

**Submission
No 210**

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS
OF CLIMATE CHANGE ON THE ENVIRONMENT AND
COMMUNITIES**

Organisation: STEP Inc
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STEP Inc

Community-based Environmental Conservation since 1978

3 November 2023

Portfolio Committee No 7
NSW Legislative Council

portfoliocommittee7@parliament.nsw.gov.au

Dear Committee

Re: Inquiry into the NSW planning system

STEP Inc is a local community-based environmental group, with a membership of over 550 in the Hornsby/Ku-ring-gai area. Our main objective is to preserve natural bushland in northern Sydney from alienation or degradation and ensure proper management of this bushland including ensuring its role as habitat for animal species. Our group has considerable experience and expertise in environmental issues and regenerating and preserving natural bushland and native vegetation.

Thank you for providing us with an opportunity to have a say on the planning system in relation to the significant long term issues of biodiversity loss and climate change. As STEP is a Sydney based group that focusses on preservation of bushland we will confine our comments to urban aspects of the NSW planning system.

In this submission we address some aspects of The Portfolio Committee 7 inquiry's terms of reference. As the details overlap we cannot follow the items directly:

a) How developments proposed or approved under the planning system can best ensure that the natural environment is protected, in particular in areas that include threatened ecological communities or habitat for threatened species.

The Statutory Review of the Biodiversity Conservation Act 2016 (the Review) that was completed in August 2023 highlighted the many inadequacies of the Act that directly relate to the operation of the planning system. The outcome has been the continuing decline in biodiversity and increase in the number of threatened species and ecological communities. The planning legislation is limited by its concentration on protecting threatened species and ecological communities but, even this is shown by the Review to be ineffective. All the recommendations of the Review must be implemented otherwise there will be more and more species becoming threatened. As the Review report states on page 4, 'In order to meet its objects, the Act should have primacy over competing pieces of legislation.' In addition, 'The focus of the Act should be shifted from threatened entities to strategic planning and management of biodiversity to ensure nature positive outcomes.' (page 5).

STEPs experience of advocacy in relation to development proposals has identified the following areas where significant improvement is required:

- Mapping of vegetation communities and species is out of date.
- Identification is required of long term goals for protection of representative areas of vegetation and habitat with creation of strategies to achieve these goals, if the required areas are not currently protected. If adequate areas are protected that this protection is maintained.
- Methods of monitoring loss of vegetation communities as development is approved, not just after the development has been completed.

- Identification of no-go areas where threatened species and ecological communities must be protected; this could include small areas that are part of a development area that must be protected within the development.
- Keeping track of developments that impact threatened communities where cumulative impacts will result in unacceptable total losses – an example is Turpentine trees where fragmentation is one of the key threats to the Sydney Turpentine Ironbark Forest critically endangered ecological community but there are many small pockets of the forest components that being lost to development.
- Legislate for a power to reassess longstanding development approvals that were granted before laws requiring environmental and cultural heritage protections and bushfire and flood risk assessment were enacted.
- Development approvals should include conditions to improve existing vegetation and habitat that remains within the development footprint.

We appreciate the need to simplify the planning system but one-size-fits-all doesn't work in areas with varied topography like Sydney. One example where specialised consideration is required is stormwater management. Steep creeklines are being seriously eroded by stormwater as water volumes are increasing with more extreme storms and larger areas of impervious surfaces. Trees are being lost as their roots are undermined by stormwater.

Creating streets that have more room for trees and shrubs will help increase water absorption as well as the other benefits of reducing the heat island effect. The allowances for impervious surfaces should be reduced for infrastructure and residential developments as well as creation of greater capacity stormwater collection.

Schemes for the collection and reuse of household and industrial waste water should become standard practice for new developments and considered for existing urban areas.

- b) **The adequacy of planning powers and planning bodies to review, amend or revoke development proposals and approvals that are placing people and the environment at risk as a result of:**
- **cumulative impacts of developments**
 - **climate change and natural disasters**
 - **biodiversity loss.**

Some examples of STEPs experience of the inadequacy of the planning powers and planning bodies in determining development approvals are outlined below. They all demonstrate it is the community that has to be alert to plans that are not consistent with the regulations and/or are not in the interest of the general community in the long term future. It seems that there often has to be community and/or council action to ensure even an adequate outcome, let alone a desirable outcome.

1. The Mirvac development of the former IBM business site at West Pennant Hills that includes a large area of pristine forest containing critically endangered Blue Gum High Forest and Sydney Turpentine Ironbark Forest and threatened species The original plan was to convert this forest to high density residential development. Strong protests from the community resulted in most of this forest being protected as C2 zoned land.
2. Lourdes Retirement Village in Killara on the edge of Garigal National Park where the owner wants to enlarge the complex, including a 6 storey, building but the bushfire protection measures and appropriateness of the location in an low density residential area have been questioned by the local MP, council and residents. We are awaiting the Minister's decision.
3. The DA for an 18 storey commercial development at Eden Gardens in Lane Cove Road at Macquarie Park on the edge of Lane Cove National Park has been refused by Ryde Council. The proponent is refusing to consider modifications such as a height reduction that will lessen the impact on the Park and traffic congestion. The community is worried the Land and Environment Court will provide a compromise that will still threaten the habitats and community amenity.
4. A development proposal for the Wahroonga Estate that includes Sydney Adventist Hospital was substantially modified after a prolonged process of consultation with the local councils and community groups. The proponent originally planned to destroy some areas that should have

been mapped as critically endangered forest. It took the community to point this out and it is now protected under a conservation agreement.

These examples point to the importance of having an engagement process for the community, not just the immediate neighbours, and listening to their views.

Often the planning process for larger developments is prolonged by the need for modifications to address environmental concerns. There is much emphasis placed by governments on the need to speed up decision making and approval processes. Preliminary consultation with the Department of Planning and local councils to establish what will be acceptable would eliminate much of this time wasting and discourage developers from making ambit claims in the hope that the planning panel or Land and Environment Court will be more lenient.

c) Planning reforms necessary to mitigate and adapt to conditions caused by changing environmental and climatic conditions

There must be a fundamental change to the way developments are designed and implemented. The focus should be on creating suburbs and communities where people can enjoy living indoors and outdoors. The profit motives of developers should not govern the layout and design of precincts. The huge areas of western Sydney with houses crammed together with no room for trees cannot continue in a future of increased heat.

Suburbs should be designed to encourage walking and cycling over car dependency. Tree lined streets will reduce the heat island effect and be pleasant to walk in so residents are not forced to stay indoors in their air conditioning. Car parking space should be limited in areas with public transport alternatives. Tree lined suburban streets will improve ecosystem services and wildlife corridors via the tree canopy,

We support infill development so that urban sprawl is no longer taking over the Cumberland Plain and coastal bushland and agricultural land.

There have been numerous reports on redesigning our cities and towns to cope with climate change, such as the Western Sydney Regional organisation of Councils' report on *Turning Down the Heat* (<https://wsroc.com.au/projects/project-turn-down-the-heat>) but so far there is limited will to implement the necessary changes. This situation must change.

Change the overdevelopment mindset

The mindset of development must change from proposals that often attempt to exceed the normal planning regulations. The onus should be on the proponent to accept the principles of the planning laws and regulations that will address the inevitable consequences of climate change and prerogative of reducing environmental impacts.

Change the complying development planning policy

In many parts of Sydney, such as the northern suburbs, the complying development planning policy is actively encouraging the destruction of trees and habitat for wildlife with existing houses being knocked down and much bigger houses being built on the block. The only protection available is for large trees or protected species but often trees are being removed illegally. The fines are inadequate to act as a disincentive and it is difficult for councils to obtain the evidence needed to prosecute offenders.

We question if the waste management laws provide for charging the full cost when a house is knocked down of the embedded energy of bricks and mortar that ends up in landfill and/or the energy used to convert this waste to another use. Then there is the environmental cost of obtaining the new raw material for the new house.

Too often the gardens in these new houses are neat hedges that require lots of fuel use for regular trimming and are useless as habitat and food sources for birds. There is now little room in front and backyards for trees and shrubs that provide protection for small birds from larger aggressive birds and wildlife corridors that facilitate their seasonal migration and breeding diversity.

This current retrofitting of existing suburbs via complying development goes against the principles of reducing greenhouse gas emissions, addressing climate change impacts and supporting biodiversity. Consideration could be given to creating some rate system that provides disincentives for building larger and larger homes that have a big environmental footprint.

Amendments to Local Environmental Plans (LEPs) and Development Control Plans (DCPs) are required that provide for urban heat standards will help apply best development practices to local projects. These should specify targets for green cover, building materials, water sensitive urban design and other measures mitigating urban heat that are appropriate for each specific location.. Lack of resources for enforcement is a potential challenge in successful outcomes for new LEP and DCP clauses.

The bushland in Greater Sydney, Newcastle, Wollongong and many coastal areas are essential areas for the conservation of biodiversity. Too often the planning panels and Land and Environment Court do not take sufficient notice of scientific data that provides evidence of potential detrimental outcomes of development plans. Instead past precedents are used as reasons for refusal of objector applications based on outdated court rulings and data. The precautionary principle is ignored.

Yours sincerely

Jill Green
President