

## New South Wales and the Sandon Point Case

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### Introduction

For many years, the environmental impact assessment (EIA) regime under the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) was held up as 'best practice'. Although flawed in some key respects, the regime provided a structure within which proposed developments could be assessed against a set of criteria that, if applied properly, had the potential to generate sustainable outcomes. The legislation also contained important mechanisms to promote transparent and inclusive decision making, including processes to ensure members of the public could provide input on proposed developments and seek merits and judicial review of planning decisions.

This regime was given a major shake-up by the *Environmental Planning and Assessment (Infrastructure and Other Planning Reform) Act 2005* which created a new environmental assessment process in Pt 3A of the original Act. Originally hailed as a way to streamline the environmental assessment process for projects of State and regional significance, the system has since been criticised on the grounds that it is a vehicle for the State government to wrest control of planning decisions from local councils and fast-track major developments.

This chapter will look briefly at the history of environmental assessment in New South Wales and examine how it was before the 2005 amendments. It will also analyse how the system has evolved since then using the *Sandon Point* litigation as a case study. The chapter will conclude with some speculation on how the regime may change in the future.

### Historical context

Before the introduction of the EPA Act, New South Wales was in the midst of a political maelstrom with regards to development. Sydney in particular was under intense development pressure, with rising land prices and a burgeoning economy leading to the demolition of a number of historical buildings and precincts to make way for high rise developments. Developers were riding roughshod over entire Sydney communities and those communities

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