



## **ECOLOGICALLY SUSTAINABLE DEVELOPMENT, SUSTAINABLE DEVELOPMENT AND THE NSW PLANNING REFORMS**

### **THE FACTS**

#### **Overview**

The NSW Government has issued a White Paper and draft Exposure Planning Bill that propose a new planning system for NSW. The first Object of the Planning Bill is *'economic growth and environmental and social well-being through sustainable development'*. The Planning Bill also states:

*'Sustainable development is achieved by the integration of economic, environmental and social considerations, having regard to present and future needs, in decision-making about planning and development.'*

This new, narrow definition of Sustainable Development (SD) is a significant departure from key principles of Ecologically Sustainable Development (ESD) that have long been enshrined in Australian law. The White Paper refers to two of these principles – the integration of environmental considerations and development objectives, and intergenerational equity – but renounces three other fundamental principles:

- The precautionary principle
- Biodiversity and ecological integrity as a fundamental consideration
- Improved valuation, pricing and incentive mechanisms (including the polluter pays principle).

Furthermore both the White Paper and Planning Bill consistently prioritise economic growth instead of focusing on the balanced integration of economic, environmental and social considerations based on the legally recognised principles of ESD.

Why has the NSW Government elected not to support all of the accepted principles of ESD in its proposed new planning legislation?

#### **Recommendation**

The *Better Planning Network* strongly advocates that:

- Promotion of ESD and its key principles should be identified as the primary Object of the Planning Bill.
- All planning and development decision-makers should be required (as a mandatory matter) to have regard to relevant ESD principles.

## ESD and SD: Accepted definition and use

The term Sustainable Development was first defined in the 1987 Brundtland Commission report, *Our Common Future*, as: ‘*development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*’ The concept of SD was further elaborated through a series of documents and legal instruments at the 1992 Earth Summit held in Rio de Janeiro, Brazil. The Rio declaration enunciated the key principles of sustainability as the principle of integration of environmental considerations and development objectives, the precautionary principle, the conservation of biological diversity, intergenerational equity and the promotion of improved valuation, pricing and incentive mechanisms (including the polluter pays principle).

Inserting the word “Ecologically” before “Sustainable Development” was an important Australian achievement in response to the Rio Declaration. Australian Commonwealth and State and Territory governments have adopted the *National Conservation Strategy for Australia* and the *Intergovernmental Agreement on the Environment* (1992), which refers to the internationally accepted principles listed above.

Since then, ESD has been the standard terminology used in Australia. ESD is also the standard terminology used in over 60 NSW statutes, including the *Environmental Planning and Assessment Act*, the *Mining Act*, *Coastal Protection Act*, the *Local Government Act*, *Water Management Act*, *Native Vegetation Act* and *Rural Fires Act*.

The definition of ESD used in all of these Acts refers back to the definition provided in the *Protection of the Environment Administration Act 1991* (NSW) that specifically includes the fundamental principles associated with ESD: the principle of integration of environmental considerations and development objectives, the precautionary principle, the conservation of biological diversity, intergenerational equity and the promotion of improved valuation, pricing and incentive mechanisms (including the polluter pays principle).

Australian courts are commonly applying ESD principles.

## ESD in our current planning legislation

One of the current Objects of the *Environmental Planning and Assessment Act 1979* (NSW) is to encourage ESD- see section 5(a)(vii).

As with other NSW statutes, ESD is defined with reference to section 6(2) of the *Protection of the Environment Administration Act 1991* (NSW), as follows:

*‘For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:*

- (a) the precautionary principle-namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*  
*In the application of the precautionary principle, public and private decisions should be guided by:*
  - (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
  - (ii) an assessment of the risk-weighted consequences of various options,*
- (b) inter-generational equity-namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,*
- (c) conservation of biological diversity and ecological integrity-namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,*

(d) *improved valuation, pricing and incentive mechanisms-namely, that environmental factors should be included in the valuation of assets and services, such as:*

- (i) *polluter pays-that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,*
- (ii) *the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,*
- (iii) *environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.'*

## **ESD and the NSW Planning Reforms**

The definition of SD proposed in the Planning Bill 2013 is a significant step backwards from the established principles of ESD that have underpinned planning and development decisions in Australia and NSW since the 1990s. In particular, this definition makes no reference to the conservation of biological diversity, improved valuation, pricing and incentive mechanisms (including the polluter pays principle) and the precautionary principle, a central tenet of environmental policy and case law in NSW for more than two decades.

This deliberate retreat from the principles of ESD is not consistent with other environmental and planning legislation in Australia: see, for example, section 9 of the *Planning and Development Act 2007* (ACT), Chapter 1 of the *Sustainable Planning Act 2007* (Qld) and section 3A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

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