



Blue Mountains Conservation Society Inc

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Nature Conservation Saves for Tomorrow

29 March 2017

Ms Carolyn McNally
Secretary Department of Planning
GPO Box 39
Sydney NSW 2001

Dear Ms McNally

Proposed amendments to the Environment Planning and Assessment Act

The Blue Mountains Conservation Society is a community based volunteer organisation with over 850 members. The goal of the Society is to promote the conservation of the environment in the Greater Blue Mountains region. The Society would like to make a submission in relation to the proposed amendments to the Environment Planning and Assessment Act. The Society's submission will be made in two parts. Part 1 (this letter) deals with the amendments proposed in relation to community consultation and strategic planning. A separate letter (part 2) will deal with the proposed amendments relating to major development projects.

Increasing public participation in strategic planning

The EPA Amendment Bill 2017 sets out new, additional requirements for community participation, including:

- New community participation principles
- A requirement for planning authorities to prepare community participation plans.
- An explicit requirement to provide reasons for decisions

The Society believes careful, constructive and well-developed community consultation processes are a vital part of any strategic planning process, along with sufficient mapping of information and data. In the Society's experience, the community consultation process is often seen as the "last minute" hurdle in the development of strategic planning documents such as Local Environmental Plan (LEPs) and State Environmental Planning Policies (SEPPs). As a result, community consultation and participatory processes are under funded, poorly thought through, and poorly executed.

The Society invested heavily to encourage widespread community participation in the development of the Blue Mountains LEP 2015. This included submissions workshops with community groups, street stalls to disseminate information, public meetings with specialists

and council staff as speakers, networking with bushcare and other community groups, social media and web information, paid ads and stories in local newspapers and radio, and regular email updates. Arguably the Society invested more time and effort than Council in encouraging public engagement in the LEP process, using more varied and innovative public engagement strategies.

As a consequence of this experience, the Society supports:

- the inclusion of new community participation principles and the requirement for planning authorities to prepare community participation plans taking into consideration those principles;
- provisions allowing the validity of community participation plans to be challenged; and
- the proposed requirement to provide reasons for decisions. However, there should also be a clear legislative requirement to take into account/consider all public submissions made during the public exhibition period.

The Society also believes the mandatory provisions for community participation should be strengthened by increasing minimum public exhibition requirements for LEPs, and including minimum exhibition periods for SEPPs. Short timeframes for public exhibition periods undermines community confidence in the planning process, and effectively prevents community engagement.

Consideration should also be given to establishing a community engagement innovation fund whereby Councils can apply for specific funding for new and innovative community engagement strategies in terms of strategic planning processes.

Exempt and Complying development

The ongoing expansion of exempt and complying development means that a greater range of development can now be carried out without community consultation. The Blue Mountains community have completed a long and hard fought process to update its LEP to comply with the Standard LEP template. The resulting Blue Mountains LEP 2015 contains significant provisions to conserve and protect the internationally recognised Greater Blue Mountains World Heritage Area (GBMWHA) and our unique heritage built environment, both of which are so essential to the local tourism and visitation economy. On finalisation of the LEP, the NSW Government issued a press release which “recognised the unique position the Blue Mountains holds in NSW” before acknowledging:

The Blue Mountains community is rightly proud of its historic towns and villages, its local environment, all living amidst a world-heritage listed National Park....This plan provides direction for the future of the area while protecting the historic atmosphere and environment that local people love.

The Society believes the ongoing expansion of Exempt and Complying developments significantly undermines the protections contained in the Blue Mountains LEP 2015 aimed at protecting our built heritage and the Greater Blue Mountains World Heritage Area. It also undermines all the efforts put in by the community, and the Society in terms community engagement in strategic planning decisions. The Society therefore believes exempt and complying development should be limited to genuinely low impact development.

Statement of reasons for decisions

The Society supports the amendments which require decision-makers to publish reasons for decisions to give or refuse development consent (including for State Significant Development and Infrastructure, excluding smaller-scale, complying development). The statement of reasons is required to include how community views were taken into account in making the decision.

The Society regularly makes submission in terms of development applications. Unless the development is determined by Councillors at a Council meeting, which requires a publicly available Council Report to be prepared which outlines how the development was assessed, the Society, as well as other community members, have no idea how issues were considered including issues raised in any submissions. Making reasons for approvals or refusals public ensures greater transparency and confidence in decision-making, including that issues raised in any public submissions have actually been considered.

However, this requirement needs to be expanded to ensure the publication of reasons is robust and comprehensive and not merely a tick a box formality.

Early consultation with neighbours

One of the Bill's community participation principles states that developers should consult community members affected by major proposals before making an application for development consent.

The Society supports this amendment but believes that this early consultation provisions should be expanded beyond just direct neighbours to a development application. Community members affected should include community groups such as nearby Bushcare groups, and where the development impacts on local heritage, local heritage/historical community groups and Aboriginal community organisations and native title holders. Similarly, early consultations should occur, where developments have the potential to impact on local environmental values, with local environmental organisations.

Expansion of proponent's rights to seek an internal review of decisions

The EPA Amendment Bill will expand proponent's rights to seek an internal review of decisions, including for integrated development and State significant development.

The Society opposes provisions of the EPA Amendment Bill that expand a proponent's right for internal review of a decision. We agree with the Environmental Defenders Office NSW's analysis that additional internal review rights for proponents contribute to unbalance in the planning system, as there are no equivalent rights for the community or public interest groups. The proposed internal review process also does not promote transparency or accountability in decision making.

There is no policy justification for introducing internal review rights in place of existing, formal review mechanisms, including proponent initiated merits review. There is still no expansion of community rights to bring merit appeals (as ICAC has recommended). This will exacerbate the existing disparity of rights, and make decision-making less inclusive.

Community appeal rights should be restored and expanded to achieve the aims of increased public confidence, robust decision-making and improved planning outcomes.

Integrating biodiversity conservation laws into strategic planning

The Blue Mountains local government area is surrounded by the Greater Blue Mountains World Heritage Area (GBMWHA). Environmental considerations, including protection of the GBMWHA, were a key issue for the community in the development of the Blue Mountains LDEP 2015.

The Society believes the Bill should include additional amendments that better integrate biodiversity and ecological integrity as a fundamental consideration across all plan making processes. This is consistent with the Biodiversity Conservation Panel's 2014 report which recommended biodiversity priorities are embedded and integrated into strategic planning including LEPS, SEPPs and regional plans.

In particular, the Society supports amending Part 3 of the Planning Act to require plan-makers such as local Councils and the Minister to:

- make regional plans in accordance with clear environmental criteria, including expressly taking into account the aims and goals of the Biodiversity Conservation Act, Biodiversity Conservation Program, and other natural resource management planning strategies such as the GBMWHA Strategic Management Plan;
- to seek advice from OEH prior to plan-making, and a requirement that this advice must be considered by plan-makers (and this consideration be made public). This should include advice on whether the planning proposal (eg draft state, regional and local environmental plan or amendments) will exacerbate key threatening processes (KTPs) to biodiversity and how to minimise these impacts.

Lack of climate change responses in strategic planning

In a strategic planning context, climate change impacts and planning adaptation strategies are a key issue for the Blue Mountains. The Blue Mountains is especially vulnerable to bushfires, which under current climate change modelling is likely to get worse, including a lengthened fire season and an increase in high risk bushfire days. Only in 2013, the Blue Mountains lost 200 homes in a four hour period due to a bushfire.

The Society agrees with the EDO NSW analysis that a major deficiency in the Bill is that while the Bill proposes to 'complete' the strategic planning framework, there is still nothing in the Act's framework that requires planning authorities to consider and respond to climate change at a strategic level. In 2012 the Government's independent planning review panel recommended climate change be a mandatory consideration in strategic planning. However this recommendation was not taken up in the 2013 Planning Bill or the current Bill.

We support that the Bill should require planning authorities to consider climate change mitigation and adaptation in plan-making. This should include requiring that strategic plans (SEPPs, regional and district plans, and LEPs) to consider and implement adaptation responses at the strategic planning stage to deal with increasing natural disaster risk such as bushfires and floods, urban heat island effects and biodiversity corridors.

Thank you for the opportunity to make a submission.

Yours sincerely

A handwritten signature in black ink, appearing to read "Tara Cameron".

Tara Cameron
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