

# The 6 Elements - More Detail

The Greens NSW have always had a key role in planning. Our party was born on the picket line in the Green Bans movement and in the environmental and social struggles in our cities, towns and forests.

For 30 years Greens NSW local councillors have been protecting their local environment and delivering leadership on grassroots planning issues across NSW. At all times our state and federal campaigns prioritise protecting precious places, putting in place good policy and empowering local people to protect their patch.

Now more than ever we must lead the way on planning reform.

The Greens NSW Planning and Infrastructure Policy includes detail relevant to its implementation in the current planning system. This additional detail brings forward the relevant parts of the old planning policy as well as new content relevant to more recent planning policies, provisions and proposals.

Not all planning issues fit neatly into the identified six elements. For example the fact that NSW needs a complete re-write of the outdated and overly complex Environmental Planning and Assessment Act is an issue that would have relevance to all 6 elements. Equally, issues such as rezoning practices, community engagement, the processes adopted by decision-makers and issues such as urban consolidation and housing affordability all involve issues and considerations which are complex and involve a wide range of perspectives.

1. **Ecologically Sustainable Development (ESD)** must be the primary consideration underlying all planning decisions. Environmental and social considerations in the decision making process have been secondary to economic considerations for many years and this needs to be reversed.

Related priorities include:

- 1.1. Re-zonings must not impact adversely on biodiversity, renewable energy availability, transport efficiency, or adversely affect water quantity or quality for wetlands, estuaries, creeks and other watercourses.
- 1.2. Sustainable building principles must be adopted including in: minimising demolition and maximising repurposing and renovation, selection of low impact construction materials, minimisation of electricity and water demand as well as adopting least impactful waste water and sewage treatment, maximising landscaping for cooling, biodiversity enhancement as well as amenity.
- 1.3. Apply BASIX to all building forms. Reform BASIX to increase environmental standards and allow individual local governments to increase BASIX minimums.
- 1.4. Require planning authorities, when determining levies on a development to factor in all hidden costs of large-scale development including:
  - 1.4.1 infrastructure costs such as the need for additional public transport, cycle and pedestrian corridors, expansion to water, sewerage and power services.
  - 1.4.2 environmental costs such as the costs of maintaining natural processes including management of stormwater quantity and quality, loss of sunlight and wind, and loss of air and water quality.

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- 1.4.3 social costs such as need for open space, additional health and education services, sporting and other recreational facilities, affordable housing, youth and aged facilities.
2. **Climate change** – both minimising emissions and adaptation to inevitable climate changes - must be central to all decisions. Attention to climate change and ESD are complementary but specific focus on climate change is warranted given that currently the NSW planning system does not seriously address climate change either in law or policy.

The EP&A Act does not even mention the words climate change. Policies relevant to sea level rise and flooding fail to set clear and unambiguous planning guidance for councils and other decision makers. These omissions mean that the interests of developers to maximise development on vulnerable land or to press for the expenditure of public money to protect their individual investments on vulnerable land are hard to resist. Specific policies include:

- 2.1. Clear statewide centrally developed, monitored and updated projections of sea level rise must be developed and guide councils' strategic planning, development control and investment planning. Compliance with projections would be needed to avoid insurance claims.
- 2.2. Expand the existing Green Corridors program which protects strategic areas of high conservation value vegetation and ensures linking corridors to facilitate inevitable flora and fauna movement as climate change impacts continue.
3. **Democratic processes** must be paramount. The centrepiece of the NSW planning system is the outdated, complex and extremely difficult to use Environmental Planning and Assessment Act 1979 and its supporting Regulations, policies and procedures. Nothing short of a complete review and replacement of the Act is needed. The Greens will work to initiate widespread consultation with community and professional organisations on legislation to replace this legislation. Restoring democratic objectives and processes is foundational to the Greens' objectives including to:
  - 3.1. Remove the discretionary powers of the Minister for Planning to make political appointments to planning bodies and alter environmental protections, consultation processes or appeal rights in relation to any project
  - 3.2. Establish an Independent State Planning Commission comprised of nominees of community and professional organisations. The composition of the Commission 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 Commission's task will be to assess major, infrastructure and utility projects with a construction value greater than \$100 million or that has a significant impact across multiple council areas, against objective criteria with no role for the Minister for Planning to exercise discretionary power
  - 3.3. Ensure State-wide planning provisions are put in place through amendments to the Act or by disallowable Regulation and not by unilateral Ministerial Direction without parliamentary oversight
  - 3.4. Abolish Joint Regional Planning Panels, Sydney Planning Panels and Local Planning Panels and return their decision making power to local government

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- 3.5. Repeal all provisions in the EPA Act and all planning instruments that diminish environmental assessment criteria, community consultation and appeal rights. Deletions would include concept plans, state significant sites and critical infrastructure.
- 3.6. 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.
- 3.7. Repeal the Exempt and Complying Development Codes SEPP and return the power to make these instruments to local communities.
- 3.8. Abolish the Standard LEP instrument and return the right to make local planning instruments to local councils.
- 3.9. Rezoning proposals for more intensive development should not be approved without proactive community engagement including information about indicative plans of potential future development and clearly detailed impacts on issues including: energy and transport efficiency, view corridors from public open space, water quality of wetlands, estuaries, creeks and other waterways.
- 3.10. Require clear statements about the cumulative impact of proposals subject to any decision-making process
- 3.11. Demolition should be subject to approval
- 3.12. 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
- 3.13. When assessing a DA, the time period for a deemed refusal should not commence until the council determines that adequate supporting material has been provided. In addition councils should be able to seek to extend the period for DA assessment when it can be demonstrated that technical assessment and community consultation so warrants
- 3.14. Require that councils give reasons for all decisions on DAs, including approvals
- 3.15. After a DA has been rejected, prohibit for 18 months 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
- 3.16. Extend 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. In relation to developer's liability for 'non-apparent defects' liability should be extended to 7 years
- 3.17. To ensure the community shares in windfall profits as a result of up-zoning the Greens will ensure that those who benefit from development decisions bear an appropriate burden of the costs associated with such development including funding public infrastructure needs. This would include a 'betterment' tax, payable on sale or disposal of development
- 3.18. Tighten provisions associated with S. 94 contributions to eliminate discretionary exclusions and remove caps
- 3.19. Publicly owned land is to be held in trust for the community. It should be zoned so that it is protected from being sold and remains available for public use. The Greens 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;

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- 3.20. Require councils, when they are considering disposing of public land, to give priority to consideration of the public interest in retaining the land and undertake competitive process for the sale of valuable land
  - 3.21. Prohibit the making of legislation to override a court decision refusing a specific development or impede a court case
  - 3.22. Ensure there is open standing to challenge breaches of the planning legislation
  - 3.23. Merit appeal rights should apply in the same way to objectors and community groups as to applicants
  - 3.24. Strengthen protections against the awarding of costs for parties who bring cases to the court on legitimate public interest grounds
  - 3.25. Protect objectors to development applications from litigation for damages
4. **Planning processes and decisions must be corruption proof.** In recent years public trust in the rigour and independence of the planning system has reached an all-time low as donations to political parties have demonstrably influenced planning decisions at both the local and state level. The planning process has become opaque to the community. Power has percolated upwards and assertions of independent decision making are mistrusted. To restore faith in planning processes the Greens propose the following:
- 4.1. Limit the power of the Minister to intervene in the rezoning and development assessment process
  - 4.2. 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
  - 4.3. End private certification of planning proposals
  - 4.4. Reform the process of selection of experts (technical consultants) to remove conflicts of interest and perverse incentives
  - 4.5. Enable Councils, where a proponent 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 proponent
  - 4.6. Where a council has a financial interest in the development and would otherwise be the consent authority, it should delegate another local council to determine the matter
  - 4.7. Councils should make internal processes corruption proof by:
    - a. allocating DAs from frequent applicants to different staff members
    - b. avoid regulatory capture of planning officers by separating the functions of pre DA consultations and final assessments, recommendations and approvals.
    - c. mandatory random auditing of development decisions which require staff to discuss and justify relevant recommendations or determinations
    - d. systems of peer review and/or countersigning of determinations in relation to significant developments
    - e. developing a statement of ethics to promote awareness among the public of the ethical standards expected of councillors and council officers and including what is appropriate and allowable in relation to interaction with applicants
  - 4.8. When engaging planning consultants, councils should manage potential conflicts of interest by:
    - a. promoting competitive processes
    - b. requiring consultants to declare any conflict of interest that may emerge

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- c. not engaging consultants who do other work in the local government area
  - d. considering using expertise from other local councils rather than private consultants
- 4.9. When disposing of council land, in the absence of a competitive process at least two valuations based on the land's 'highest and best use' should be obtained. If the council decides for strategic purposes to dispose of land at a below-market price it should clearly identify the reasons and costs
- 4.10. Establish a system whereby the Land and Environment 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.
5. **Protections for the state's natural, cultural and built heritage. Protections for Aboriginal cultural heritage.** Planning for the natural, built and Aboriginal heritage is increasingly a process of administering its loss or diminishment. The pre-eminence of economic considerations when evaluating vegetation removal for agriculture, mining proposals, forestry, infrastructure and urban growth overwhelm environmental and social concerns. This must be addressed by:
- 5.1. Requiring consent authorities to refuse development proposals where an EIS shows that there will be significant deleterious impact on critical habitat or the environment. This would include not agreeing to biodiversity offsets where irreplaceable or endangered habitats are involved
  - 5.2. Rewriting native vegetation land clearing laws so that there is a clear priority to protect native flora and fauna
  - 5.3. Promoting the linking of public recreation spaces with bike and walking corridors
  - 5.4. Championing an independent, representative and adequately funded Heritage Council directly accountable to the NSW Parliament rather than to a Minister

Standalone Aboriginal cultural heritage legislation is essential to provide respect to the history and culture of the planet's longest continuous civilisation. At the core of Aboriginal cultural protection must be self-determination with Aboriginal people having the first and final say over the protection of their heritage and culture. Aboriginal people know best about what is best for their culture and they need to be given the right to determine that.

The Greens recognise the interrelationship between Aboriginal heritage culture and land and therefore propose a statutory right for Aboriginal people to be consulted and given rights in relation to development that impacts on that relationship between culture and land.

### 6. **Progressive aspirations for the planning system to achieve**

A planning system is more than just a set of processes for making decisions about whatever comes up in the minds of public and private proponents slavishly constrained by established ways of doing things. It is vital that there is a clear indication of the aspirations for change.

Planning for increased population and higher densities is accepted as a legitimate objective however it must combine with maintaining a natural and healthy environment, sustainable infrastructure, affordable housing, social support systems and quality of life including as follows:

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- 6.1. Healthy communities depend on a resilient environment. Environmental protections must be fundamental objectives of all urban growth. Retaining and protecting local flora and fauna along with natural high quality water-ways is vital to resilient communities. Air quality – especially in places like western Sydney where air quality regularly fails accepted standards - must be a determinant of acceptable development.
- 6.2. Sustainable infrastructure requires a focus on accepting that the old ways of doing things cannot be sustained or justified. Existing electricity distribution systems are going to require major overhauls as more and more people see the wisdom in local renewable power systems rather than long haul coal fired power grids. The current emphasis on road building over public mass transport will need to change. Young people are already choosing to move away from a dependence on cars and driving toward public transport and active transport. Attractive alternatives to car dependence are vital. The fact that Sydney's sewerage is disposed of basically untreated into the ocean cannot be justified in a world where water is valuable and drought likely. Infrastructure systems need to change dramatically.
- 6.3. Healthy communities require space and opportunities to meet and mix in a range of settings. Well planned growth need not be cramped or high rise. Attractive human scale development of varied design with generous public open spaces for recreation, public meeting and active transport will create integrated and socially connected communities. Resisting the tyranny of overdevelopment associated with elevated land prices needs to be a high priority in order to encourage a mix of urban development interspersed with local food production, urban forests and permeable access streetscapes.
- 6.4. The Greens recognise community access to public spaces and services is an essential human right and will promote and enforce standards of universal design and access to newly built and renovated public spaces and public and private buildings. We will work towards all public buildings and workplaces displaying disability access information at the entrance according to a ratings system, requiring existing public spaces and public and workplace buildings to make simple access improvements that can be made without hardship to the business, and supporting local communities to upgrade existing infrastructure to meet accessibility standards.
- 6.5. Housing affordability must be a priority. The Greens take the view that new developments should have a much higher proportion of affordable, social and public housing required. The government and councils must take on an increased responsibility for ensuring widespread availability of affordable housing options.
- 6.6. The Greens support new and innovative ideas in town planning that are focused on collective, cooperative and community development. Decentralisation needs to be actively examined in order to create communities designed around novel ways to protect the environment, create new models of infrastructure, new patterns of land use and vibrant community spaces. New decentralised communities could fulfil the need for new progressive patterns of community creation.