



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEES

## **BUDGET ESTIMATES 2019-2020**

### **Supplementary Questions**

**Portfolio Committee No. 7 – Planning and Environment**

#### **PLANNING AND PUBLIC SPACES**

Hearing: Friday, 13 March 2020

**Answers due by: 5.00 pm Friday 17 April 2020**

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## PLANNING AND PUBLIC SPACES

### Questions from Ms Cate Faehrmann MLC

#### Maules Creek Coal Mine Offsets

1. **With reference to the Department's approval of Whitehaven's Maules Creek coal mine offsets for the clearing of the Leard Forest in March 2018 which the Biodiversity Conservation Trust refused to sign off on because of inaccuracies in the mapping, has the Department now found Whitehaven's original mapping to be adequate?**

**(a) If so, how?**

#### **Answer**

I am advised:

As part of the conservation agreement application process, Whitehaven is required to update its vegetation mapping to conform to contemporary plant community types which have been introduced in the time since the Maules Creek Coal Mine was approved. This is a standard requirement for securing offset areas under the Biodiversity Conservation Trust.

2. **What was the difference between the Department's view of the quality of the offsets and those of the BCT?**

#### **Answer**

I am advised:

The Biodiversity Conservation Trust has asked Whitehaven to update its vegetation mapping in accordance with contemporary plant community types as part of the conservation agreement application process for the offset areas at the Maules Creek Coal Mine. This is a standard requirement for securing offset areas under the Biodiversity Conservation Trust.

3. **Whitehaven coal have repeatedly missed deadlines to secure the offsets and been granted extensions, even now only an unknown portion of the offsets have been secured:**

**(a) Has whitehaven coal been granted extensions on the offsets it has currently failed to secure?**

**i. If so, for what are they and for how long?**

- (b) Will the department take any punitive action in regards to the Maules Creek Coal Mine clearing the leard forest for a period of nearly 7 years on the basis of inadequate offsets?**

**Answer**

I am advised:

- (a) There have been delays in securing offsets for the Maules Creek Coal Mine due to administrative changes as a result of the introduction of the *Biodiversity Conservation Act 2016*. The Department of Planning, Industry and Environment has granted extensions to Whitehaven as a result of these regulatory changes. In the meantime, Whitehaven is required to manage all offset areas for conservation purposes in accordance with a detailed Biodiversity Management Plan which was approved in April 2017.
- (b) The biodiversity offsets for the Maules Creek Coal Mine are satisfactory and meet the requirements of the Independent Planning Commission's conditions of consent.

- 4. Which Conservation Agreements for biodiversity offsets for Whitehaven Coal's Maules Creek Coal mine have been executed?**

**Answer**

I am advised:

Two conservation agreements covering five offset properties have been executed.

- 5. Does the department have a policy on the viability of a biodiversity offset for a critically endangered ecological community being mined for coal or in the immediate vicinity or contiguous with open cut coal mining?**

**Answer**

I am advised:

The Biodiversity Offsets Scheme under the *Biodiversity Conservation Act 2016* sets out the NSW Government's policy for assessing biodiversity impacts and offsets for State Significant Developments, including coal mines.

6. **Is it correct that outstanding obligations on Whitehaven Coal to improve Maules Creek offsets and render them satisfactory have been incorporated into the Management Plans, with a further 12-month extension of time to demonstrate satisfactory progress?**

**Answer**

I am advised:

That is not correct. The approved Biodiversity Management Plan includes a range of actions to maintain and improve biodiversity values within the offset areas. This is a standard approach to managing offset areas and does not mean that the offsets are not satisfactory.

7. **Who is responsible for assessing whether progress of the Management Plans is satisfactory?**

**Answer**

I am advised:

The Department of Planning, Industry and Environment is responsible for assessing compliance with the conditions of consent, including implementation of management plans.

8. **If, 12 months from the signing of the Maules Creek Conservation Agreements, the offsets continue to be unsatisfactory, what options does the Planning Department have to redress the failure?**

**Answer**

I am advised:

The biodiversity offsets for the Maules Creek Coal Mine are satisfactory and meet the requirements of the Independent Planning Commission's conditions of consent.

9. **What financial penalties (if any) are available in such a situation where the Conservation Agreement has been approved and registered based on satisfactory outcomes under the Management Plan, and satisfactory outcomes are not achieved?**

**Answer**

I am advised:

The Department of Planning, Industry and Environment has a range of enforcement options under the *Environmental Planning and Assessment Act 1979* to enforce compliance with the development consent for the mine, including penalty infringement notices and prosecutions. The Biodiversity Conservation Trust also has its own compliance policy for assessing non-compliances with private land conservation agreements.

## **New Koala Sepp**

10. **The LLS Act requires that core koala habitat be designated as category 2 -sensitive regulated land (LLS Act s 60I (2) (j)) and LLS Reg cl 108(b) and 111). What is the time frame and the process for updating the Native Vegetation Regulatory Map if and when councils put in place new KPOMs, so that any newly identified core koala habitat is then mapped as category 2 sensitive land under the LLS Act?**

### **Answer**

I am advised:

The currently published transitional native vegetation regulatory (NVR) map is updated annually to reflect any significant and widespread changes to land categorisation and includes a public submission process.

Ad hoc changes to land categorisation are made on a monthly basis that originate from Koala Plans of Management (KPOMs) approved by the Planning Secretary.

Since the *State Environmental Planning Policy No. 44 – Koala Habitat Protection* (SEPP 44) was introduced in February 1995, six council KPOMs have been approved by the Planning Secretary. A further five council KPOMs are currently under consideration for approval under the new SEPP's transitional arrangements. In addition, as of July 2019, the Department of Planning, Industry and Environment (the Department) had approved 81 individual KPOMs since 1995. There is no requirement for individual KPOMs or process for preparing them under the new *State Environmental Planning Policy (Koala Habitat Protection) 2019*.

The Department is not aware of any new KPOMs being prepared by councils. Given the survey effort required to prepare a KPOM, the council endorsement and public consultation process required and the Planning Secretary approval process it could be 12 to 24 months before any new KPOMs are approved.

11. **How many hectares of land does the koala SEPP apply to?**

### **Answer**

I am advised:

For development applications, the Koala Development Application Map applies to 6,368,644.50 hectares of land. The map applies to lots over 1 hectare within this mapped area.

The Site Investigation Area Map applies to 24,874,389.23 hectares of land. Councils can prepare a Koala Plan of Management that identifies core koala habitat only on the area included in the map. The figures for the DA Map and SIA Map do not include land in National Parks or State Forests.

12. **How many hectares of land that has koala habitat does the koala SEPP not apply to?**

**Answer**

I am advised:

The new *State Environmental Planning Policy (Koala Habitat Protection) 2019* (Koala SEPP) continues to exclude National Parks and State Forests from its application as was the case under the old *State Environmental Planning Policy No. 44 – Koala Habitat Protection* (SEPP 44). NSW National Parks and State Forests are regulated under their own legislation which provides protections for koalas and their habitat and applying the Koala SEPP in these situations would provide unnecessary complexity.

The new Koala SEPP contains two maps:

- The Development Assessment Map which refines the area where development proponents and councils must consider the protection of koala habitat as part of the development application process. This map is based on the best available science and predicts where koalas are likely to be, based on attributes such as habitat, climate, soil composition, topography and koala records.
- The Site Investigation for Koala Plans of Management map is used by councils when preparing koala plans of management and focuses investigation effort on land which is likely to contain habitat that is highly suitable for koalas based on similar information used for the DA Map excluding koala records.

Both maps are based on predictive modelling and the Department of Planning, Industry and Environment acknowledges there may be some areas of habitat not identified.

## Planning and public spaces

13. **What is the government doing to plan for the impacts of climate change within the state's planning and assessment framework?**
- (a) **Currently the EP&A Act contains no explicit reference to climate change. Are there any plans to change this?**
  - (b) **Are there plans to strengthen the Building Sustainability Index (BASIX) to ensure new residential buildings are reducing energy consumption and increasing the levels of renewable energy that can be produced at the neighbourhood level?**

### Answer

I am advised:

- (a) Substantial reforms to the *Environmental Protection and Assessment Act 1979* (the Act) were made in 2017 and have been progressively implemented over the preceding three years. There are already numerous provisions in the Act that indirectly relate to climate change, including the objects of the Act which include to facilitate ecologically sustainable development and to protect the environment and the requirement that consent authorities assess the likely environmental impacts of the development.
  - (b) The Department of Planning, Industry and Environment (the Department) is committed to achieving the NSW Government's aspirational target of net-zero emissions by 2050. This includes working to the Trajectory for Low Energy Buildings, a national agreement signed by all Energy Ministers that maps a regulatory pathway to achieving 'zero carbon (ready)' new homes by 2030.
14. **Are local councils able to determine their own water efficiency and thermal performance targets to suit local conditions? if not, why not?**

### Answer

I am advised:

Local councils that wish to increase their energy targets beyond those set by the BASIX online assessment tool would need to provide the Planning Secretary with a robust cost-benefit analysis for building types where target changes are intended. This must also be supported with stakeholder consultation on the proposed change.



15. **What is the Government doing to explore the potential for all new development of residential and commercial buildings to be able to produce more energy than it consumes?**

**Answer**

I am advised:

In February 2019, the Council of Australian Governments (COAG) Energy Council agreed to a Trajectory for Low Energy Buildings. The Trajectory recommends the cost-effective tightening of the energy efficiency requirements for new buildings in the National Construction Code (NCC) and cost-effective policy initiatives for existing buildings. A substantial update to NCC energy efficiency requirements for new residential buildings is expected in 2022. It can be expected the NCC update will be matched by corresponding requirements under the NSW Building Sustainability Index (BASIX), which sets energy efficiency requirements for new residential buildings in NSW. The NCC only applies to new commercial and public buildings in NSW.

16. **What is the Government doing to ensure that all modification or alterations to existing buildings result in improvements to water consumption, thermal performance and the generation of renewable energy within the building?**

**Answer**

I am advised:

Alterations and additions to existing residential buildings, valued at \$50,000 or more, must meet minimum energy and water efficiency requirements.

17. **What opportunities are there for the Government to drive innovation in construction and supply chains, towards the use of low carbon or carbon neutral construction materials in every new development?**

**Answer**

I am advised:

Under the new Net Zero Plan Stage 1: 2020-2030, the Government will:

- partner with industry bodies to develop targets and certification for low emission building products, such as concrete and aluminium;

- embed sustainable standards and targets into the design and construction of major NSW Government infrastructure projects; and,
- work with large developers and infrastructure providers to drive their use of low emissions materials in procurement processes. These and other actions will allow the building materials industry to meet increasing demand for low emissions products and allow NSW building suppliers to maintain a competitive advantage against overseas imports.

18. **What opportunities are there for the Government to encourage or require the energy and water efficiency of existing residential and commercial buildings to be measured and, where possible, improved?**

**Answer**

I am advised:

There are a number of opportunities including:

- developing information, training and energy rating tools for households and businesses to enable greater understanding of energy efficiency options and applications;
- developing and expanding targeted building policies, including disclosure of energy performance, minimum energy efficiency standards for rental properties, renovations and refurbishments, improving heating, ventilation and cooling, and energy productivity in government operations; and
- identifying and developing supporting measures, including specific measures for strata titled buildings, financial initiatives, appliance standards and labelling, specific measures for vulnerable households, a national dataset and collection process for existing homes, and other targeted initiatives.

The COAG Energy Council's Trajectory for Low Energy Buildings is aligned with the NSW Government's target and efforts to reach net zero emissions by 2050, and the recently released Net Zero Plan Stage 1: 2020-2030 (the Plan), available at [www.environment.nsw.gov.au/topics/climate-change/net-zero-plan](http://www.environment.nsw.gov.au/topics/climate-change/net-zero-plan). The Plan sets out how NSW will reduce emissions over the next decade and accelerate the shift to a low-carbon economy. Its initiatives are grounded in science and economics, and are forecast to reduce emissions by 35% on 2005 levels by 2030, create almost 2,400 jobs and attract over \$11.6 billion of investment to NSW.

NSW also owns and administers the National Australian Built Environment Rating System (NABERS), a rating scheme that measures the energy, water and waste performance of commercial buildings. The wide and successful use of NABERS in NSW has helped our state become a world leader in commercial building energy efficiency, both in terms of the number of buildings actively measuring their energy efficiency as well as the rate at which they are reducing energy use. Buildings participating in NABERS reduced energy use by on average of over 30% in the past decade. We are working to bring buildings in many more sectors into NABERS, help them set improvement targets and embark on a similar world-leading trajectory of energy and carbon savings.

19. **Is the Government on track to meet its target of 5 million trees planted in Greater Sydney by 2030? How is progress being measured?**
- (a) What information and resourcing is available for local councils and residents who wish to assist?**
  - (b) What plans does the Government have to ensure tree planting is targeted to areas with low or diminishing canopy cover, that need it most?**

**Answer**

I am advised:

The NSW Government is on track to meet the 5 million tree target by 2030. The first stage of meeting this target is to achieve the Premier's Priority of planting one million trees by 2022. Progress is measured through two key measures. The first is the 5 million tree online tree counter. People and organisations that plant trees can register the trees they have planted on that website. The second is a percentage measurement of Greater Sydney's tree canopy that is prepared by the Department of Planning, Industry and Environment's Energy, Environment and Science division (EES).

- (a) The data for urban canopy in Greater Sydney is available on the SEED (Central Resource for Sharing and Enabling Environmental Data in NSW) portal, along with other relevant datasets such as Urban Vegetation Cover and Heat Vulnerability Index. This information is accessible for local councils and other stakeholders, including residents.

The 5 Million Trees website provides further information for individuals on how they can

be involved. The website includes information on the program, a calendar of upcoming events and a tree selector tool.

- (b) Funding for the current grant program was weighted towards areas of low canopy cover and high heat island impacts. Future grant rounds will also consider existing tree canopy cover when investigating sites and funding for tree planting activities.

20. **What guidance and resourcing does the Government provide to local councils to increase tree canopy targets?**

**Answer**

I am advised:

The 5 Million Tree Grant Program allows councils to apply for matched funding for tree planting projects. Other grant programs that support increasing tree canopy cover include the Metropolitan Greenspace Program and Everyone Can Play.

Data on the SEED portal about existing canopy cover and heat impacts is freely available to councils and can be used to inform future canopy programs delivered by councils.

## Local Strategic Planning Statement

21. **How many local councils have submitted a draft Local Strategic Planning Statement for assessment by the Greater Sydney Commission? How many assessments have been completed?**

(a) **How many drafts have been approved?**

(b) **How many drafts have been not approved?**

### Answer

I am advised:

As at 27 March 2020, 31 councils have submitted draft Local Strategic Planning Statements (LSPS) to the Greater Sydney Commission. Please refer to the Commission's website for the most current data (<https://www.greater.sydney/local-planning-assurance-tracker>).

As at 27 March 2020, the Greater Sydney Commission has completed 26 assurance reviews of draft LSPS. Please refer to the Commission's website for the most current data

(<https://www.greater.sydney/local-planning-assurance-tracker>

(a) As at 27 March 2020, 26 Letters of Support have been issued to councils by the Greater Sydney Commission. Please refer to the Commission's website for the most current data (<https://www.greater.sydney/local-planning-assurance-tracker>

(b) As at 27 March 2020, no council has received a letter from the Commission indicating that its draft LSPS has not been supported. Please refer to the Commission's website for the most up-to-date data (<https://www.greater.sydney/local-planning-assurance-tracker>

22. **How many local councils are on track to review their Local Environment Plans within 5 years in accordance with the Greater Sydney Commission's regional and district plans?**

### Answer

I am advised:

19 of the 33 Greater Sydney Councils will have reviewed their Local Environmental Plans by 30 June 2020, the remaining 14 are expected to have done this by June 2021.

## Affordable Rental Housing

23. **What is the number of affordable rental dwellings made available as a result of the ARSEPP(Affordable Housing Rental SEPP)**

### Answer

I am advised:

This data is held by councils who are responsible for assessing and determining development applications for affordable rental housing under the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

24. **How many of these dwellings will revert to market rentals this year.**

### Answer

I am advised:

Data on the number of dwellings that will convert to private market rental under the National Rental Affordability Scheme (NRAS) has been obtained from the Australian Department of Social Services (DSS) NRAS Quarterly Performance Report, (31 December 2019).

DSS is responsible for the administration of the National Rental Affordability Scheme in consultation with the Australian Taxation Office and the Departments of Treasury, and Finance and Deregulation.

The DSS report indicates that there are currently 5,652 NRAS dwellings tenanted or available for rent in NSW. There are also 395 NRAS incentives allocated where the dwellings were not delivered by the developer.

The table below indicates the number of properties that will no longer attract an NRAS incentive in the calendar year. NSW NRAS allocations ceasing by calendar year:

2020	2021	2022	2023	2024	2025	2026	Total
271	380	457	605	1,140	1,186	2,008	6,047

Source: [www.dss.gov.au/housing-support-programs-services-housing-national-rental-affordability-scheme/december-2019-nras-quarterly-performance-report](http://www.dss.gov.au/housing-support-programs-services-housing-national-rental-affordability-scheme/december-2019-nras-quarterly-performance-report)

25. **How many will revert to market rentals in the next 10 years.**

### Answer

I am advised:

The National Rental Affordability Scheme will not operate after 2026.

26. **Has the government investigated options to ensure that affordable rental housing that's been developed via ARSEPP can be extended indefinitely given the chronic shortage of affordable housing in NSW. If not, why not?**

**Answer**

I am advised:

Extending the amount of time housing developed under the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP) is rented as affordable housing would require significant funding.

The affordability requirement is enforced primarily through conditions of development consent. To vary these conditions the applicant would need to initiate a modification to the planning consent.

In many instances affordable housing developed under the ARHSEPP has been developed by community housing providers and other not-for-profit developers and will continue to be managed as affordable housing after the ARHSEPP 10-year affordability requirement and the NRAS financial incentives have expired.

27. **What current planning law provisions, including exemptions, are in place to support the development of affordable housing including local government provisions?**
- (a) Can you give details of these, including the nature of the exemptions to the provisions which enable Councils to require affordable housing?**
  - (b) Which of these rely on developers building affordable housing out of their own goodwill, ie: are entirely voluntary once an exemption has been granted?**
  - (c) What measures are available to local councils to fast-track amendments to their LEPs so as to be able to use SEPP 70 for the creation of more affordable dwellings in their LGAs?**

**Answer**

I am advised:

- (a) Division 1 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP) allows the developer to vary the maximum Floor Space Ratio (FSR) allowable on site depending on the nature of the affordable housing to be provided. Exemptions within division 1 include minimum landscaped area, minimum site area given that the site is 450m or more, maximum parking rates depending on the dwelling size.

In February 2019, the *State Environmental Planning Policy No. 70 - Affordable Housing (Revised Schemes)* (SEPP 70) was expanded to include all councils across NSW. The amendment removes the administrative step of entering a council into SEPP 70, thereby expediting councils' ability to investigate and develop an affordable housing contributions scheme. It does so by entering all Local Government Areas into SEPP 70.

- (b) The ARHSEPP is completely voluntary. Any development undertaken using the provisions of the ARHSEPP is done so based on commercial decisions.
- (c) In conjunction with the expansion of SEPP 70 to all Local Government Areas, the Department of Planning, Industry and Environment (the Department) has prepared a guideline for developing affordable housing contribution schemes. The guideline will ensure consistency in the way schemes are prepared and give greater clarity to communities and developers about how affordable housing contributions will be levied.

The Department has also developed an affordable housing viability tool (the SEPP 70 Tool). The SEPP 70 Tool provides a consistent and transparent method for all councils to test and develop an affordable housing contribution rate as part of an affordable housing contribution scheme. It will also be used in the assessment and justification of a planning proposal to include or refer to an affordable housing contribution scheme in a local environmental plan. The SEPP 70 Tool was developed by the Department and the Greater Sydney Commission.

28. **Is there any tracking or reporting on the effectiveness of affordable housing requirements, specifically the 'below market rent' requirements for rentals in new builds, which in fact mean that dwellings are rented at unaffordable levels for most people?**

**Answer**

I am advised:



The Department of Social Services reports on affordable housing in NSW that is subject to NRAS incentives. The Department of Family and Community Services (FACS) tracks properties that have been developed under the NSW Social and Affordable Housing Fund (SAHF) and the Communities Plus program. Some of these properties have been developed under the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP).

Affordable housing developed under the ARHSEPP must be managed by community housing providers (CHPs) and rented to very low, low and moderate-income households.

Ensuring tenant households are not placed in housing stress is the responsibility of the managing CHP. Where below market rents apply, CHPs aim to ensure tenants are not placed in housing stress by carefully selecting households that can afford to pay the below market rent.

29. **How are affordable housing requirements reported or enforced? If there are powers to enforce, are there any cases of enforcement?**

**Answer**

I am advised:

*State Environmental Planning Policy (Affordable Rental Housing) 2009* affordable housing requirements are enforced through conditions of development consent. Enforcement of these requirements is the responsibility of local government.

30. **What planning provisions have been made in relation to the supply of affordable housing in the following proposed redevelopment areas.**
- (a) **In relation to the Eveleigh corridor**
  - (b) **In relation to Parramatta Road revitalisation**
  - (c) **In relation to WestConnex - any current reclaimed, current construction site proposed for affordable housing or other purposes like green space?**
  - (d) **In relation to Millers Point.**

**Answer**

I am advised:

- (a) –(b) The Department of Planning Industry and Environment applies the policy position from the Greater Sydney Region Plan - A Metropolis of Three Cities which requires 5-10% affordable housing depending on feasibility.
  
- (c) Transport for NSW (TfNSW) and Transurban are working with local councils to design and deliver open space for the community. The open space initiatives along WestConnex are:
  - i. Ismay Reserve in Strathfield (Stage 1 M4 East)
  - ii. Haberfield Gardens (Stage 1 M4 East)
  - iii. Concord Road Interchange (Stage 1 M4 East)
  - iv. St Peters Interchange Recreational Area (Stage 2 New M5)
  - v. Rozelle Interchange Parkland (Stage 3 M4 – M5 Link).
  
- (d) The Department applies the policy position from the Greater Sydney Region Plan - A Metropolis of Three Cities which requires 5-10% affordable housing depending on feasibility.

## Community Land Trusts

31. **Has the government investigated options to increase inclusionary zoning provisions for not only social rental but also for permanently affordable ownership options such as Community Land Trusts? If not why not?**
32. **Will the government incorporate zoning provisions to planning legislation to facilitate permanently affordable ownership options such as Community Land Trusts?**

### Answer (31 & 32)

I am advised:

The NSW Government facilitates the delivery of affordable housing principally through two State policies.

The first of these, *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes)* (SEPP 70), identifies local government areas which have a need for affordable housing. In 2019, the Government expanded SEPP 70 to include all local government areas in NSW. This means that all councils can now prepare affordable housing contribution schemes and require the provision of affordable housing as a condition of development consent.

The second policy, *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP), aims to facilitate the effective delivery of new affordable rental housing, including in-fill affordable housing and boarding houses. Some Community Housing Providers and Social Housing Providers use the provisions of the ARHSEPP to provide affordable and social housing.

Community Land Trusts are a form of shared ownership of a residential property, where the land component is owned by a community-based entity and the building is owned or long-term leased by an individual household. Although Community Land Trusts have been used to facilitate affordable housing in other countries, such as the US and UK, they are not common in Australia.