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Submission

NSW Department of Planning

DRAFT COMMUNITY PARTICIPATION PLAN

The Better Planning Network Inc. (BPN) is an incorporated, volunteer-based, not-for-profit association established in 2012 in response to the then O'Farrell Government's proposed overhaul of NSW planning legislation. Our aim is to advocate for a robust and visionary NSW planning system designed to achieve Ecologically Sustainable Development.

Community participation in planning is a keystone of BPN policy: to give local and regional communities a genuine and meaningful voice in shaping their local area and region.

The BPN congratulates the Department of Planning for its Draft Plan to improve community participation in the planning process but is concerned about the generalized nature of the proposals without any real power given to the community to have its declared preferences actually incorporated in development decisions.

State Government legislation in recent years has disempowered the community and bypassed the agencies through which the community could not only express opinions but enforce them.

Local Councils have been the first line of contact for the community in the planning process but Council powers have been eroded. Decisions concerning projects worth more than \$30 million have been removed from Local Councils and are now determined by Planning Panels.

Councils are answerable to their community through an electoral process, unlike Planning Panels, where three of the five members of the Panel are appointed by the Minister. They are required to hear submissions from the public but should the community disagree with the development application, the Panel is under no constraint to act upon community opinion.

Gateway procedures have allowed developers to bypass an unfavourable decision made by a Council and request that the decision be reviewed by the Department and Minister. The majority of these reviews have favoured the developer's proposal.

Private Certifiers who are outside Council control and are often appointed by the developer, can approve grossly inappropriate development.

Code complying development removes the requirement to notify those likely to be affected and the opportunity for objections.

Finally the community is disempowered by the removal of a Third Party Right of Appeal. Once a planning decision has been made, only the applicant can appeal against that decision in the Land and Environment Court.

Ultimately this means community participation in planning can only be tokenistic. It is a one-way process where opinions can be expressed but not negotiated.

Given, however, that the legislation requires consultation, the following should be emphasised to improve public expression of preferences in strategic planning and development decisions:

Notification of those affected by development applications should be mandatory.

All members of the community should be notified in sufficient time to appreciate the implications of the development application.

Given the quantity of documentation that is submitted for even medium sized development, the short amount of time allowed for Council to come to a determination has facilitated developer's propensity for lodging 'deemed refusal' applications to the Land and Environment Court. This is a technique to pressure Councils into making a favourable determination or face Court costs they can ill afford.

The greater the likely environmental impact of a proposal, the greater scrutiny it should receive from both the public and the authority assessing it. In the past public participation has been curtailed significantly in respect to some of the largest and most potentially environmentally damaging proposals, such as State Significant Developments and critical infrastructure proposals.

The community's ability to seek review of a decision is important in preventing corruption and poor decision-making. Fast-tracking of development does not benefit the public interest.

Disproportionate influence from vested financial interests has no place in planning decisions. It is inappropriate to allow companies, wealthy individuals or lobbyists a greater level of access than is available to the public.

The community should be re-engaged with respect to amendments to a proposal.

Notification and participation opportunities should not be limited by timing or location, such as nominating deadlines in holiday periods and selecting unsuitable meeting sites away from public transport.

The information about the development application can be provided in a variety of ways including social media, websites, surveys, events, drop-in centres, community group and local meetings, and briefings and should not be limited to letters and submissions.

The community should have access to the information at the concept stage, not just at the final proposal stage. Developers should meet with the community to explain their proposals and hear concerns before final documents are submitted. This provides the opportunity for community input at an early stage and avoids complaints

from developers that they will incur considerable work and higher costs if changes are required.

The role of the consent authority is to collect public comment on development proposals and ensure compliance by developers.

Given the likely significance of an environmental impact statement relating to a development application, if it is not made public, the reasons for doing so should be made clear to the community.

It is particularly important that the statement in the Draft Community Participation Plan, that the community will be notified of decisions on proposals and provided with detail of how their views were considered in reaching the decision, is followed through in entirety.

The timing of these reports according to the Draft CPP, that they 'may be published prior, at the time of or following the making of a decision', seems arbitrary, particularly if the community has no power to challenge the decision. Without the right of appeal, the decision – making still remains one way.

Finally, the decision by the Department or Minister to amend or refuse to make a plan should be legally challengeable.

Attached is a copy of the Planning for People Charter. The Charter and its Companion document were prepared by a working group of community organisations in consultation with the Better Planning Network, Community Councillors Network, Inner Sydney Regional Council for Social Development, National Parks Association of NSW, National Trust of Australia (NSW), Nature Conservation Council of NSW, NSW Heritage Network, Shelter NSW and the Total Environment Centre. These documents can also be accessed at <https://thecommunitycharter.org>.