



# Blue Mountains Conservation Society Inc

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**Nature Conservation Saves for Tomorrow**

The Hon. Brad Hazzard, MP  
Member for Wakehurst, Minister for Planning and Infrastructure  
Level 31, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Mr Hazzard

## **Submission to the White Paper and Planning Bill**

The Blue Mountains Conservation Society (BMCS) is the largest and oldest operating environmental conservation group in the Blue Mountains, with approximately 900 members. In September 2012 BMCS lodged a comprehensive submission to the Green Paper, in which many concerns were raised with the proposals for a new planning system. Those concerns have become even greater and more substantial, on review of the White Paper and draft Planning Bill, in terms of the significant adverse impact the new system will have on the Blue Mountains natural environment, World Heritage values, National Park system and residential amenity.

### **The Blue Mountains World Heritage environment and its protection under the current planning system.**

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, such as Lithgow and beyond. For this reason the protection of these world famous national parks is crucial for the regional economy as well as for social and environmental reasons.

Every resident in the Blue Mountains lives either close or adjacent to the World Heritage listed national parks and are highly aware of the sensitivity of the natural environment in which they live. 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:

- A highly varied and steeply sloping topography with a network of watercourses feeding into Sydney's main drinking water supply and creeks and rivers within the national parks and beyond. The watercourses are highly prone to pollution and sedimentation from stormwater run-off from developed areas located on the Blue Mountains ridgelines.

- Highly sensitive, varied and bushfire prone native vegetation which provides habitat for a wide 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 threatened flora and fauna species and ecological communities, including 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.
- Limited ability to ensure the safety and amenity of residents living in developments along north-south ridge tops or valleys, frequently served by a single access 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.

The new planning system as proposed in the White Paper, Planning Bill and first of the regional growth plans under the new system – the Metropolitan Strategy for Sydney, will open up vast areas of the environmentally sensitive Blue Mountains to development where currently there are environmental protection and other effective planning and development controls. The approach in the new system satisfies the primary aim of facilitating economic growth and development but leaves little room for environmental or residential amenity considerations.

The points below show how and where the new planning system deletes and/or considerably reduces meaningful environmental protections, residential amenity, community say, and orderly considered development processes that are currently contained in the existing planning system and in the local Blue Mountains planning instruments that come under that system.

## **Community Participation**

The Blue Mountains community has already been bypassed in the promised community participation at the strategic planning stage. Even before the new legislation has come into force a draft regional growth plan (the Metropolitan Strategy) has been drawn up for Sydney, including the Blue Mountains contrary to all the provisions requiring meaningful community participation under Part 2 (Community Participation) of the Bill and contrary to all the declarations in the White Paper about regional growth plans having to have significant community participation (page 73).

In view of this example, it is difficult to believe that the community participation at the strategic planning stage, that has been promoted so strongly by the Government as a reason to get rid of community or neighbour input at the development approval stage, will occur in any meaningful way. It appears to the Blue Mountains community at least, that no one will have a meaningful say at any stage.

In more general terms, the community participation process set out in the draft Planning Bill takes away far more than it gives, even at the strategic planning stage. No matter what input the community has to a strategic plan, anything within that plan can be overridden by numerous provisions built into the new system that will permit anything to occur above and beyond the provisions in those plans. The overriding of local land use zones/planning controls through Strategic Compatibility Certificates, and the use of broad simple open land use zones that only prohibit the most incompatible of uses in an area, are just some of the examples of mechanisms that can be used to overcome agreed outcomes in strategic plans.

Community participation at an abstract planning stage, where it can never be clear, settled, certain or guaranteed what development can or will occur in the future should not be used as an excuse to delete any ability for neighbours or the wider community to comment on what is developed in their local area.

### Recommendations:

- The community should be given the chance to properly participate in every stage of strategic planning for the Blue Mountains in the right order and after the legislation has come into force. This means the production of a regional growth plan covering the Blue Mountains should occur after all the proposed NSW Planning Policies have been completed and with the full community participation, in accordance with the draft Planning Bill and White Paper.
- Local residents and neighbours should retain the right to participate at the strategic planning stage and provide comments at the development approval stage where a development proposal may affect them.

## **Strategic Planning**

*Strategic planning principles*

It has been made clear throughout the draft legislation and White Paper that the primary and overriding aim of the new planning system will be facilitation of economic growth and development. The 10 strategic planning principles in the draft Planning Bill (clause 3.3) are designed to primarily promote economic development and growth. There only mention of consideration for environmental (along with social and economic) factors, is at the end of two development principles (1 and 9). There is no stand-alone principle or part of any principle that refers to environmental protection or which will create any real positive or tangible, specific environmental outcomes. The lack of any environmental protection principle will excuse any loss or reduction of existing environmental protection provisions at the strategic planning and at the later development approval stage as there will be no statutory principle by which such vital components will be underpinned. It will also prevent the inclusion of environmental protection provisions in strategic plans.

Recommendation:

The strategic planning principles should include at least one stand-alone principle on environmental protection, including protection of biodiversity, water quality and natural resources.

*Existing statutory environmental protection provisions*

Statutory provisions to protect the environment, currently contained in State Environmental Planning Policies (SEPPs) and Section 117 Directions, will either no longer exist or be translated into (non-statutory) policies and objectives in the new State level strategic plans – NSW Planning Policies, Regional Growth Plans and Subregional Delivery Plans – where, in short, they will have no legal strength.

Under the current planning system, there are a wide range of existing environmental provisions that have been instrumental in protecting the environment, such as the Section 117 *Direction 2.1 Environment Protection zones* that requires a planning instrument to not reduce the environmental protection standards that apply to the land to which that instrument applies. Another example is the SEPPs that protect for koala habitat, coastal wetlands, urban bushland, littoral rainforests or the Sydney drinking water catchment. These legally enforceable protections will not remain in the higher order plans and will be difficult to incorporate as statutory controls in Local Plans. Many of the existing environmental protection provisions in SEPPs and section 117 Directions are designed to sit above the Local Plan level as they are directions aimed at ensuring local plans (LEPs) include certain environmental protection provisions or have the ability to override provisions in local plans. These will be lost as statutory controls in the new system as they are unlikely to be incorporated into Local Plans.

Recommendation:

Statutory environmental provisions in existing SEPPs or Section 117 Directions should not be reduced or deleted. The requirements in these existing statutory planning mechanisms should be translated in full in the statutory component of the Local Plans. Where provisions are not suitable for a Local Plan they should be legislated in the Planning Bill in view of the fact that the higher order plans (policies, growth plans and delivery plans) will not be statutory documents.

## *NSW Planning Policies*

The White Paper and draft Planning Bill states that NSW Planning Policies will “set the State’s planning objectives and policies” (p 66 White Paper). They are meant to be prepared by the time the new legislation comes into force and will inform the rest of the planning hierarchy (p69) . According to the White Paper there is meant to be “a clear line of sight” between each layer of planning, meaning the policies and actions in the higher order plans are advanced into subsequent plans in a consistent manner. This is meant to be ensured through a legislative requirement that each plan gives effect to agreed outcomes in other plans further up the hierarchy (p66).

The Government does not say how the eight planning policies will give effect to regional growth plans that have already been completed (for instance the currently exhibited Metropolitan Strategy which covers the Blue Mountains). Clearly the policies and objectives in the NSW Planning Policies that are meant to guide and direct those regional growth plans like the Metropolitan Strategy do not yet exist therefore they could not guide the lower plans already completed in the strategic plan hierarchy. The Blue Mountains and entire Sydney basin will miss out on any outcomes in the NSW Planning Policies that may have provided some recognition of, or direction o, environmentally sensitive areas via the proposed NSW planning policy on environment and conservation.

### Recommendation:

- NSW Planning Policies should be developed with full community participation after the legislation comes into force and before any regional growth plans are put in place.
- All strategic plans in the strategic plan hierarchy should incorporate the policies and objectives contained in the environment and conservation NSW Planning Policy and in a consistent manner.

## *Regional Growth Plans*

The White Paper says that Regional Growth Plans will be progressively rolled out across the State following the introduction of the new planning framework (page 74). This has not happened - the entire Sydney Basin, Blue Mountains, Hawkesbury or Wollondilly LGAs already have had a regional growth plan imposed on them (the Metropolitan Strategy).

The BMCS is opposed to the Metro Strategy as it identifies the eastern half of the Blue Mountains, including thousands of hectares of currently environmentally protected and sensitive lands including parts of the Blue Mountains National Park, as a Metropolitan Urban Area. These areas have been targeted for urban release to cater for the minimum 39,000 new dwellings earmarked for parts of Penrith and the eastern half of the Blue Mountains LGAs over the next 20 years. This will result in turning the eastern Blue Mountains into an extension of the suburban sprawl of Sydney, with 10 day complying housing codes as proposed under the White Paper applying, with no community input, no environmental assessment, and no consideration of the environmental impact. This will occur at the expense of the terrestrial and aquatic environment of the Blue Mountains, residential amenity, the tourist and visitor economy of the area and the World Heritage listed national park system. The BMCS is also

extremely concerned the Metro Strategy has been imposed on the Blue Mountains without compliance with any of the NSW Government's requirements for community participation.

The Metropolitan Strategy is provided as the example in the White Paper for how future regional growth plans will be done. Its targeting of 1000s of hectares of environmentally sensitive lands as targets for urban growth, does not bode well for environmental outcomes in other regions. It is assumed land identified as Metropolitan Urban Areas in the eastern Blue Mountains will be zoned the new simple, broad and open residential zone proposed in the White Paper. The western half of the Blue Mountains has been identified as a Metropolitan Rural Areas (MRA) under the Strategy. It is also assumed these areas will also be open for possible urban release, as the Strategy declares that MRAs are also to be managed and monitored for possible expansion of the Metropolitan Urban Areas (p27).

There is no evidenced based strategic planning in this first example of a Regional Growth Plan, in the sense of information and data being used to ensure a balance between environmental protection, residential amenity and orderly development. Instead a very narrow definition of economic growth has been facilitated at the expense of all else.

#### Recommendations:

- The development of the Metro Strategy should be halted and the process re-started. The NSW Government should go through the correct community participation and strategic plan processes, as the Government has publicly committed to do in its own draft planning legislation and White Paper.
- The Blue Mountains should be removed from the Metropolitan Strategy. The Blue Mountains should not be treated as a "high growth" area and placed in a plan applicable to Penrith.
- Instead the Blue Mountains should be part of a regional growth plan with LGAs west of the Blue Mountains. The Blue Mountains should not be treated as an extension of Sydney and Penrith. The eastern escarpment was deliberately protected to provide a definitive boundary to the suburban sprawl of Sydney.
- The only areas placed in Metropolitan Urban Areas should be existing urban areas and those that have already been identified for future urban release/development such as the Growth Centres, Penrith Lakes or further stages of Glenmore Park; or areas that have had a full environmental, economic and social investigation before being considered suitable for release. This is evidence based planning, a key concept emphasised in the White Paper, which the Society cannot see at all demonstrated in the Metro Strategy.
- Criteria for any further release should be far more extensive than "infrastructure availability" and should take into account all social and environmental factors. Release should not be based on a landowner nominating their lands and the fact their land is identified in a higher order strategy, as the reasons for allowing a highly profitable rezoning.
- Any land considered for urban release should have to go through a strict process to justify its release. Clearly land that is zoned environmentally protected, as well as bushfire prone areas, steeply vegetated slopes, watercourses and rocky outcrops for example, should not be considered for urban release.

### *Subregional Delivery Plans*

As the Subregional Delivery Plans are “given effect” by the regional growth plan (and NSW Planning Policies that don’t yet exist) (clause 3.8), it appears that the future subregional delivery plan, which will place the Blue Mountains in with Penrith and Hawkesbury will do anything other than ensure the environmentally protected lands, already earmarked as urban areas in the Metropolitan Strategy regional growth plan, will be entrenched as land for future development.

The subregional delivery plans will “identify key areas for direct rezoning in local plans that cannot be overridden by local councils” in order to achieve the subregion targets and will set mandatory development parameters and identify exempt, complying and code assessed development. It is assumed the code and complying assessed development identified for the Penrith LGA will also be applied to the Blue Mountains as part of the same subregion, yet these are entirely different LGAs. It is also assumed the minimum 39,000 new dwellings by 2031 (within the next 18 years) in this “West” Penrith/Hawkesbury/Blue Mountains subregion, will be placed within the urban identified areas in the Metropolitan Strategy. As only parts of Penrith and the eastern half of the Blue Mountains have been identified as Metropolitan Urban Areas (MUA), - the target for the almost 40,000 new dwellings over the next 20 years – it is likely the Blue Mountains will be expected to contribute a significant proportion of these new dwellings, yet its stock of undeveloped land suitable for urban release is extremely limited.

The MUA covers most areas outside the national parks in the Blue Mountains, up to the mid Blue Mountains. The outcome of this target is likely to be extensive suburban sprawl creeping up the mountains, over the eastern escarpment, along every ridge line and down the currently vegetated slopes to the edges of the World Heritage listed Blue Mountains national park. The impact on the environment, residential amenity and the economy (as a tourist drawcard) will be enormous. The face of the Blue Mountains as everyone knows it will be transformed from the green lungs of Sydney and the defining edge of the city basin, to endless high impact suburban sprawl. This is not a sustainable, evidenced based approach, even on economic grounds.

#### Recommendation:

The BMCS objects to the placing of the Blue Mountains LGA with Penrith and Hawkesbury LGA in the Sydney West subregion. The applying the same code and complying development standards as developed in the subregional delivery plan to both Penrith and the Blue Mountains is clearly unsustainable. The targeting of the eastern half of the Blue Mountains for much of the nearly 40,000 new dwellings over the next 20 years, is clearly unsuitable when considering the extremely different environment encompassed by the LGA.

Subregional delivery plans are, according to the White Paper, for “high growth” areas only. The Blue Mountains is not a high growth area. It should be removed from the West subregion in the Metropolitan Strategy, and be placed within the same region as Lithgow and beyond as the gateway to those regions.

### **Local Plans**

#### *Planning Controls section*

The BMCS greatest concern with the Local Plan component of the new planning system, (which was not evident in the Green Paper), are the proposed new broad and “open” zones for a standard Local Plan (page 95), which are touted as preventing future spot rezoning (on the basis that there will be no need because most types and levels of development will be accommodated). Following on from the concerns of what will be imposed on the Blue Mountains by the growth targets and identified urban areas in the Metropolitan Strategy the new zones basically ensure an outcome of unmitigated suburban sprawl across the Blue Mountains.

The Blue Mountains Council is currently transferring the Blue Mountains place-based planning instruments (LEP 1991 and LEP 2005) into the existing Standard Instrument format. The existing LEPs contain numerous provisions that have served the area well over many years to underpin a good balance between environmental protection, residential amenity and orderly development. It will be challenging to find the equivalent provisions and zones in the existing Standard Instrument that can retain that balance, and it is expected that much will be lost in the transfer. What is coming under the new planning system and the already imposed growth plans on the Blue Mountains will however, make the current Standard Instrument transfer seem quite tame.

It is of extreme concern to the BMCS that the proposed new indicative zones in the Local Plan will strip back even the existing standard instrument to a shell that deletes environmental zones, and places development in simple far reaching residential or rural zones. The only protection zone will be a combined national parks and natural hazards zone (called environmental protection and hazard management) which is unlikely to be accepted for use over private lands (even where existing environmental protection zones occur) except in very limited circumstances, and certainly not in the areas earmarked in the regional growth plan for the LGA as future or existing urban.

The Blue Mountains is already facing an enormous loss of its environmental protection as a result of the first of the regional growth plans turning 1000s of hectares of protected lands into urban areas. This new indicative zoning as outlined in the White Paper, would act as a further tool to reduce environmental protection zones. Even if the Blue Mountains new standard LEP process which is currently occurring, is able to retain environmental zones such as E3 or E4 to replace the combined environmental protection/residential zones (Bushland Conservation and Living Bushland Conservation) in the existing Blue Mountains LEP 2005 – these will disappear under the new Local Plan.

In addition to this it is alarming that the zones are to be “open” zones, listing a few prohibited uses (that could be overcome with a strategic compatibility certificate) then allowing all else listed or otherwise to proceed. These broad simple open zones will enable most development to occur as code assessed (more major development that complies with the Local Plan) or complying (all single dwellings and dual occupancies), with no community say and no merit assessment. As noted above, the code and complying standards imposed on the Blue Mountains will be the same as those applying to Penrith – which has a totally different topography, amenity and environmental. Even merit assessed development which will be the higher impact style development that does not comply with the Local Plan only allows for a 14 day consultation period, a clearly inappropriate short timeframe. The impact on the Blue Mountains environment, including the surrounding World Heritage listed national parks would be extensive and significant.



The White Paper is silent on what will happen to most other provisions that exist in the current standard instrument and in existing local plans that help to protect the environment, such as minimum lot size provisions or environmental protection clauses. What is apparent through the White Paper is that the basic statutory land use zones will be transformed into such simple versions under the new simplistic Local Plan, almost anything can be developed anywhere.

#### Recommendations:

- The BMCS objects to the proposed simplified and broad land use zones for a new standard local plans. The zones would turn vast tracts of environmentally sensitive and protected lands into simplified residential zones (in the eastern half of the Blue Mountains) or rural zones (western half of the Blue Mountains).
- All zones should prohibit anything that is not listed as permissible rather than allowing open zones that permit all but a few listed prohibited uses.
- There should be no loss of environmental zones in any new standard local plan format.
- There should be no ability for a development that does not comply with the provisions in a Local Plan (as the only statutory plan under the new system) to be considered (as merit assessed development) on top of the already extremely loose zones.

#### *Development Guides Section*

The BMCS is concerned that the new simpler Local Plan will not be able to accommodate anything more than the most simple and basic development standards in its development guides section. The White Paper states that all councils will have to adopt the Department's model development standards within 2 years of the legislation coming into force, and applicable to all LGAs. These statewide model standards, or indeed any limited standard form of development "guide" would not be able to take into consideration the vast variations between each LGA, or in the case of the Blue Mountains the type of environment in which even minor development can have an adverse impact. It is also assumed that no standards will be prescriptive any more (just "guides").

In view of the fact that the Development Guides section of the Local Plan replaces comprehensive DCPs and prescriptive controls with "guides" and limited statewide model standards, the controls that have ensured over many decades that appropriate development compatible with its surroundings occurs in the Blue Mountains, will be lost. The Blue Mountains villages and surrounding environmentally protected bushland already earmarked for urban development are likely to transform from separated villages to suburban sprawl that ignores the surrounding environment, and the type of development that will be able to occur under the new system will be completely void of any consideration of surrounding environment or location.

#### Recommendation

- Councils should be able to retain a separate DCP document that contains the details of requirements for development, especially in highly constrained areas such as the Blue Mountains.
- Councils should not be forced to use standardised development guides that cannot respond to the variety of environments and needs of each LGA across NSW.
- Any development standard should be a prescriptive control, not a “guide”.

#### **Part 4 Development (other than Infrastructure) assessment and consent**

In its submission to the Green Paper, the BMCS expressed concern with the proposal for 80% of development to be code or complying within the next five years. The impact on the Blue Mountains environment and World Heritage national parks that surround the townships, of 80% of development in the Blue Mountains being done without merit assessment and without any community say would be enormous. Moreover, the vast bulk of development in the Blue Mountains will be single dwellings or dual occupancies under the new system. This will mean that most of the 80% of development that will be code or complying will be “complying” which applies to all single dwellings (height limit or size unstated) and dual occupancies up to two storeys. Apply a 10 day, tick box process, by a private certifier employed by the proponent of a development, is clearly not a sensible way to enable development to occur in such sensitive environments as the Blue Mountains. Already there are well documented problems with the complying and certification system. The new planning system, instead of reigning in the cowboys and carefully considering the environmental and amenity impact already caused by complying/certified development, has opened up the entire landscape to more of the same. This will have major impacts on the environment and amenity.

Code (a tick box approval within 25 days) development will cover townhouses, villas, multi-unit commercial development, mixed use, retain commercial etc development. This is not the type of development that should be treated as code assessed except in the most limited within established town centre areas.

The code and complying development standards imposed on the Blue Mountains through the subregional delivery plan will be the same standards applicable to the very different Penrith LGA and the Hawkesbury LGA and will not be suited to the highly sensitive Blue Mountains environment.. In short the NSW Government will impose on vast areas of the Blue Mountains the type of huge-mansion suburban urban estates that are heavily concreted, retain little in the way of soft surfaces, let alone natural vegetation and are entirely inappropriate in terms of impact for areas that are sloping, vegetated, rocky, crossed by streams and rivers, and highly sensitive to change. And all this can happen within a 10 (complying) or 25 (code) tick box period with no merit assessment and no community or neighbour say.

Even the proposed small proportion of development to be merit assessed appears to be more major development that would otherwise be treated as not complying with a Local Plan, and hence requiring a rezoning or under current circumstances prohibited and not able to go ahead. It is assumed the government is seeking to avoid the rezoning process altogether by ensuring a developer has numerous ways to more easily build whatever they want. The paltry 14 day public

exhibition period applied to this only area of development on which the community and neighbours will be able to comment is an insult considering they will have lost most other rights to comment under the new planning system.

The complexity and sensitivity of the Blue Mountains environment with its valleys, creeks, ridges and escarpment, heath and wet and dry forests, is extremely vulnerable to over-development and inappropriate development as documented over many years in countless studies and reports, including the Blue Mountains State of Environment reports. It is totally inappropriate to apply broad open residential zones over vast areas of environmentally protected steeply sloping bushland. Yet this is what will happen under the new planning system. To not only open up these areas to extensive urbanisation, but to also permit development that follows a simple tick box approval with no merit assessment or neighbour or community say, is a complete abrogation of responsibility towards the environment and community.

The further out along the ridgetops and down the sides of vegetated slopes development is built the more impact will occur on the Blue Mountains World Heritage National park – the backbone of the Blue Mountains economy and the lungs of Sydney. Increased fires, polluted waterways, loss of threatened species and communities such as the hanging swamps are some of the many impacts that will occur under the new planning system. Further when asset protection zones, and hazard reduction has to be increased and extended in the surrounding World Heritage listed national parks, to ensure the safety of the new estates and development sprawling along the outlying ridge tops and slopes, the impact on the environment will be enormous. The face of the Blue Mountains as we know it will change forever.

#### Recommendations:

- For the reasons given above, code or complying development should only apply to minimal impact development in areas that are not environmentally sensitive. It is highly unsuitable that 80% of development could be done in a form that excludes environmental assessment or neighbour/community input.
- The community and neighbours should have the ability to comment on development proposals that affect them, including all neighbouring proposals and any proposal that has a wider impact on the community.

#### *Strategic compatibility certificates.*

Part 1, clause 1.19m, (carrying out development that is prohibited) enables a strategic compatibility certificate to be used to directly override and ignore any zone or planning control within an existing Local Environmental Plan/future Local Plan. Clause 4.33 in Part 4 (grounds on which certificate may be issued) enables the Director General (DG) to issue the strategic compatibility certificate on the grounds that the land is recognised for development in a regional growth plan or subregional delivery plan and the local plan has not yet rezoned the land to allow such development. In the Blue Mountains these certificates would effectively enable urban development to be directly imposed on the 1000s of hectares of currently environmentally protected lands outside existing villages that have been identified as “Metropolitan Urban Area” in the regional growth plan applicable to the Blue Mountains. This is

completely inappropriate. As stated above, the Blue Mountains is not a high growth area, it should not be in a regional growth plan applicable to the Sydney basin, or in a subregional delivery plan that equally applies to the growing suburbs of Penrith. It is not an area that should be targeted as an extension of Sydney's suburban sprawl. Yet these plans, imposed on the Blue Mountains with no community say, will enable any landowner to nominate their site for development, bypassing all existing local plan controls, on the basis their land is in an area identified as "urban". This is an unbelievably undemocratic way to bypass all rules and regulations.

#### Recommendation

- The ability for landowners/developers to override prohibitions in local plans through the use of a strategic compatibility certificate should be removed from the planning legislation. This process would make a mockery of any prohibitions in a plan and of community agreed outcomes in strategic plans. No one should be able to bypass the system on the basis of broadbrush areas being called "urban" in a broadscale plan.

#### **Concurrences, consultation and other legislative approvals**

The BMCS strongly objects to the removal of concurrence, consultation and approvals from State agencies that deal with the protection and regulation of matters such as bushfire, water quality, Aboriginal and non-Aboriginal heritage, native vegetation and biodiversity.

The expertise in these agencies is vital. For example only the RFS would be able to say with any credibility whether a proposed outlying ridgetop development (made so possible and easy under the new planning system) would be in extreme danger on bushfire hazard grounds, and if built would endanger the lives of RFS personnel forced to fight fires on the frontline to protect those inappropriately located properties. Yet this life-saving power has been removed through this new planning system.. In the case of national parks, only the Office of Environment and Heritage would be able to clearly state and know the impact a proposal could have on the national parks, or on areas of threatened species such as the hanging swamps of the Blue Mountains that regulate water quality.

#### Recommendation

All state agencies should retain the consultation, concurrence and approval powers they currently have.

#### **Judicial review and merit-based appeal rights**

The Independent Commission Against Corruption in its submission to the Green Paper recommended that third party merit-based appeal rights must be available in relation to all developments, including State Significant Development. As extensively documented, third party review rights do not result in a huge number of cases coming before the court. Appeal rights are exercised in very few cases, with developer appeals making up the vast majority of merit appeals to the Land and Environment Court. In 2010-11, there were 378 developer appeals and only four objector appeals. In other words, less than 1% of development determinations are appealed overall, and only 1% of these appeals are made by objectors.

Limiting judicial review and third party merit appeals rights is contrary to the promise made by the Government that accountability and transparency would be improved in the new planning system and severely undermines community confidence in this system, the NSW Department of Planning and Infrastructure, the Minister for Planning and Infrastructure and the NSW Government as a whole.

#### Recommendation

There should also be a right for any person to go to the Land & Environment Court and seek judicial review in relation to ALL of the provisions of the Planning Bill, including decisions by the Minister and his delegates (such as the Planning Assessment Commission and officers of the Department of Planning and Infrastructure) as well as in Strategic Plans, Strategic Compatibility Certificates, and decisions relating to State Significant Development and Public Priority Infrastructure. The preparation and implementation of Community Participation Plans should also be subject to rights of review on judicial grounds. As well as, the right to request a review of a decision to grant or reject a spot rezoning request must be available to both developers and community members.

#### **Vulnerability to corruption**

The Society is also concerned that the Planning Bills will result in significantly more flexibility for decision-makers and an increased concentration of powers in the Minister and Director-General of Planning. This is highly problematic for two reasons:

1/ It greatly increases opportunities for corruption in planning and development decisions, and does not address the concerns raised by the Independent Commission Against Corruption (ICAC) in its submission on the Green Paper.

2/ It erodes the role of local government and goes directly against the Government's promise to 'return planning powers to the community' by undermining current mechanisms for local democracy and governance.

#### Recommendation

It is recommended that the Planning Bills be audited by ICAC before they are finalised, and that all ICAC recommendations to minimise the risk of corruption be adopted, with the Bills changed accordingly.

Lastly we hope the Department follows its own requirements and takes all the BMCS concerns and objections into account. The profound effect the White Paper and Planning Bill will have on the Blue Mountains is of serious concern to the Society and the Blue Mountains community.

Yours sincerely

A handwritten signature in black ink that reads "P. Ridgeway". The signature is written in a cursive style with a large, sweeping initial "P" and a long, trailing flourish at the end of the name.

Peter Ridgeway

President

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