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Nature Conservation Saves for Tomorrow



Planning Reforms

GPO Box 39

Sydney NSW 2001

22 January 2008

Dear Sir/Madam,

Re: Improving the NSW Planning System

Thank you for the opportunity to comment upon the discussion paper 'Improving the NSW Planning System'.

Our submission is enclosed.

We would appreciate further input into the process and would welcome an opportunity to discuss our ideas with you.

Yours sincerely,

Lyndal Sullivan

For the Management Committee

Blue Mountains Conservation Society response to the NSW Government discussion paper: *'Improving the NSW Planning System'*

Introduction

The Blue Mountains Conservation Society (BMCS) is the largest community based environmental organization in the Blue Mountains. It was founded in 1961, and now represents over 850 adult financial members. BMCS has a long standing working relationship with the Blue Mountains City Council, the various catchment management authorities, the National Parks and Wildlife Service (now DECC) and the Department of Planning in particular during the review of the Sydney Drinking Water Catchments REP.

The Society has been actively involved in the development of Blue Mountains Local Environment Plans 1991 and 2005 and in the Commission of Inquiry preceding the 2005 Plan. Members brought detailed local environmental knowledge to these processes. In addition to these planning activities, BMCS has been actively involved in a range of activities to help conserve the natural environment of the Blue Mountains. This has involved members in a range of efforts from monitoring development consent conditions, to producing local native plants, to hands on restorations works.

BMCS welcomes the opportunity to make a submission on the proposed reforms to the NSW planning system.

Whilst we agree that the NSW planning system can be improved, we are generally disappointed with the proposed reforms. In particular, like the 2005 changes to the Environmental Planning and Assessment Act, the latest proposals are clearly aimed at satisfying the demands of development and rezoning proponents rather than raising the quality of planning and development outcomes. The balance is too much in favour of speedy urban expansion, and not ecologically sustainable development. This threatens to undermine community confidence in the NSW government's commitment to ecologically sustainable development.

Further, the reforms do not recognise and accommodate the unique circumstances of local government areas such as the Blue Mountains. The Blue Mountains LGA is uniquely situated in the Greater Blue Mountains World Heritage Area and it is apparent that the provisions of the proposed planning reforms can only lead to degradation of this area through the negative cumulative environmental impact of development. The special character of the Blue Mountains area is reflected in the local LEP, which has been widely recognised as 'visionary'.

Our submission is organised into three areas: objections, major recommendations, and detailed comments on each chapter of the discussion paper.

OBJECTIONS

Specifically, we object to:

1. The removal of meaningful environmental safeguards, contrary to the discussion paper's definition of a good planning system (p.7, 13), and contrary to the object of the EP&A Act, to encourage ecologically sustainable development [s5(a)(vii)]
2. The removal of provisions of community consultation from most rezoning and development applications, contrary to the discussion paper's definition of a good planning system, and contrary to the Objects of the EP&A Act, [S5(c)] which is to *provide increased involvement in public participation in environmental planning and assessment*.
3. The requirement that 50% of development proposals, be assessed as 'complying' or 'exempt' developments.

MAJOR RECOMMENDATIONS

1. BMCS proposes that the EP&A Act be amended to impose a statutory obligation to apply the principles of Ecologically Sustainable Development.

Although the NSW government has made commitments to promote ESD in intergovernmental agreements, there is no require to apply these principles in all planning situations. Part 3A of the Act does not even require ESD principles to be considered.

Given the rate of destruction of natural systems, ESD should no longer be a 'consideration' but a statutory obligation to apply.

2. Exempt and Complying Development.

BMCS proposes:

- That environmentally sensitive areas be excluded from the ambit of **exempt and complying development**.
- That the Blue Mountains LGA be recognised as one in which a significant proportion of the area is environmentally sensitive.
- That the uniform target for 50% of development proposals, to be dealt with as 'complying' or 'exempt' developments be replaced with targets which are individually tailored to the situation in each LGA.

The BMCS is extremely concerned with, and objects to the requirement that 50% of development proposals, including single dwellings, be assessed as "complying" developments.

The environmental value and fragility of the Blue Mountains places a high obligation on consent authorities to carefully take the environmental impacts of large and small developments into account before considering whether to approve a proposal or what conditions to place on it. This could not be done to a satisfactory standard if those developments are considered "complying" and private certifiers, (employed by the proponent, with no environmental expertise and no mandate to make merit assessment) are given the role of assessing and approving a proposal.

Such a process reduces development assessment and approval to a tick-box form of self-regulation - a process that has already been found to be problematic in far less environmentally fragile areas. The development assessment process needs skilled, professional and strictly independent environmental assessment to ensure that areas like the Blue Mountains are not degraded by serious irreversible impacts over time.

The principles and ideas outlined above apply equally to almost all LGAs in NSW. Coastal LGAs, LGAs with significant riparian corridors, LGAs economically dependent on local environmental tourism features and LGAs containing significant remnant ecological niches are further examples. The diverse and highly numerous ecological systems of NSW cannot be squeezed into generalized state-wide guidelines.

Impact of the complying development changes on the Blue Mountains

The proposed expansion of exempt and complying development will mean the removal of environmental assessment for a significant proportion of small and residential developments, under local planning instruments and development control plans. This will inevitably lead to a negative cumulative environmental impact.

The discussion paper repeatedly claims (or assumes) that environmental impact is proportional to the cost or size of a development. This is clearly not the case in the Blue Mountains LGA where even small developments can have a high impact as a result of the sensitivity of the landscape.

The Blue Mountains LGA comprises a series of towns located along ridge tops squeezed between the Blue Mountains National Park, part of the Greater Blue Mountains World Heritage Area (GBMWA). Most pressure does not come from large developments but from the cumulative impacts of large numbers of single residential developments located on or close to the bushland fringe. It is here that the combination of poor location and design can lead to the "death by a thousand cuts" to the Blue Mountains National Park and GBMWA. The steep slopes, highly erodible soils, creeks vulnerable to siltation and pollution, fragile native vegetation, high bushfire risk, and ever increasing pressure on the habitat of threatened fauna and flora in the Blue Mountains place an obligation on consent authorities to give extremely high consideration to environmental impacts of development proposals.

Blue Mountains State of Environment (SOE) Reports, compiled since the late 1990s, have documented increasing pressures on the terrestrial and aquatic environment over the years as a result of urban development moving further towards the fringe of the National Park and GBMWA. The listing of the GBMWA was also reliant on the understanding that urban impacts would be controlled through environmental planning

instruments (pg 246, *the Greater Blue Mountains World Heritage Nomination, NPWS 1998*).

For the above reasons any imposed reduction in standards of development assessment in the Blue Mountains LGA would be an abrogation of responsibility by the State Government and would risk delisting of the GBMWSHA.

3. Community Consultation

- BMCS proposes that opportunities for **community consultation** be established in this reform process; with forums held across NSW and legislation delayed until the responses of the forums have been assessed, and;
- That minimum standards for public participation be established in all development assessment and plan making processes.

Only the development industry sector has had an opportunity to be involved in the development of these proposals. The rest of the community has been largely excluded.

The discussion Paper cites the *New Ideas in Planning Forum* (14 August 2007) as 'an opportunity for people to discuss the operation of the planning system'(p16). This implication that it was a reflection of community opinion, is quite staggering given that it was held on one day in the City of Sydney during the business week at \$250 or \$300 per head. How many community organizations across NSW can afford to pay that price, plus transport, maybe accommodation and compensating a forfeited day's wages for the attendee? It is not surprising that this forum would have made recommendations that assist the smooth passage of developments from an industry perspective.

BMCS recommends that a series of free public forums be held across NSW to promote genuine public discussion of these proposals, or to discuss a revised draft emanating from responses to this discussion paper.

Detailed Comments upon the Discussion Paper

1. The Need for Reform (Chapter 2)

The case [for the need - delete] for reform is built upon statistical data of undue delay by local councils in the processing of DAs. Undoubtedly some councils are slow and inefficient in their administrative procedures, but the answer to this problem is to reform these council procedures, and not the whole planning procedure of the state. If some councils can perform creditably under the current system then why not all? The statistical examples given are all also open to question. The mean time taken to process DAs is a more revealing statistic than the presented average times, but this data is not provided. Finally, and most importantly, many DA applicants provide insufficient information, are poorly informed and advised or have a non-compliant attitude towards planning regulation and planners. No amount of planning reform will prevent these sorts of applicants from causing delay.

BMCS is also concerned that there is no discussion in this section of the Discussion Paper about the need for councils, in their assessment of a DA, to take sufficient time in

order to adequately consider it. Applicants are entitled to have their applications duly processed. Considerable emphasis is given to council delays in preparing LEPs or assessing DAs, but the Discussion Paper offers no guidance or discussion about what actually constitutes sufficient time, except to refer to "taking only as much time as is necessary". If the criteria used to criticise councils is almost purely a time based one then some discussion about optimal times would appear to be relevant and needed. The proposed reforms, tailoring process to complexity, do not address this issue and offer no guarantee that in fact the time taken to assess DAs or prepare LEPs will not increase.

BMCS is concerned about the Discussion Paper's analysis of community input. The community are entitled to input into the planning process as interested parties, occasional stakeholders in the planning system and via the democratic process and their financial support of the system. The Discussion Paper does not acknowledge the important role of the community. Furthermore, as previously discussed in this submission, a small DA proposal can have as much or a greater adverse environmental impact than a much larger one, and so community input, which also often and usually contains much local detailed knowledge, is important to the proper analysis of the DA by the relevant council. To presume that a small sized DA will always have no or minor environmental impacts, as the Paper does, by questioning the degree of allowable community input into small and large DAs ("one size fits all") is not borne out by experience. Finally, the process of community input is not always "largely adversarial", and no evidence is produced to support this assertion. Community input is often well intentioned and of high quality, and can contribute significant information and improvements to a DA.

BMCS commends the use of "Sustainability" as a principle for developing a better system. Decisions involving serious environmental consequences require application of the Precautionary Principle, which advocates that avoiding environmental damage is the primary consideration in such situations, and not just adopting a "cautious" approach. "Transparency" and "Accountability" are also commended. "Efficiency" is also commended, but BMCS does not believe that a "streamlined" system is always efficient. It is just as capable of producing bad outcomes as good ones, and arguably more of the former, because of a lack of due process and inputs. An efficient system makes good use of resources and time and produces planning outcomes that are sustainable and do not require expensive remediation. "Simplicity", as in a simple system, is a worrying principle. Planning considerations, DAs and LEPs are complex and require scrutiny. It is not a prime objective of a planning system to make sure that the process is user-friendly, but to make sure that good outcomes are achieved. The rights of DA applicants should be respected, but their right to a user-friendly system is not sacrosanct. The principles of "Objectivity" and "Consistency" are commended, but BMCS does not believe that "Equity" automatically involves balancing economic, environmental and social considerations. No environment, no economy.

2. Plan-making (Chapter 3)

2.1. Overall approach

Streamlining required

It is agreed that the aim should be to reduce the number of spot rezonings and instead redirect these resources to strategic and comprehensive planning. Unfortunately the “outcomes” in recommendation P10 do not reflect this.

The BMCS agrees with the need to streamline the plan making process and delegate powers from the Minister to local government.

The problem of lengthy delays at the State level during the final stages of the LEP process is well understood by the Blue Mountains community. The Blue Mountains LEP 2005 was stalled in the Dept of Planning (DOP) and the Parliamentary Counsel (PC) for about 3 years before it was finally gazetted late in 2005.

Gateway process unclear

It is unclear who will make the decisions for the ‘gateway screening system’. The BMCS can see some benefit if the local council is the decision maker because this process would allow for:

- a rapid rejection of inappropriate zonings;
- early identification of the need to engage state agencies;
- using existing agencies (rather than setting up new panels etc)

2.2. Transparency, accountability and community consultation

The BMCS objects to those recommendations on rezonings and LEP formulations which do not ensure a transparent and accountable process, where the community has an opportunity for meaningful involvement.

Lack of opportunity for community input

It is not clear whether there will be any opportunity for community involvement in major rezonings/LEP changes as the locally elected council will be largely by-passed through this process. Local knowledge and understanding of issues that the council and community bring to the planning process do not appear to have a place.

Recommendation P6.3 will allow the NSW government to directly amend an LEP without public consultation and an open process of debate, which is not ‘a system of accountability’ as is claimed.

Lack of detail in "concept-stage" consultation and approval

The BMCS objects to the proposals to relegate consultation to the concept stage of changes **only** (p42). Whilst this early consultation is the most important, it is crucial that the community also has an opportunity to review and comment on the detailed legal instruments. This is where detailed local knowledge can identify unforeseen problems in the implementation.

Pages 45 states that “in some cases....a draft of the legal instrument may also be placed on community consultation”.

The BMCS also objects to the recommendation P3 that approval may be given in principle (at the gateway stage) before full details of a proposal are provided. This prevents any proper determination of the suitability of a proposal in a particular location.

2.3. "Minor" rezonings

No definition of "minor"

At this stage there is no indication as to what is considered to be minor rezoning and who will decide what is a 'minor' amendment.

Removal of notifications

There is also no indication as to when or who will decide when only an adjoining owner should be notified of a 'minor change to a zone boundary' (as in the example on p42). Apparent 'minor' changes can have a significant effect on the protection of creeks or significant vegetation communities that, for example, may be of no interest to a neighbour but of major concern to a local bushcare group.

Section 73A expansion

An expansion of matters to be dealt with under Section 73A is opposed. This process to amend an LEP is not transparent nor does it offer any opportunity for community consultation. Section 73A should remain a clause that deals with truly minor errors as is currently the case. In particular such a clause should not operate in environmentally sensitive LGAs such as the Blue Mountains.

2.4. Environmental Protection

Reduction in Environmental Protection

The BMCS is concerned that meaningful environmental considerations do not appear to be included for all rezoning and LEP proposals. In particular:

- Minor LEP amendments to be included in Section 73A (Recommendation P3). There is no provision in this process to assess the potential for significant cumulative environmental impacts of individually small changes.
- The proposed state wide 'guidelines' for LEPs (recommendation P9) will lower environmental standards in areas such as the Blue Mountains. The LEPs and DCPs covering this LGA have developed standards to safeguard this sensitive area. Compliance with State policies proposed in this recommendation is clearly a euphemism for reducing all developments in NSW to the 'lowest common denominator'. Page 44 clearly states that it will be prohibited for DCPs 'to raise standards above those set within State codes'.
- There is no guarantee that those rezonings or LEPs assessed as State or regionally significant will use the environmental safeguards developed by existing LEPs or other strategic plans developed by the local council and community. These rezonings/plans (recommendation P6.3) to be assessed by the State have no guarantees to involve the community or council experts, in order to take account of local environmental factors.

- The removal of REPs. BMCS strongly urges the retention of REP 20. This is an important environmental safeguard to ensure the protection of this important regional catchment.

Reduction in DCP standards

The discussion paper argues (page 34) that DCPs should 'not raise standards above those set within State codes'. The BMCS objects to this proposal as it is clearly a retrograde step and does not meet the criteria of a good planning system as outlined in chapter 1 of the document: viz:

- *A system is one in which community members participate actively in developing plans and have ownership of them* (These reforms prohibit local communities from developing better standards).
- *Adopts practices and processes for development assessment that encourages sustainable development* (The practices for sustainability need to be of higher standard in more environmentally sensitive areas ... but these reforms do not permit this)
- *Has clear and consistent ruleswhich ...can respond to change* (This will not be permitted unless the change is State wide and State approved)

2.5. Temporary rezonings

The BMCS objects to the use of "temporary" rezonings.

Lack of justification for temporary rezonings

There is no justification given for why a proposal can be considered a temporary or permanent rezoning. Its only advantage appears to be to enable a highly controversial or high impacting proposal to go ahead on the grounds that it is only going to be temporary.

Problem of changing temporary rezonings back again

Once any rezoning has been approved, regardless of its status, it is virtually impossible to reverse the decision as it is seen as removing "development rights" even though such rights do not strictly exist. The NSW Government would be very familiar with the problems of so-called "backzoning".

2.6. Assessment and targets

Speed of approval for rezoning proponents not quality planning outcomes

None of the 'Measurable Outcomes' recommended in P10.2 are measures of good planning outcomes, rather they are just measures of how fast approval is granted.

Reduced processing times and numbers of REPs (p48) are not a measure of a good planning system unless there is a good planning outcome also. A good planning system, in the words of the discussion paper (p 7) should produce more "sustainable development". Instead of these crude 'output measures', there should be highly refined criteria to measure 'sustainable outcomes'.

3. Development Assessment (Chapter 4)

3.1 Overall Approach

As with the approach to plan making, the BMCS is extremely concerned with the approach taken in this section of the discussion paper and objects to most of the assumptions and proposals made.

Removal of DA assessment from councils

It appears that DA assessment is largely removed from local council as an independent, expert and accountable body, to State appointed panels or Ministerial level, with no clear accountability attached. The BMCS objects to such an approach.

Streamlining proposals - State and Panels

It is unclear how the State-wide panels and processes proposed will improve the development assessment system except to make the process smoother for larger developers who operate across many LGAs by enabling them to bypass individual councils and go directly to the Minister or state or regional panels (Planning Assessment Commission (PAC) and Joint Regional Planning Panel (JRPP)). All proponents should receive the same treatment regardless of their size or influence.

DA Assessment based on local planning provisions and controls limited

Comprehensive, proper and appropriate environmental and social assessment is limited to only a small proportion of DAs that could be considered "local". For most DAs an assessment based on local planning instrument provisions and controls does not appear to be required. Strategic, major, State or regionally significant, "minor" or complying developments appear exempt from meaningful local council considerations.

Restriction on conditions of consent

The conditions of consent to be imposed will be limited yet it is often the conditions that ensure a proposal does not have a serious impact on the environment or amenity of an area. The BMCS considers that councils should be able to impose as many conditions as they consider necessary in order to ensure the best outcome.

Location as important as size and cost of development

The level of assessment will be based on the size of development not the range of environments or circumstances in which they will be located. This can result in a minor development having a major impact, especially when cumulative impacts are considered, as raised at the beginning of this submission. This issue is of particular importance in environmentally sensitive LGAs like the Blue Mountains.

Checklists and time extensions supported

As the primary reason for delays in assessment is the inadequate information provided by proponents with DAs submitted. The proposals to use checklists and an extension of time to reject inadequate DAs are therefore supported by the BMCS.

3.2. Objectives

The BMCS supports three of the four objectives outlined on p49. However it challenges the third objective that is based on an assumption that the size and scale of a

development is proportional to its environmental impacts. The extent of environmental assessment should be appropriate to the sensitivity of the location and the assessed risks. In the Blue Mountains for example, very small developments such as a fence or garden shed in a Blue Mountains Swamp can have significant impacts on a threatened ecological community, a wildlife corridor and also on groundwater.

3.3. Recommendations

A1 Decision making bodies

It is unclear how the panels proposed will be independent. Part time appointees to the PAC or JRPPs are likely to be working in the private sector making it difficult to ensure they are independent and free of any conflict of interest. There appears to be no mechanism in place to ensure there is accountability. There also appear to be no mechanisms to ensure environmental factors are taken into account.

A2 Ministerial determinations on critical infrastructure and State significant projects

This should be a transparent process with predetermined criteria. Without predetermined criteria (which has been subject to community debate) there can be no avenues to exercise accountability. Lack of accountability is an existing problem under Part 3A of the EP&A Act.

A3 Planning Assessment Commissions (PACs)

PACs should always include an independent person with environmental expertise who determines whether there are significant environmental impacts. It is not appropriate that the Chair determines when an environmental expert is required, as the Chair would not necessarily have the ability or expertise to understand the need for such an expert.

A3/A4/A5 Planning Assessment Framework

It is unclear whether all bodies assessing DAs will be required to apply objectives and controls under relevant LEPs and DCPs. In particular where LEPs and DCPs contain environmental protection provisions, these should be complied with.

A9 Inadequate DA information

The BMCS supports the recommendation to extend the period in which councils can reject an inadequate DA from 7 days to 14 days.

The BMCS also supports the preparation of guidelines and checklists by Councils, however these must be able to be tailored to the requirements of the local environment and the LEP. The studies required should be included in the local LEP. Checklists should not be 'standardised across the State' (as suggested on p 57) which could bring all councils down to the lowest common denominator as it is impossible to take the full range and complexity of environments into account.

The BMCS proposes that an amendment be made to the EP&A Regulation to enable any DA to be rejected if the information required by the relevant LEP or DCP (or council guideline) does not accompany the DA. **Such a simple straightforward and logical step would do more to decrease the time taken to assess a DA than any other proposals made in the discussion paper, as the lack of proper or adequate information supplied by a proponent is one of the primary reasons for lengthy assessment timeframes. The NSW Government is aware of this problem.**

The BMCS objects to the introduction of a State-wide regulation which would limit the amount of information that a council can request. The information required for a DA does not only depend on the value or size of the development, it may depend on its location or nature of use as addressed above.

A10 ePlanning

The recommendations to encourage electronic lodgment and tracking are supported.

A13 Standard Conditions of Consent

The BMCS strongly opposes any action that would prevent Councils imposing additional enforceable conditions appropriate to the site for environmental protection. State guidelines should be a **minimum** requirement, not the 'lowest common denominator'. Improved environmental safeguards should be permitted and encouraged.

A15 Extension of Assessment periods

The BMCS supports the extension of statutory assessment periods for designated and medium scale developments. However longer determination periods are required if the NSW Government is genuinely wishing to allow for community consultation, and these periods should only commence after all documentation is available to the public.

40 days should be the minimum time for DAs not requiring public exhibition where the environmental and social issues are complex because of the location.

Similarly 'small scale' and "medium scale' development requiring exhibition would need longer in the Blue Mountains to enable all relevant parties to be consulted and expert advice to be considered; 60 days should be adequate for both.

90 days is better but not adequate for development of the complexity of designated developments.

A17 Meaningful Community Involvement

BMCS supports the production of consultation guidelines by the Department of Planning. However these should be a **minimum** level to be met by all councils, not a maximum, and all councils should be encouraged to improve the level and scope of consultation.

The discussion on page 60 demonstrates the failure of the NSW Government to recognize that it may be the location of a development rather than its scale that is relevant to the degree of environmental impact. We disagree with the statement that a '*small scale DA is only likely to have a direct impact on the adjoining properties, if at all*' (p60). Any residence can have native vegetation and trees removed, and if built close to a creek line or a swamp will have a significant impact on downstream areas.

A18 Assessment and targets

As with plan making, none of the 'Measurable Outcomes' recommended are measures of good planning outcomes, rather they measure the speed with which a proposal can be approved regardless of its appropriateness to a location and/or design.

4. Exempt and Complying Development (Chapter 5)

4.1. Overall Approach

The proposal to expand the scope of exempt and complying development is of major concern to the BMCS. It will inevitably lead to environmental degradation of the local environment and ultimately the surrounding Blue Mountains National Park and Greater Blue Mountains World Heritage Area (GBMWhA).

The expansion of exempt and complying development will enable development to occur in environmentally sensitive areas without independent assessment where it would have a high impact regardless of size or cost. For example a single dwelling in or adjacent to a hanging swamp or wetland which is of extreme sensitivity can be approved by a private certifier employed by the proponent using only a tick-box self regulation method.

Targets for complying development do not consider the different environmental sensitivities of different council areas, and the impact this approach will have on councils such as the Blue Mountains which are largely comprised of areas of high environmental value, fragility and sensitivity as discussed at the beginning of this paper.

The justification for the expansion of this already problematic system is highly questionable as it is based on speed of approval for proponents alone, with no other consideration.

4.2. Recommendations

C1 Expansion of the ambit of exempt development

The BMCS agrees that the exempt list should include internal changes or fittings within the existing footprint of approved buildings (e.g. solar panels).

The BMCS strongly opposes the expansion of exempt development through the use of state wide mandatory 'guidelines'. Any definition of what comprises an 'exempt development' must be simple and should not rely on expert environmental knowledge. It therefore should be reduced to permitted locations (as depicted on a map) or to the simplest definitions of types of structures such as internal or fittings within existing footprints.

As stated above, type and size does not determine the extent of environmental impact. Certain locations should exclude developments from being exempt, even though they may be small and appear to be 'sustainable' (e.g. water tank located in the buffer zone of an endangered Blue Mountains Swamp).

This Discussion Paper (p73/S5.4) demonstrates the lack of understanding of what gives rise to environmental impact and failure to take account of cumulative impact in a region like the Blue Mountains as stated above; viz

- Location of the development – proximity to a watercourse, proximity to groundwater,
- Materials proposed in development – toxicity of CCA timbers above a sandstone aquifer,
- Design – solid fences destroy wildlife corridors

LGAs with environmentally sensitive areas such as the Blue Mountains should be permitted to exclude all developments from 'exempt' where there is potential for environmental impacts for reasons of location, design or materials used.

C2 Expansion of the ambit of complying development

The BMCS strongly objects to the expansion of the ambit of complying development through the use of state wide mandatory codes/'guidelines'. The claim that such codes could guarantee minimal environmental impact cannot be proven. As stated above, when approval for a proposal, is reduced to a tick-box form of self-regulation based on generalised state-wide codes, it would be almost impossible to ensure that environmental impacts are adequately considered.

Private certifiers employed by the proponent do not have the expertise, interest or obligation to consider the environment and are unlikely to do so, as is already the case. The Blue Mountains in particular is a highly vulnerable area that is likely to suffer serious consequences from the cumulative impacts of large and small single dwellings that have been "self-approved" under such a system.

C3 Complying Development Expert Panel.

The design of the code to ensure all complying developments have minimal environmental impact requires a high level of environmental management expertise across all situations in NSW. No environmental expert has been proposed for the Complying Development Experts Panel (p75).

C4 Statewide Codes Mandatory default code

The BMCS objects to the development of statewide codes based on the nature of the development rather than its location. The only development types that could be uniform across NSW are matters involving the fittings internal to a building or within its existing footprint.

C5 / C6 / C7 Local Codes, Mandatory code and levels of Complying Development

Local government areas with extensive environmentally sensitive land should be able to develop their own local codes with higher standards than the state-wide code. In particular LGAs such as the Blue Mountains in which most development is likely to impact directly on the National Park and World Heritage listed Areas should be provided with such an ability. The NSW and Federal governments have an international obligation to retain the values of these areas and the areas should therefore no be subject to the same level of complying development as required in less environmentally sensitive LGAs.

The application of a code to ensure environmental sensitivities are recognized requires environmental expertise. Private certifiers (PCs) do not necessarily have environmental expertise and are unlikely to give the environment consideration if doing so would negate or reduce the ability of the proposal they have been paid to certify to be approved.

C8 Non-compliance

Subjective assessments involving 'opinions' of what is a 'minor' non-compliance is not appropriate for private certifiers. They are highly unlikely to have the level of skill or accountability mechanisms for such assessments. It would also create a conflict of interest situation.

The merit assessment required to condition an application to become compliant is also opposed for the same reasons (C8.4).

The limited 7-day opportunity for council to challenge a Provisional Complying Development Certificate (C8.2) is a clear bias towards approval. This short time frame could only be justified if the state government was to fund additional position/s in each Council and provision was made to circumvent the normal exploitation of the Christmas and other holiday period by extensions of time in these periods.

C11 Inclusion of sensitive areas

This recommendation completely undermines the Blue Mountains LEP and the BMCS strongly objects to it.

The inclusion of environmentally sensitive areas in a code would require some level of environmental assessment to be made. This cannot work if private certifiers are unable to recognize the relevant environmental values (threatened species or communities, buffers, wildlife corridors, groundwater issues, etc). Private certifiers would also need to have a basic level of local environmental knowledge to know when a development application comes outside of the requirements for complying development and should be referred to council as a local development.

In the Blue Mountains, private certifiers are currently unable or unwilling to even assess whether basic sediment controls comply with standard conditions of consent. It is unclear how it can be anticipated that they will be able to assess the extent of a significant vegetation community and whether the buffer required by the LEP complies, or even what is intact native vegetation for example?

Again we question the statements made on p78 that imply that single dwellings could be undertaken 'without any impacts on the environmental sensitivity of the area'. This is possible, but can only be assessed by an experienced environmental scientist/manager who can ensure that the location, and design detail guarantees protection. Such DAs have to be assessed individually by independent experts.

The other example of swimming pools and metal clad fences in fire prone areas is justification of the need for proper environmental assessment, rather than need for a private certifier ticking boxes. Almost all bushfire prone areas in NSW would also have high environmental values. A metal clad fence may be good for the protection of a house but it can be highly destructive to wildlife by fragmenting important and dwindling corridors; hence the use of solid materials and its location needs to be properly assessed.

It is suggested (p78) that the zoning process is designed to prohibit development in areas where there will be an environmental impact. This is less likely to be the case under the range of planning reforms introduced in NSW over recent years, in particular under the new standard LEP template where EP zones are limited in use and scope.

There are also impacts on these sensitive areas by urban and other development upstream and upslope. Hence there is a need to have "buffer zones" around sensitive areas. There is extensive literature on 'edge effects' and the impact of urban development. For example, in the Blue Mountains a study was undertaken by Judy and Peter Smith entitled *Buffer Zones for the Protection of Sensitive Vegetation Units in the City of the Blue Mountains* (December 1997) which addressed this issue. This study of 50 sites in the Blue Mountains and the literature survey established that:

- The effectiveness of a buffer in preventing or minimising human impacts on sensitive vegetation depends on its width
- A buffer zone of at least 60m wide should be retained around areas of sensitive vegetation. Measures in addition to the 60m buffer will be required in areas with drainage lines
- An effective buffer should be of native bushland and have no development; [i.e. it should not be cleared or slashed or partly cleared as is often required for an Asset Protection Zone (APZ)].
- The vegetation within the buffer zones can be expected to degrade over time and will require active management.

C12 Community Involvement

There is no process in exempt or complying development to enable the community to present information to be even considered in the assessment. The expansion of these systems therefore excludes the community from the planning process, yet even a small development can have a high impact on amenity.

'Non-mandatory notifications' and 'courtesy notices' are pointless. The whole purpose of notification is for a neighbour to be able to let council know for example that a proposal would block out the sun from their entire living area and therefore enable consideration to be given to such impacts and for the design of a proposal to be adjusted to take this into consideration.

Every property owner, including development proponents, is at some point likely to also be the on the receiving end of a development that impacts negatively. The paper assumes that proponents are the victims in the DA process because they are being held up in their desire to develop their property. One of the reasons for the introduction of the EP&A Act was in recognition of this one-sided approach. The discussion paper rolls back legislation (in place since 1979) that was designed to consider the broader environment and residential amenity as opposed to following a dog-eat-dog situation.

C18 Performance Monitoring

The 'outcomes' listed have nothing to do with good planning outcomes. As already stated above, the BMCS strongly objects to these 'outcomes' and the NSW government's willingness to abandon even a pretence of good planning in exchange for economic gains to the development industry.

5. e-Planning (Chapter 6)

The introduction of electronic planning tools would appear to be beneficial.

6. Private Certification (Chapter 7)

6.1. Overall Approach

Even with the small number of complying developments approved in the Blue Mountains LGA in recent years, it is obvious that the existing system has two significant problems:

1. Failure of private certifiers to enforce all conditions of consent, particularly simple environmental conditions such as sediment control.
2. Lack of integrity, as developers will shop around for a compliant certifier if one doesn't do their bidding

The BMCS strongly objects to the expansion of use of private certifiers as stated earlier in this response.

6.2. Recommendations

B9/ B10 Clarifying responsibilities and sanctions (p 111)

The BMCS supports the recommendations to give Councils mandated responsibility to enforce development consents. However Councils also need the resources to undertake this task.

We strongly support the suggestion of an enforcement bond to allow councils to take enforcement action and also to fund remediation works if necessary (p107)

Increased powers of enforcement are needed. (B10)

B14 Subdivisions

The BMCS strongly objects to this proposal. Private certification of subdivisions is not appropriate in the Blue Mountains. Almost all subdivision applications require detailed environmental assessment to implement the provisions of the relevant LEP

B16 Mandatory training of accredited certifiers

Mandatory training of accredited certifiers should include training about:

- The presence of environmental conditions which would disqualify DAs as complying development because expert advice is required
- Standards for compliance for environmental conditions of consent (PCA).

7. Paper Subdivisions (Chapter 9)

The BMCS strongly objects to PA1 and its underlying assumption that all paper subdivisions ought to be developed. Where land has never been zoned for urban development and is not suitable for it, the community should not be funding land acquisitions, trading or development to 'compensate' failed speculation.

Such a proposal is no different to proposing that share market investors should be given money from the public purse that they expected to raise from investment in shares that didn't rise as far as expected.

Landowners and buyers are made fully aware of zoning and development opportunities on land through means such as Section 149 certificates. There should be no obligation to bale out the speculation of a buyer who was hoping to get rezoning.

8. Miscellaneous (Chapter 10)

M1 Lapsing Development Consents

The Society agrees with the need to better define 'substantial commencement' to allow for updated/revised consents

M3.2 Amendments to the Standard Instrument should be exhibited and reviewed in the light of comments from the community

M3.3 Conversion into standard LEPs

Any changes to planning provisions and development controls as a result of the conversion should be placed on public exhibition.

M6 Amendment of DAs appealed in L&E Court

BMCS agrees that this is a major issue and supports the need for change to address it. The proposal (M6.2) is supported as a way to discourage amendments during the appeal process.

M11 Tailored Assessments under Part 3A

Environmental assessments should be tailored to the anticipated complexity and scale of environmental impacts not the value or size of the project.