



FRIENDS OF
KU-RING-GAI
ENVIRONMENT INC.

The Premier of NSW
The Hon Barry O'Farrell MP
Member for Ku-ring-gai
27 Redleaf Avenue
WAHROONGA NSW 2076

27 October 2013

Dear Premier

We are writing to you to express our deepening concern that the revised Planning Bills introduced to Parliament last week, will not meet your election promise of "returning planning powers to local communities". Please see below the analysis on the revised proposed legislation.

In conjunction with our information stalls the last two months we conducted with STEP Inc., a random survey of hundreds of residents in West Pymble, North Turramurra, Wahroonga, Lindfield and Roseville about how their local member of Parliament is addressing issues on planning.

In summary:

- 97% want planning laws to be driven by principles that protect quality of life, environment and heritage;
- 96% say high-rise should not replace family homes in low density suburbs;
- 97% want an adequate right to comment on development proposals next door or nearby;
- 97% want the same rights to object to planning decisions that developers have;
- Only 9% believe that their local MP is effective in addressing these issues;
- 89% say these issues will influence their vote.
- 30% would vote for you in a NSW election now

We urge you to withdraw the revised planning legislation and to go back to the drawing board and to use as the basis for the new legislation the Moore/Dyer community based consultation report for drawing up the new planning legislation, to restore trust back into the consultation and planning process.

ANALYSIS OF REVISED PLANNING BILLS:

Will the Bills return planning powers to local communities?

No, the Bills will not return planning powers to local communities.

This is why:

- The Bills' intention to engage communities in strategic planning is commendable. However: this can already be done under our current planning legislation; State Government has a very poor record and capacity for good strategic planning and for engaging communities in strategic planning; it is widely recognised that it is extremely challenging, time consuming and resource-intensive to engage communities meaningfully in strategic planning.
- Given the above barriers to meaningful community engagement in strategic planning, the Bills' proposal to remove community consultation at development assessment level through code-assessed development undermines any intention to return planning powers to communities.
- In particular, and despite Minister Hazzard's assertion that code-assessed development will be restricted to 'growth areas', nothing in the Bills provides for this restriction and nothing in the Bills defines what a 'growth area' is, how these areas will be nominated and by whom. In other words, there are no limits to what can be declared a 'growth area'.
- Whether it is justifiable for some residents to be able to comment on development next door, but others to have that right removed, is also highly questionable.
- Although the Bills do not impose code-assessed development across the State, they do allow any Council to use code-assessed development if they so wish.
- Further, whilst Sections 4.16 and 4.17 of the Planning Bill 2013 provide that Local Plans will identify what if anything will be code-assessable, the Minister has a number of ways of ensure that a particular Local Plan includes code-assessed development. For example, under section 3.10(2)(a), the Minister may appoint the Director-General of Planning or another body such as the Planning Assessment Commission to be the planning authority for a Local Plan if the Minister is of the opinion that the provisions (such as the insertion of code assessment) are of planning significance for the State, Region or Sub-Region.
- It continues to be the position of FOKE and the Better Planning Network that the difficulties inherent in engaging communities in strategic planning, combined with the Bills' introduction of code-assessed development, will result in a marked reduction in community participation in our planning system and will certainly not return planning powers to communities.

Will the Bills provide greater certainty and transparency in planning?

No, the Bills will not provide greater certainty and transparency.

This is why:

- The Bills contain multiple mechanisms for modifying strategic planning controls which the community has considered, debated and thought to be resolved.
- These mechanisms include developer-initiated rezoning proposals, Strategic Compatibility Certificates and broad Ministerial powers to make and amend any strategic plan at any point in time.
- Under complying development, the Bills also introduce the possibility of 'variation certificates' which can be granted even if a development does not strictly comply with the criteria for complying development (section 4.7).

- The proposal for Strategic Compatibility Certificates (SCC) under Division 4.7 of the Planning Bill 2013 is particularly concerning. After application to the Director-General of Planning citing that a particular local plan is inconsistent with a Regional Growth and Sub-Regional Plan – a developer’s application for a SCC is publically exhibited and determined by the Director-General (if there are less than 25 objections) or the Regional Planning Panel (if there are at least 25 objections or Council has objected to the granting of the SCC). The grounds on which the SCC may be issued are broad and do not include any consideration of impacts on community amenity or the environment (section 4.34). The SCC can completely overrides the local plan and once issued, any proposed development on the land subject to the SCC cannot be refused by the local Council if the grounds for refusal relate to matters dealt with in the conditions of the SCC (section 4.37).
- There is concern that SCCs will be used time and time again to override local strategic plans, consistently undermining certainty for residents.

Will the Bills ensure adequate environmental protection?

No, the Bills will not ensure adequate environmental protection.

This is why:

- Although the Bills include sustainable development as a stand-alone Object, the definition of sustainable development excludes the internationally recognised principles of sustainable development included in our current planning legislation and in over 60 NSW statutes, such as the Precautionary Principle and the Polluter-Pays Principle. The Bill’s definition of sustainable development is likely to weaken the application of sustainable development throughout our planning system.
- The Bills do not include adequate consideration of cumulative impacts on the environment in strategic planning.
- The Bills do not include any specification of the minimum standard of environmental data required to underpin strategic planning.
- The Bills do not include any requirement to undertake environmental impact assessment as part of strategic planning.
- The Bills override important environmental approvals and concentrates power in the Director-General of Planning, giving him the power to override the advice of environmental agencies.

Will the Bills ensure adequate heritage protection?

No, the Bills will not ensure adequate heritage protection.

This is why:

- While World Heritage and State Heritage listed items will be identified in Regional Growth and Subregional Delivery Plans, this does not extend to the 26,000 locally listed heritage items and the hundreds of Heritage Conservation Areas across NSW.
- The Bill does not prevent complying and code-assessed development from being carried out in relation to local heritage items or within or next to Heritage Conservation Areas.
- Whilst the Bill has adopted a heritage objective and heritage has been specifically identified in clause 3.13 of the Bill, there is no specific mention of ‘heritage impacts’

as a matter to be considered under merit assessment in clause 4.18(2)(c). Without such specific mention there is a major risk that heritage will not always be adequately considered.

- Whilst the Bills requires the Director-General of Planning to follow the NSW Heritage Council's advice on applications, this requirement does not apply if the Heritage Council does not meet the time frame that is yet to be stipulated in the Regulations. This is problematic as the negotiation and resolution of complex heritage applications often takes time and an applicant could simply delay providing required information in order to bypass the Heritage Council altogether.

Will the Bills increase housing supply?

Yes, the Bills are likely to increase housing supply. However, planning rules and controls are not the only driver of housing supply. Market conditions, the availability of credit and land supply all play a significant role as well.

Will the Bills improve housing affordability?

No, the Bills are unlikely to improve housing affordability.

Although the Government and the development lobby have both promoted the argument that increasing housing supply will solve housing affordability, there is no evidence that this is so.

The reasons for housing affordability are complex and a recent report by the Grattan Institute, *Renovating Housing Policy*, identifies government tax and welfare policies, such as negative gearing and capital gains discounts as major drivers of housing affordability. The summary of this report (see <http://grattan.edu.au/publications/reports/post/renovating-housing-policy/>) states that:

'Through negative gearing rules, and the capital gains discount introduced in 1999, the Commonwealth provides residential property investors with nearly \$7 billion a year, or \$4500 on average for each property investor...By increasing demand for residential property, these policies help to push up property prices and lock many homebuyers out of the market.'

The regulatory changes that allow Self Managed Super Funds (SMSFs) to purchase investments properties also have a significant effect in increasing housing prices.

"The Reserve Bank has also started to show some concern over the use of SMSFs to invest in direct property, as there are fears starting to mount this will contribute to the next property boom..." (AFR 23.10.13, *Future uncertain for SMSF investors*).

To claim that relaxing planning rules at state level and increasing housing supply will in itself result in improved housing affordability is grossly inaccurate.

CONCLUSION: Despite concessions by the NSW Government and a significant number of changes, the revised Planning Bills are unlikely to result in good long-term outcomes for NSW.

The Bills will increase housing supply and stimulate construction jobs but at what cost to our communities, environment and heritage?

Most importantly, the Bills will not return planning powers to local communities, will not provide certainty and transparency to communities and will not in themselves improve housing affordability.

We would like to hear from you urgently as to whether you plan to vote for the legislation in its revised form, and if so, the reasons why you support the legislation.

We will be watching with keen interest on how you and your parliamentary colleagues vote.

Yours sincerely

Kathy Cowley
PRESIDENT

cc Minister for Planning and Infrastructure, The Hon Brad Hazzard MP
cc Mayor and Councillors Ku-ring-gai Council
cc The Hon. Luke Foley MLC Shadow Minister for Planning
cc Mr Paul Fletcher MP Member for Bradfield