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Conserving our heritage · Encouraging a sense of community · Working for Glebe's future
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Joint Chairs
Review of Environmental Planning and Assessment Act, 1979

The Glebe Society made an initial response to the Review on 2 November, 2011. This second submission is in response to the Issues Paper due to be finalised on March 2, 2012. The Society has not attempted to answer all 284 questions posed in the Issues Paper, but has confined itself to those within its ambit as an Inner Sydney residents' group, dealing with Sections A-F in turn, though combining issues from different Sections. Where possible we identify responses to particular questions by quoting the number. The Glebe Society has studied a number of submissions made by other organisations, many of which have made carefully considered comments, and especially supports those made by the National Trust, ICOMOS and in the main to that of the City of Sydney.

The Glebe Society believes Glebe, though imperfect, is an excellent model of development, especially for inner urban areas. Led by the Glebe Society, Glebe was saved from the appalling planning decisions of the past, including radial expressways and high rise slum clearance. It has a very heterogenous population, with a mix of publicly rented, privately rented and privately owned dwellings. It has a proportionately high population in a relatively low-rise, intact and well-cared for Conservation Area. The residents live harmoniously in a human scale environment, with mature trees, gardens, large waterfront parks and good facilities, all achieved by active locally-based community organisations such as the Glebe Society. It is very close to the model recommended by Elizabeth Farrelly, architecture columnist, Brian Zulaikha, President of the Australian Institute of Architects (letter to SMH, 9 February 2011) and other noted architects and planners. For this reason our comments deserve your careful attention.

SUMMARY

1. The Terms of Reference of the Review should be widened. For an Act to be effective it must include all matters related to planning, including Environment and Climate Change and Heritage.
2. The Local Authority is the body best equipped with the necessary knowledge and experience to make decisions and plans.
3. The role of the Department is to assist local authorities to do their job more effectively.
4. Public involvement, participation and consultation should occur at all stages. It is the key to public acceptance of the Act.
5. A 'one size fits all' approach is completely inappropriate for a complex and varied State such as NSW. Simplify, eliminate duplication and double handling, but do not impose templates.
6. The Act should be reviewed every ten years, with the aim of reflecting contemporary issues and embracing modern technology.
7. Extending and improving public transport should be a priority for all major population centres.
8. Maximum advantage should be taken of modern technologies such as the National Broadband Network and High Speed Rail to achieve decentralisation.
9. The combination of these last two points would go a long way toward improving housing provision and affordability.

A: Introduction

The Glebe Society is very concerned that the Review regards Heritage issues, apart from Aboriginal ones, as outside its ambit, because they are covered by a separate Act (1977). The Glebe Society believes it is of the utmost importance that the new Planning Act should not only be contemporary in its wording and outlook, but should also include as many as possible of the issues related to planning. We believe that a large part of the current concern with the operation of the Act is that matters related to planning and development are scattered in a variety of places, and this makes it difficult to obtain clarity and certainty, as well as requiring special knowledge of the history of legislative changes in order to consider all relevant matters.

This is especially true of Environmental issues, including both Heritage and Environmental Sustainability. Preserving Heritage and achieving Sustainability should be key objectives for a new Act (A1). It is inconceivable that a contemporary planning act should not concern itself with such major issues as Climate Change (C11), and also with the provision of infrastructure. Responsible development cannot take place without considering the likely consequences for the future.

Similarly, there will probably continue to be a need for Statewide Policies on some issues. The best place for these SEPPs is within the Act (C18) where they are readily available, and where they can be made consistent with other requirements. SEPP 65, regulating unit design, should be retained and included, but it would also be an opportunity to discard any that are no longer relevant, or need updating.

A hierarchy of Strategic, Regional Plans is desirable, but the history of such plans is not encouraging. The involvement of most of the population is essential for developing such plans, and requires a major effort of consultation. The efforts of the City in developing its Sustainable 2030 could be taken as a model (A6,7&8).

Periodic reviews of the Act and of all major plans should take place every ten years (C6, C7). In practice, this is about the length of time a plan can survive without needing significant change and updating, and regular reviews reduce the need for tinkering and the kinds of accretions that have helped to discredit the current Act.

Issues raised in the Introduction recur under other sections, and the Glebe Society will address them at the appropriate point, but as a resident organisation the Glebe Society is especially concerned with the issue of consultation. A procedure for consultation should form part of the Act, and should include all the necessary elements for it to be effective. These elements include general advertisement of proposals, notification of those affected, free and easy access to plans and information, public information and consultation sessions, and adequate time for response. These should be graded according to the size and importance of the development and should be mandatory (1.4).

B: Key Elements

The Glebe Society reiterates that it is very important for the credibility and usefulness of a new Act that all matters pertaining to planning are included (B10), and that if for some reason this is not possible, there should be integration with and reference to any other relevant Act, Such as the Local Government Act and Heritage Act.

The Role of the Minister (B17) has been brought into disrepute in recent years because of his removal of development from the normal consultative and approval processes, especially through Section 3A. There is a role for the Department and Minister in the development of Statewide policies, though even here they should be developed in consultation with the community and as far as possible incorporated into the Act, through periodic revision if necessary.

C: Making of Plans

Making of Plans should be the responsibility of the authority within whose territory they lie, and the expectation should be that they reflect the character of that area, rather than fit a prescribed template. If it is appropriate to have a Regional Plan, Regional organisations of Councils should be recognised and empowered to prepare them. In every case there should be community participation in their drafting. There is an advisory, but not a determining role for an Independent Planning Commission in the preparation of plans (C1-4).

The source and accuracy of data for the making of plans is a cause for concern. In particular, population projections used to set targets for housing development are unreliable. The sources should be available and challengeable (C10).

Biodiversity and Environmental Studies should be mandatory (C12) and Aboriginal Landscapes and Heritage should be identified and considered.

Local Environmental Plans should be prepared by the local authority, which is best equipped with knowledge and experience, in consultation with its own community. There is an advisory role for the Department in seeking uniform standards based on empirical evidence, and similar forms of wording where plans are dealing with the same issues. There should not be any blanket rezonings of Special Use Zones as is proposed in the current template. There should be wide latitude to allow these LEPs to reflect the distinctive characteristics of the areas they cover (4.4).

Each LGA should be required to conduct a Heritage Study in which Conservation Areas and Heritage Items are identified. The onus should be on an objector to prove that an Area or Item should not be listed, or is incorrectly recorded.

It is important that Development Control Plans should be consistent and integrated with LEPs. Provided this is the case they should be recognised as mutually supportive and of equal status, but it is also important LGAs retain the flexibility to change DCPs after consultation without submitting them for Departmental approval (C32-33).

D: Development Proposals and Assessment

This section is particularly lengthy and diverse, with very specific questions that it is probably better to address one by one.

D2: State significant development should be defined in the Act and not left to the Minister or appointed body, as has happened in the past. It should be defined as infrastructure that is essential for the welfare of the State. It should specifically exclude residential development. However, it may in some instances include development covered by State-wide policies affecting a number of LGAs. It should be assessed by panels including the affected LGAs.

D4: Exempt and Complying Development should not apply in Conservation Areas except when wholly within an existing structure.

D7: There is no absolute right to develop. There are minor types of development, usually those within structures, that could receive automatic approval provided they meet the appropriate standards and controls. For minor types of development, where there is no possibility of affecting neighbours or public areas, bureaucratic requirements and procedures should be kept to a minimum. There should be a clear distinction, so that development without impacts are approved expeditiously, whereas those that do have impacts go through a rigorous process of advertising and assessment.

D10,11,12: The current restrictions on nonconforming uses should be retained. Nonconforming uses should not intensify, expand, or convert to other nonconforming uses.

D17: There is often provision for uses for Heritage Items that are prohibited in a particular zone (adaptive reuse). This flexibility should be retained, so that the Items can be preserved and put to good use. Other provisions should be included that specifically recognise and encourage the retention, restoration and integration of Heritage Items into the life of communities, including various types of rate and tax relief and incentives to record and exhibit their significance and value.

D21: Pre-DA processes are extremely valuable in working out how a proposal can best fit an area. Consultation with precincts and groups can form an important part of this process, and should be recommended where the opportunity exists.

D36: The value of Environmental Impact Statements has been undermined by allowing developers to choose their own. They should be required to choose from a panel of assessors of proven integrity, which will increase rapidly in size once the principle is established.

D37: Multi-dwelling and large scale development should undergo scrutiny by architectural design and review panels.

D44: Where there are large or numerous sites to be developed there are usually clear cumulative impacts, especially on infrastructure. These should be assessed, and if excessive, should be grounds for refusal or modification. This is a case where properly developed regional plans are essential, which should include State infrastructure planning and provision.

D45 and 52: Carbon accounting should form part of environmental impact assessment, as should water issues.

D81: The CSPC appears to operate effectively in ensuring State input into decisions of the City of Sydney. However, this role should be limited to the CBD, where the State has a clear interest.

D82: Most development is delegated to development panels. However, Councillors should decide on what basis this occurs, and retain the right to make decisions about controversial development. This is their proper role as elected representatives, and if they do not carry it out effectively the ballot box is an effective remedy. Councillors also have an important role in strategic as well as statutory planning.

D83 and 87: Recommendations about proposals should always make clear the supporting reasons, including the public interest, and why objections are not supported.

14. There has been a great deal of debate about infrastructure contributions. The fact is that if developers do not pay for infrastructure someone else has to. Provided there is a clear nexus

between the development and the required infrastructure developers' contributions are the fairest method.

D107 and 108: One of the purposes of pre-DA processes is to reduce the need for modifications. Provided these processes are carried out effectively the need should be very minor.

17.1 Councils are in the best position to certify whether proposals are carried out in accordance with approvals and the relevant standards. Private Certification has proven to be a failure and impossible to regulate effectively, and should be abolished.

E: Appeals and Reviews

E 1-3 From the Glebe Society's point of view the most important right of appeal is by third parties in cases where a development does not comply with the controls and standards in an LEP, but it is also important that third parties are able to appeal where there is a breach of the Act.

E6: Applicants should pay all the costs associated with amendments.

E7: There should be no right of appeal against developers contributions.

E8: Review decisions should be final.

E9: The Society has experience of the City of Sydney's Small Permits Appeals Panel, and believes it is an effective mechanism that should be considered for inclusion in the Act.

E12: Penalties for development without consent, or non-compliance, should be increased to a point where the problem is eliminated.

E13: Councils should be able to require DAs to be completed, and to order demolition where there is only partial completion.

E18: Councils should be able to revoke consent within a short timeframe, but in such a case should compensate the applicant for work carried out.

E19: Council officers should have right of entry for compliance and enforcement purposes.

F: Implementation

F1-2: The role of the Department should be to provide resources for Councils to implement the new Act. Councils should retain their present powers, plus those noted above, including a role for pre-DA meetings.

F5: The State Government should provide improved coordination for provision of infrastructure, especially transport.

F4,7,9: Planning lags behind in the use of modern technology. Electronic lodgement should be compulsory, and databases with information able sites should be integrated. Both Councils and government Departments should be required to provide summaries of all key planning information, documents and controls in the appropriate community languages, and the legislation should require, and make provision for, all strategic plans to be easily accessible on line.

Adequate consultation is the key to ensuring public acceptance of the planning process, and hence of the new Act. The Act should encourage and require consultation in all areas and explore the most effective methods of advertising proposals, and the latest methods to improve public participation including on line consultation and comment.

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