

Department of Planning and Environment

Proposals to update the Environmental Planning and Assessment Act 1979 (EP&A Act)

Submission by Tony Recsei

President
Save Our Suburbs (SOS) NSW

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1. INTRODUCTION

Save Our Suburbs (SOS) expresses appreciation for this opportunity to comment on the proposed planning legislative updates.

SOS is a non-profit and non-aligned group of residents, opposing unwanted rezoning and over-development of city suburbs and promoting sustainable living to protect the planet. The organization supports residents in their struggle to save cities from overcrowding, traffic congestion, high housing cost, pollution and loss of bushland and heritage resulting from ill-considered planning impositions and supports whole of nation development. The organization is active in endeavouring to persuade State Governments to effect beneficial changes to planning policies.

This submission does not attempt to exhaustively analyse the updates but will concentrate on certain proposals and also comment on the underlying strategy and concepts.

2. ENCOURAGING FEATURES

Features that are encouraging in the proposals include statements relating to:

- Guiding principles for good design
- Protect built and cultural heritage
- Business and employment emphasised
- Improvements to community participation procedures
- Limitations on applications to modify consents
- Statement of reasons for decisions
- Expanded incentives for early consultation with neighbours
- Infrastructure coordination

3. OBJECTIVES

We suggest the objectives should read:

(a) to promote the advancement of civilisation, social amenity and economic welfare of the community by proper management, development and conservation of the State's natural and other resources

(b) to achieve long term ecologically sustainable development conducive to sustaining the evolution of life by effectively integrating in decision-making relevant short and long-term environmental considerations that protect the environment and its associated ecosystems and biodiversity, including soils, threatened species, populations and ecological communities and habitats

(c) to promote the orderly delivery of business, employment and housing opportunities (including for housing choice, balanced housing provision for families with children and affordable housing) and ensuring housing and infrastructure needs are fully integrated

(d) to promote integration of good design in the built environment and the landscape within which it resides as a means to enhance wellbeing and sustainable communities

(e) to promote identification, conservation and the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)

(f) to ensure community participation planning meets international best practice standards and the community's right to meaningfully participate in the generation of strategic plans which guide the future of their community and the right to participate in subsequent development decisions.

(g) to ensure adequate provision of land for public purposes

(h) recognise the global nature of greenhouse gas emissions and according to best available science ensure that annual direct greenhouse gas emissions in NSW effectively meet global emission reduction targets and annual greenhouse gas emissions outside NSW resulting from final consumption of NSW mined products will reduce over time

4. COMMUNITY PARTICIPATION

It should be mandated that community participation principles such as minimum public exhibition periods and the provision of giving reasons for decisions are included in plans and their implementation.

There should be guidelines regarding how community representatives are identified and appointed to local planning panels (and whether this includes councillors); the use of ministerial directions; and how to vet members' independence and credentials to act in the public interest.

There should be a provision for the community to appeal against development approval decisions made within councils.

Community participation principles should be applied to the exhibition and amendment of State Environmental Planning Policies

With regard to complying developments:

- Neighbours should have the right to make a submission on complying developments
- Community engagement should be assured on zoning, place and design standards
- Precautions should be taken to avoiding adverse cumulative impacts relating to visual aspects, congestion, amenity and other community factors
- There should be measures to improve enforcement action and governance of private certifiers to avoid poor quality construction, overdevelopment and design.

5. OTHER ASPECTS

There should be a general power in the Act to allow consent authorities to update consent conditions with modern standards taking into account cost and technical feasibility.

6. INDEPENDENT PLANNING COMMISSION

There has been considerable public cynicism concerning projects termed state significant. This press report is indicative: "The Coalition maintains that since Part 3A was introduced hundreds of contentious projects overruling local community concerns and allowing special treatment for those close to the Labor Party (have been) " ¹. In view of these past concerns, at the commencement of the determination procedures there

should be some mechanism for a formal process which includes community engagement to determine whether a project should indeed be classified as a state significant project.

There should be a provision for third party merit appeal rights to the Land and Environment Court following a public hearing

7. BROADER CONTEXT

Gains for community participation in planning decisions are a positive features of the proposed amendments. However consideration of the broader planning policy framework engenders concern that these community participation initiatives divert attention from undesirable underlying policies behind the NSW planning process, policies and strategies which have been a major factor generating public antagonism in the past.

7.1 Historical perspective

The primary background factor relating to these policies and strategies is that the NSW population is projected to grow by 2.71 million from 2011 to 2036 to reach a total of 9,379,600 ². Geometry dictates that housing this increased population requires an increase in population densities and/or an increase in settled area. Each of these possibilities has advantages and disadvantages and should be objectively assessed.

Since about 1990 instead of planning being based on best practice from examples around the world the predominant policy has been focussed on increasing population density. This focus has been to a degree more extreme than in other jurisdictions that pursue this ideology. Communities that in the opinion of the authorities did not plan for sufficient high density had their planning powers taken away. The results of this policy at a local level are strongly resented by the community. Basic downsides are seen as an increase in congestion and housing unaffordability. High-density policies are also viewed as causing a reduction in factors relating to quality of life, community wellbeing, residential amenity, good urban design and environmental and heritage protection ^{3 4}. They are seen as measures that benefit the development industry and those organisations reliant on it rather than the general public. For some sixteen years the community has been concerned about the undue influence these organisations have had on the government of the day. This was first brought up to general public attention by the author in 2001⁵ and has been in the public arena ever since^{6 7 8 9 10 11 12 13 14 15 16 17 18}.

This public concern eventually resulted in political donations to developers and their associates being banned in NSW. However it is still considered that these organisations use the resources previously allocated to donations to influence politicians, the public service and academia in other ways.

7.2 Current initiatives

Against this background the Government is currently resorting to extraordinary efforts to “sell” the proposed planning legislative updates as well as the activities of the Greater Sydney Commission. Multiple high-level community information and consultation sessions are being held. There is a perception this is an effort to avoid electoral backlash from initiatives that assist the continuation of underlying unpopular top-down high-density policies. None of the consultation sessions appear to be genuine. Attractive scenarios are portrayed and the input from the community encouraged with no indication of practical methods of achieving desired outcomes. Concrete processes are not reflected in the rhetoric in the publications being distributed.

These concerns are amplified when the proposed changes are viewed in conjunction with the expansion of the categories of housing and other developments as “complying development”. The recently exhibited draft medium density housing code and the objectives and functions of the Greater Sydney Commission adds to these concerns.

The following factors are disturbing in a number of areas.

7.2.1 Proposed updates to the Environmental Planning and Assessment Act

The following aspects of the proposed updates indicate a dictatorial top down approach.

- Local strategic plans will not be the basis of a state strategic plan. Local strategic plans will have to be subject to district plans which will be subject to a state strategic plan
- Local planning statements such as rezoning will need to be endorsed by the Department of Planning and Environment for the Greater Sydney Commission
- The Minister will have the power to direct local planning panels
- Councils are required to obtain signoff for local strategic planning statements from the Department of Planning and Environment or the Greater Sydney Commission. This is too directive and does not give councils adequate opportunity to incorporate local knowledge and expertise in plan-making.
- The amendments erode the role of councils and elected representatives in local planning decisions and diminish the rights of the community to have a say on the local developments that affect them most.

7.2.2 The Greater Sydney Commission

The objectives and functions¹⁹ of the Greater Sydney Commission point to a top-down approach. The public frequently comment that the publications put out by the Greater Sydney Commission are of a

general aspirational nature and do not provide sufficient detail for the community to visualise outcomes in a manner meaningful to them. This generates suspicion that the final result will differ from the generalised pictures portrayed in the publications, presentations and discussions and not accord with the pleasing images portrayed.

7.2.3 Medium Density Housing Code

This initiative is viewed as a large-scale imposition of medium density into areas currently zoned for single-residential dwellings without community input. The new Code will result in neighbours in a single residential area not having the right to object to a development that will substantially transform the street in which they live. The only requirement will be that they be informed of a development.

The cumulative effect of the proposed updates, the operations of the Greater Sydney Commission and the expansion of complying development by types such as the Medium Density Housing Code appears to be to facilitate the imposition of higher densities in residential areas, a result that is unacceptable to the general community.

8. SUGGESTIONS

The proposed amendments limit community input in individual planning proposals. It appears the predominant policy is top down and still narrowly focussed on increasing population density at the expense of the consideration of other options. The amendments therefore do not produce a convincing argument that the proposals will be of overall benefit to the community, especially when viewed in the context of other parallel legislative initiatives. Planning should primarily be based on community benefit and as far as is practical be devised to employ a community-up system. Planning strategies should not be based on ideology but be evidence based and supported by acceptable practical examples from around the world.

8.1 A planning system should respect people's right to generate the strategic plans which guide the future of their community and the right to participate in the subsequent development decisions. It should belong to the people. Government imposed quotas have no part in this process and should only be used as a very last resort.

Save Our Suburbs suggests that a better approach to accommodate an increasing population would be along the following lines of:

- Councils prepare a short-term and a long-term concept plan for their area in consultation with their communities (utilizing precinct committees if available)
- Council groupings (such as Regional Organisations of Councils or Regional Planning Panels) assemble these concept plans after

discussion with submitting councils on an iterative basis and on completion submit them to the Secretary

- The Planning Secretary maintains a State-wide database of these short-term and long-term concept plans to be used as part of the input for NSW planning policies and draft regional growth plans.
- The process must flow in both directions, but initiating at the local community level and flowing upwards to be followed by an iterative process.

Such a system could result in councils competing for development and developers being channelled to areas seeking development. If a dwelling shortfall results then councils would need to accept quotas which would be deliberated in the above process.

8.2 A new State Environmental Planning Policy should be issued requiring all developments to maintain or enhance quality of life, community wellbeing, residential amenity, good urban design and environmental and heritage protection.

8.3 The Government's State Environmental Planning Policy (Exempt and Complying Development Codes 2008 and its Draft Medium Density Housing Policy must not be allowed to override existing laws protecting these attributes referred to in 8.2.

What is needed is the political will to resist the pressure from the development industry, pressure that seems to have hijacked the planning system at the expense of the public good. Planning should not seek to satisfy the requirements of one group at the expense of society as a whole. It must balance carefully social, environmental and economic needs for the wellbeing of all.

SOS expresses its appreciation for the opportunity to make submissions for this important area of government and hopes that final decisions made will result in optimal long-term benefit to the citizens of New South Wales. SOS looks forward to a system that is free of corruption and free from the imposition on the community of unwanted styles of living.

¹ *Uncertainly plagues NSW developers*, Australian Financial Review, 4 February 2011

² <http://www.planning.nsw.gov.au/Research-and-Demography/Demography/Population-projections>

³ *New Metropolitan Strategy, Sydney over the next 20 years*. Tony Recsei, June 2012
<http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=tOrvnPMKz5k=&tabid=205&mid=1081&language=en-AU>

⁴ *Comment on Centre for International Economics report on alternative growth paths for Sydney*, Tony Recsei, Australian Planner, 2013

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- ⁵ Australian Broadcasting Corporation TV Stateline, 30 March 2001.
- ⁶ *The politics of money*, Sydney Morning Herald, 2-3 February 2002
- ⁷ *Democracy feeds off donations drip*, Sydney Morning Herald, 1 October 2007
- ⁸ *Political donations linked to developers, contractors*, The Age, 7 July 2008
- ⁹ *Put a lid on the planning honeypot*, Sydney Morning Herald, 20 October 2009
- ¹⁰ *Rees to tell ICAC private donors must be banned*, Sun-Herald, 8 August 2010
- ¹¹ *Donations to NSW opposition soar but ...*, Sydney Morning Herald 6 October 2010
- ¹² *Uncertainly plagues NSW developers*, Australian Financial Review, 4 February 2011
- ¹³ *Call for ban on developers' donations*, The Age, 15 October 2012
- ¹⁴ *Corruption probe snares Liberal MPs and property developers*, Australian Financial Review, 29 April 2014
- ¹⁵ *Developers keep pouring in the funds for political parties, despite bans*, Sun-Herald, 8 June 2014
- ¹⁶ *Developer donation ban safeguards democracy*, Sydney Morning Herald, 12 August 2014
- ¹⁷ *Developers in fight for inner-city suburbs*, Sydney Morning Herald, 13 September 2014
- ¹⁸ *Foley wants developers banned from councils*, Sydney Morning Herald, 24 August 2015
- ¹⁹ <http://www.greater.sydney/>