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2 September 2016

The Hon Greg Pearce, MLC
Chair, Legislative Council Standing Committee on State Development
NSW Parliament
Macquarie St
SYDNEY NSW 2000

By email and post: state.development@parliament.nsw.gov.au

Dear Committee Members

**Legislative Council Inquiry into Regional Planning Processes in NSW –
EDO NSW response to Questions on Notice from Inquiry Hearing, August 2016**

Thank you for the opportunity to provide evidence to the Inquiry into Regional Planning on 17 August. Please find below our responses to questions on notice on the following issues:

- 1. Question from The Hon. MICK VEITCH (ALP) – community engagement (Inquiry Hearing transcript, 17/8/2016, uncorrected proof, p 3)**
- 2. Question from The Hon. ERNEST WONG (ALP) – community engagement, innovation and new technologies (Inquiry transcript, p 5)**
- 3. Question from The Hon. RICK COLLESS (NAT) – Ecologically sustainable development (ESD) (Inquiry transcript, p 8)**
- 4. Question from The Hon. GREG PEARCE (Chair, LIB) – statistics on merit appeals against development decisions (Inquiry transcript, p 10)**
- 5. Question from The Hon. PAUL GREEN (CDP) – Who accesses the legal services of EDO NSW. (Inquiry transcript, p 10).**

Please contact me or EDO NSW Policy and Law Reform Director,
or by return email, if we can be of further assistance.

Yours sincerely
EDO NSW

Nari Sahukar
Senior Policy and Law Reform Solicitor

1. Question from The Hon. MICK VEITCH (ALP) – community engagement (Inquiry Hearing transcript, 17/8/2016, uncorrected proof, p 3):

The Hon. MICK VEITCH: What would you consider to be a process that attains meaningful community consultation?

Ms WALMSLEY: We have done a lot of analysis in this area. We have looked at international jurisdictions and various different methods. In the planning reform process in 2012 we wrote substantially on this and we would be happy to provide that to this Committee.

EDO NSW response (1)

Please see the resources below:

- **Nature Conservation Council, Total Environment Centre and EDO NSW (2012) *Our Environment, Our Communities* – Integrating environmental outcomes and community engagement in the NSW planning system**, at http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/287/attachments/original/1380667224/120824Our_Environment_Our_Communities.pdf?1380667224:
 - 'Integrating Community Considerations in the NSW Planning System', pp 25–30.
 - 'Emerging trends in public participation', pp 30-37.
 - 'Requirements for public participation in planning legislation', including summary of key outcomes and conclusion, pp 41-43.
- **EDO NSW (2013) *Submission on A New Planning System for NSW*** at http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/853/attachments/original/1382927830/130628NSWPlanningWhitePaper_EDONSWsubmission.pdf?1382927830:
 - 'Community Participation Charter', pp 28–32.
 - 'Further Consultation and Limited Discretion', pp 36–37.
- **ICAC (2012) *Anti-corruption Safeguards in the NSW Planning System*** at [http://www.icac.nsw.gov.au/documents/preventing-corruption/cp-publications-guidelines/3867-anti-corruption-safeguards-and-the-nsw-planning-system-2012/file](http://www.icac.nsw.gov.au/documents/preventing-corruption/cp-publications-guidelines/3867-anti-corruption-safeguards-and-the-nsw-planning-system-2012/file;);
 - 'Meaningful Community Participation and Consultation' pp 19–21.
 - 'Expanding the scope of third party merit appeals', pp 22-23.
 - Recommendations 11-16 (p 7, detailed on the pages above):

ICAC Recommendation 11

That the NSW Government requires community consultation to be undertaken and public submissions to be given due consideration before the release of a major strategic planning document.

ICAC Recommendation 12

That the NSW Government mandates that public submissions are to be considered by a planning authority following the exhibition of a draft voluntary planning agreement.

ICAC Recommendation 13

That the NSW Government requires planning instruments of state significance to be subject to community consultation, except where there are adverse environmental, social or economic impacts and where these adverse impacts outweigh the benefits of community consultation. Where community consultation has not been undertaken,

then the specific reasons for not undertaking community consultation should be made publicly available when the planning instrument is made.

ICAC Recommendation 14

That the standard community consultation requirements for draft local environmental plans be given statutory backing.

ICAC Recommendation 15

That the NSW Government ensures that planning authorities are required to provide regular information and updates to the public about development applications under assessment, including any significant changes made to an application.

ICAC Recommendation 16

That the NSW Government considers expanding the categories of development subject to third party merit appeals to include private sector development that:

- *is significant and controversial*
- *represents a significant departure from existing development standards*
- *is the subject of a voluntary planning agreement*

- **International Association for Public Participation (IAP2), *Public Participation Spectrum*** at https://www.iap2.org.au/Tenant/C0000004/00000001/files/IAP2_Public_Participation_Spectrum.pdf:

IAP2'S PUBLIC PARTICIPATION SPECTRUM

The IAP2 Federation has developed the Spectrum to help groups define the public's role in any public participation process. The IAP2 Spectrum is quickly becoming an international standard.



INCREASING IMPACT ON THE DECISION ➔

	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision. We will seek your feedback on drafts and proposals.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will work together with you to formulate solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

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2. Question from The Hon. ERNEST WONG (ALP) – community engagement, innovation and new technologies (Inquiry transcript p 5):

The Hon. ERNEST WONG:

My question is to do with community engagement. ... Please elaborate on what sorts of new technologies you have in mind.

EDO NSW response (2)

Please see the resources and examples below:

- Nature Conservation Council, Total Environment Centre and EDO NSW (2012), ***Our Environment, Our Communities*** at http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/287/attachments/original/1380667224/120824Our_Environment_Our_Communities.pdf?1380667224:
 - 'Emerging Trends in Public Participation and Community Engagement', pp 30–39.
- Access Canberra, *Fix My Street Initiative* at https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1146/~/-/fix-my-street

3. Question from The Hon. RICK COLLESS (NAT) – Ecologically sustainable development (ESD) (Inquiry transcript p 8):

The Hon. RICK COLLESS:

Can I expand on this concept of ecologically sustainable development [ESD]. ... How can we get back to really rationalising what ESD is? How do we rationalise it and make sure there is an equivalent and equal approach given to that triple bottom line statement?

EDO NSW response (3)

Please see the resources below:

- EDO NSW (2011) *Ecologically Sustainable Development* at http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/96/attachments/original/1379312523/impact_91.pdf?1379312523: see especially 'Trends in the Application of ESD in NSW Planning', p 9.
- Wentworth Group of Concerned Scientists (2014) at <http://wentworthgroup.org/wp-content/uploads/2014/11/Blueprint-for-a-Healthy-Environment-and-a-Productive-Economy-November-2014.pdf>: 'Benefits of a Healthy Environment', p 4.

4. Question from The Hon. GREG PEARCE (Chair, LIB) – statistics on merit appeals against development decisions (Inquiry transcript p 10):

Ms WALMSLEY: As I said earlier, the large majority of merit reviews are brought by proponents. Very few are brought by third parties.

The CHAIR: Do you have any stats on that?

EDO NSW response (4)

Local Development Performance Monitoring sets out statistics on appeals of council decisions:¹

	Class 1 (merit) appeals determined by Land and Environment Court
2014–15	388 (~99% brought by developers)
2013–14	284 (~96% brought by developers)
2012–13	344 (~99% brought by developers)

The annual LDPM also sets out the number of requests for *internal review* of council decisions:²

	Number of internal (Council) reviews of decisions at request of proponents (s 82A)
2014–15	373 (70% approved on review)
2013–14	353 (72% approved on review)
2012–13	427 (66% approved on review)

For further recommendations on merit appeal rights please see these resources:

- **EDO NSW (2016) Merits Review in Planning in NSW**, 'Improving Decision Making in NSW', pp 8–10, at: https://d3n8a8pro7vhm.cloudfront.net/edonsw/pages/2998/attachments/original/1467777537/EDO_NSW_Report_-_Merits_Review_in_Planning_in_NSW.pdf?1467777537.
- **EDO NSW (2013) Submission on A New Planning System for NSW** at http://d3n8a8pro7vhm.cloudfront.net/edonsw/pages/853/attachments/original/1382927830/130628NSWPlanningWhitePaper_EDONSWsubmission.pdf?1382927830:
 - Merits Review, Appeals and Enforcement, **pp 86-88**.
- **ICAC (2012) Anti-corruption Safeguards in the NSW Planning System** at <http://www.icac.nsw.gov.au/documents/preventing-corruption/cp-publications-guidelines/3867-anti-corruption-safeguards-and-the-nsw-planning-system-2012/file>:
 - 'Ensuring Transparency', **pp 15–16**;
 - 'Expanding the Scope of Third Party Merit Appeals', **pp 22–23**.
- **ICAC (2013) Submission regarding A New Planning System for NSW** at https://majorprojects.affinitylive.com/public/ce705036e745f116c36beef83ed074cb/L71_NSW%20ICAC.pdf:
 - 'Clarity & Availability of Third Party Appeal Rights', pp 3–4.

¹ Sources:

- NSW Department of Planning (2015) *Local Development Performance Monitoring (LDPM) 2014–15* at <http://datareporting.planning.nsw.gov.au/ldpm-data-highlights>: 'Reviews & Appeals'.
- NSW Department of Planning (2014) *LDPM 2013–14* at <http://datareporting.planning.nsw.gov.au/ldpm-data-highlights-2013-14>: 'Reviews & Appeals'.
- NSW Department of Planning (2013) *LDPM 2012–13* at http://datareporting.planning.nsw.gov.au/images/data-reporting/LDPM/Reports2005-14/LDPM_2012_March2014_part1.pdf: 'Statewide s 82A and legal appeals summary 2012-13', p 90.

² Ibid.

5. Question from The Hon. PAUL GREEN (CDP) – Who accesses the legal services of EDO NSW (Inquiry transcript p 10):

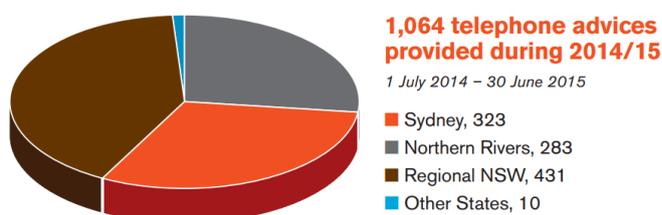
The Hon. PAUL GREEN:

Do you have any stats on your Annual Report of who applies to your [Office]?

EDO NSW response (5)

Please see the resources below:

- EDO NSW (2015) *Annual Report 2014/15*, 'Legal Advice & Litigation', pp 10–11, at: https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2263/attachments/original/1449611742/10478_Annual_Report_2014-15_WEB.pdf?1449611742:



- EDO NSW website, 'Our clients' (testimonials) at http://www.edonsw.org.au/our_clients.