



**COMMUNITY FORUM ON THE WHITE PAPER
NSW PARLIAMENT THEATRETTE, 20/05/2013**

KEY ISSUES DISCUSSED- UPDATED LIST (As at 21 May 2013)

Objects of the Planning Bill

- The key Object of the new planning system must be Ecologically Sustainable Development (ESD), not economic growth. Economic issues are an important component of ESD but should not be the driving component of our planning system.
- The definition of *sustainable development* in the Planning Bill does not reflect international or Australian best-practice- **see BPN factsheet further below.**

Protection of the Environment

- The wording '*having regard* to environmental and social considerations' in Strategic Planning Principle No. 1 (see Planning Bill Part 3) is not strong enough to ensure adequate consideration of environmental and social issues. *Having regard* has no legal standing- **see presentation by John Mant.**
- The wording of Strategic Planning Principle No. 10 (see Planning Bill Part 3) is very concerning as it implies that local plan controls should not affect the financial viability of development, thus undermining controls designed to protect the environment, heritage and community amenity- **see presentation by John Mant.**
- The Planning Bill (4.19 (2)(d)) states that *in determining an application ... a consent authority is to take into consideration ... : the public interest, in particular whether any public benefit outweighs any adverse impact of the development.* This statement is concerning in its potential to undermine environmental and heritage protection, as well as residential amenity
- The wording of Strategic Planning Principle No. 10 (see Planning Bill Part 3) is very concerning as it implies that local plan controls should not affect the financial viability of development, thus undermining controls designed to protect the environment, heritage and community amenity- **see presentation by John Mant.**

Appeal Rights

- There are no appeal rights on decisions by the Planning Assessment Commission.
- There are no appeal rights for residents on spot rezoning decisions (but developers can appeal).
- The Community Participation Charter is not enforceable or reviewable.

Risk of Corruption

- The Planning Bill invests too much power in the Minister- eg. he or she can amend any strategic plan at any point in time and the Director-General can issue Strategic Compatibility Certificates to developers even if the proposed development does not comply with the local plan. This raises the risk of corruption significantly.
- Given the significant powers invested in the position of Director-General of Planning, the Planning Bill must give statutory protection to this position (ie- the Minister must not be able to dismiss the Director-General based on the nature of his/her decisions or advice).

Private Certification

- Private certification is bound to be highly problematic until developers cease to be allowed to employ private certifiers to approve their proposals.

Urban Design

- The new planning system will promote standard, rather than contextual controls- ie. 'tick the box' developments with no local community and limited Council input. This is likely to have an adverse impact on building design- ***see presentation by John Mant.***

Community Engagement

- Meaningful community engagement is paramount to the success of the new planning system. Yet, no additional resources have been allocated to community engagement and there is much work to be done to ensure best practice processes- ***see presentation by Wendy Sarkissian.***
- The Community Participation Charter is not enforceable or reviewable.
- Community consultation does not in itself mean that any community input will be reflected in strategic plans.

Housing Affordability

- The new planning system does not contain practical mechanisms for addressing housing affordability. Housing affordability will not be addressed simply by increasing housing supply. Amongst other reforms, urgent State Government action is required to identify mandatory affordable housing targets as a subset of new housing.

Heritage Protection

- The role and powers of the Heritage Council and the legal effect of the Heritage Act must be restored to that originally intended. State heritage laws will continue to be "turned off" or undermined further by the new planning laws when development is proposed, making the legal protection of the Heritage Act powerless. Furthermore, the proposed reforms remove the Heritage Council's ability to refuse major and integrated developments affecting State Heritage Register items and unlisted places protected by interim heritage orders.
- The flexibility of the proposed planning system with its unlimited potential to approve development exceeding controls, and increased restrictions on refusing development, will not only undermine current incentives to conserve heritage, but also increase financial pressure to demolish heritage for redevelopment profits.
- It is unclear whether complying and code-assessable development will require any assessment of impacts on unlisted or yet-to-be discovered heritage items- European and Aboriginal.

Infrastructure

- The White Paper recognises that '*Infrastructure is fundamental to support growth, productivity and ultimately our standard of living. This infrastructure must be available when required, be delivered efficiently and be fit for the purpose it was intended.*' These are solid principles to build on.
- The proposed provisions allow up to 3 years lag time between collection of contributions and the provision of infrastructure earmarked for those funds. There is no requirement for supply of infrastructure to meet the level of demand created by new homes and jobs, at the same time they need them.
- There are no explicit powers to delay or refuse consent on the basis of an infrastructure impact assessment; only powers to impose contributions.
- The Infrastructure fact sheet suggests that local councils will only collect contributions for essential community facilities, even though community facilities have not been defined. Similarly "education establishments" are not defined. Social infrastructure services such as sufficient child care, preschool and out of school hours care may fall through both the local and regional planning cracks.
- The mechanism for collecting contributions and building infrastructure is through local and regional infrastructure plans. What are the benchmarks for whether these local and regional infrastructure plans are fit for purpose? For example, how many schools are enough? How many childcare centres are sufficient? Etc.



ECOLOGICALLY SUSTAINABLE DEVELOPMENT, SUSTAINABLE DEVELOPMENT AND THE NSW PLANNING REFORMS

THE FACTS

Overview

The NSW Government has issued a White Paper and draft Exposure Planning Bill that propose a new planning system for NSW. The first Object of the Planning Bill is '*economic growth and environmental and social well-being through sustainable development*'. The Planning Bill also states:

'Sustainable development is 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 (SD) is a significant departure from key principles of Ecologically Sustainable Development (ESD) that have long been enshrined in Australian law. The White Paper refers to two of these principles – the integration of environmental considerations and development objectives, and intergenerational equity – but renounces three other fundamental principles:

- The precautionary principle
- Biodiversity and ecological integrity as a fundamental consideration
- Improved valuation, pricing and incentive mechanisms (including the polluter pays principle).

Furthermore both the White Paper and Planning Bill consistently prioritise economic growth instead of focusing on the balanced integration of economic, environmental and social considerations based on the legally recognised principles of ESD.

Why has the NSW Government elected not to support all of the accepted principles of ESD in its proposed new planning legislation?

Recommendation

The *Better Planning Network* strongly advocates that:

- Promotion of ESD and its key principles should be identified as the primary Object of the Planning Bill.
- All planning and development decision-makers should be required (as a mandatory matter) to have regard to relevant ESD principles.

ESD and SD: Accepted definition and use

The term Sustainable Development was first defined in the 1987 Brundtland Commission report, *Our Common Future*, as: 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.' The concept of SD was further elaborated through a series of documents and legal instruments at the 1992 Earth Summit held in Rio de Janeiro, Brazil. The Rio declaration enunciated the key principles of sustainability as the principle of integration of environmental considerations and development objectives, 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).

Inserting the word "Ecologically" before "Sustainable Development" was an important Australian achievement in response to the Rio Declaration. Australian Commonwealth and State and Territory governments have adopted the *National Conservation Strategy for Australia* and the *Intergovernmental Agreement on the Environment* (1992), which refers to the internationally accepted principles listed above.

Since then, ESD has been the standard terminology used in Australia. ESD is also the standard terminology used in over 60 NSW statutes, including the *Environmental Planning and Assessment Act*, the *Mining Act*, *Coastal Protection Act*, the *Local Government Act*, *Water Management Act*, *Native Vegetation Act* and *Rural Fires Act*.

The definition of ESD used in all of these Acts refers back to the definition provided in the *Protection of the Environment Administration Act 1991* (NSW) that specifically includes the fundamental principles associated with ESD: the principle of integration of environmental considerations and development objectives, 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).

Australian courts are commonly applying ESD principles.

ESD in our current planning legislation

One of the current Objects of the *Environmental Planning and Assessment Act 1979* (NSW) is to encourage ESD- see section 5(a)(vii).

As with other NSW statutes, ESD is defined with reference to section 6(2) of the *Protection of the Environment Administration Act 1991* (NSW), as follows:

'For the purposes of subsection (1) (a), ecologically sustainable development requires 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:

(a) *the precautionary principle-namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) *careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
- (ii) *an assessment of the risk-weighted consequences of various options,*
- (b) *inter-generational equity-namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,*
- (c) *conservation of biological diversity and ecological integrity-namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,*

(d) *improved valuation, pricing and incentive mechanisms-namely, that environmental factors should be included in the valuation of assets and services, such as:*

(i) *polluter pays-that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,*

(ii) *the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,*

(iii) *environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.'*

ESD and the NSW Planning Reforms

The definition of SD proposed in the Planning Bill 2013 is a significant step backwards from the established principles of ESD that have underpinned planning and development decisions in Australia and NSW since the 1990s. In particular, this definition makes no reference to the conservation of biological diversity, improved valuation, pricing and incentive mechanisms (including the polluter pays principle) and the precautionary principle, a central tenet of environmental policy and case law in NSW for more than two decades.

This deliberate retreat from the principles of ESD is not consistent with other environmental and planning legislation in Australia: see, for example, section 9 of the *Planning and Development Act 2007* (ACT), Chapter 1 of the *Sustainable Planning Act 2007* (Qld) and section 3A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Better Planning Network

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For more information about the *Better Planning Network*, visit betterplanningnetwork.good.do or email us at betterplanningnetwork@gmail.com .