THE LAW SOCIETY
OF NEW SOUTH WALES

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8 December 2025

The Hon. Paul Scully, MP
Minister for Planning and Public Spaces
GPO Box 5341
SYDNEY NSW 2001

By online portal

Dear Minister,

ENVIRONMENTAL PLANNING AND ASSESSMENT (PLANNING SYSTEM REFORMS) ACT 2025 (NSW)

We are writing in relation to the *Environmental Planning and Assessment (Planning System Reforms) Act 2025* (NSW) (**Amending Act**), assented to on 24 November 2025.The Law Society's Environmental Planning and Development, Indigenous Issues and Property Law Committees contributed to this submission.

The extent of the amendments to the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) made by the Amending Act have been described by the Government as:

> …no simple technical update to the Environmental Planning and Assessment Act. It is a necessary reset of the way the planning system and its pathways work in New South Wales.[1]

We acknowledge the importance of reforming the Act and note that important details in relation to of a number of the reforms initiated by the Amending Act will be provided in regulations and instruments. The Government has flagged further consultation on key aspects of the reforms made by the Amending Act, for example:

> …In many areas, the finer details of these reforms will be shaped by public exhibition. Before certain provisions take effect, we will seek the views of the community, council and industry. For example, we will exhibit the draft statewide Community Participation Plan, proposed variations to complying development standards, changes to concurrences and referrals along with supporting regulation for the DCA, how we will support the Act's new climate change and natural hazard object, and development types proposed for targeted assessment.[2]

Given the important details to be provided in the regulations, we recommend that comprehensive consultation be undertaken before finalising these supporting regulations and instruments.

[1] NSW, Parliamentary Debates Second Reading Speech, Legislative Assembly, 17 September 2025, 34 (Paul Scully, Minister for Planning and Public Spaces) <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-157345/HANSARD-1323879322-157345>.
[2] NSW, Parliamentary Debates Second Reading Speech, Legislative Assembly, 15 October 2025, 101 (Paul Scully, Minister for Planning and Public Spaces) <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-158079>.

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The Law Society would be pleased to participate in any targeted consultation with stakeholders in relation to the draft regulations. We bring a diversity of relevant perspectives, experience and expertise which enable us to provide a unique contribution. For example, our Environmental Planning and Development Committee comprises a cross-section of specialist planning lawyers, some of whom act for councils or are in-house council lawyers, while other members act for developers.

We note that the provisions of the Amending Act commence upon proclamation, and that the Government has indicated that commencement will occur in staged phases. It is essential that the Amending Act provisions which will be supported by those regulations and instruments, should not commence until those regulations and instruments have been drafted after proper consultation.

We set out our comments in Attachment A in relation to several of the reforms initiated by the Amending Act that we understand will be subject to further consultation, or will, in our view, require further guidance. We also set out some potential matters for future consideration as part of the broader planning reform agenda.

If you have any questions in relation to this letter, please contact Gabrielle Lea, Senior Policy Lawyer, by phone (02) 9926 0375 or by email to gabrielle.lea@lawsociety.com.au.

Yours sincerely,

Jennifer Ball

Jennifer Ball
President

Attachment A – *Environmental Planning and Assessment (Planning System Reforms) Act 2025* (NSW)

1. Changes to complying development

Section 4.31A of the Amending Act will permit multiple applications for variations of development standards applicable to a single complying development application. We understand that further consultation[3] will occur in relation to the nature and extent of the variations that will be permitted, and the number of applications for variation that can be made in relation to a single complying development application. In the absence of clear limitations, the benefit of the certainty provided by development standards for complying development will be replaced with a scheme that places an additional burden on councils by introducing a third and hybrid approval pathway, subject to an unreasonably tight timeframe in relation to deemed approval.

When considering potential permitted variations to the development standards applicable to complying development, it will be important to take into account the fact that some development standards relate directly to safety and other important requirements. An example is the minimum 900mm side setback of a dwelling. The National Construction Code requires a wall which is less than 900mm from the boundary to be fire-rated.

The Amending Act also appears to leave it open for a private certifier to approve a variation (the "appropriate person" in section 4.31A(9)(b)), creating potential scope for the misuse of the complying development pathway. We do not support the prescribing of private certifiers as an "appropriate person" for determining variation certificates. We understand this is not the intent and suggest this should be clarified by regulation.

2. Targeted assessment development

We understand that definitions for the targeted assessment pathway "will be developed through detailed consultation with councils, industry and the community".[4] We would be pleased to participate in this consultation.

We note that the Second Reading Speech provides the low and mid-rise pattern book as an example of a detailed design process where the impacts are addressed through compliance with the patterns. We consider that the targeted assessment development pathway should be further limited to low and mid-rise housing where "key planning issues have been resolved upfront or are adequately addressed in the planning controls".[5]

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[3] Regulations are foreshadowed in section 4.31A(8)(e) of the Amending Act, and changes to environmental planning instruments are foreshadowed in sections 4.31A(4) and 4.31A(5) of the Amending Act.
[4] NSW, Parliamentary Debates, Legislative Assembly, 15 October 2025, 100 (Paul Scully, Minister for Planning and Public Spaces) <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-158079>.
[5] NSW, Parliamentary Debates Second Reading Speech, Legislative Assembly, 17 September 2025, 31 (Paul Scully, Minister for Planning and Public Spaces) <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-157345>.

We are also concerned at a practical level with legal uncertainty arising from the specification that certain matters must not be considered under this pathway, under section 4.15(1D) of the Amending Act, as opposed to what must be considered, under section 4.15(1C) of the Amending Act. For example, it is unclear to us how a consent authority would be permitted or required to treat a submission from the public that references a matter that is not to be considered. We suggest this is a matter that requires further consideration and guidance.

3. Development Coordination Authority

The introduction of the Development Coordination Authority (**DCA**) provides a central hub for integrated development applications (**IDAs**) to be referred for assessment and issue (or non-issue) of General Terms of Approval (**GTAs**). The intention of fostering interagency coordination is supported, however, the way that integrated development, (as well as concurrence and consultation requirements) is framed under the Act means that there is not a requirement or authority for these agencies to collaborate in assessing or drafting GTAs to a development application (**DA**).

We understand that further details as to the operation of the DCA and how it will be constituted are being developed with the relevant agencies. In our view these further details should include:

- how the DCA will be appropriately staffed with officers from the relevant approval bodies/concurrence authorities with requisite expertise and delegation to issue GTAs;
- whether there will be provision for agency representatives in the DCA to consult back to their agency on matters requiring technical expertise or matters requiring access to agency information;
- how the DCA will be financed;
- what the decision not to grant GTAs by one agency will mean for the output of the DCA;
- how interagency disagreements or delay within the DCA will be resolved; and
- the impact the establishment and function of the DCA may have with agencies' responsibilities under their empowering Acts.

The DCA will require adequate staffing, and importantly staff with appropriate expertise, to provide the real tangible benefits of speeding up the DA assessment and determination process. Referrals to the relevant agencies in important portfolios such as bush fire protection and flood affectation should continue to ensure that these very important aspects of assessment continue under the DCA.

4. Development assessment changes

We note that the Amending Act inserts the word "significant" before the word "likely" in section 4.15(1)(b) of the Act. The word "significant" is not defined in the Act, the *Environmental Planning and Assessment Regulation 2021* (NSW) (**Regulation**) or the Amending Act, and the meaning of that term is therefore open to interpretation. Additionally, *how* an impact is to be assessed to determine if it is significant or minor is not contained in the Act, Regulation or the Amending Act.

The Amending Act also removes the words "to the fullest extent possible all" from section 5.5(1) of the Act, and inserts a new section 5(2):

> For subsection (1), a determining authority may take into account the matters referred to in the subsection in a manner that is proportionate to the nature and risk of the activity.

We suggest that guidelines will be required in relation to the meaning of "significant" to assist the consent authority in determining what a proportional assessment would look like. Removal of "to the fullest extent possible all" still requires the determining authority to consider all environmental impacts. For example, where it is considered that the environmental impact would be minor, the extent of the assessment could be more limited. We also suggest that this change will result in there being less certainty as to what is required from the applicant. Therefore, greater input, feedback and consideration of the environmental impacts from the determining authority would be required earlier in the assessment stage so that the applicant can appropriately address these matters.

5. Reforms to development consent (Model conditions and modifications)

We would be pleased to participate in the stakeholder consultation on the development of model conditions under subsections 4.17(12)-(15) of the Amending Act, that has been foreshadowed by the Government.[6]

We are concerned about the potential uncertainty that may arise under section 4.17(15) of the Amending Act as to what is an "inconsistency". We are also concerned that section 4.17(4C) of the Amending Act may be read as requiring the consent authority to consult more than once with the applicant. For example, in Land and Environment Court (**Court**) proceedings, the conditions are often finalised through a process of iteration. Each iteration should not require a seven-day notice period. We suggest that it may be appropriate to issue guidance to the effect that the consent authority is not required to consult further with the applicant after considering the applicant's written submissions.

In relation to modification applications, there has been regular debate in the Court as to whether a modification involves "no or minimal environmental impact" under section 4.55(1A) of the Act. If an application under section 4.55(1) of the Amending Act involving "no environmental impact" receives the benefit of a "deemed approval" period, we would expect this debate to become much more commonplace. We suggest this should be monitored, and if appropriate, further reforms considered.

6. Historical development consents

Section 4.57(1) of the Amending Act is cognisant of the recent debate on historical or "zombie" development consents, where previously approved development approvals, including complying development, have re-emerged after years of inactivity. Some of these development consents pre-date the Act and are troubling

[6] NSW, Parliamentary Debates, Legislative Assembly, 15 October 2025, 99 (Paul Scully, Minister for Planning and Public Spaces) < https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-158079>.

because the rules in place at the time the consent issued had fewer conditions, and in some cases were approved when a number of environmental factors were not accounted for in the assessment process.

This issue has been the subject of the Legislative Assembly Committee on Environment and Planning Inquiry into historical development consents in NSW (**Inquiry**).[7] The Amending Act contains provisions to address the issue of historical development consents in sections 4.57(1)(a) and (b), and section 116A of the Regulation. Collectively these amendments mean that the Planning Secretary's powers to revoke or modify a historical development consent, having regard to a proposed or existing environmental planning instrument, will be limited to historical development consents granted more than 25 years ago. We support these reforms as an initial response to the issue of historical development consents, and note that the Government has indicated it will also consider the recommendations of the Inquiry when it reports back to Parliament. We would welcome the opportunity to provide feedback on any further proposal that may be considered following recommendations of the Inquiry.

7. Non-discretionary development standards

In relation to the updated provisions relating to non-discretionary development standards, sections 4.15(3)-(3AC) of the Amending Act, we note that the details of the changes are deferred to the regulations by section 4.15(3AC) of the Amending Act. Careful consideration will be required as to what is meant by a "corresponding provision" and "more onerous" before the new provision commences operation.

8. Abolition of district and regional planning panels

The abolition of district and regional planning panels will ostensibly increase the workload of local planning panels (**LPPs**). From an expertise point of view, the current make up of LPPs would not have to change, as the chairs and experts are in essence no different from the members of district and regional planning panels. The increased workload needs to be properly supported by dedicated administrative staff to co-ordinate business papers and meetings, and increased resources generally. Again, the existing LPP arrangements are more than capable of being adjusted to meet this extra demand and we are supportive of this reform.

However, one important aspect that needs addressing is the remuneration paid to LPP members who will inherit this extra (and more complex) workload. The current remuneration to LPP members is based on the *Remuneration Determination* made by the former Minister for Planning, Mr Anthony Roberts MP on 23 February 2018[8] which is out of step with an appropriate remuneration applicable to the level of expertise required to sit on a LPP in 2025 and beyond.

We suggest there must be a revised *Remuneration Determination* made by the current Minister for Planning and Public Spaces, for both LPPs and the Independent Planning Commission, that is commensurate with the expertise of the members that sit on these consent authorities, to appropriately remunerate current and potential members.

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[7] The Law Society's submission to the Legislative Assembly Committee on Environment and Planning Inquiry into historical development consents in NSW, dated 14 June 2024 is available here.
[8] Minister for Planning, *Remuneration Determination*, 23 February 2018 <https://www.planning.nsw.gov.au/sites/default/files/2023-02/remuneration-determination.pdf>.

9. Community Participation Plan

We note that subsection 2.23(1) of the Amending Act provides for the preparation of a community participation plan (**CPP**) by the Planning Secretary. It is imperative that the CPP provides culturally safe and appropriate mechanisms, and adequate timeframes to engage with, consider and reflect Aboriginal people's views, knowledge and aspirations for Country. In our members' experience, Aboriginal people are rarely adequately consulted on proposed development into undisturbed areas including bushland and forestry estate. The system currently relies upon use of the Aboriginal Heritage Information Management System (**AHIMS**) database to determine whether cultural heritage exists. There are significant deficiencies with this as a sole reliance tool, including that mapping is often incorrect and can be approximately 400m away from any actual landmark supposedly being protected. Many sacred and secret sites are not mapped in AHIMS. We understand that Aboriginal Elders are fearful that the sites will be disturbed, destroyed or abused by information being shared from the AHIMS system by those who access it for development assessment purposes. In our members' experience, this is not an unfounded experience.

Aboriginal places of cultural significance including but not limited to, meeting places, landscapes, burial sites, birthing sites, caves, carvings, art and places containing Aboriginal tools and crafts should not be limited by graphical identification markers prescribed with the AHIMS database used in the development assessment process. Cultural significance for development purposes should extend to story places, connecting landscapes, secret places for men's and women's business[9] to continue a connection to Country and recognise that AHIMS is not an exhaustive representation of culturally significant areas. Aboriginal people have cultural responsibilities within their communities. Spokespersons who are authorised to speak for community are not appropriately recognised or catered for in contemporary planning laws. An Aboriginal Elder advocating on behalf of their community as authorised spokesperson for the greater community is unfortunately seen as one objection only. These are examples of issues that must be addressed in the development of the CPP if it is to adequately provide for appropriate participation by Aboriginal people.

10. Additional comments

Building Information Certificates

Given the extent of planning reforms, we suggest consideration should also be given to reviewing the building information certificate (**BIC**) process under Division 6.7 of the Act. In our members' experience, BIC applications are being used for "de facto" retrospective planning approval. This was not the intended role of the BIC historically.

There is very limited guidance as to what needs to be assessed with a BIC (equivalent to section 4.15 of the Act). There is also regular confusion as to whether a BIC or planning application ought to be assessed first,

[9] The Aboriginal Women of the Awabakal area fought for 13 years to have the Butterfly Cave preserved and their access to it restored, when the land was proposed for residential development. The Government acquired the Cave and surrounding land, and access was restored to Aboriginal Women to continue traditional practices. The local Aboriginal Women had to bear an unnecessary cultural load to defend their position, they had to disclose a lot of cultural women's business in order to justify their position, and the extensive media coverage has identified the site and its secret location to the community at large.

creating a “chicken and egg” situation and resulting in incomplete assessment of unauthorised works. Where a BIC is obtained to regularise unauthorised work, there can be a sense within the community that the person who has breached the law is being treated more favourably than the law-abiding person who did everything according to the granted approval. Currently consent authorities can only address the wrongfulness by way of separate, and costly, criminal or enforcement proceedings.

We note that applications for a BIC continue to play an important role in the conveyancing process, which is also part of the rationale for the BIC process. In our view, it would be appropriate to consider whether Division 6.7 of the Act is currently operating as intended. We would be pleased to participate in further consultation on this issue both from a planning law and conveyancing practice perspective.

Acceptance and lodgment of development applications

One important reform that appears to be omitted from current reforms is the acceptance and lodgment of DAs via the NSW planning portal (**Portal**). Currently under Part 3 of the Regulation, section 24(3) provides for the making of a DA application on the Portal, and the application is only considered to be **lodged** upon the date of the payment of the applicable fee. Under section 256(2)(b) of the Regulation, the determination of the fee for an application must be made by the consent authority before, or within 14 days after the application is submitted on the Portal. However, the only recourse for non-compliance available to a development proponent is to bring civil enforcement proceedings.

This lag between submission on the Portal and payment of the fee has proved to be problematic as we understand that some councils have taken action to carry out preliminary assessments of DAs, akin to evaluations under section 4.15 of the Act, to avoid the lodgement of DAs, thus preventing applicants from paying the DA fee to commence the assessment timeframe. In turn, this can frustrate applicants, and denies any opportunity and the right to appeal to the Court against the deemed refusal of a DA after 40 days, or an IDA application after 60 days.

This “de facto” DA evaluation by councils is a by-product of section 24(3) of the Regulation, which should be reformed so that a DA is taken to be lodged 14 days after it is submitted to the Portal if no invoice is issued by the council within that period. We understand this matter has been raised with the Department of Planning, Housing and Infrastructure and we look forward to the matter being addressed.

Adequate provisions exist under section 39 of the Regulation for councils to reject a DA when insufficient information or details have been submitted with the application. This suggested reform is consistent with the proposed changes to the Portal to publicise information about the form and content of documents that need to accompany DAs when submitted.