

Greens NSW Submission to Environmental Planning and Assessment Bill 2017

April 2017

Thank you for this opportunity to provide a submission on the proposed changes to the Environmental Planning and Assessment Act.

At the outset we note our strongest concern with this legislation is that it completely fails to provide an adequate framework for dealing with the climate impacts created by the NSW planning system. The draft bill also fails to put in place appropriate measures to ensure new developments are climate change ready.

Given the NSW planning system is the biggest contributor to climate emissions in this state this is an unacceptable omission. We strongly urge a rewrite of this bill to ensure that mitigating climate change and climate preparedness are given the central role they need if we are to avoid the catastrophic impacts of climate change.

The claimed intention is to “slash approval times for state significant developments such as mines, while increasing accountability”. These objectives are in opposition to each other and the draft bill fails to satisfactorily resolve this.

We will detail further concerns about the proposed bill below, some of these concerns include:

- Renaming the Planning Assessment Commission the “Independent Planning Commission” without actually making it independent
- Giving more powers for the Secretary of the Department to step in for concurrence agencies where they are said to take too long to provide approvals
- The lack of meaningful improvements in Aboriginal involvement and custodianship within the planning system
- Creating new internal review rights for proponents but not for third parties and the community
- Increasing number of DAs decided by planning

panels or council staff rather than elected councillors

- Increasing complying development through the medium density housing code and the inland housing code

There are a number of positive changes within the proposed bill, which we will detail below. These include:

- New requirements for community participation including community participation plans
- New object of the Act: “promoting good design in the built environment”
- Proponents of State Significant Development will have to show how they have consulted with the community prior to lodging plans
- Requiring planning authorities to give reasons for their decisions

Timing

These changes were announced early January and consultation closes today. We note that consultation on these proposed changes has run concurrently with the draft Greater Sydney Commission District Plans.

Given the sheer volume of materials and breadth of issues raised by the changes to the Act and these draft plans, it represents a substantial challenge for environmental groups and other stakeholders to provide submissions on these at the same time.

We also have concerns that this consultation is being undertaken while a number of local councils are being run by Administrators. This legislation is going to have a significant impact on the decision making being undertaken by local councils and communities in local government areas recently subject do not currently have elected representatives able to provide input on the



proposed bill.

This is a substantial concern and reduces the overall level of engagement with these changes.

Objects

We support the new object of the act: "promoting good design in the built environment", but note that it is substantially imprecise.

While we also support the proposed introduction of "the sustainable management of built and cultural heritage (include Aboriginal Cultural Heritage)" as an object of the act, this does not go far enough to give Aboriginal people and their communities appropriate decision making power within the planning system.

We agree with the EDO NSW that two necessary updates to the objects are to include an object to "achieve ecologically sustainable development" and to "respond to climate change". These would provide the appropriate direction for the NSW planning system well into the future.

Changes regarding community participation and consultation

The Greens NSW strongly support the requirement for all planning authorities to prepare a community participation plan. The requirements will be set out in the regulations but will include how the authority will undertake community participation for proposals and DAs.

They will need to be consistent with Community Participation Principles.

It is also positive to require decision makers to provide reasons for their decisions (see Schedule 2.1 [2], clause 19(2) (c) on page 19 of the Bill). These should be proportionate to the decision. This will substantially increase transparency and accountability in the scheme.

In principle we also support encouraging early consultation with neighbours, though noting this will occur through the regulations so it is hard to ascertain the detail of the changes. There will be trials for incentive schemes with some local councils – for instance offering lower fees

where applicants show consultation has resolved obstacles (see Schedule 1.1 [23]).

Reserve powers

We join environmental groups and other stakeholders in raising strong concerns to the proposal to grant reserve powers to the Secretary of the Department of Planning to step in if councils or other agencies are said to take too long on approvals (does not apply to SSD).

This is particularly concerning where the Heritage Council is considered since in the last few years this agency has almost never complied with the relevant timelines. These powers will be exercised in accordance with the "State Assessment Requirements" which will be a statutory policy and therefore not subject to Parliamentary oversight, and not included substantively in this consultation.

The Government has assured us as part of this process that they will also undertake a comprehensive assessment of referrals and concurrences. In doing so they must ensure that the public has full access to this assessment and that it occurs in a transparent and accountable fashion.

Complying development

We have serious concerns about the proposal to increase complying development through the medium density housing code and the inland housing code. While there is a key role for medium density development across much of NSW, achieving this through complying development risks facilitating bad design and inappropriate development and excluding local communities from having input on development in their area.

In this context, while we support the requirement for private certifiers to issue a complying development certificate to provide this and supporting details to council and direct neighbours it is at best an improvement in notification, rather than actually improving community involvement in planning.

Council decision making

Overall the most concerning aspect of the legislation where it comes to council decision making is the step to remove democratically elected

local councils from certain decisions. The bill imposes a number of additional requirements on councils regarding their planning processes and instruments, while also removing decision making power from them. This is a troubling combination. We support the provisions in the bill that mean councils will be required to develop and publish local strategic planning statements. These will need to explain LEP zoning and the DCP as well as how councils will implement higher level (regional and State) strategic targets.

We do not have significant concerns with the proposed 5 yearly LEP checks against listed criteria to determine if an update is required. We note that numbers of planning proposals received is one criteria. The council's assessment of this goes to the Minister or the Greater Sydney Commission for their determination.

We support recognition that councils will not have to prepare community participation plans if they have made one under the Local Government Act. The introduction of a standard format DCP appears positive, though this will initially be optional. We note without examples of the content of this and its impact it is difficult to properly assess.

The draft bill would result in an increasing number of DAs being decided by planning panels or staff, rather than elected councils following a direction by the Minister under Schedule 4, item [3]. This is obviously concerning and runs counter to community expectations of planning decision-makers being accountable.

Additionally we oppose the replication of the SA system where the Minister can set up a planning panel or administrator on any council that is taking too long to decide a project (Schedule 4, item [3]). The provision which creates a regulation making power to limit certain categories of complying development to council certifiers only is theoretically supported.

The bill proposes the introduction of a compliance levy to support councils in their enforcement work. This is in addition to existing rates, and the newly created Fire and Emergency Services Levy. While we support councils having the appropriate funding to undertake the activities in their remit, the constant

imposition of levies like this is a poor and ad-hoc method of achieving this.

We have been advised that the Government will also review Special Infrastructure Contributions, local infrastructure guidelines, and section 94A contributions. We support a review of these, and note that councils and local residents should be given a central and deciding role in the review.

State Significant Development

The bill proposes the renaming of the Planning Assessment Commission as the Independent Planning Commission – though members continue to be appointed by the Minister (Schedule 2.1 [3], clause 35) and there is no actual increased independence of the body. This is window dressing at best, and fails to respond adequately to the long public demand for a truly independent and accountable state level planning body.

We further note the bill removes the PAC review stage which is where the planning department submission is currently considered. This essentially means it won't even have a chance to independently review the information it receives.

Public meetings will continue to have no effect on appeal rights, while public hearings will remove appeal rights. The opportunity to remedy this problem should be taken in the final version of this. It is a positive step that SSD applicants will have to show how they consulted the community prior to lodgement.

Mining

The objective of the changes is to slash approval times for SSD and mines, there is no way of doing this that ensures the protection of environmental values and sustained community input. The draft bill proposes the transition of all existing Part 3A projects to SSD or SSI.

Unfortunately however there will still be a transition that will give big mines 2 months to put in final modifications. We expect this to be used to extend the life of the mines and increase the amount of coal they can extract in any year. This will allow them to rip it out when prices are good and hold on to their



approvals longer if they are not. This is a perverse incentive and there is no good justification for not simply ending these arrangements immediately. Close to 100 mine approvals have been granted by the PAC.

The trend of continuous approval by the PAC seems likely to continue under the "Independent Planning Commission" unless some serious steps are taken to ensure the body has appropriate guidance to consider the environmental and social impact of new coal mines and of the total emissions of the burning of all coal extracted - domestically used and exported.

Conclusion

We strongly urge the government to address our substantial concern regarding the failure to adequately account for climate change in the next iteration of this bill.

The Greens believe that addressing climate change must be central to the new planning laws. This can be done encouraging and promoting low carbon intensive development and by ensuring that development that is built is adaptable to the likely challenges that will likely come from climate change in the coming decades.

Climate change is one of the greatest challenges facing the world, it is both negligent and short-sighted for our planning system not to address the potential effects of climate change.

Should you have any questions about the issues raised in this submission please don't hesitate to contact my office on (02) 9230 3030 or david.shoebridge@parliament.nsw.gov.au



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