



Lane Cove Bushland & Conservation Society Inc

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Planning Legislation Update 2017
NSW Department of Planning and the Environment,
GPO Box 39,
Sydney 2001

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Draft Bill – Environment Planning and Assessment Amendment Bill 2017

Thank you for the opportunity to comment on the above legislation. Our Society has been in existence for 46 years and we have continually throughout that time advocated for the environment both in Lane Cove and elsewhere in the state. Planning is a major factor governing the environment and it is for this reason that we are commenting on this Bill.

Our comments are arranged on broad issues and not necessarily on actual sections of the Bill.

Objects

We support the reference to good design and heritage protection. These are important for the liveability of an area. However, the requirements contained in the amendment bill for appointees to regional, district and local planning panels (as well as for development assessment) should be reviewed to ensure that their expertise will ensure good design or planning outcomes. As proposed, the constitution of such panels could result in people with little or no expertise relevant to the matters to be decided and this should be rectified.

In addition, we consider that the amendment bill should require that all related documents, such as SEPPs and DCPs (including exempt and complying codes) must contain provisions for good design expertise, similar to those contained in SEPP 65.

Good design should take into consideration enhanced health, well-being and sustainable communities and should reference environmental performance standards.

Protection of the environment should include “***and their habitat***”.

The ESD objective should be rewritten “***to achieve***” ESD by implementing ESD principles in decision making. These principles must include the precautionary principle, intergenerational equity, conservation of biological diversity and polluter pays principle.

It should include short and long term considerations and not just “***relevant***” considerations.

There is a strong need for a statement on Climate Change to guide developers and planning authorities. Climate Change is here to stay and it must be planned for in this legislation and not ignored.

Community Participation Plans

The Society strongly supports the adoption of community participation plans and principles but we suggest that it be made mandatory and not left to the individual plans as this could be abused as a “loophole”.

We support the requirement to provide reason for decisions and there must be requirements to take into account submissions made during public exhibition periods.

Local Planning Panels

Again we support the updating provisions of governance, membership and roles of the Local Planning Panels. Reporting must go beyond the short term time frame but allow for sound decisions making, not governed by legislated time frames to achieve the answers.

In addition to the comments relating to the skills of people to be appointed to regional, district and local planning panels made previously the community membership needs to be better defined and could include people with expertise in social sciences, law and economics in addition to planning and design expertise.

Standardised Development Control Plans (DCPs)

Standardised DCPs could provide more certainty and make rules easier for communities to understand. However, enough flexibility must be allowed for local issues to be accommodated.

The community must be involved in developing any new format for DCPs.

New Step-In Powers for Secretary for Integrated Development

We oppose the provision to establish new “step-in” powers to the Secretary.

Concurrence and approval requirements ensure that expert within agencies consider the impact of developments. This expert knowledge is not always available to the Secretary.

Any delays now occurring in concurrence decisions could be remedied by increased funding to the agencies.

Independent Planning Commission (IPC)

We support the two stage public hearing process but request that third party appeal rights to the Land and Environment Court should be expanded, as proceedings in that jurisdiction are far more rigorous than at a public hearing.

Defining developments in the new SEPP means more transparency and provides more certainty for both developers and stakeholders. This should remain with the community consulted as to what types of developments are determined by the IPC.

New Internal Review Provisions for Proponents.

The Society is strongly opposed to the provisions that expand proponent's right to an internal review. These would contribute to unbalance the planning system and does not promote transparency or accountability.

There is no justification for introducing this provision over the existing formal review mechanism.

Repeal of Part 3A transitional pathway

The Society strongly supports the repeal of this section.

However we do not support the two months transitional period allowed after the passing of this Bill to allow proponents to lodge amendments under the old section (which was repealed six years ago). This Bill should completely shut down the Part 3A section on adoption.

Future amendments under s96 should be on the original application and not on any subsequent amendments that have been granted under the Part 3A transitional pathway.

Related Reforms

Code assessable developments must be restricted in the new Bill to developments that have insignificant impact on the environment. Local councils must have the ability to;

- Assess cumulative effects
- To enforce improved action and governance of independent certifiers the use of which has caused continuing problems for Councils, building owners and the community.
- Ensure meaningful community engagement on compliance with LEPs and DCPs as well as local impacts
- Mandate leading practice sustainability standards.

Therefore the development application system should remain to give Councils the ability to assess the above points.

Missed Opportunities

We also recommend the following.

- Climate Change. There is no reference to the NSW "*net zero by 2050*" emission targets. Planning taken now will have lasting effects on future generations so this reference must be included.
- There is an urgency to include responding to climate change through timely mitigation and adaptation in all development applications. There is a need to allow consent authorities to update consent conditions to keep up with new technologies and innovation.

- The legislation must restore third party rights for merit appeals to the Land and Environment Court to increase public confidence, robust decision making and improved planning outcomes.
- Limit the extent of exempt and complying development.
- Strengthen the rules applying to the integrity of Environmental Impact Statements.

We request, as is outlined in the community participation section, that we be given feed-back on the results of deliberation on all of the above matters raised in this and reasons for the decisions.

We further request that all new regulations and SEPPs be publicised for comment before they are gazetted.

Doug Stuart, for the Committee.
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