Blue Mountains Conservation Society Inc

ABN 38 686 119 087

PO Box 29 Wentworth Falls NSW 2782

Phone: (02) 4757 1872

E-Mail: bmcs@bluemountains.org.au Web Site: www.bluemountains.org.au

Nature Conservation Saves for Tomorrow

02 November 2011

Planning System Review
GPO Box 39
Sydney NSW 2001

SUBMISSION ON NSW PLANNING REVIEW STAGE 1 CONSULTATION

Members of the Blue Mountains Society attended the two NSW Planning Review Community Consultations held in Katoomba on 19th September 2011. We appreciated the opportunity to discuss with you our views and concerns about aspects of the current planning system and to provide material to you in follow-up communications. We are now lodging our formal submission to the NSW Planning Review Stage 1 Consultation.

Preamble

The Blue Mountains Conservation Society is the largest and oldest operating environmental conservation group in the Blue Mountains, with some 850 members. The Society is particularly concerned to stress to the NSW planning review that planning in NSW should be flexible and sensitive to local environmental conditions and, in the case of the Blue Mountains, to internationally significant ecological areas. The Blue Mountains local government area is a city within a national part and World Heritage Area. It is incumbent on the Blue Mountains City Council to carefully manage the local environment and development in the area. We therefore support the concept of local 'place based' plan-making undertaken by local councils with other relevant authorities in consultation with the local community.

The NSW government's planning review publicity material states that the 1979 Environmental Planning and Assessment Act (EP&A Act) was hailed as innovative because it recognised the importance of environmental protection and community consultation. There are many good things in the planning system that have evolved over the past 20 years that should be retained and strengthened. In the Blue Mountains context, these include threatened species provisions (e.g. sections 5A and 34A; SEPPs aimed at environmental protection e.g. SEPPs 44 (Koala) and 19 (Urban Bushland).

However, over the past 20 years we have also seen a diminishing of some environmental protections and, more recently, there has been a severe attenuation of the community's right to be consulted in local plan-making through the new 'Gateway' process. The Society is concerned that the planning review should not be an opportunity for further watering down of environmental protection and community consultation, but rather a strengthening of it.

RESPONSES TO THE NSW PLANNING REVIEW STAGE 1 CONSULTATION'S 4 MAIN AREAS FOR CONSIDERATION:

1. What should be the underpinning objectives and philosophy of a new legislative structure?

The Society endorses the 10 principles to inform planning reform in NSW developed by the Environmental Defenders Office. Please refer to the EDO's submission for details. In summary, the 10 principles are:

1. A focus on Strategic planning rather than developer-driven planning. A new planning act should stipulate processes for strategic planning (including mandatory public consultation and environmental assessment processes), give appropriate legislative weight to plans, ensure decision-making consistency with approved plans, and include review provisions to keep plans up-to-date and track cumulative impacts.
2. Implementing ecologically sustainable development (ESD). Principles of ESD include: the precautionary principle; inter-generational equity; conservation of biological diversity and ecological integrity; and improved environmental valuation, pricing and incentive mechanisms.
3. Improving the objectivity, credibility and cumulative impact review of environmental impact assessment. This includes mandating the use of independent accredited experts in undertaking environmental impact assessments and considering the cumulative impacts of development.
4. Genuine, appropriate and timely public participation, including the continuing availability of 'open standing' in the Land and Environment Court and instituting merits appeal rights for third parties.
5. Transparency and accountability for major public projects.
6. Recognising the pre-eminent role of the Land and Environment Court as a specialist review body over and above any commissions or panels and other Courts. This is essential for the application of consistent, transparent and impartial decision-making standards.
7. Applying a meaningful 'maintain or improve' test to key developments
8. Making planning law climate-ready. This means the incorporation of mandatory climate change considerations into strategic planning and development proposals.
9. Ensuring integration with other environmental legislation. A simple, integrated concurrence system is an essential part of a whole-of-government approach to implementing ecologically sustainable development.

10. Regular review of the Act. The review process should mandate significant stakeholder and community consultation.

2. How should plan-making be undertaken?

The Society's view is that there should be a return to three levels of plans: State, Regional and Local.

State Plans. State Environmental Planning Policies (SEPPs) should be retained as they enable an issue that is not captured under regional or local boundaries or that cuts across multiple LGAs, or the whole State to be captured such as the protection of urban bushland or coastal wetlands (SEPPs 19 and 14). SEPPs should retain their statutory strength but many could be updated. No current SEPPs centred on environmental protection should be deleted.

Regional plans should be reintroduced as a form of planning strategy and given statutory strength. They should be more place-based so they can more usefully inform and guide future LEPs.

Local Plans.
Here we want to address 2 issues:

1. Standard Instrument
2. Gateway system

Standard Template

The Society's strong view is that planning be 'place-based' and sensitive and responsive to local environmental conditions. It is unacceptable to the Society that current provisions relating to environmental protection in LEP 2005 will be disallowed when it is converted to the Standard Instrument in a few years' time because they either do not fit the model standardized and simplified clauses or are more restrictive than what the Standard Instrument provides for.

For example, many residential areas are covered by the subzone called Living Bushland Conservation which protects areas of environmental significance, while still enabling dwellings to be built in less sensitive parts. Subzones are no longer permitted in revised LEPs and it will be extremely difficult to find adequate zones to provide the same protection for bushland on large parts of a lot. The 'closest fit' from the Standard Template is likely to contain mandated uses that could result in inappropriate development in environmentally significant areas. A major concern is that land currently zoned for 'Environmental Protection' will be degraded if any zone other than Environmental Protection (E2) is used. The Standard Template will also make it more difficult to protect areas such as scheduled vegetation communities and escarpment areas through the use of protected area overlays. The current LEP 2005 overlay clauses will be

replaced with 'model' standardised and simplified clauses that will not adequately protect areas of environmental significance in this city within a World Heritage national park.

Conversion of LEP 2005 to the Standard Instrument is highly likely to weaken the local provisions that protect and prevent the loss of areas of local, regional and international environmental significance. **The Society therefore recommends that the Standard Instrument should be made more flexible** to allow local councils to protect and prevent the loss of areas of local, regional and international environmental significance.

- Councils should have far more flexibility to add their own provisions to the Standard Instrument clauses and to add more of their own local clauses rather than use model clauses provided under the Standard Instrument. For example the clause attached to an environmentally sensitive lands overlay map under the SI should be a local council clause or clauses only. This would enable the Blue Mountains City Council for example to keep the environmental protection clauses currently under the LEPs 1991 and 2005 such as escarpment protection attached to an ESL map.
- The standard zones should be expanded to include subzones such as those used in the BM LEP 2005.

Gateway system

The biggest problem with the Gateway system is the lack of opportunity for meaningful public participation, the ease with which spot rezonings can occur and the fact that studies done to determine the suitability and capability of a site for rezoning e.g. its environmental constraints, availability of infrastructure etc, are only done after the Gateway determination.

The Gateway system does allow for public exhibition of planning proposals which generally include zoning maps, lot size maps and a basic description of what the proposal involves, however the draft instrument (the draft LEP) that is drawn up from the planning proposal after it has been through exhibition is not seen by the public until it is gazetted. By then it may have been considerably altered. The public also get to comment on the proposal prior to any studies of the land proposed for rezoning so little detail is provided for the public to comment on during the exhibition process.

Anyone who wants to rezone their land only has to fill in a justification criteria with fairly simple tick-box answers. As long as the relevant planning authority (usually Council) approves the rezoning request (which is when the rezoning proposal becomes the Council's own planning proposal) it will go to the Department of Planning and Infrastructure for a Gateway Determination. This all occurs prior to public exhibition, prior to any studies etc yet by the time the proposal reaches this stage it is highly unlikely to be refused, or significantly changed.

Once a planning proposal has been given a Gateway Determination, it is more or less approved, prior to any studies that might find the land has considerable constraints and prior to any submissions from public agencies or the public.

The Society therefore recommends that:

- more detailed justification for a proposal and basic (if not full) environmental studies should be required at the front end of the Gateway process prior to consideration by Council.
- the public should have the opportunity to provide submissions when the proposal is considered by Council at the front end before it goes to Gateway and public submissions should be included with the planning proposal sent to gateway for determination. The public should get the opportunity again to participate when the draft LEP is drawn up as this is the form in which it is likely to be finalised, so will include all relevant information and shows what is likely to be gazetted.
- the process and requirements for planning proposals should fit the extent of the rezoning. For example if the proposal is for a minor change to an LEP, fewer studies, less information etc would be required and vice versa for a larger proposal.

3. How should applications for proposals for development be assessed and determined?

The Society's view is that most of the development assessment requirements that are currently in the EP&A Act should be retained, including the need for an environmental assessment, the IDA process and consideration of impact on threatened species, populations and their habitat and ecological communities.

The Society also supports the Environmental Defender's Office's view that a new Act should set out clear mandatory minimum requirements for environmental impact assessment (EIA), to ensure all assessments under the Act are objective and independent. This can only be achieved by mandating that independent accredited experts are allocated to assess development proposals based on their expertise, and not chosen by proponents. In the new Act, the development's cumulative impacts should be a mandatory consideration, as should the climate change implications, the 'maintain or improve' environmental values test, and 'like for like' environmental offsetting.

Specifically, the Society's recommendations are as follows:

Exempt and Complying

Councils should retain the ability to decide locally what can and cannot be exempt and complying and the circumstances, areas etc in which such development is acceptable or otherwise. This will enable Councils to more easily control or prevent such development in environmentally sensitive areas.

Private Certifiers

The use of private certifiers should be severely restricted to minor development only. The conflict of interest inherent in the owner/developer/builder paying for their own certifier to approve their development as complying has resulted in numerous problems for councils and residents. Certification should be done in most cases by the local council only.

Developer contributions

Local developer contributions should be able to be used for conservation purposes again such as for the protection of riparian corridors that can remain under Council ownership and management or for local bushland reserves.

4. What should be the availability of conciliation, mediation, neutral evaluation, review or appeal?

The Society supports the Environmental Defenders Office's recommendation that a new Act should provide for merits appeal rights for third parties.

The Blue Mountains Conservation Society looks forward to reading and giving feedback on the Issues Paper.

Yours sincerely

Lachlan Garland
President
T: (02) 4757 1929
M: 0415 317 078
E: lachlan.a.garland@bigpond.com