplify the way local, regional and state significant development applications are processed, and add increased certainty over outcomes, compliance and enforcement. The SCCG recognises that the planning system has become overly complex and that updating these provisions is long overdue.
- The present system of concurrences, advice or general terms of approval (and the subsequent need for integrated development) is a legacy of the overly complex, obese nature of the planning system, and legally prescriptive legislative environment that has proliferated in NSW over the years. Despite this, these approvals and advices provide a fundamental safeguard within the planning system. Giving the Planning Secretary power to intervene (as a last resort) in disputes or delays between agencies for development applications where council is the consent authority must incentivise agency participation and collaboration. A new digital platform to facilitate intra-government cooperation is much needed.
- For local development, the main proposals relate to early consultation with neighbours, improving the efficiency of concurrences from NSW agencies (including step-in power), limiting the scope of modifications to consent, and improvements to the complying development pathway through a number of different projects.
- Specifically, foreshadowed changes to the Regulation will specify certain categories of development for which only a council certifier can issue a Complying Development Certificate (CDC). Such categories could include exempt or complying development within the NSW coastal zone. Given the special characteristics of the NSW coastal zone, consideration should be given to ensuring that either the Council certifiers are sufficiently knowledgeable or have access to specialist coastal expertise (should they require it) for complying development in the sensitive coastal zone.
- The SCCG supports initiatives to ensure that Councils are sufficiently resourced to monitor and enforce complying development, and that such development doesn't

occur without the ability to levy appropriately for infrastructure (through special infrastructure contributions or planning agreements).

- Key changes proposed to the state significant development regime include improving the adaptability and integration of conditions regulating risks and impacts, finally deleting Part 3A, and improved environmental impact assessment (EIA) procedures⁷.
- Of note is the section on p.28 of the *Summary of Proposals* that outlines some thoughts for modernising approaches to managing environmental impacts:

"Consideration is also being given as to whether special provisions should be made with respect to conditions relating to offsets for the impacts of proposed development. These amendments would confirm that conditions of consent can apply offset requirements to address any environmental impact of a project, not just biodiversity impacts.

In applying conditions requiring either financial assurance or offsets, consent authorities would not seek to duplicate the role of other approvals such as EPLs or mining leases.

The regulations would set out the classes of development to which these types of conditions could be applied. Such conditions would only be able to be imposed where a NSW Government policy is in place to set out how they would operate. For example, the regulation would allow either a particular type of offset condition or financial security to be imposed in relation to a particular class of development, to ensure that there is a sound policy basis for the application of such conditions."

The SCCG is concerned that leaving these significant changes to the Regulation allows for no input from stakeholders as to the possible pitfalls of this approach. Furthermore, extending the ability for proponents to offset their environmental impact through any number of means (not just biodiversity offsetting) sets a dangerous precedent that will erode public trust in institutions to adequately and transparently manage the impacts of development on the environment. Giving proponents this avenue will disincentivise the fundamental requirement to avoid or remedy potential environmental impacts as the initial step.

2.5 Schedule 5 - Infrastructure and environmental impact assessment (new Part 5)

- This schedule allows for the designation of infrastructure corridors for roads, railways, public transit ways, electricity transmission lines, pipelines or other linear infrastructure; and simplifies concurrence and notification requirements, and facilitates dispute resolution for activities that may be occurring in those corridors.
- To allow for routine maintenance activities to readily occur in designated infrastructure corridors it's requested that Schedule 5, Concurrence and Notification Requirements (1) be reworded:

A State environmental planning policy may require a determining authority to obtain the concurrence of a specified public authority (or to notify a specified public authority) before carrying out an activity, or granting an approval in relation to an activity, within an infrastructure corridor **if the activity will result in the**

- **Erection of a permanent structure; or**
- **Significant alteration of the natural landscape; or**
- **Installation of essential services e.g. telecommunication infrastructure**

- SCCG has no other specific comments, with the exception that SCCG supports a comprehensive and transparent environmental impact assessment process.

⁷ Draft EIA guidelines are proposed to be developed and will be released for consultation following feedback on the 2016 discussion paper.

2.6 Schedule 6 - Building and subdivision certification (new Part 6)

- The proposed new Part 6 of the Act consolidates building and subdivision provisions into one single part of the Act. It sets out the rules and definitions for subdivision and subdivision works, the construction and occupation of buildings, their regulation and certification, and liability issues for defective works. This part of the Act is proposed to be administered by the Minister for Innovation and Better Regulation.
- Changes proposed to the *Environmental Planning and Assessment Act 1979* are part of broader changes to building regulation and certification across Government agencies in response to the 2015 Independent Review of the *Building Professionals Act 2005* (the Lambert Report).
- The SCCG supports amendments to ensure that construction certificates are consistent with development consents.

2.7 Schedule 7 - Infrastructure contributions and finance (new Part 7)

- This Schedule seeks to ensure that planning agreements result in a clear public benefit, that the process for negotiating them is fair, reasonable and transparent, and that the infrastructure needs are informed by an assessment of the needs of the local community. Additional projects are underway to determine Special Infrastructure Contribution (SIC) areas and to review local infrastructure guidelines.
- **Potential for beach nourishment funding to be considered as infrastructure.** Beaches are considered a public amenity in Australia. Therefore, any potential increase in demand for beach use (arising out of development) can be subject to a requirement to pay money or dedicate land at no cost. For example, under existing s.94ED provision of infrastructure within Special Contributions Areas can include funds for *the conservation or enhancement of the natural environment*. Given this premise, sand required for beach nourishment to maintain beach and public amenity value in the face of increased demand could be considered as a form of 'infrastructure'. Defining it in this way future proofs our beaches and foreshore from the impacts of a changing climate and changing demographics, and also provides a potential additional revenue stream to tap into. In the long run and in the face of climate change, beach nourishment (or beach scraping) will constitute an ongoing cost in order to maintain some urban beaches (like Collaroy-Narrabeen) in their present configuration. These costs will be significant and span multiple LGAs.
- SCCG recommends that the DoPE investigate opportunities to **expand the development contributions system** to allow for its utilisation to enhance open space, environmental assets (like beaches and foreshores) and contribute to the development of the blue-green grid. Other funding opportunities to assist with public good neighbourhood enhancements must be investigated for utilisation. **Value capture mechanisms** should be implemented when there is land value uplift resulting from upzonings and provision of additional services and infrastructure.
- The DoPE has also released a set of draft documents to improve the policy framework for planning agreements⁸ including a proposed Ministerial direction, a revised practice note and a planning circular. The SCCG supports the updated provisions that allow for Councils to levy infrastructure charges for any class of development. This makes the

⁸ Planning agreements are entered into between a developer and the Minister for Planning to fund State infrastructure such as public amenities, affordable housing, transport or other infrastructure.

nexus between land development and infrastructure explicit and provides Councils with additional tools to ensure public purpose amenity is maintained.

2.8 Schedule 8 - Reviews and appeals (new Part 8)

- This Schedule deals with reviews and appeals to which the SCCG has no specific comment.

2.9 Schedule 9 - Implementation and enforcement (new Part 9)

- Proposed changes to the enforcement toolkit will make it easier for agencies to intervene, provide greater deterrents, recover costs, and enhance processes to ensure accountability for those responsible for harm to communities or the environment. The SCCG has no specific comment on this Schedule.

2.10 Schedule 10 - Miscellaneous (new Part 10)

- This Schedule deals with fire safety, contaminated land and deletes a number of Schedules in the Act (including Part 3A transitional arrangements). The SCCG has no specific comment on this Schedule.

