

Greens NSW

Planning, Building and Infrastructure Policy

(Under review)



Principles

The Greens NSW believe that:

1. Residents and the environment have an equal interest in planning decisions;
2. Planning must respond to the demands of increasing urban development, the need to protect fragile environments, the challenge of climate change, and the overriding right of citizens to participate in decisions which affect themselves, their local environment and the planet;
3. Planning must give primacy to Ecologically Sustainable Development principles, which strengthen environmental and social considerations in the decision-making process;
4. Planning laws and planning codes must be capable of adaptation to local conditions;
5. Planning must deliver outcomes that improve the health and wellbeing of communities and eco-systems;
6. Community involvement in the planning process is inherently democratic, promotes transparency and accountability, and will lead to better planning outcomes because:
 - (i) residents are able to contribute their local knowledge and expertise, and
 - (ii) involvement in the process will promote greater community acceptance of outcomes.
7. Special measures need to be taken to involve Aboriginal people in planning

Policy Detail

Planning Legislation

The Greens NSW will advocate for the wholesale rewriting of NSW Planning Laws based on the following considerations:

1. Retain as an offence under the Electoral Funding and Disclosures Act 1981 for a political party or candidate to accept a donation from a property developer and for a property developer or persons closely

associated with property developers to make a donation to a political party or candidate.

2. Repeal Part 3A of the Environmental Planning and Assessment Act 1979 (EPA Act) as it is widely viewed as corrupt and corrupting of the planning process because it allows for ad hoc, discretionary, and unaccountable decision making, and contains no clearly defined environmental, social, economic or health outcomes.
3. Abolish the standard instrument LEP and return the right to make local planning instruments to local councils.
4. Repeal all provisions in the EPA Act and all planning instruments relating to concept plans, state significant sites and critical infrastructure that diminish environmental assessment criteria, community consultation and appeal rights.
5. Remove the discretionary powers of the Minister for Planning to dispense with environmental protections, consultation processes and appeal rights in relation to any project.
6. Oppose the making of legislation to override a court decision refusing a specific development and legislation designed to impede a specific the court case.
7. Limit the power of the Minister to intervene in the development assessment process to the refusal of an application or the imposition of additional conditions of consent.
8. Repeal State Environmental Planning Policy 1 and only allow consent to a development that breaches a developmental standard where it will result in a positive environmental outcome.
9. Repeal the Exempt and Complying Development Codes SEPP and return the power to make these instruments to local communities.
10. Abolish Joint Regional Planning Panels and return their decision-making power to local government.
11. End private certification of planning proposals
12. Initiate widespread consultation with community and professional organisations on legislation to replace the Environmental Planning & Assessment Act 1979
13. Include healthy communities as an object of the EP&A Act
14. Ensure State-wide planning provisions are put in place through amendments to the Act or by disallowable Regulation and not by unreviewable SEPPs.
15. Require the cumulative impact of planning decisions be taken into account in the decision-making process.
16. Establish an Independent State Planning Commission (ISPC) comprised of nominees of community and professional organisations, the composition of the ISPC to be subject to approval of 75 per cent of members of both the NSW Legislative Assembly and the Legislative Council and supported by legislation to ensure its independence. The

IPC's task will be to assess major, infrastructure and utility projects with a construction value greater than \$100 million against objective criteria with no role for the Minister for Planning to exercise discretionary power.

17. Strengthen environmental assessment provisions to require consent authorities to refuse to approve development proposals where an EIS has shown that there will be significant deleterious impact on critical habitat or the environment.
18. Support a 'betterment' tax, payable on sale or disposal, to be levied on windfall gains that accrue to a landholder as a result of rezoning that increases the development potential of land.

Heritage

The Greens NSW will:

19. Ensure the independence of the Heritage Council by guaranteeing its funding and making it directly accountable to the NSW Parliament (as per the Ombudsman's Office) rather than to a Minister.
20. Reconstitute the Heritage Council to ensure the appropriate representation of community and professional organisations
21. Provide adequate resources to permit an increase in the rate of assessment of items for inclusion on the State Heritage Register.
22. Facilitate the extension of Interim Heritage Protection Orders to items not on the State Heritage Register
23. Remove economic disadvantage as a reason to delist a heritage item
24. Remove the right of the Minister to unilaterally delist any heritage item
25. Require the Heritage Council to approve any recommendation to de-list any item on the State Heritage Register.
26. Require local councils to notify the Heritage Council of any item that may be of State Heritage significance and to seek the Council's advice prior to approving demolition or alteration of that item.
27. Encourage and fund local councils to revise and extend their local heritage registers.
28. Require any application to demolish a heritage item to demonstrate why alternatives such as adaptation of existing structures are not feasible, and forbid the demolition of any heritage item without prior approval of the relevant authority with significant penalties for breach.

Development Assessment

The Greens NSW will:

29. Ensure proposals to alter zonings to allow more intensive developments are not approved without proactive community

- engagement including review of indicative plans of potential future development;
30. Ensure such re-zonings do not occur when they will impact adversely on biodiversity, energy or transport efficiency, view corridors from public open space, built heritage, or water quality for wetlands, estuaries, creeks and other watercourses
 31. In the case of large subdivisions and developments, revise the pre-development application process to ensure
 - a. Sufficient land is set aside to provide for public open space, parks and landscaping
 - b. Require open non-gated communities
 - c. Stormwater is treated on site, eg by constructed wetlands, or
 - d. Sufficient contributions are made by the developer to Council to cover the costs of optimal off-site stormwater treatment.
 32. Reform legislation and planning instruments that allow authorities to circumvent development application assessment processes required under the EP&A Act.
 33. Prohibit for 18 months after a DA has been finally rejected for a particular site, the lodging of a new DA which is the same or substantially the same and fails to address the reasons for refusal of the rejected DA for that site, without the written permission of the objectors to the refused DA.
 34. Reform the process of selection of experts (technical consultants) to remove conflicts of interest and perverse incentives.
 35. Require the developer to pay for experts, who are to be chosen at random by Council from a pool of certified experts;
 36. Enable Councils, where a developer uses expert advice such as a Statement of Environmental Effects or a traffic study, to obtain its own expert advice to conduct an independent review, at the expense of the developer.

Local Approval Process

The Greens NSW will:

37. Require that councils give reasons for all decisions on development applications, including decisions to approve an application;
38. Delegate another local council to determine developments where a council has a financial interest in the development and would otherwise be the consent authority.
39. Resource and direct councils to allocate development assessments from frequent applicants to different staff members.

40. Put in place robust governance processes that avoid regulatory capture by planning officers, including by separating the functions of pre-DA consultations and final assessments, recommendations and approvals.
41. Institute a mandatory random auditing of development decisions that would require staff to discuss and justify relevant recommendations or determinations;
42. Direct councils to adopt a system of peer review and/or countersigning of determinations in relation to significant developments.
43. Direct councils to develop a statement of ethics to promote awareness among the public of the ethical standards expected of councillors and council officers and what is appropriate and allowable in relation to interaction with applicants.
44. The time period for a deemed refusal does not commence until the council determines that sufficient material has been provided to allow a council to determine the application.
45. Allow Councils an extension of time for development application approval when it can be demonstrated that the extension is needed for adequate technical assessment and community consultation.
46. Require councils, when disposing of their land, to:
 - a. give priority to consideration of the public interest in retaining the land
 - b. undertake either a competitive process for the sale of valuable land, or
 - c. in the absence of a competitive process, consider at least two valuations based on the land's 'highest and best use', and
 - d. clearly identify the reasons if the council decides for strategic purposes to dispose of land at a below-market price.
47. Require councils to adopt measures to manage potential conflicts of interest when engaging planning consultants, including:
 - a. promoting competitive processes for the selection of consultants,
 - b. requiring consultants to declare any conflict of interest that may emerge throughout their engagement,
 - c. Not engaging consultants who do other work in the local government area,
 - d. Consider using expertise from other local councils rather than private consultants.
48. End the practice of measuring councils' performance on planning issues based on simplistic and misleading numerical standards such as the number of development applications approved and the time taken to approve them.

Land and Environment Court

The Greens NSW will:

49. Allow the same merit appeal rights to objectors and community groups as are given to development applicants;
50. Ensure there is open standing to challenge breaches of the Environmental Planning & Assessment Act.
51. Prohibit developers from submitting to the Court plans other than those rejected by council, without the agreement of council and objectors;
52. Establish a system whereby the Court reports annually on the findings of each Commissioner, including a summary of the number of cases decided, in whose favour, whether consistent with council's decision, length of case, and the cost of the case to the council, developer and objectors.
53. Strengthen the protection against the awarding of costs against parties who bring cases to the court on legitimate public interest grounds.

Publicly Owned Land

The Greens recognise that governments hold publicly owned land in trust for the people of New South Wales and will therefore:

54. Ensure that the zoning of public land protects the land from being sold and retains it for public use.
55. Oppose the current practice of granting exclusivity of use of public land and water (such as shopping bridges over public roads, access from railway stations and private motorways) to private developments;
56. Protect and preserve public spaces such as streetscapes (roads, streets, footpaths and laneways) and assert the right of public access to relevant areas of privately owned shopping centres,
57. Link publicly owned recreation spaces by non-motorised transport corridors;

Building design, demolition and construction

The Greens NSW will:

58. Ensure demolition is subject to written council approval.
59. Extend the developer's liability or 'warranty' for a period of two years after construction, during which time the developer will be liable to rectify without cost to residents or purchasers any defects in construction.
60. Extend for a minimum of seven years a developer's liability for non-apparent defects.
61. Support sustainable building principles in:

- a. the process and materials used during construction, renovation and demolition;
 - b. water supply and conservation, waste water and sewage treatment
 - c. energy supply and conservation
 - d. landscaping and maintenance of landscaped areas
62. Apply BASIX to all building forms;
63. Reform BASIX to increase environmental standards and allow individual local governments to increase BASIX minimums.
64. Undertake an investigation of the BASIX program to determine the effectiveness of BASIX in reducing energy use.

Urban Consolidation

The Greens NSW will

65. Acknowledge the need for planning to accommodate increasing populations in cities and towns by prioritising:
- a. Urban infrastructure - particularly public transport,
 - b. Sustainability of social support systems and quality of life
 - c. local character and heritage values.
 - d. the importance of localised food production in and around urban centres;
 - e. the need to retain agricultural and bio diverse land;
66. Acknowledge that quality urban consolidation can benefit the community rather than fuel developers' unrealistic profit expectations and unaffordable housing prices.
67. Recognise that the potential environmental, economic and affordability benefits of increased population density can only be achieved where urban consolidation is accompanied by:
- a. restrictions on the loss of ecological values and farmland caused by urban growth
 - b. improved access to infrastructure, especially public transport infrastructure, in Sydney and throughout regional NSW
 - c. high quality public open space;
 - d. reduced housing prices;
 - e. environmental benefits such as improved air quality and lower resource use;
68. Support urban consolidation which delivers high quality housing close to public transport, increases the scope for providing public services and makes our towns and cities more liveable and sustainable; and

69. Oppose profit driven urban consolidation where it detracts from heritage values and local character and where local communities are shut out of the decision making process.

True cost of development

The Greens NSW will:

70. Require planning authorities, when determining levies on a development to factor in all hidden costs of large-scale development including:
 - a. infrastructure costs such as the need for additional public transport, cycle and pedestrian corridors, expansion to water, sewerage and power services.
 - b. environmental costs such as the need for compensatory habitats, loss of sunlight and wind, loss of air and water quality.
 - c. Social costs such as need for open space, additional health and education services, sporting and other recreational facilities, affordable housing, youth and aged facilities.
71. Tighten section 94 contributions legislation to eliminate discretionary exclusions.
72. Initiate a Parliamentary inquiry to investigate better ways of ensuring that those who benefit from development bear an appropriate burden of the costs associated with such development including funding public infrastructure needs.

General

The Greens NSW will:

73. Revive the use of regional planning instruments as the formal basis for ecologically sustainable regional planning.
74. Ensure regional planning puts in place bio diversity and nature corridors.
75. Allow only franchises or leases of public land that support a demonstrable public benefit (eg. surf life saving club, railway station)
76. Consider funding the extension of parklands by taxes/contributions from developers with expenditure co-ordinated according to a long-term comprehensive plan.
77. Legislate to protect objectors to development applications from litigation for damages.