



# Nature Conservation Council

The voice for nature in NSW

The Hon. Pru Goward, MP  
Minister for Planning  
52 Martin Place  
SYDNEY NSW 2000

By email: [office@goward.minister.nsw.gov.au](mailto:office@goward.minister.nsw.gov.au)

18 February 2015

## **An open letter on the status of planning in NSW**

Dear Minister Goward,

The Nature Conservation Council of NSW (NCC) is the peak environment organisation for New South Wales, representing more than 130 member societies across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

As you will be aware NCC has a longstanding and carefully considered view on what good planning for the long term wellbeing of NSW should entail, as articulated in the most recent NCC Planning Policy<sup>1</sup> adopted at our 2014 Annual Conference<sup>1</sup> and in submissions to your government over the past four years.

We will be forwarding a copy of this letter to the Opposition spokesperson on planning as well as the Greens, Christian Democrats and Shooters and Fishers spokespersons.

We are writing to you to:

- a) express our concerns about your Government's record on planning to date; and
- b) request urgent clarification, prior to the election, on your Government's policies on planning.

We consider that:

- Firstly, contrary to its promise to the electorate in 2011, that the NSW Government has proceeded with policies which do not return planning power to local communities through their local councils.
- Secondly, we are dismayed that despite the demise of the highly controversial Planning Bill 2013, the NSW Government has implemented policies contained within the White Paper and that Bill that reduce community participation and environmental protection.
- Furthermore, we are highly concerned that the Government has not fully implemented ICAC's recommendations to reduce corruption in the planning system.

Aspects of your Government's record on planning and corruption prevention to date, which highlight these concerns, are discussed below.

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<sup>1</sup> Download at [www.nature.org.au/about/governance/policies/](http://www.nature.org.au/about/governance/policies/)

## **Context**

When your Government was elected in March 2011 it was on the basis of a promise to return planning power to communities via their local Councils. The promise was made largely in response to the notorious Part 3A of the *Environment Planning and Assessment Act 1979* which had been introduced by the previous Labor Government. Part 3A had become synonymous with:

- unbridled Ministerial discretion (identified as a corruption risk by the ICAC in 2010)
- over-riding of both local controls and various environmental legislation
- a disregard for strategic planning

The Coalition promise, either directly or by inference, to the people of NSW suggested that a NSW Coalition Government was committed to:

- genuine community consultation
- respecting the role of local government and the strategic planning undertaken to prepare local environment plans
- reinstating the role played by the requirement for concurrences under specific environmental legislation (for example, the *Rural Fires Act 2003*) in the planning process in NSW
- ending corruption in the planning system

## **The record**

Unfortunately the NSW Government has not met these commitments.

### ***Community Consultation***

Two aspects of your Government's Planning Bills in particular raised strong concerns about your Government's commitment to meaningful public participation in development assessment.

The first was the proposition that public consultation at the strategic planning stage for local plans was sufficient for the majority of developments. No details were provided as to how all relevant issues could be resolved at the strategic planning stage or what resources would be made available to achieve this. The proposed model has not been adopted successfully anywhere, including Vancouver, which was put forward as a model on which to base planning in NSW.

The second was the proposal for 'code assessable development' which your Government indicated could apply to 80% of all developments. The public would have no opportunity to comment on proposals of this type of development.

Further, your Government has failed to adequately consult the public about the Metropolitan Growth Plan, Priority Precincts and various *State Environmental Planning Policies*. For example, the *SEPP Amendment (Newcastle City Centre) 2014*, which will radically impose high rise buildings on the historic east end of Newcastle, was only exhibited for 16 days.

Related to the *SEPP Amendment (Newcastle City Centre) 2014* is the closure of the Newcastle Rail Line without a demonstrated business case and based on a 2009 report whose authors had a conflict of interest in the outcome of the report.

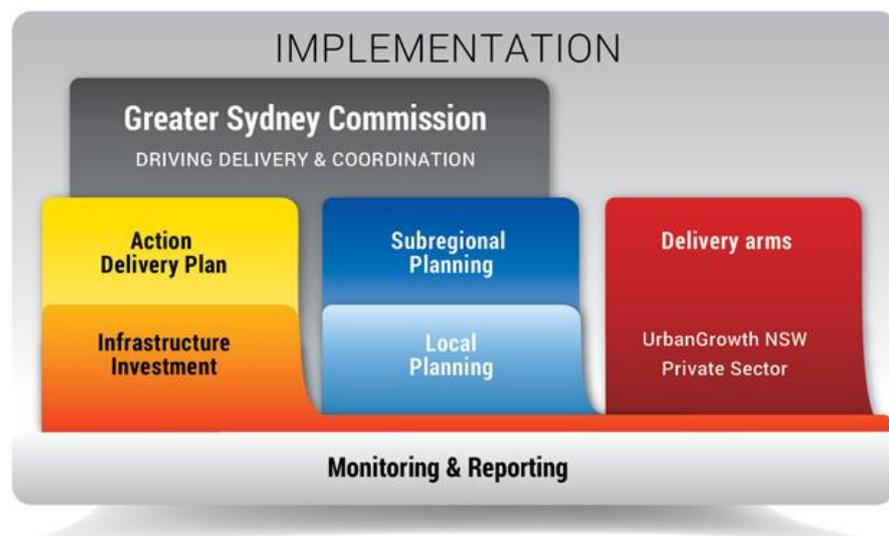
Lastly, your Government ignored the majority of recommendations of the Moore and Dyer two volume report, *The Way Ahead for Planning in NSW – Recommendations of the NSW Planning System Review*, that was prepared after very extensive public consultation.

### ***Returning power to local Councils***

Your Government has reduced the planning powers of councils by:

- Enabling developers to appeal against Council decisions not to refer planning proposals to the Gateway process. This has effectively recognised strategic planning as a private process. Strategic planning should be an open and transparent process based on the merits of a proposal and not a process from which the public is excluded and in which decision-making by local Government is overridden.
- Creating 13 Priority Precincts (previously called Urban Activation Zones) and nominated a further Priority Precinct in the Sydney Metropolitan Growth Plan (Greater Parramatta to the Olympic Peninsula). The purpose of the Priority Precincts is to intensify development far above the levels permissible in Local Environment Plans again overriding local strategic planning.
- Initiating Regional Growth and Infrastructure Plans focusing on economic benefits without adequate consideration of the environment or the views and needs of local communities. These Plans are not statutory plans and have no mandatory requirements for comprehensive environmental assessment or public participation yet they are imposed via a Ministerial s 117 Direction with which Councils must comply.
- Imposing the Greater Sydney Commission and sub-regional planning on metropolitan Sydney in a way, which will further reduce local Councils and local communities input into planning. See graphic below from *A Plan for growing Sydney 2014*.

**FIGURE 7:**  
Delivery framework



In our opinion, the ill-defined role of the Greater Sydney Commission, the use of subregional planning outside the planning legislation and the imposition of priority precincts, highlight that strategic planning in NSW is certainly not integrated and neither is it clear, transparent nor accountable to the community.

### ***Environmental Protection and Assessment***

Far from living up to the implied promise of restoring environmental concurrences and protections for major development, after repealing Part 3A your Government has provided for 'state significant development' and simply repeated the exemptions from legislative approvals that had existed in Part 3A. These included exemptions under the *Coastal Protection Act 1979*, *Fisheries Management Act 1994*, *Heritage Act 1977*, *National Parks and Wildlife Act 1974*, *Native Vegetation Act 2003*, *Rural Fires Act 1997* and the *Water Management Act 2000*.

Further issues of concern are:

- The attempt to remove ecologically sustainable development as an object of planning legislation.
- Proposing to override the principles of ecologically sustainable development by requiring the significance of the resource to be the principle consideration when making determinations under the *State Environmental Planning Policy (Mining Petroleum production and Extractive Industries) 2007*.
- Commissioning a Biodiversity Legislation Review with terms of reference requiring it to be guided by the principles of encouraging economic development and budget restraint. Not surprisingly, given the terms of reference, the review recommended increased use of offsetting.
- The Biodiversity legislation Review has also suggested incorporating agricultural activity into the NSW planning system via the *Environment Planning and Assessment Act 1979*, a direction which would see Council staff trying to assess land clearing proposals without adequate resources or relevant expertise.
- Regional Growth and Infrastructure Plans that propose growth and new infrastructure without adequate assessment of environment protection or natural resource constraints, including those arising from climate change. Critically, no mention is made of Ecologically Sustainable Development principles as the foundation for integrating and resolving conflicts between economic, social and environmental considerations in decision-making.

### ***Corruption Prevention***

Existing laws have been shown to be inadequate to prevent corrupt behaviour.

We welcome the resignation and standing aside of Coalition MPs under investigation by ICAC for corrupt conduct. However, the Government has not taken a pro-active role in arguing for the importance of corruption prevention legislation in the McCloy High Court case. We are concerned that the action taken so far by Premier Baird in relation to those MPs currently under investigation has been politically expedient rather than a genuine commitment to achieving public decision making which is free of corruption and inappropriate influence via donations or unequal access.

We are highly concerned that your Government has not fully implemented the recommendations of the ICAC report *Anti-corruption safeguards and the NSW planning system, February 2012* on preventing corruption in the planning system.

## **Conclusion**

In our view, your Government has not delivered on its promise to deliver planning power back to local communities. Neither has it supported genuine community consultation, nor meaningful environmental protection through the implementation of the principles of ecologically sustainable development by either its actions or its policies.

We also consider that the Government has implemented policies that were contained in the highly unpopular White Paper and the Planning Bill 2013 even though the Bill was abandoned (for example, proposed regional growth and infrastructure plans and sub-regional delivery plans).

Further, your Government has not taken adequate steps to address corruption in the planning system.

We call on your government to set out your election platform on planning and, in particular, clarify, your position with regard to the involvement of local councils in planning, community consultation, ecologically sustainable development and corruption prevention.

As you will be aware, NCC is a member of the Community Charter for Good Planning coalition. We urge you to endorse the Charter so that the people of NSW can participate in an environmentally sustainable and a socially robust NSW.

Yours sincerely,



Kate Smolski  
Chief Executive Officer

## **CC:**

The Hon. Mike Baird, Premier  
The Hon. Rob Stokes, Assistant Minister for Planning