



Nature Conservation Council

The voice for nature in NSW

PLANNING POLICY 2014

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Preamble

The Nature Conservation Council of NSW (NCC) is a non-profit, non-government organisation dedicated to protecting and conserving biodiversity, cultural heritage, landscapes and natural resources of NSW. We strive to achieve an ecologically sustainable society in which nature is respected, protected and embraced through advocacy, education, research and community empowerment. Accordingly, these goals are the focus of NCC's planning policy.

The principal legislation that presently governs planning in NSW is the *Environmental Planning and Assessment Act 1979*. The processes established under the Act, the regulations and environmental planning instruments are together referred to below as the NSW planning system. The policy would also apply to any future planning system.

This policy focuses on the key essentials that should underpin legislation for the NSW Planning system. It is intended that the NCC will pursue implementation of the policy, together with articulation of and integration with overarching strategic goals, targets and legislative instruments for nature conservation and natural resource management in NSW.

What constitutes a good planning system?

The planning system must maintain the natural environment, and increase its resilience to development pressures, while providing for needed development. It must respond to both known and potential environmental issues. These issues include: loss and fragmentation of native vegetation and wildlife habitat; degradation of rivers, wetlands and water catchments and coastal environments; urban sprawl, traffic congestion, urban air pollution; development pressures on parks and urban bushland; feral animals and plants; and climate change.

The integrity of planning and development decisions is absolutely essential if the community is to have faith in both planning and political systems. Yet changes to the NSW planning system over the past decade have led to a significant weakening of environmental protections and community alienation from the processes and outcomes of planning and development decisions in NSW.

There is more to a planning system than processing timeframes, and development approval

rates. Poor quality planning decisions are not in the public interest and do not achieve a triple bottom line. Ecologically sustainable goals including clean air and water; reduced car dependency; energy and water efficiency; and protection of biodiversity are fundamentals for our quality of life.

Purpose of the planning system

The principal purpose of the planning system will be to provide a framework for planning and development decisions that applies and gives effect to the principles of ecologically sustainable development.

These principles are:

- integration of economic, social and environmental considerations in decision-making;
- the precautionary principle;
- intra- and intergenerational equity;
- conservation of biodiversity and ecological integrity; and
- the full valuation of environmental assets.

The above purpose and principles will be explicitly recognised by the planning Act.

Legislative Objectives of a Good Planning System

The following objectives must be incorporated in the planning system to ensure sound planning:

1. Protect biodiversity and maintain the integrity and resilience of native species, their habitats, ecological communities and ecosystems as well as ecological processes.
2. Ensure natural resources are sustainably managed, protected and conserved.
3. Reduce carbon emissions and mitigate and adapt to climate change.
4. Conserve, protect and maintain cultural heritage and scenic landscapes, including items, places and landscapes that are valued by Aboriginal and non-indigenous communities.

The objectives must be taken into consideration where relevant by any person or body carrying out functions under the planning system.

Key Principles

The following key principles are integral for a NSW planning system that protects and enhances the natural environment and supports community well-being:

1. **The principles of ecologically sustainable development listed above must be applied as the framework for integrating environmental, social and economic objectives in planning and development decisions.**

The legislation will create the necessary framework for this by:

- a. including a statutory definition of the principles of ecologically sustainable development that is consistent with existing Australian State and Commonwealth legislation; and
 - b. requiring that any person or body carrying out functions under the planning system must exercise those functions in a way that, as far as practicable, implements the principles of ecologically sustainable development.
2. **There are clear and robust legislative mechanisms for achieving sound environment and conservation outcomes, including the protection of biodiversity, natural resources & cultural heritage (both Aboriginal and non-Aboriginal).**
3. **There is a legislative framework for effective strategic planning across state, regional and local levels that includes: strategic environmental assessment, assessment of cumulative impacts, and integration of key natural resource management and environmental policies.**
- a. The planning system will specifically promote the integration of regional-scale planning with existing biodiversity conservation and natural resource management processes, such as 'regional conservation plans' and Catchment Action Plans. An important objective will be to promote an enduring co-existence between natural systems and human settlement, infrastructure networks and resource utilisation.
 - b. State, regional and local planning decisions will be supported by reliable spatial databases on ecological, and natural resources, natural hazards and cultural heritage assets.
 - c. To address the significant lag times in between when human activities, for example habitat destruction, groundwater depletion or carbon emissions occur, and related impacts on ecosystems may become apparent, decision-makers will apply the principles of intergenerational equity and the precautionary principle.
 - d. There will be mechanisms for managing climate change by incorporating mitigation and adaption requirements throughout the system.
 - e. Strict controls on development will be applied to locations having high environmental value, significance, sensitivity or risk. These controls will be applied in planning instruments by protective zonings or overlays. At such locations there will be a presumption in favour of protection.
 - f. The planning system will be closely linked with other legislation specifically concerned with the protection of biodiversity, natural resources and cultural heritage. Approvals under legislation will be integrated with planning approvals. However, specialist agencies will still carry out separate assessments, approvals and/or concurrences.
 - g. Proposals affecting key publicly-owned resources such as Crown land, minerals, forests, rivers, aquifers, foreshores, waterways and coastlines will be subject to a public interest test as to whether a proposal will generate a net

benefit to the community. Full valuation of environmental assets will be required over intergenerational time scales.

- h. The relationship between the planning and mining legislation will be reviewed so as to remove exemptions from the application of planning and other natural resource legislation that at present apply to applications for mining, coal seam gas and petroleum extraction and other extraction industries, as well as exploration.
- i. It will be a mandatory requirement for relevant authorities to review strategic plans on a regular basis and if required, update – for example every 5-7 years.

4. There are mandatory requirements for genuine and meaningful public participation in decision making throughout the system, including for both strategic planning and development assessment.

- a. People will be given the opportunity to participate meaningfully in decisions that affect them, at both the early and later stages of the planning process. There will be mandatory public participation processes and standards for the preparation of policies and plans, and for the assessment of development projects.
- b. Full public access will be available to information relating to draft and approved policies, plans and development projects.
- c. Legislation will require planning authorities to continually monitor and improve the quality and effectiveness of public participation that they conduct and will also require them to regularly report on how public participation has been implemented.
- d. The level of public participation required must be commensurate with the potential for environmental harm of a proposal.
- e. Third party appeal and review rights should apply equitably to third parties and to proponents alike. They must apply to all State significant development and State Significant Infrastructure as well as mining, coal seam gas and petroleum extraction and exploration proposals.

5. Development assessment and approval processes will be proportionate to the potential impacts of proposed development

- a. Only genuinely low impact development is to be identified as exempt or complying development.
- b. Concurrences and approvals of agencies which were removed, including those for State significant development and State significant infrastructure, will be reinstated.
- c. High impact development must be subject to robust checks and balances, strategic planning instruments and appropriate assessment criteria.
- d. Activities that currently require an environmental assessment under Part 5 of the *Environment Planning and Assessment Act 1979* (i.e. where a development is assessed and approved by the public authority which is also the proponent) should require assessment by the relevant planning authority as if it were a Part 4 development.

- e. Legislation will require relevant authorities to undertake public consultation as part of the environmental assessment process prior to issuing a mining, or petroleum exploration or assessment license, or a water license.
6. **There are mechanisms for ensuring the integrity of environmental impact assessment including:**
- a. Environmental consultants will be independently appointed;
 - b. There will be robust offences for providing false and misleading information (recklessly or intentionally) and for deceptive conduct; and
 - c. There will be comprehensive assessment and scrutiny that reflects the scale of potential impacts including cumulative impacts.
7. **There is objective decision-making**
- a. Decision-making is based on evidence.
 - b. There are objective decision-making criteria in legislation and planning instruments, underpinned by robust scientific methodology.
 - c. Decision makers must take into account the public interest.
8. **There are mechanisms for ensuring transparency and accountability including:**
- a. Requirements for decision makers to give substantiated reasons for decisions;
 - b. Third party appeal rights and open standing for breaches of the legislation;
 - c. Effective enforcement by way of robust tools, penalties, resources and monitoring; and
 - d. Independence of decision-makers demonstrated via accountability and appropriate anti-corruption measures.

SUPPORTING INFORMATION

The following NCC reports provide further detail on the key principles outlined above:

Our Environment, Our Communities - Integrating environmental outcomes and community engagement in the NSW planning system. [Download here](#)

Nature in the balance: Environmental protections at risk under the proposed new planning system for New South Wales. [Download here](#)

Charting a new course: Delivering a planning system that protects the environment.

