



Blue Mountains Conservation Society Inc

ABN 38 686 119 087

PO Box 29 Wentworth Falls NSW 2782

Phone: (02) 4757 1872 - E-Mail: bmsc@bluemountains.org.au

Web Site: www.bluemountains.org.au

Nature Conservation Saves for Tomorrow

7th September, 2012

New Planning System Team,
Department of Planning and Infrastructure,
GPO Box 39,
Sydney 2001.

Dear Sir/Madam,

Submission to "A New Planning System for NSW Green Paper"

Blue Mountains Conservation Society

The Blue Mountains Conservation Society (BMCS) is the largest and oldest operating environmental conservation group in the Blue Mountains, with some 850 members. Members of the Society attended the Planning Review consultations held in Katoomba in September 2011. The Society lodged a submission to the Planning Review consultation phase and, in February 2012, to the Issues Paper. We are now pleased to present our submission on the Green Paper.

The Blue Mountains environment

The Blue Mountains local government area (LGA) is not comparable to other LGAs in NSW. It is a "city" within a national park comprised of separate contained towns and villages developed either side of the Great Western Highway that crosses the main east-west ridgeline of the Blue Mountains.

The World Heritage listed Blue Mountains National Park and neighbouring Kanangra Boyd and Wollemi national parks draw millions of domestic and international visitors to the region every year, benefitting not just the economy of the Blue Mountains, but communities and economies to the west, in Lithgow and beyond. For this reason the protection of these world famous national parks is crucial for the economy as well as for social and environmental reasons.

Every resident in the Blue Mountains lives either close or adjacent to the national parks and are highly aware of the sensitivity of the natural environment in which they live. The awareness has been raised over many years by numerous organisations and publications such as the Blue Mountains City Council (BMCC), the local newspaper (Blue Mountains Gazette), Bushcare groups, neighbourhood centres, schools, volunteers in the Rural Fire Service, recreational and environmental groups and many others. Most people have chosen to live in the Blue Mountains knowing the risks and the need to care for their surroundings to limit those risks to themselves, their property and the environment.

The physical constraints to development in the Blue Mountains are extremely high, resulting in the need for numerous considerations before a new development can be safely completed without significantly impacting on its surrounds. The constraints include, for example:

- a highly varied and steeply sloping topography with a network of watercourses feeding into Sydney's main drinking water supply or rivers in the national parks and beyond. The watercourses are highly prone to pollution and sedimentation from stormwater run-off from developed areas that largely sit on top of the Blue Mountains ridge lines
- highly sensitive, varied and bushfire prone native vegetation which provides habitat for a range of animals and plants, some of which are threatened with extinction as a result of the cumulative impacts of development, fires, weed incursion and predation by feral or domestic animals
- state and nationally listed flora and fauna threatened species and ecological communities, including flora and fauna species unique to the area and found nowhere else
- numerous rocky outcrops and extremely nutrient poor, friable, shallow soils which are highly prone to erosion
- iconic scenic values
- internationally recognised World Heritage national parks and
- limited ability to ensure the safety and amenity of residents living in developments along north-south ridge tops or valleys, served by a single in, single out road, surrounded by bushfire prone vegetation

Blue Mountains State of Environment Reports and other documents compiled over many years by the local council and other local organisations document the cumulative impacts of development in the Blue Mountains on the environment in terms of loss of water quality, biodiversity, visitor and residential amenity and so forth. The Greater Blue Mountains World Heritage Area (GBMWhA) Strategic Plan (January 2009) lists inappropriate development adjacent to World Heritage Areas as a major impact on the integrity and values of the GBMWhA.

Local planning instruments and policies have been designed to respond to the physical constraints of the Blue Mountains and the need to protect an environment that draws so many visitors and provides significant local and regional employment. The planning mechanisms in the Blue Mountains have been developed over many years, through successive local and State governments. A key aim of the planning and development controls is to ensure there is orderly development in the Blue Mountains that does not degrade the World Heritage listed national park environment to the point that it loses its economic, social and environmental values. One example of such mechanisms is the Blue Mountains Local Environmental Plan 2005 (LEP 2005), a place-based instrument developed with strong community input which has won a number of planning awards recognising its excellence and innovation.

General concerns with the proposed new planning system

The BMCS is extremely concerned with the overall direction of the proposed new planning system as it would largely remove existing planning and development control mechanisms designed to protect the environment. The Green Paper proposes replacing planning mechanisms that have been proven over many years in the Blue Mountains to respond well to local environmental, social and economic requirements and constraints with a system in which there is minimal planning and development control, and almost no consideration of the natural environment or residential amenity. It is grossly skewed towards a very narrow interest group - being the landowners and developers who would prefer to have no regulation in the planning and development system so they can do anything they

want on their land without any need to consider impacts on the environment, community, or neighbours.

There will always be a demand from some landowners and developers for a purely “laissez-faire” system, no matter how much regulation is stripped back to the bare minimum, but it is the responsibility of local and State government to ensure that responding to that demand is balanced with the need to consider and protect the needs and requirements of the wider community and the natural environment on which everyone depends.

There will also always be a need to “improve” existing planning systems as it is impossible to reach the perfect balance between prescriptive controls and flexibility. The key aim of a planning system, however, should be to achieve as perfect a balance as possible so development can occur but in an environmentally, socially and economically sensible manner. To achieve this, a system is required that is based on prescriptive controls as well as providing some room for flexibility. It is the prescriptive nature of a planning system that provides certainty for developers and those affected by development that occurs under that system.

The new planning Act

The Green Paper proposes an “enabling” Act without prescriptive controls, that will not need to go through parliament for any change, to replace the current *Environmental Planning and Assessment Act 1979* (EP&A Act) which is an Act of Parliament containing statutory provisions. As the State level policies and plans which will carry much of what was in the Act are able to be changed whenever desired (ie through Cabinet), the ability for public scrutiny or input to future changes to State and regional policies and plans will be largely removed.

Recommendation 1: The BMCS recommends that the new planning Act remains an Act of Parliament with essential statutory provisions that ensure development occurs in an orderly manner and in balance with broader environmental, social and economic requirements. As the planning system at State, regional and local level has such a wide and deep impact on everyone, the Act should require parliamentary consideration allowing for public scrutiny before any significant amendments are made.

Objectives

The Green Paper states on page 3 that the objectives of the new Act will “*emphasise in particular the role of planning in facilitating and managing growth and economic development*”. The first objective listed on page 17 is “*promote economic development and competitiveness*”.

While the BMCS appreciates the need for the broad spectrum of economic considerations to be included in the new planning system, it is extremely concerned that the facilitation of economic growth and development has become the overarching aim and purpose of the new system, overriding every other consideration.

The new planning system would be a failure if it does not genuinely balance environmental, social and economic needs. It would also not be a system based on evidence (as the proposed system is purported to be) but one with a predetermined outcome – to approve any development regardless of its consequences and impact.

Recommendation 2: The BMCS recommends that the objectives and purpose of the new planning system explicitly state that no objective overrides another. The NSW Planning Review listed an overarching objective for the new Act that encompasses environmental, social and economic considerations (Volume 1, page 37):

“provide an ecologically, economically and socially sustainable framework for land use planning and for development proposal assessment and determination together with the necessary ancillary legislative provisions to support this framework”

As the NSW Planning review was based on 12 months of consultation and was, as the community expected, meant to inform the new system, the Government should take its recommendations that encompass all aspects of a planning system more seriously and in good faith. A good start would be to ensure objectives in the new planning system to protect the environment, for example, are not overridden by objectives to facilitate short term economic growth and development.

Community and Stakeholder Engagements

The statement that “community and public interest will be at the centre of the new planning system” and the proposal for early community engagement and a public participation charter are empty of meaning and represent pure “spin” for the following reasons:

- Community consultation (which includes consultation with environmental groups, local government, wider community and stakeholders and industry), is already enshrined in law many times over, in existing planning legislation, policies and instruments at state, regional and local level. To declare that community consultation will be guaranteed at the strategic planning level as if the Government is doing the community a favour and it is a new way of doing things is simply “spin” as that consultation already exists. What the Government is removing is any further ability for the community to have a say, knowing full well that future planning changes and future development will be approved without public scrutiny and regardless of whether a development proposal fits with a strategic plan or not. This is shown in the number of ways proposed in the Green Paper that a proponent can get their rezoning or development proposal approved, no matter how much the proposal fails to comply with relevant plans.
- The Government has already shown its contempt towards community engagement even before the new system is adopted. It has ignored numerous recommendations from the 12 month Planning Review, headed by Tim Moore and Ron Dyer, simply because they are counter to its publicised deregulation agenda or do not facilitate short term economic growth and development outcomes. The Government has therefore ignored a huge sector of the community that wants protection of the natural environment, residential amenity and orderly development based on consideration of those factors. The only community that seems to have been considered from the review are the landowners and developers that want no regulation in the planning system. This is not putting the community and public interest “at the centre of the new planning system” as claimed in the Green Paper (page 19).

Recommendation 3: The BMCS recommends that community and stakeholder engagement should be retained at all levels, as it is currently. This includes the ability for a neighbour to have a say about a development proposal that may adversely affect them (such as cutting out their light or privacy) or for the wider community to have a say over a development proposal that may, for example, result in broader or more profound impacts on the environment.

Use of information technology and electronic planning

The BMCS supports the proposal for greater use of information technology and electronic planning as a means for the public to access information on the planning and development controls applicable to a site. The process should, however, include an easy to understand explanation of what those controls mean.

Strategic Planning

The Green Paper proposes that strategic planning will become the cornerstone of all planning decisions and that strategic planning at all levels will be evidence-based prepared with local councils etc (p.27).

The BMCS is concerned that the proposed hierarchy of plans (NSW Planning Policies, Regional Growth Plans, Subregional Delivery Plans, Local Land Use Plans) are dominated by State requirements for facilitation of economic growth and development above local environmental or social considerations in local plans. The BMCS considers this approach is not evidence-based and can easily ignore the considerations of local councils and communities.

NSW Planning Policies

The Green Paper proposes replacing statutory SEPPs and Section 117 Directions with non-statutory NSW Planning Policies that can be “updated and approved by Cabinet as required”(page 32). The 10-12 policies are intended to guide planning outcomes in key areas such as housing supply and affordability, employment, agricultural resources, mining and petroleum extraction, retail development, regional development, tourism, infrastructure, biodiversity conservation and coastal management. Biodiversity conservation is the only example given of an environmental policy. Although it is understood that this is not a final list and it does not state how one policy will respond to another, the overriding message is that these policies will be largely aimed at facilitating economic growth and development.

The reason there are a large number of SEPPs and Section 117 directions in the existing planning system is because planning and development by its very nature is complex and multi-faceted. The existing statutory SEPPs and Section 117 directions are designed to provide clear direction on a wide variety of matters, including a large number of environmental issues that have been effectively addressed through these mechanisms. This includes, for example, SEPPs that ban highly polluting and environmentally destructive canal estates, or protect koala habitat, prime agricultural lands, coastal wetlands, drinking water catchments, urban bushland or littoral rainforests.

Section 117 directions include ones that also protect the environment such as the requirement that an environmental planning instrument must include provisions that “facilitate the protection and conservation of environmentally sensitive areas” and “must not reduce the environmental protection standards that apply to land within an environmental protection zone or land otherwise identified for environmental purposes in an LEP, including by modifying development standards that apply to the land” (s.117 direction 2.1).

The BMCS is concerned that the small number of proposed non-statutory policies, dominated by those that facilitate economic growth, will not effectively include the wide range of environmental considerations currently included in statutory SEPPs and Section 117 directions.

Recommendation 4: The BMCS recommends that:

- **an adequate number of policies are included to cover the wide range of environmental considerations an evidence-based planning system should be embracing. This would include policies on natural resource management, biodiversity, coastal protection, riparian protection, water quality, protection of threatened species, coastal protection etc. It would also include policies that encompass environmental protection provisions in existing section 117 directions, such as direction 2.1 that ensures environmental sensitive areas and zones are adequately protected, included in planning instruments and are not subject to reductions in environmental protection standards**
- **the weight given to one policy over another is genuinely based on evidence as the Green Paper proposes strategic planning will do. So if, for example, a proposal for housing development would reduce environmental protection provisions in an LEP, weight should be given to the policy that requires no reduction in environmental protection and consideration should be given to whether the development can be better located, designed differently etc to avoid that reduction, or whether it should not proceed**
- **the policies should be statutory to enable them to be applied with certainty**
- **changes to the policies should be open to public scrutiny and not just done by Cabinet.**

Regional Growth Plans

The Green Paper states that Regional Growth Plans will be non-statutory and comprise key components such as 10 year growth targets, a range of population growth scenarios, use of market and feasibility data to determine the likely pattern of future development, spatial interpretation of planning outcomes required to support growth based on the NSW Planning Policies and a number of other outcomes. The regional growth plans also refer to addressing cumulative impact and natural resources.

It is assumed the regional growth plans will replace the existing regional strategies in metropolitan and regional areas, and as such will replace existing biodiversity conservation plans and strategies and other environmental tools or studies that have helped inform those regional strategies.

Recommendation 5: The BMCS recommends that rather than “reinventing the wheel”, the Government should base their proposed regional plans on the existing regional strategies and seek to improve or fill in any missing gaps in those strategies based on evidence put forward by local councils and communities. The existing strategies provide growth targets and set out areas that are considered suitable for growth and areas that are less suitable or unsuitable due to environmental, hazard or other constraints. The strategies also include sustainability criteria that proponents of development/land release located outside areas earmarked for growth have to comply with in order to be considered. The Metropolitan Plan also includes directions for infill and greenfield development to prevent high cost and high impact urban sprawl.

The Green Paper does not provide much detail on the regional plans but specifically the BMCS supports the recommendations by the NSW Planning Panel regarding what should be taken into

consideration at the strategic planning level (Volume 1, page 15). This includes the following considerations:

- *Identify sensitive areas containing (or likely to contain) factors that will limit or prevent development taking place, such as:*
 - *biodiversity and other ecological constraints*
 - *significant landscapes or features, including Aboriginal cultural landscapes or sites*
 - *riparian corridors*
 - *items or localities of likely or known heritage significance*
 - *existing land uses that can be expected to place constraints on land use in their vicinity*
- *Have regard to expected population changes, including seasonal or temporary population fluctuations whether for tourism or seasonal labour reasons.*
- *Consider the scientifically anticipated impact of climate change within the footprint of the strategic planning study area and the broad measures required to mitigate its impact*
- *Have regard to the impacts of natural risks such as flooding or bushfire*
- *Identify areas where competing and potentially conflicting land use expectations are likely to arise*
- *Identify past and present human activity constraints with broader than localised impacts.*

The BMCS supports the use of catchment boundaries for rural regional planning (as suggested in the NSW Planning Review) which would encompass multiple LGAs but not necessarily match LGA boundaries. However, proper regional planning would encompass the multitude of natural environmental considerations that are better dealt with at the catchment level. Catchment boundaries could be based on existing CMA boundaries.

Recommendation 6: The BMCS recommends that in order to address the issue of cumulative impacts, the regional plans and subsequent subregional and local plans adopt the recommendations by the NSW planning review panel in Volume 1, page 49: **12. Strategic planning processes are to investigate the cumulative impacts of presently operating and approved development, both within and outside the footprint of the strategic planning area, which are contributing directly to impacts within the strategic planning area.**

13. In the designation of areas for future development, the processes are to take into account the potential to add to the existing and likely future cumulative impacts within that strategic planning footprint.

Recommendation 7: The BMCS recommends that comprehensive environmental studies and mapping are compiled for use in and to inform regional, subregional and local plans as the NSW Planning Review has noted with regard to biodiversity, for example. *It is important to integrate biodiversity issues into the strategic planning process, particularly by taking into account the flora and fauna information and mapping that has been undertaken. Integrating biodiversity issues into the strategic planning process will also enable greater clarity in the early identification of biodiversity issues that need to be accommodated in future development patterns. This may include areas where development may be precluded for reasons including biodiversity protection.* In many areas recently compiled, updated and comprehensive mapping and studies already exist that have been undertaken at the local or regional

level. For example, the Blue Mountains City Council has relatively up-to-date vegetation mapping that covers the LGA and has undertaken site specific studies to ground truth the mapping.

Many existing environmental studies in the Blue Mountains show its highly constrained environment provides limited capacity for further growth and development beyond the existing towns and villages and therefore growth is better accommodated within these centres close to existing infrastructure and services.

Recommendation 8: The BMCS recommends that adequate weight is given to the environmental and other constraints within each region to ensure that development or new land releases are not located in areas with low capability or suitability for development, such as in the Blue Mountains, beyond existing towns and villages.

Subregional Delivery Plans

The BMCS is concerned that the Green Paper's proposed subregional delivery plans, which will be informed by a consideration of the economic and market drivers of investment, are able to directly and immediately rezone areas within an LGA regardless of existing zones, controls and other considerations in local plans and policies.

The proposed State level plans counter the declaration that strategic planning will be evidence-based and compiled with local council and community input. If, as stated, they will be the principal planning tool for effecting land use change and the setting of development parameters and criteria within a region, they appear to remove local council and community control, no matter how much "consultation" occurs in their making in the first instance.

Of concern also to the BMCS is that the Green Paper proposes that even where development or land release proposals are not identified in a subregional delivery plan or before a subregional delivery plan is released, those proposals will be accommodated through Strategic Compatibility Certificates (page 54) that can also override local plans.

It appears that no matter what benchmarks or criteria are set at the strategic planning level, the Green Paper proposals ensure any land release or development proposal has some way of being accommodated, countering the purported focus on up-front, evidence-based, strategic planning.

The BMCS considers the proposed subregional delivery plans are an unnecessary and duplicative extra level of planning that should not be included in the new planning system. The subregional plans add complexity and confusion rather than making the new system more open and simple to use.

Recommendation 9: The BMCS recommends that only two strategic plan layers are adopted under the new system, being the Regional and Local level plans. These plan levels can readily deal with identification of new release areas without the imposition of an extra State Government "subregional delivery" plan. The only area in which subregional plans may be suitable is in the more highly populated metropolitan areas where a catchment-based regional plan may not be adequate to address more concentrated growth and environmental issues. Draft subregional strategies already exist in such areas.

Recommendation 10: The BMCS recommends that the location of any new release areas should be based first on the full consideration of environmental constraints rather than priority given to demand for release by landowners and developers.

Local Land Use Plans

Land in the Blue Mountains LGA currently comes under two separate LEPs, the Blue Mountains LEP 2005 that applies to towns and villages and their immediate surrounds and the LEP 1991 that applies to the areas between towns and rural areas. A process is currently underway to transfer land under LEP 1991 into 2005 so one LEP applies across the LGA.

LEP 2005 is a strongly evidence-based LEP that responds well to the local environment. It took many years to complete, involved extensive studies and investigations, frequent and genuine community consultation including a Commission of Inquiry, public hearings and workshops, and over 800 public submissions. As a result, it effectively identifies the capability of the land for development or otherwise, taking into account the highly constrained nature of the environment. Complementing the LEP is the Better Living Development Control Plan (DCP) that provides the site-specific guiding detail for development that cannot be accommodated in the LEP.

The LEP's prescriptive nature, like other LEPs, provides certainty to anyone buying land or property in the Blue Mountains. It provides certainty that the natural environment—which usually attracts a buyer in the first instance—will be protected, that orderly development occurs within identified residential, industrial or commercial areas in existing towns and villages. Land and property owners know what restrictions exist and what process to follow if they want to expand and develop their own properties.

LEPs such as the Blue Mountains LEP 2005 are a prime example of the Green Paper's proposed evidence-based strategic planning involving genuine community consultation and providing upfront certainty while still allowing for some flexibility where appropriate.

The BMCS is extremely concerned with the Green Paper's proposal to replace all existing LEPs (which are described in the paper as "rigid statutory instruments"), and probably all DCPs, with one simpler, shorter, Local Land Use Plan (LLUP) containing few prescriptive controls.

There are always areas that can be improved in a local planning and development process to make the system more streamlined and responsive, but such improvements can be done without getting rid of planning mechanisms that have served locations like the Blue Mountains well.

It is difficult to see how the proposed simpler easier LLUPs will be able to contain a strategic context, a spatial planning component, all development standards and guidelines (imposed from the State level through subregional delivery plans and sectoral plans) and detail on infrastructure, without being a huge, unwieldy document that will not be easy for residents to use or understand.

It is also difficult to see how a local plan largely stripped of meaningful local planning and development controls, and containing only planning and development guidelines and standards imposed by a standardised State plan and template, will provide any protection for the environment or residential amenity.

Recommendation 11: The BMCS recommends that local plans should remain prescriptive in order to offer certainty, and that they be comprised of planning and development controls that are suited to each local environment.

New Zones and greater flexibility within zones

The BMCS is concerned with the proposal for greater flexibility within zones and the new Enterprise and Future Urban Release Area Zone. These proposals seem to be yet another way to ensure that any areas that have not been identified through higher order plans for development or growth are still able to be released and developed. The flexibility in zones, along with the proposed new flexible development regime, would allow most development proposals to go ahead regardless of any controls in a plan.

Recommendation 12: The BMCS recommends that zones remain components of a local plan that provide certainty to residents and buyers of land. Prescriptive controls need to be retained stating what is permitted in a zone with or without consent and what is prohibited. There should not be flexibility beyond that other than through a rezoning application process that can be refused by council without appeal.

Recommendation 13: The BMCS recommends that the Enterprise Zone should be genuinely applied to areas strictly intended for employment purposes and not include the ability for residential development to occur.

The Future Urban Release Area Zone could easily just become a “speculative land bankers” zone rather than a process controlled by local councils. As with so many other proposals in the Green Paper it adds yet another way to obtain rezoning and development approval in areas that have not been identified at a more strategic planning level. The BMCS considers the Future Urban Release Zone should not be adopted.

Development Assessment and Compliance

The Green Paper proposes a multitude of ways in which development can be approved regardless of whether it complies with a local plan or otherwise. The onus on approval regardless of whether a development complies with a local plan or not makes a mockery of the claim that the new system is focussed on strategic planning that is evidence-based and involves genuine community consideration. The proposed system instead ensures that anything can go ahead regardless of requirements and directions in a strategic plan. Specifically of concern to the BMCS in the proposed new development system are the proposals for

- removal of community consultation at the development stage
- an easier, simpler State significant (former Part 3A) development assessment and approval process
- strategic compliance certificates to cover cases where a proposed development or land release does not fit with a subregional, regional or local plan, and ability to appeal any refusal of a certificate
- increase in the range and types of development exempt from approval and those that are code complying and can be approved through the highly problematic private certification process
- allowing variation of standards for development applications

- allowing appeals and reviews by proponents of a rezoning proposal even though the applicant knew what was permissible on their land when they bought it
- the automatic approval, without assessment, of all development in a local area that is within areas identified in subregional delivery plan and/or regional plans
- removal of expert State agency concurrences and approvals at the development stage
- approval of most development types through a 10 day code complying system with no merit assessment where it complies with a plan, 25 day code-complying approval system with some merit assessment for any part that does not fit with a plan, or a 50-day approval with full merit assessment if a proposal does not comply with a plan at all. In other words there is no option for refusal!

The proposed new system reduces development assessment and determination to a simplistic tick box process, aimed at approval regardless of the land's capability or suitability for such development. Considerations of environmental impacts and constraints or residential amenity, for example, are absent. The code system which will apply to most development under the new planning system will not capture impacts such as those on vulnerable or sensitive ecosystems, riparian corridors or water quality because a code system is very much based on building matters that can be standardised such as floor space ratio, building envelope or height. Moreover, those responsible for certifying such development are usually private certifiers paid by the proponent to provide that approval, and rarely would have the qualifications or ability to consider broader environmental impacts or even impacts on neighbours. The system would be reduced to one that gives attention to building form and little else.

While the BMCS recognises that there is always room to improve a system, including to make it more streamlined and less complex for proponents where there are minimal or no likely impacts, the proposed new system largely removes any meaningful development control. Over time this is likely to have a significant adverse impact on highly constrained and sensitive environments such as the Blue Mountains.

Recommendation 14: The BMCS recommends that the Government rethink its approach to the new development assessment system in order to accommodate a balanced environmental, social and economic outcome. It recommends that:

- **Complying development types and where complying development is permitted should remain limited to development that will not have an adverse impact on neighbours (eg where a block is big enough for new development to not block out light or reduce privacy) or on the environment (eg in already built up areas away from sensitive bushland, wetlands and creeks). This would limit complying development to development of a minor nature in non-sensitive environments.**
- **Neighbourhood notification of any type of development should remain, as should the opportunity for neighbours to raise concerns or objections and for those to be considered objectively by the consent authority. This would include in the Blue Mountains, the ability for the NPWS to respond to a proposal that may affect the Blue Mountains or other national parks.**
- **Broader community consultation opportunities should remain for any development that may have a broader impact in a particular location or place.**
- **Local councils should remain in charge of how development applications are advertised and notified.**
- **Local plans should not be overridden by strategic compliance certificates, or land release areas in subregional delivery plans. Rather, any change to a local plan should be considered first from a local level.**

- Merit assessment should apply to all development, not just development that does not comply with a plan. Recommendations 71, 72 and 73 of the NSW Planning Review outline matters for consideration in merit assessment including Aboriginal heritage, air quality, biodiversity, climate change projections, human health and liveability, soil, water and the water cycle, and the public interest. These recommendations should be adopted.
- Where development does not comply wholly with a plan, it should not be approved.
- The ability for a Council to refuse a rezoning proposal without the ability for a proponent to appeal or seek review should remain. Rezoning proposals are a gamble for a proponent not a right.
- Thorough environmental assessment processes for State significant development should remain
- Concurrences and referrals to State agencies for areas requiring expertise such as bushfire, water quality, riparian protection and management, or biodiversity protection should remain.

Mandatory Performance Monitoring

The BMCS supports the requirement for performance monitoring. The new system should ensure however, that issues such as environmental protection are not overridden by requirements for development targets and approvals in a given area.

SUMMARY OF RECOMMENDATIONS

A New Planning Act

Recommendation 1: The BMCS recommends that the new planning Act remains an Act of Parliament with essential statutory provisions that ensure development occurs in an orderly manner and in balance with broader environmental, social and economic requirements. As the planning system at State, regional and local level has such a wide and deep impact on everyone, the Act should require parliamentary consideration allowing for public scrutiny before any significant amendments are made.

Objectives

Recommendation 2: The BMCS recommends that the objectives and purpose of the new planning system explicitly state that no objective overrides another. The NSW Planning Review listed an overarching objective for the new Act that encompasses environmental, social and economic considerations (Volume 1, page 37):

“provide an ecologically, economically and socially sustainable framework for land use planning and for development proposal assessment and determination together with the necessary ancillary legislative provisions to support this framework”

Community and Stakeholder Engagements

Recommendation 3: The BMCS recommends that community and stakeholder engagement should be retained at all levels, as it is currently. This includes the ability for a neighbour to have a say about a development proposal that may adversely affect them (such as cutting out their light or

privacy) or for the wider community to have a say over a development proposal that may, for example, result in broader or more profound impacts on the environment.

NSW Planning Policies

Recommendation 4: The BMCS recommends that:

- an adequate number of policies are included to cover the wide range of environmental considerations an evidence-based planning system should be embracing. This would include policies on natural resource management, biodiversity, coastal protection, riparian protection, water quality, protection of threatened species, coastal protection etc. It would also include policies that encompass environmental protection provisions in existing section 117 directions, such as direction 2.1 that ensures environmental sensitive areas and zones are adequately protected, included in planning instruments and are not subject to reductions in environmental protection standards
- the weight given to one policy over another is genuinely based on evidence as the Green Paper proposes strategic planning will do. So if, for example, a proposal for housing development would reduce environmental protection provisions in an LEP, weight should be given to the policy that requires no reduction in environmental protection and consideration should be given to whether the development can be better located, designed differently etc to avoid that reduction, or whether it should not proceed
- the policies should be statutory to enable them to be applied with certainty
- changes to the policies should be open to public scrutiny and not just done by Cabinet.

Regional Growth Plans

Recommendation 5: The BMCS recommends that rather than “reinventing the wheel”, the Government should base their proposed regional plans on the existing regional strategies and seek to improve or fill in any missing gaps in those strategies based on evidence put forward by local councils and communities. The existing strategies provide growth targets and set out areas that are considered suitable for growth and areas that are less suitable or unsuitable due to environmental, hazard or other constraints. The strategies also include sustainability criteria that proponents of development/land release located outside areas earmarked for growth have to comply with in order to be considered. The Metropolitan Plan also includes directions for infill and greenfield development to prevent high cost and high impact urban sprawl.

Recommendation 6: The BMCS recommends that in order to address the issue of cumulative impacts, the regional plans and subsequent subregional and local plans adopt the recommendations by the NSW planning review panel in Volume 1, page 49:

12. Strategic planning processes are to investigate the cumulative impacts of presently operating and approved development, both within and outside the footprint of the strategic planning area, which are contributing directly to impacts within the strategic planning area.

13. In the designation of areas for future development, the processes are to take into account the potential to add to the existing and likely future cumulative impacts within that strategic planning footprint.

Recommendation 7: The BMCS recommends that comprehensive environmental studies and mapping are compiled for use in and to inform regional, subregional and local plans as the NSW Planning Review has noted with regard to biodiversity, for example.

It is important to integrate biodiversity issues into the strategic planning process, particularly by taking into account the flora and fauna information and mapping that has been undertaken. Integrating biodiversity issues into the strategic planning process will also enable greater clarity in the early identification of biodiversity issues that need to be accommodated in future development patterns. This may include areas where development may be precluded for reasons including biodiversity protection.

In many areas recently compiled, updated and comprehensive mapping and studies already exist that have been undertaken at the local or regional level. For example, the Blue Mountains City Council has relatively up to date vegetation mapping that covers the LGA and has undertaken site specific studies to ground truth the mapping.

Recommendation 8: The BMCS recommends that adequate weight is given to the environmental and other constraints within each region to ensure that development or new land releases are not located in areas with low capability or suitability for development, such as in the Blue Mountains, beyond existing towns and villages.

Subregional Delivery Plans

Recommendation 9: The BMCS recommends that only two strategic plan layers are adopted under the new system, being the Regional and Local level plans. These plan levels can readily deal with identification of new release areas without the imposition of an extra State Government “subregional delivery” plan. The only area in which subregional plans may be suitable is in the more highly populated metropolitan areas where a catchment-based regional plan may not be adequate to address more concentrated growth and environmental issues. Draft subregional strategies already exist in such areas.

Recommendation 10: The BMCS recommends that the location of any new release areas should be based first on the full consideration of environmental constraints rather than priority given to demand for release by landowners and developers.

Local Land Use Plans

Recommendation 11: The BMCS recommends that local plans should remain prescriptive in order to offer certainty, and that they be comprised of planning and development controls that are suited to each local environment.

New Zones and greater flexibility within zones

Recommendation 12: The BMCS recommends that zones remain components of a local plan that provide certainty to residents and buyers of land. Prescriptive controls need to be retained stating what is permitted in a zone with or without consent and what is prohibited. There should not be flexibility beyond that other than through a rezoning application process that can be refused by council without appeal.

Recommendation 13: The BMCS recommends that the Enterprise Zone should be genuinely applied to areas strictly intended for employment purposes and not include the ability for residential development to occur.

Development Assessment and Compliance

Recommendation 14: The BMCS recommends that the Government rethink its approach to the new development assessment system in order to accommodate a balanced environmental, social and economic outcome. It recommends that:

- Complying development types and where complying development is permitted should remain limited to development that will not have an adverse impact on neighbours (eg where a block is big enough for new development to not block out light or reduce privacy) or on the environment (eg in already built up areas away from sensitive bushland, wetlands and creeks). This would limit complying development to development of a minor nature in non-sensitive environments.
- Neighbourhood notification of any type of development should remain, as should the opportunity for neighbours to raise concerns or objections and for those to be considered objectively by the consent authority. This would include in the Blue Mountains, the ability for the NPWS to respond to a proposal that may affect the Blue Mountains or other national parks.
- Broader community consultation opportunities should remain for any development that may have a broader impact in a particular location or place.
- Local councils should remain in charge of how development applications are advertised and notified.
- Local plans should not be overridden by strategic compliance certificates, or land release areas in subregional delivery plans. Rather, any change to a local plan should be considered first from a local level.
- Merit assessment should apply to all development, not just development that does not comply with a plan. Recommendations 71, 72 and 73 of the NSW Planning Review outline matters for consideration in merit assessment including Aboriginal heritage, air quality, biodiversity, climate change projections, human health and liveability, soil, water and the water cycle, and the public interest. These recommendations should be adopted.
- Where development does not comply wholly with a plan, it should not be approved.
- The ability for a Council to refuse a rezoning proposal without the ability for a proponent to appeal or seek review should remain. Rezoning proposals are a gamble for a proponent not a right.
- Thorough environmental assessment processes for State significant development should remain
- Concurrences and referrals to State agencies for areas requiring expertise such as bushfire, water quality, riparian protection and management, or biodiversity protection should remain.

Yours sincerely,



Vice President
Blue Mountains Conservation Society

