



Better Planning Network Inc.
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Better Planning Network AGM for 2020 – 2021 Deferred AGM held 28 May 2022 AGM REPORT

Statement of Purpose:

Our aim is for a robust and visionary planning system for NSW - one that fosters best practice environmental, heritage, social sustainability and design outcomes; and make sure best practice planning is achieved through a collaborative and authentic community partnership engagement approach.

BPN continues to actively promote the planning principles outlined in the *Planning for People Charter* and to represent the interests of our members and communities to the Government. BPN also continues to inform our members of Government policies and processes in the context of the many new planning developments across NSW.

The BPN Constitution continues to be upheld and BPN does not support any political party. Member groups, Affiliates, Friends and Supporters may choose to support political parties individually. BPN encourages all to be actively involved in their community and support policies from political parties where these seriously address better planning for NSW.

An Overview:

BPN has been hit as hard as any with COVID, with only one face to face meeting with members being able to be held in between pandemic lockdowns. During that time there have also been several Leadership Group members having to step back for significant periods as a result of serious health issues. A difficult time indeed.

At the same time, since the advent of the pandemic the Department of Planning, Industry and Environment has increased its rate of change to the Planning System, with significant new legislation being proposed and/or introduced on a regular basis, often concurrently.

BPN therefore ensured that it consistently engaged with DPIE by Zoom, at the very least on a monthly basis and frequently more often, as well as making substantial submissions on the continuing stream of important Planning and Environment changes.

A conscious decision was made to engage with Government Departments by making as many submissions as possible on legislative changes, within the capacity of the BPN volunteer organisation. We have been pleased that our submissions have been increasingly effective in getting important changes to proposed legislation.

BPN encourages its members to continue to make informed submissions on issues that affect or are of concern to them. While it is often not possible to completely prevent what we may view as negative planning outcomes, we can all get amendments and improvement to the final outcomes. **Never, ever give up.** The quantity of submissions matters because it shows the decision makers the depth of community concern which gives them cause to consider their decisions. And that must be backed up by even just a small number of quality, detailed submissions that cover the legislative and regulatory reasons why a poor planning outcome is not acceptable and must be avoided.

As well as written submissions on a wide range of topics being made by BPN, verbal evidence was provided to Parliamentary Inquiries and Independent Planning Commission hearings.

The Department of Fair Trading granted a deferral for community group AGMs last year as a result of the ongoing difficulties with COVID lockdowns. As a result, the deferred BPN 2021 AGM is being held on 28 May 2022. The Leadership Group asks members with the time and capacity to join the LG to enable the workload to be shared across more people. There's always more we could do and BPN needs you all to help make that happen.

If any members or groups are interested in joining the Leadership Group, please do fill in the nomination form which is sent out prior to the AGM. All Leadership Group meetings are held by Zoom so regional members are able to attend.

Never Give Up!



Never Give Up Poster by gelucas

Zazzle

This Report:

As the AGM was deferred, it was decided by the Leadership Group that this AGM Report would cover the period from the last AGM until this AGM. Therefore while the Financial Report covers the financial period from 1 July 2020 to 30 June 2021, this AGM Report includes the period up to the date of the deferred 2021 BPN AGM ie to 28 May 2022.

Leadership Group:

Members of our Leadership Group are volunteers involved with planning issues in their local areas and across the State which brings a depth and breadth of knowledge to the group. Their diverse professional skill sets provide unique perspectives on planning issues. The geographic spread of the Leadership Group members, while principally based in Sydney metropolitan and major regional centres, means that the BPN can meet challenges in Sydney and beyond with local knowledge.

The LG further benefits from having two Local Government Councillors on its team from diverse electorates in the Sydney metropolitan area. In 2021 the BPN LG Convenor was awarded the prestigious Dunphy Award by Nature Conservation Council, which *"is given to an individual who has demonstrated outstanding commitment to the conservation of the NSW Environment, and courageously challenged Government and non-Government decision-makers"*.

Governance and Administration:

BPN records are up to date, Minutes have been maintained and the Treasurer will present an annual Financial Report, indicating our financial stability.

Membership:

BPN's current membership and affiliates as at December 2021 -

Member groups: 35

Affiliates: 18

Individual members: 21

Friends: 18

Department of Planning, Industry and Environment (now DPE) and its Ministers:

The Department of Planning Industry and Environment recently changed its name back to Department of Planning and Environment, to reflect the change of Ministers from Rob Stokes back to Anthony Roberts, who did not keep the Industry portfolio.

Minister Roberts has, to the disappointment of many, quickly revoked Rob Stokes' Planning Principles *"to ensure focus remained on the government's priority of delivering a pipeline of housing supply"*. Minister Roberts has also stopped the Draft Design and Place SEPP from being implemented. While BPN believed that the Draft SEPP did not go far

enough in providing a robust and visionary planning system for NSW, and said as much in its submission on the Draft SEPP, the SEPP was at least a step forward. Instead the Minister has taken what BPN believes to be a step backward in not introducing the Design and Place SEPP.

The Department has held numerous stakeholder meetings by Zoom each of which were attended by members of the BPN Leadership Group. Various heads of Department attend these meetings including the Government Architect Executive Director, DPE State Policy and Strategic Advice Executive Director, DPE Local Government and Economic Policy Executive Director, and the DPE Planning System Policy Executive Director, together with others depending on the meeting agenda.

The Department recently said the DPE team appreciated the input provided by BPN at these stakeholder meetings. We ensure the meetings are a lively mix of information sharing together with substantive question and answers sessions.

DPIE also provided a series of webinars on the various elements of the Design and Place SEPP - Urban Design Guide webinar, Apartment Design Guide webinar, Sustainability, Resilience and BASIX webinar, and BASIX in detail webinar and a Panel meeting with the Building Commissioner, all of which the LG attended. Webinars were also provided on a diverse range of topics including Saving Our Species, New LEP Making Guideline, the Koala SEPP, and the Crown Lands Review, again all attended by LG members.

Some of the recent topics discussed at the monthly DPE stakeholder meetings included, in no particular order, the Design and Place SEPP (multiple meetings), Cumberland Plain Conservation Plan, Koala SEPP, Regional Housing Taskforce and Flying Squad, flood disaster recovery, mining, Natural Hazards package, Rapid Assessment Framework, COVID regulations (multiple meetings), EP&A Regulation Review, Employment Zone Reform, Public Spaces Legacy Program, Local Environmental Plan Making Guideline, New Approach to Rezoning, Infrastructure Contributions (multiple, multiple meetings), Solar Energy Guideline, and more.

BPN is given the opportunity at these DPE meetings to make comments regarding the information provided as well as engage in useful question and answer sessions on each topic. BPN has over time developed an excellent respectful working relationship with the heads of department at DPE.

Submissions:

The Leadership Group has made substantial submissions on a wide range of proposed legislative and regulatory changes. Members and Affiliates have assisted at times in making submissions in their field of expertise and BPN is grateful for their input. Some of the main written submissions made by BPN are listed below, together with a summary of the recommendations and comments from BPN which we hope may assist members with some of their future submissions:

- **Local Lands Services Amendment**

- That the Local Land Services Amendment (Miscellaneous) Bill 2020 be abandoned in favour of a carefully crafted, well informed new Bill that aims to increase, instead of erode, environmental protections for our koalas and other native wildlife.
- The Bill further weakens koala protections without foundation.
- The removal of all references to the Koala Development Application Map makes no sense and must be reversed. The freezing of the inclusion of newly identified koala habitat in category 2 regulated land mapping undermines both the effectiveness of the Koala SEPP and a local council's Koala Plan of Management (PoM) made under State Environmental Policy No 44 - Koala Habitat Protection (SEPP 44).
- Allowing landholders to request an additional 60 days to object to proposed core koala habitat on their land in addition to the 90 day consultation period provided by the Koala SEPP, should not be allowed.

- **Rapid Assessment Framework**

- Standardizing application procedures to improve process efficiency should not come at the expense of statutory requirements. BPN does not agree that the proponent should in any way be relied upon to consider the level of assessment required for the project.
- BPN does not agree with the basic premise of industry-specific SEARs (Secretary's Environmental Assessment Requirements). All matters concerning a development must be provided in the SEARs Application Form, not just the common issues. There are various *Issue and Assessment Requirements* that have been omitted from all industry-specific SEARs which must be included.
- Matters that are not necessarily common to a particular type of development, such as risk of erosion and landslip or land use conflicts, will be able to be omitted or overlooked by the proponent.
- There is no requirement for applicants/proponents to seek the community's views by way of public exhibition of their draft Environmental Impact Statement or any other means such as public hearings, only an 'expectation' that will occur.
- BPN is of the opinion that there is a fundamental problem with the proposed concept of recognition of registered practitioners. The selection of the registered practitioner (REAP) must be on a rotational basis NOT selected by the proponent.
- A Registered Environmental Assessment Practitioner (REAP) who writes a proponent's Environmental Impact Assessment must not also certify that EIS. It should in essence be peer reviewed instead.
- An independent body must be set up to investigate complaints against individual REAPS. They must have the power under the EP&A Regulation to issue penalties including fines and decertification. Industry bodies usually only have the option of

withdrawing membership if complaints are upheld. Penalties must be included in the EP&A Regulations and it must be considered an offence for a REAP to provide false or misleading information.

- The organizations accredited by DPIE under the REAP scheme must create a REAP scheme as a subset within their membership, not simply have all members of the organisation automatically become REAPs basically just because they've paid membership fees for 10 years.
- The stated objectives of certainty, timeliness, reduced complexity, better government coordination and supposedly improved customer service, all sound like development industry demands which BPN believes will reduce community input and influence, prove to be to the detriment of the public interest and lead to poorer planning outcomes.
- The level of community engagement must be determined and defined by the Department in the *State Significant Development Guide* and the *Undertaking Engagement Guide*, and not by the proponent. The Department must provide the parameters for community engagement, not allow the proponent to "innovate".
- The Expectations for Engagement must be amended to require the listed actions to be undertaken. Where the wording "*The proponent is expected to*" is used, it must be amended to "*The proponent is required to*".
- For projects over a certain capital value, say \$50 million, the exhibition period should be 60 days. Only the smallest projects, with a very low capital value, should be exhibited for just 28 days.
- BPN is of the opinion that third party objectors should have the right to appeal State Significant Development applications, whether or not they meet the criteria for designated development.
- Past, current and future cumulative impacts must not be separated into two different assessment streams. Cumulative impacts must be considered for all key issues in the preparation of the SEARs. Any assessment of whether a cumulative impact assessment is required must take into account impacts from projects undertaken in the past.
- Clear government guidance on how to undertake the cumulative impact assessment on a relevant matter must be provided, including a comprehensive list of what government guidance is available on relevant matters.
- Determinative language must be used. The repeated use of words such as "may" instead of "shall" does not define the necessary requirements. It allows proponents to avoid undertaking actions that would be expected by the community and theoretically by the Department.

- **Design and Place SEPP - Explanation of Intended Effects**

- There is significant concern in communities right across NSW that the exhibition process for any change in planning has become little more than ticking the community consultation process box. The outcomes of exhibitions must be based on submissions made, rather than be a justification process for a predetermined Government policy position.
- Without significant community input being sought prior to Government policy decisions being decided, NSW will have increasing numbers of dissatisfied and disaffected communities. Additional community stakeholder meetings should be held prior to or during the exhibition period of the draft Design and Place SEPP.
- The five design principles against which developments will be judged, are so ill-defined that anything could be described as being consistent with the principles:
 1. Design places with beauty and character that people feel proud to belong to;
 2. Design inviting public spaces to support engaged communities;
 3. Design productive and connected places to enable thriving communities;
 4. Design sustainable and greener places for the wellbeing of people and the environment;
 5. Design resilient and diverse places for enduring communities
- It is considered that the Design and Place SEPP as written cannot *"ensure design quality of new neighbourhoods and precincts, public spaces, new architecture, landscape architecture and the environment"*. Without positive prescriptive controls, there can be no argument made against even the worst design, as design appreciation by its very essence is subjective.
- Prescriptive controls and guidelines including LEPs, DCPs, heritage, local green offset codes etc must not be subsumed by a subjective approach in the SEPP.
- BPN is fundamentally opposed to the State Government imposing *"baseline residential density targets in urban areas"* through the use of a SEPP, rather than targets being reached in cooperation with local councils. The Design and Place SEPP must NOT be used to impose population targets on Local Government Areas.
- As established suburbs become increasingly densified, all developments that increase population density in an area must contribute either with dedicated public space or by financial contribution.
- Each of the five Principles must address all three scales of development - new precincts, significant developments and other developments - in the Mandatory Matters for Consideration.
- The definition of a "Precinct" is considered to be too small. Almost every new land release in greenfield areas would be greater than 10ha. Most subdivisions in transitional zones and many brownfield sites would be more than 50 lots. Almost every site surrounding transport hubs would have more than 1,000 people.

- The definition of "Significant Development" as being greater than 4,000 m² (0.4ha) on any other parcel of land within a precinct or site bounded by streets is not acceptable. Virtually every one of the 100 planning proposals that were approved using the recent Fast Track Assessment process would have met that definition.
- The words "*(where possible)*" must be removed from the Intended Effect reference to "*retain existing green infrastructure (where possible), particularly habitat and significant vegetation*". The inclusion of residential dwellings (including medium density residential) within this SEPP will mean that council policies for green offsetting to ensure tree replacement will be over-ridden.
- The SEPP must not imply or condone the use of green roofs and walls as an offset for planting trees, the meeting of tree replacement rates or for the retention of existing green infrastructure.
- All classes of designer that are to be proposed as "qualified designers", including Landscape Architects, must be included in the *NSW Design and Building Practitioners Act and Regulation 2020*.
- The SEPP must NOT be used to limit the scope of advice that a Design Review Panel can provide. If the NSW Government is appointing architects and urban designers etc to review developments, it should not then be providing micro details of what they are allowed to comment on.
- The SEPP should not prevent the Panels from calling in additional expertise where needed. The Design and Place SEPP must ensure the Design Review Panels have more authority than just as an "advisory service".
- The basic minimum of thresholds contained in the SEPP must include project locations, project types, capital investment value, development height, site area, density, environmental and traffic impacts. Thresholds must not be set so high as to exclude the majority of proposals and developments.
- Individual councils must be permitted to add to the list of thresholds. Individual councils must be allowed to set their own thresholds, not be beholden to a one-size-fits-all SEPP that CANNOT be fit for purpose for all LGAs.
- The requirement of just two documents for all development, a design statement and a site analysis, is far too limited. This falls far below the requirements set in the EP&A Regulation 2000.
- The essential elements of good design and planning are being reduced to simply "considerations" in the Design and Place SEPP. Proponents will just employ consultants with the willingness to provide reports with such wording as to show that a matter has been "considered". Matters for Consideration must instead be Mandatory Matters.

- Cultural and built heritage must be a mandatory matter for consideration for precinct, significant development and all development. Mandatory consideration of public space must also apply to significant development.
- The use of the phrase "where possible" for green infrastructure, green infrastructure connectivity and proximity to public transport and schools makes these considerations meaningless.
- Environmental flows from stormwater and rain into any local waterway must be maintained to ensure the viability of local creeks and waterways. Connectivity of "blue" infrastructure must be a mandatory consideration.
- Precincts must retain existing green infrastructure. Consideration must not be for either *"retaining or enhancing"* existing tree canopy, it must be for *"retaining and enhancing"*.
- Mandatory consideration of green infrastructure must also apply to Significant Development, not just at Precinct level.
- If this SEPP wants strategies *taken "to reduce or avoid occupant's vulnerability to those risks, particularly bushfire, flooding, extreme heat and coastal erosion"*, removing the requirement for reports on these risks is not a sensible method of doing so.
- The mandatory consideration must include a list of expert reports that will be required to be produced and considered, including but not limited to structural engineering, bushfire, landslip, flood, arboricultural and ecological reports. Mandatory consideration of resilience must also apply to Significant Development.
- The minimum density capacity of 15 dwellings per hectare is far too high for significant developments in established suburbs. That equates to 666m² per block, not including streets, footpaths, open space and community facilities in R2 zones. It is unacceptable to use this SEPP to override individual council minimum lot size maps.
- The planning choice is not between high rise or urban sprawl. Urban and regional centres have both sprawl and highrise foisted upon them by unachievable density targets promoted and supported by the development industry, while frequently being opposed by local councils.
- One only has to consider the continuing huge rise in residential prices, despite tens of thousands of units being built, to see that the supposed drive for a range of housing types and different price-points are pointless if property prices continue to skyrocket.
- Mandatory considerations for impacts on existing residential buildings of new developments within night-time economy areas must be included to protect the amenity of existing residents.

- The minimum percentage of non-residential activation on street frontages should be no less than 75%. The term "adequate lighting" is inadequate - reference must be made to the relevant Australian Street & Public Space Lighting Standard, AS/ANS 1158:2005, or as updated.
- Developments must meet or exceed the performance standards and relevant targets of BASIX. Newly proposed measures for BASIX compliance must be designed to result in better measurable local outcomes.
- Competing provisions in other environmental planning instruments or DCPs should be allowed to exceed the current policy position standards if they are designed to provide better environmental outcomes. Sustainability targets currently embedded in the online BASIX tool should be converted to mandatory requirements.
- Although the requirement for development to meet or exceed relevant NABERS targets for emissions reductions by 2030, 2040 and 2050 is supported, these targets should be made a mandatory minimum rather than "*where possible*".
- The proposed use of "thermal comfort" is opposed as it is too subjective and should be replaced by the measurable use of "thermal performance".
- The words "*where possible*" must be deleted in relation to retention of the existing tree canopy. All proponents claim that it is not possible to retain trees. Little if any effort is made to design developments so that they retain existing mature trees. Clear felling the site is always a developer's preference.
- Green roofs, walls and softscape landscaping are NOT alternatives to retaining or replacing mature trees. They do not provide shade, sufficient cooling effects, habitat, transpiration or oxygen release. They should never, ever be used as alternatives to trees.
- Affordable housing targets must be MANDATORY, not just something to be "*considered*".
- Important issues such as cultural and build heritage, public space, connectivity, local living, street design, water management green infrastructure and resilience must matters for consideration for all scales of development and must apply to precincts, significant developments and all other developments alike. This must be stated in the proposed Design and Place SEPP, and supported in the proposed Urban Design Guide.
- Land use zoning, height, and floor space ratio must be determined in individual councils' LEPs, not prescribed in this SEPP. Likewise, The SEPP must not codify intensification of existing areas.
- Fine grain numerical controls such as building setbacks, the depth and width of individual lots, maximum lot size, open space dimensions and the amount of car parking, must not be included in the SEPP, that should be determined by individual local councils. These should be deleted from the SEPP.

- Limiting the amount of single use residential zones must not be determined by the UDG or the SEPP, it must be determined by individual local councils.
- Uniform design is not good design. The alignment of LEPs to the SEPP must be considered very carefully in the context of each LGA.
- Stages of development MUST align with the provision of public amenity and services. If there are no public amenities and services, no development.
- All RU zones including the RU6 Transition zones, RE1 & RE2 Recreation zones, all E1 to E4 Environmental zones as well as the Waterways zones, at the very least, must be excluded from the SEPP.
- The Urban Design Guide within the Design and Place SEPP contains reference to *"compact urban form"*. This time the supporting reason is *"greater potential for ... efficient local economies"*. No matter how many times this is dressed up, this is still a policy focus on cramming more people into areas when it is only the development industry that is pushing this overdevelopment. Whether it's a "jobs, jobs, jobs" mantra, or a COVID economic response justification, the result is the same. Higher density in established areas. The "intention" of the Guide should not be to guide designers to deliver higher densities. Density must be within the remit of local councils, not developers financial decisions.
- Effective *"risk assessment"* starts by obtaining expert reports on what the risks are for any particular precinct or significant development. Without that information, *"developing strategies for ongoing resilience"* will only provide overarching doctrine, not factual information.
- A benchmark must be set of at least 20% of urban-capable land to be dedicated to open spaces and community facilities in any precinct plan.
- While removing virtually all development controls on the development industry, the Design and Place SEPP and accompanying Urban Design Guide would impose the following numerical controls on local council decisions for sites greater than 0.4ha or 0.15ha for metropolitan centres -
 - total public space area, open space dimensions, inclusionary zoning, baseline residential density targets, percentage of single dwellings, average block size, maximum single block size, lot dimensions (lot width and depth, front, rear and side setbacks, including ability for zero side setbacks), car parking, street width and tree replacement. Also the amount of documentation required for DAs and probably most heritage controls. RECOMMENDATION: Leave local planning controls to local councils.

Footnote: It was pleasing to see that many of the comments and recommendations made by BPN on the Design and Place SEPP Explanation of Intended Effects, were considered in the final Draft Design and Place SEPP documentation, including removing many of the fine grain numerical controls which would have overridden Local Government controls.

- **Building Back Better - changes to the Exempt & Complying Development Code**

- The proposed changes fail to consider all the objectives of the EP&A Act, including promotion of the social welfare of the community and a better environment, facilitation of ecologically sustainable development and promotion of the orderly use and development of land. Only the economic reasons appear to have been investigated and considered in the development of the proposed policy changes for this SEPP.
- Many of the proposed policy changes will have a significant impact on local communities, especially because in recent years the Government and local councils have encouraged shop-top and other significant residential development in or near business and industrial zones.
- The proposed changes to complying development include:
 - opening the code to more land uses in business and industrial zones
 - simplifying some requirements, such as hours of operation and car parking
 - increasing building heights and gross floor area (GFA) limits for industrial and commercial development
 - removing the requirement to prove lawfulness of the current use from the proponent for complying development in industrial and business zones rather than relying on the requirement for a new use to be bound by the consent conditions of an earlier use. Instead, development controls will be provided to manage impacts relating to parking, traffic, noise and hours of operation.
 - allowing additional uses within change-of-use provisions that are common in neighbourhood and local centre zones: for example, neighbourhood supermarkets, specialised retail premises, selected indoor recreational facilities (health studios, squash courts, table tennis centres) selected outdoor recreational facilities (mini golf centres, tennis courts).
 - allowing a wider range of land uses access to the building allowances in the Codes SEPP including: commercial premises in a B5–B7 zone, function centres, health consulting rooms, medical centres, community facilities, health manufacturing facilities, vehicle repair station, wholesale supplies, amusement centres, boat building and repair facilities vehicle body repair workshops, vehicle repair stations, information and education facilities.
- The operation of many of the types of uses proposed for industrial areas such as veterinary hospitals, medical centres and indoor recreation facilities require stringent controls. Many of the types of uses proposed are not considered suitable for the complying development pathway.
- The only assurance that councils will continue to have some input into where complying development will be permitted in business and industrial zones is a

reference in the Explanation of Intended Effects to an opt-in council-led masterplan pathway for complying development that would be subject to a ministerial approval and would have to demonstrate how councils can "accelerate and promote economic development and investment in their local areas."

- In addition to making a council masterplan optional, the EIE suggests that the community need not be consulted about the design of this new complying development pathway. It recommends that councils only partner with developers or landowners in order to carry out the land use studies necessary to use this pathway. The concept of an opt-in Master Plan Complying Development Pathway is not supported.
- Many of the proposed policy changes will likely have a significant impact on community amenity and the environment. For example:
 - No additional parking spaces will be required for an existing building under 500m² when a change of use is undertaken as a complying development certificate.
 - Increase in building height in industrial zones to 18 metres (overriding any local industrial zone height control where it is less than 18 metres in an LEP.)
 - Larger allowable building footprint of up to 50,000 m² in industrial zones and heights up to 45 metres where no local environmental plan (LEP) height limit is in place.
 - A new complying development pathway for new-build commercial development in business zones B5–B7. If local planning controls permit, new builds could be possible as high as five storeys and 10,000 m².
 - Allow a wider range of land uses to be complying development in B1 and B2 zones with development standards for these new land uses to mitigate amenity impacts. These developments standards are not articulated in the EIE and the document doesn't clarify how they will ameliorate the community and environmental impact of some of the following proposed changes:
 - introducing standard hours of operation from 7 am to 10 pm, irrespective of existing consent conditions, with developments in industrial zones permitted to operate 24 hours a day
 - increasing seating allowances for food and drink premises from 50 to 100 seats
 - removing additional parking and loading bay requirements for existing premises that are less than 500 m²

- allowing minor external alterations (such as shopfront and awning repairs and maintenance) to existing buildings in a heritage conservation areas and on the site of listed local heritage items
 - making new allowances for neighbourhood circular economy land uses, such as repair-shops, cafés and swap-and-re-use centres
 - allowing ancillary complying development for lots that adjoin a lane or secondary or parallel road
- Large scale developments are not considered suitable for complying development pathway.
 - Despite the numerous issues identified with the use of private certifiers over the years, the role of private certifiers would be expanded.
 - The proposed policy changes do not represent an innovative approach to addressing pressing issues like climate change, flood mitigation risks, water conservation and environmental degradation:
 - The EIE doesn't acknowledge that buildings and the construction sector generally are highly energy-demanding and carbon-intensive. The proposed changes should incorporate requirements to reduce carbon footprint, minimise contributions to the urban heat island effect and include water storage tanks.
 - In summary:
 - The proposed amendments to the SEPP are well beyond the scope of what was the original intent for complying developments which are supposed to have minimal impacts.
 - Large scale developments are not suitable for the complying development pathway.
 - Insufficient detail is provided for many of the changes.
 - There is a greater potential for significant adverse impacts.
 - The proposed SEPP must not override Councils' controls.
 - The community will have even less input into more developments.
 - Private certifiers will inappropriately have an even greater role in development assessment.
 - The increased use of the complying development pathway is likely to result in further community distrust in the planning system.
 - **Varying Development Standards - Clause 4.6 requests for variation**
 - Clause 4.6 Variation Requests should not be considered as being "*overly complicated*" or that they impose "*significant cost burdens for proponents*".

- LEP objectives and statements about improved outcome alone are not sufficient to ensure good planning outcomes. The six NSW Land and Environment Court planning principles for determining whether a Clause 4.6 Variation is warranted must also be incorporated, being:
 - Compliance with the development standard is unreasonable or unnecessary because the objective of the development standards are achieved;
 - The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
 - The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
 - The development standard has been virtually abandoned or destroyed by the Council's own decisions;
 - The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate;
 - Compliance is unreasonable or unnecessary.
- Guidance materials should be provided clarifying the case law instead of reducing controls. Less controls are not the answer to any of the purported issues, except the issue of greater profits for proponents.
- The threat of more spot rezonings should not be used by developers or DPIE to justify more flexibility in the zones.
- BPN considers it inappropriate to develop *"an alternative test"* for Variations to allow even more ways for developers to circumvent development standards.
- The ability of councils to include additional development standards in their LEPs under Clause 4.6.8(c) must not be repealed.
- The proposed criteria of Objectives and four "outcomes" will not ensure that only in exceptional circumstances will Variations be requested. It is considered likely that there will be even more Variations requested with the more flexible arrangements, of an even bigger scale. The *"appropriate level of flexibility"* should be very little.
- The requirements of Clause 4.6 Variation Requests must not be diluted because the development industry purports that it is too complicated.
- The Report notes *"As highlighted in the recent recommendations from the ICAC Operation Dasha investigation report there is a need to support greater integrity, accountability, certainty and transparency in the planning system, particularly in the context of decision making in respect to the granting of variations under clause 4.6"*. However it is considered unlikely that ICAC was suggesting removing development standards and exclusions agreed by community consultation as a method to ensure "greater integrity" and "transparency".
- The only way to curtail the unacceptable overuse of Variation requests to justify unreasonable variations is to apply a maximum numeric limit on contraventions. This will strengthen the integrity of developments and provide certainty while

providing sufficient flexibility. A maximum of 15% or at most 20% exceedance should apply.

- No secondary alternative test should be provided. The aims of the Review are better provided by maximum exceedance controls.
- The development industry's views must not take precedence over community views. Community consultation must not become a box-ticking exercise. The updated Clause 4.6 as proposed is only of benefit to the development industry (the stakeholder). Providing "flexibility" to the developers, removing a whole raft of exclusions, and failing to provide numerical exceedance controls, provides far less certainty to the community that DPIE is supposed to also serve.
- The EIE states that *"the consent authority is the most appropriate body to determine the planning outcomes of a development"*. This statement is at the core of all BPN's submissions to DPIE. The consent authority, not one-size-fits-all policies and plans, SEPPs etc, are the most appropriate body to determine planning outcomes. DPIE should make this statement central to all of its planning policies.
- Better Planning Network considers that the proposed changes to Clause 4.6 will not be effective in assessing probity and transparency issues; they will further remove planning controls from local planning bodies; will result in poorer planning outcomes; and does not satisfactorily address the concerns raised by ICAC Operation Dasha or the Kaldas Review.

- **Heritage Review**

- The composition of the Heritage Council of NSW should be restored to its original 1977 composition, which included a representative from local government, a representative from the Australian Historical Society, the NSW Government architect, and a representative from the relevant union.
- The status of the Heritage Office within Government needs to be elevated and better resourced so that the Heritage Council does not have to rely as much as it does on outside consultants for guidance and advice. Whilst overall the objectives of the Act are quite comprehensive, heritage conservation needs to be better resourced at all levels of government to ensure that the objectives can be met.
- The Minister for Heritage should be required to follow the advice of the Heritage Council. It needs to be reshaped as an independent body
- Stronger recognition in the Heritage Act of the Burra Charter would help to ensure that Aboriginal Cultural Heritage is better acknowledged and protected.
- Protecting heritage through a separate Act gives it a well-deserved status, but heritage conservation should also be an integral part of the Environmental Planning & Assessment Act 1979 (EP&A).

- Provisions for the Heritage Council to work with the government on strategic planning schemes, which were removed from the Act in 1998, need to be restored.
- Heritage committees with community representation need to be restored at the council level and councils should be made to heed their advice.
- The objectives of the Act need to take into account that the definition of heritage has evolved. The Burra Charter, for example, emphasises the importance of conserving places of cultural significance
- The objects of the Act need to be strengthened to recognise the importance of conserving whole areas instead of just individual buildings/places.
- The Government needs to engage in genuine consultation with the community about heritage issues. The community is disappointed with the overall lack of protection for heritage items in recent years.
- The Government needs to be a lot more active in adding items to the State Heritage Register
- Adaptive reuse of heritage-listed items is possible and important, but decisions need to be integrated into the planning process and should not denigrate the aesthetic value or cultural significance of the heritage item by an overemphasis on activation, which can become a byword for commercialisation.
- The Government should see the maintenance of heritage items as a benefit, not a cost.
- Exemptions from some Building Code of Australia regulations and Equitable Access requirements should be considered, as is the case with some of the stairs at the Sydney Opera House.
- Existing provisions in the Act that encourage heritage conservation need to be better utilised. Additionally the Government could:
 - Assist with the cost of adaptive reuse and heritage activation to encourage commercial or community ventures that will stimulate economic growth and have indirect economic and social benefits
 - Provide owner incentives such as access to transferrable heritage floor space schemes. This scheme has proven so popular in the City of Sydney that the supply of transferable heritage floor space has not been able to keep up with demand. Unfortunately, however, the City of Sydney's building boom, which has seen countless new high rise towers go up, has spoilt the ambience around important heritage buildings like the Customs House.
 - Provide stewardship payments to heritage owners seeking to activate a heritage item for a community or business opportunity

- Establish a revolving conservation fund that could help communities acquire, restore and operate items for profit
 - Offer tax incentives, grants or other concessions for private conservation or philanthropic heritage investment
 - Expand the Commonwealth Cultural Gifts Program to encourage more philanthropy for heritage-listed items.
- The Discussion Paper proposal for different categories for heritage listings has merit only if it doesn't devalue protections. The key is to make listing heritage items easier in the proposed Category 4 so that more areas of local character/heritage can be protected before they are steamrolled over by development.
 - We do not support the Discussion Paper's recommendation that *"before deciding to add an item to the State Heritage Register, the Minister should consider not only if reasonable and economic use would be affected by the listing but also what opportunities there are for adaptive reuse and activation."*
 - Comprehensive reviews of heritage items in NSW should be conducted regularly and community input should be mandatory
 - We agree with the Discussion Paper's position that the current heritage listing procedure is lengthy and complex, with some items taking more than a year to be listed on the State Heritage Register (SHR). We would welcome an easier, more efficient listing system that would enable the Heritage Council to understand community interest and support for future listings.
 - Comprehensive analysis of local heritage by local governments is desperately needed and must be supported by the state government. We recommend that the Government mandates councils to establish local heritage committees with strong community representation.
 - We agree with the Discussion Paper assessment that *"there is no current process to engage the broader community in identifying items of value for potential listing, or for ensuring that future listings reflect the broad and diverse interests of the NSW community."*
 - We agree with the Discussion Paper's proposal to introduce a community-driven nomination process with early-round nominations that would be submitted to the Heritage Council for consideration.
 - We have strong reservations about the Discussion Paper's suggestion to bypass council approval for development applications of heritage items. This suggested

reform follows a familiar pattern of expanding the categories of development eligible for approval under the complying development route.

- We generally agree with the Discussion Paper's view that "*The listing of a building or place on the SHR should not mean that the item cannot be changed*". However this must not come at the expense of retaining period features that contribute to the heritage value of the item.
- While a less prescriptive approach may be warranted for heritage conservation, it would need to be carefully considered by independent heritage experts to ensure that heritage protections aren't too significantly downgraded.
- Protecting heritage in NSW must be urgently prioritised by the Government given the ongoing huge development pressures.
- State Significant Developments must not be allowed to turn off the Heritage Act.
- Ongoing changes to the EP&A Act, designed to supposedly deliver simpler, faster and better-quality planning outcomes, are a risk to the heritage system.
- Heritage must be prioritized in the strategic planning process but often local councils in the outer suburbs and rural areas lack the will or the resources (or both) to adequately protect the heritage of their areas.
- Unfortunately, the impact of neglect of heritage buildings and sites is of great concern to both local governments and the community because it can result in their demolition. There is a need for government-wide protocols regarding the protection of heritage items across both state and federal governments.
- Where vandalism has occurred, 'make good' orders must be promptly imposed and enforced to ensure that the heritage significance of an item is not significantly reduced.
- We do not agree with the Discussion Paper's assessment that compliance measures should be weakened to avoid "expensive and uncertain court action." Typically, developers are happy to play the odds because they either assume that orders will not be enforced or are prepared to incorporate the cost of litigation for defying heritage orders into the cost of their development.
- People need to be made aware of the benefits of heritage protection. It contributes to a sense of identity, especially at the local level. It benefits local economies and promotes social cohesion, especially because it can instil pride in place.
- That being said, the destruction of the State's heritage is rarely to do with lack of understanding and more to do with lack of respect for heritage.

- The contribution of heritage to promoting tourism needs to be better acknowledged by both the state and federal governments.
 - We are concerned about the above scheme's tourism emphasis on "removing red tape" and encouraging "commercial activity." We believe that the best way to enhance heritage's tourist potential is to ensure that the planning process properly respects and accommodates heritage to enhance the ambience of the area.
 - We would like to see more evidence of why the Discussion Paper believes that "*many (heritage items) may now be considered surplus to need due to changing service delivery needs, expensive maintenance costs or other reasons.*" The Discussion Paper places too much emphasis on the need for heritage items to make an economic contribution. Alarming it says that "*these surplus assets require ongoing conservation and maintenance, even when idle*".
 - We recommend that a thorough and independent audit is done of both the direct and indirect economic and social benefits of heritage items.
 - We agree with the Discussion Paper's view that "*revitalising public buildings to meet the contemporary needs of local communities*" will ensure they "*continue to be valued, used and cared for by the communities they were built to serve*". However we are very wary of the Discussion Paper's over-emphasis on activation and economic contribution as justification for recognising and maintaining heritage.
- **National Parks and Wildlife Service (NPWS) Draft Cycling Strategy**
 - BPN considers the Draft Cycling Strategy and Guidelines to be inconsistent with NPWS Objective 1 - to "*protect and conserve park values*".
 - There must be no proposals accepted from external parties, particularly commercial stakeholders or project sponsors who have vested interests, for new mountain bike parks and trails within National Parks. BPN believes that there should be no external party proposals whatsoever, as this has the potential to create pecuniary conflicts of interests within the mountain biking industry.
 - The proposed Strategy which is based wholly on unsolicited proposals, including from businesses with commercial interest in the proposals, is inappropriate for National Parks.
 - It is unacceptable that the wider community would have no input whatsoever in assessment of individual proposals.
 - The Assessment Strategy is based on desktop assessment of information provided by the proposers. NPWS do not have the resources to ground-truth the documentation provided for every kilometre of every proposal and therefore under

the proposed system, NPWS would have to rely on information provided by those who may have a vested or pecuniary interest in the proposal.

- Maintenance of authorised 'tracks' (ie tracks for mountain bike use only) must NOT be undertaken by mountain bikers who have no environmental education or training. Closure and rehabilitation of illegal tracks must be funded by the mountain bike community but not undertaken by their members.
- According to the Draft Strategy, "*NPWS is responsible for over 30,000 kilometres of management trails. This provides an extensive network of cycling trails suitable for 'leisure' mountain bikers, which make up the largest portion of the mountain biking market*". This indicates there are sufficient existing mountain bike tracks for the majority of mountain bikers.
- No evidence is provided to support the view that establishing more cycling networks will reduce the construction of unauthorized tracks. Case studies were provided that show the opposite is true in many places.
- The proposed multi-criteria assessment method, which gives equal weighting to three criterion, is not acceptable. These criterion are:
 1. Routes are in appropriate locations where park values are protected, and ongoing use is ecologically sustainable.
 2. Routes facilitate an enjoyable and safe visitor experience.
 3. Construction and maintenance costs are reasonable and sustainable.
- Protecting Park values is far more important than maintenance costs or whether a route is "enjoyable". Criterion 2 and 3 are incompatible with NPWS Objective 1 - to "*protect and conserve park values*".
- It is unacceptable that, according to the Assessment Method Tables, a positive score is given to constructing a new track within a threatened ecological community. Threatened Ecological Communities include Critically Endangered Ecological Communities (CEECs), which are, by definition, at imminent risk of extinction.
- It is not in any way acceptable to construct a new mountain bike track, or sanction an existing track, within a CEEC as they are at imminent risk of extinction. Likewise, a positive score must not be given to new or existing tracks within the known locations of Threatened fauna.
- It is unacceptable that the Assessment Method would also give positive scores to new/existing tracks that directly intersect (ie cut across) or are within buffer zones of:
 - Aboriginal shelters, middens and rock carvings
 - Listed heritage items and places
 - Geological forms such as the Gardens of Stone
 - Landscape features such as significant stands of trees or vistas
 - Undisturbed habitat, causing edge effects which reduce the size of the habitat

- Inside freshwater wetlands or hanging swamps such as in the Blue Mountains National Park
 - 1st, 2nd, 3rd and 4th order creeks
 - Steep mountains within erosional zones such as Mt Canobolas, Orange
- In addition, positive scores are given even where an existing or proposed new track:
- Has no emergency access by road or even by foot
 - Alignment is not conducive to a sustainable track
 - Is beyond practical repair
 - Is costly to upkeep
 - Has a low quality ride experience
 - Is within a powerline easement
 - Has limited market appeal
 - Does not cater for a broad range of riders
 - Is not close to transport
 - Has limited connectivity to network or transport
 - Is located close to neighbours
 - Adversely impacts on other users such as bushwalkers
 - Even if user conflicts may arise
 - Costs over \$15,000 to construct
 - Costs over \$15,000 per year to maintain
 - Has been illegally constructed
- In short, even the most environmentally damaging track, with abysmal rider experience, that costs a massive amount to construct and maintain, will be awarded a substantial positive score. If the scorecard Assessment Method is retained, which BPN does not agree that it should be, positive scores must not be awarded to any of the above negative outcomes of the construction or use of mountain bike tracks.
- The Assessment Method Tables must amend score ratings so that they are not biased towards track approval.
- Any Assessment Method must penalize poor environmental outcomes and/or creation of illegal tracks, not reward them.
- The suggestion that NPWS can *"rely on user groups and individuals that frequently use our tracks and trails to support our compliance efforts by providing feedback on inappropriate use"* (below) is at best naive and at worst grossly misleading. It is inconceivable that the very people that are damaging the National Park ecological systems, would report themselves or others in the biking fraternity for inappropriate use of the Parks.
- There are penalties that can be applied to the illegal construction of tracks and riding on them, including *"risking the safety of other users (bushwalkers)"*, *"ground disturbance"* and *"removal of vegetation"*, yet penalties are rarely if ever applied.

- The proliferation of illegally built tracks is a direct result of lack of compliance efforts, not a lack of facilities. Illegally built tracks must be closed and those that ride them fined.
- The concept of volunteers playing "*a significant role in maintaining mountain bike facilities in some parks*" is disturbing. In a recent social media post, a mountain biker says that he "*was planning on doing a walking lap with some shears and secateurs to trim some of the growth*". This was within a Critically Endangered Ecological Community of Sydney Turpentine-Ironbark Forest that a recent Ecological report on the site stated was "*currently at risk of approaching an ecological threshold*".
- Mountain bikers must not be allowed to undertake track maintenance, even those that are engaged by the State Government for their 'campaigns'. Mountain bikers have inadequate or no ecological knowledge or expertise.
- The Guidelines acknowledge the long term unsustainability of tracks through bushland, where tracks are subject to erosion, rutting, soil displacement, and damage to root systems, unless they are frequently maintained. Even those that are adequately constructed require ongoing long term expensive maintenance.
- There will be massive maintenance costs, borne by an already underfunded NPWS, to ensuring the tracks are not causing environmental damage, but also so that they are not a safety risk for bikers and bushwalkers. The cost to maintain mountain bike tracks in National Parks will be simply unsustainable. Volunteers cannot be trusted not to cause even further damage when they are maintaining or constructing tracks.
- By all means allow "leisure" riders on National Park maintenance trails but allowing any other sort of mountain bike track to be constructed in National Parks is a waste of money and resources and is a safety risk.
- It is unacceptable that NPWS intends to engage with only some "key stakeholders" prior to formal public exhibitions of Plans of Management, being the mountain bike stakeholders. There is no mention or reference anywhere to the other National Park stakeholders being consulted - bushwalkers and their clubs, conservation groups, native plant societies, bird watchers, horse riders, animal welfare groups, National Park pass holders, campers, boat owners, Birdlife Australia and their citizen scientists, ecologists, environmental legal practitioners, community advocacy groups, wildlife rescue groups, and peak bodies such as the National Park Assoc, Nature Conservation Council, World Wildlife Fund, Coolong Foundation, Better Planning Network etc. Apparently none of these will be consulted prior to public exhibitions of changes to Plans of Management, only the mountain bike construction companies, mountain bike consultancies, mountain bike event organisers and mountain bike clubs. That is unacceptable and does not constitute transparent, balanced and fair practice. It could bring into question the probity of NPWS stakeholder engagement practices and the potential for conflicts of interest.
- There is no consistency whatsoever in NPWS proposals for mountain bike tracks and the way in which NPWS handles other sports such as horse riding, marathon

running and other extreme sports. This Strategy and its Guidelines are biased towards the sanctioning of tracks that are currently illegal, to satisfy the demands of a small, vocal, well funded minority, to the detriment of National Park values.

- The proposed construction of "*highly technical tracks and gravity experiences*" in any National Park is inconsistent with, and anathema to, National Park values. The construction and maintenance of off-Park technical tracks and gravity experiences must be funded by the mountain bike community who use them, not by the taxpayers of NSW nor through the NPWS. It is unacceptable that track construction and maintenance costs could be borne by NPWS for a small group of extreme sports people. No other sport is funded by NPWS in this way.
- If mountain biking is not permitted in a Plan of Management this would not in any way prevent the construction of new tracks or sanctioning of existing illegal tracks. Instead, the automatic step in the proposed methodology, is that if mountain biking is prohibited, the Plan of Management is to be amended or a new one created. The assessment methodology must not be skewed towards ensuring all Plans of Management are amended to allow extreme mountain bike riding. That is not fair and equitable to all other National Park stakeholders ie the other Park users.
- No Environmental Impact Assessment or Species Impact Assessment would be undertaken. Only a Review of Environmental Factors and then it would only to be undertaken after NPWS has decided to progress with the tracks or events. The environmental factors must be considered before the decision is made, not afterwards. This is not acceptable.
- Mountain biking in National Parks does not necessarily allow users to connect with nature. Indeed, out of all of the mountain bikers, including the "leisure" riders (mainly families), the Guidelines show that only 9% of bikers ride to "enjoy nature". The rest apparently do not care whether they ride in a National Park or a repurposed tip or quarry.
- The Guideline states that there were 62.93 million visits to NSW National Parks in 2018. Yet this Strategy and its Guidelines, is being written for 3,500 mountain bikers who specifically enjoy nature. 62,930,000 National Park visits vs 3,500 mountain bikers. The desires of a handful of elite sports mountain bikers must NOT be allowed to subsume or dominate the experience of the other Park users that visited 62,930,000 times in 2018.
- While the vast majority of families and 'leisure' riders are considerate of others on maintenance trails, mountain bikers who ride for speed (technical and downhill bikers) are a constant safety risk for walkers and the slower leisure riders. It is a well established Government regulation that where there is a shared zone with pedestrians, bikes and other vehicles, the speed limit is 10km per hour. This is strictly for safety reasons. It is inconceivable then, why NPWS would allow mountain bikers to ride shared trails, which often have blind crests on hills or bends with limited sight lines, at speeds that are far in excess of 10km per hour. Speed limits on maintenance trails must be applied and enforced.

- The Strategy states that tracks should be designed by a *"contractor with appropriate expertise"*. No doubt constructed by one of that handful too. This Strategy is a multi-million dollar gift to the 4 or 5 mountain bike construction companies that operate in NSW.
- The last thing that is needed in National Parks is powered bikes. They *"exacerbate safety issues"* (heavier, faster) with an *"increased potential for collisions"*. If that's not bad enough, the additional erosion issues they cause are significant. The need for people with disabilities to require adaptive cycles must not be conflated with mountain bikers who simply want to go faster or go back up the same fast downhill run they just descended using an e-bike.
- Shared tracks are a nightmare for bushwalkers (especially the elderly), horse riders, dog walkers and anyone who doesn't have eyes in the back of their heads to see the silent bikers approaching from behind without any bell or warning.
- Conversely the concept of "locking up" parts of the National Parks for the exclusive use of mountain bikers is neither fair nor equitable. There is no other sport whereby sections of National Parks are put aside for the exclusive-only use of one sport. Technical, downhill and racing mountain bikes have no place in National Parks.
- NPWS must develop its own Bike Trail Guidelines, not use the Australian Mountain Bike Trail Guidelines which are written by mountain bikers for mountain bikers. NPWS is accountable to all Park users and its policies should be written with that in mind, not written by mountain bike associations.
- After decades of providing little if any basic infrastructure such as toilets for bushwalkers and other Park users, NPWS is now suggesting it is going to provide toilets, car parks, accommodation, bike hire, cafes and event hosting capabilities for the 3,500 mountain bikers who enjoy nature.
- Despite the 63.9 million visits by families, kids, bushwalkers and international tourists there are few toilet facilities provided in many National Parks, let alone cafes and accommodation. A mountain biker recently stated on social media *"The reason National Parks are so under resourced is because they have failed to cater to a consortium of users who can successfully apply pressure and lobby politicians on their behalf"*. It appears the mountain bike lobby group have important vocal people applying pressure on NPWS. The scant resources of NPWS must not be spent on providing facilities to a group of elite sports lobbyists.
- The Guidelines go to great length to describe NPWS legal duty to reduce the risk of harm but say nothing about how that will apply if the tracks that are approved by NPWS are not adequately maintained (rutted, obstacles created after construction, side tracks) or are maintained inadequately by "volunteers", and someone is injured. In those cases there would not be in a legal sense an obvious risk (bikers would assume that NPWS maintained tracks would be properly maintained), nor could adequate warnings be given in all cases. It appears that mountain bikers get all the benefits and NSW taxpayers take all the risk. NSW taxpayers must not be expected to shoulder the liability for tracks that are constructed or maintained by mountain bike volunteers.

- It seems like a case of chicken and the egg for NPWS to have to seek funding by commercial events and tours to provide facilities and tracks for one elite sporting group. A better idea would be not to build or approve the mountain biking tracks in the first place and then NPWS won't have to raise money by commercializing National Parks to fund construction and maintenance of those tracks.
 - The accuracy of the graphics and the underlying data provided in the Guidelines is dubious at best. The number of mountain bikers nationally is suggested as being up to 3.3% which comes from a GHD report commissioned by AusCycling in 2021. It states "*Participation in mountain biking nationally is estimated to be between 73,823 and 837,352*". That's a statistical error factor of over 1000%. The number of 837,352 was extrapolated from "*a one off survey*" completed at a trail network by a company commissioned to provide a report for a mountain biking organisation.
 - The Guidelines state that nationally it is estimated people take 2.3 million rides per year. A Guideline graphic shows that 340,000 people ride nationally. If 340,000 riders is divided into 2,300,000 rides per year, then the average number of times a rider rides is 6.76 times a year. That's just over once every two months. Yet the Guidelines graphic on "*how often do people participate*" shows that 84% ride more than once a month. Those graphics cannot both be true.
 - The Guidelines state that 3.3% percentage of people are mountain bikers. Yet in the same graphic it provides the number of riders as being 340,000 which is 1.32% of the population, not 3.3%, ie less than half.
 - The information provided in the statistics and graphics is often at best misleading and at worst incorrect. DPIE should not publish incorrect and/or misleading data in a Strategy that is for public exhibition.
 - DPIE and NPWS must not be bullied into providing extensive, expensive mountain bike "facilities" in National Parks, based on a concerted campaign by a vocal minority of elite sports mountain bikers, supported by dodgy statistics provided in part by the mountain bike community.
- **LEP rezonings**
 - The proposal to allow the proponent of the planning proposal to have applicant status must be rejected. Councils must retain control of the rezoning application and assessment process.
 - If the proposed reforms are adopted, which BPN does not agree that they should be, there must be merits appeal rights for Objectors in respect of Category 2 and 3 Rezoning Applications.
 - Arbitrary time limits with penalties for councils for exceedance of them should not be allowed but subject to flexible duration dependent on individual case circumstances, particularly where inaccurate or incomplete documentation is provided, as is frequently the case.

- Arrangements must be made to improve community consultation about proposed rezoning.
 - In regard to the proposed types of assessment fees, we recommend Option 3: Fixed and variable assessment fees.
- **Draft Design and Place SEPP - including ADG, UDG, BASIX and Sustainability**
 - While BPN agreed that the Draft Design and Place SEPP is a good first step towards better planning outcomes, the inclusion of alternative pathways would only be supported if they can be demonstrated to be beneficial to residents and the wider community as confirmed by an independent Design Review Panel.
 - A 'principle-based system' lacks the certainty required to ensure good planning outcomes and is likely to result in resources being diverted to costly and protracted litigation. We also point to the warnings made by the NSW Independent Commission Against Corruption which says that discretionary decision-making results in an increased corruption risk. A number of key objectives outlined in the Urban Design Guide and Apartment Design Guide therefore need to be mandated.
 - Most people live in urban landscapes. If we are going to ensure mitigation and adaptation to climate change we need to change the way we live and work. The design of houses and suburbs is an integral part of this.
 - The Draft Design and Place SEPP and accompanying Guidelines apply to all of NSW. BPN is of the opinion that a one-size-fits-all SEPP cannot be applied to metropolitan and regional Local Government Areas alike and there needs to be greater differentiation than is currently proposed in the Draft DP SEPP.

Draft Apartment Design Guide -

- BPN strongly objected to the substantial changes made from the exhibited Explanation of Intended Effects to the current Draft Apartment Design Guide, apparently at the behest of the development industry. BPN had considered that the proposed EIE beneficial changes did not go far enough.
- Some of the proposals in the Draft Apartment Design Guide listed below which BPN objected to, included amendments to, or removal of, recommendations made in the EIE. These included:
 - Reductions to the separation distances between apartment blocks
 - Removal of a maximum apartment tower floorplate size
 - Reduction of deep soil area necessary for large trees
 - Reduction in the minimum tree canopy target
 - Reduction in number of bike parking spaces
 - Increase in the maximum of number of units per core
 - No requirement for internal community spaces in many developments
 - Where LGA controls on apartment mix currently exist, the SEPP should not override them
 - Removal of minimum room sizes for 3 bedroom units

- Reduction in ceiling heights and deletion of kitchens as habitable rooms
- Increase in percentage of livable housing and adaptable apartments should have been supported
- Reduction in balcony size
- Inclusion of Gosford LGA in the list of areas where only 2 hours of sunlight access is required
- The hours in which sunlight access is assessed should not be moved to 8am - this does not increase the amount of sunlight, it just makes it easier to comply
- Removal of increase to natural ventilation to 70% of all storeys
- Removal of increase to storage volumes
- Removal of the recommendation that waste should be separated at source

It appears from the above that the development industry made substantial objections to the original Design and Place SEPP Explanation of Intended Effects, which resulted in significant changes in the exhibited Draft Design and Place SEPP.

- BPN considers it necessary to mandate minimum metrics for core amenities of apartment blocks including the solar access, ventilation, natural cross ventilation, ceiling heights, room sizes, insulation for noise and heat, and private open spaces.
- BPN also considered that the minimum separation between apartment blocks must be mandated by the SEPP with the flexibility for LGAs to increase the separation in accordance with place based principles.

Draft Urban Design Guide -

- BPN considered that the 19 Objectives of the Urban Design Guide were far too generalized to be of any practical use.
- While the "Design Guidance" has some terrific concepts that would be fantastic if followed by developers, as guidance only they have the same planning weight as DCPs, which have as little legislative weight as the paper they're written on.
- The DP SEPP, UDG & ADG must have Objectives that have substance that can be applied by the consent authority, as well as strong Design Criteria, to ensure good planning outcomes.
- It is imperative that all new urban design proposals clearly demonstrate that they meet the Objectives. Any attempt by the development industry to water down to "Guidance" or "Consideration" must not be accepted.
- The Urban Design Guide doesn't need to be started again, it just needs some of the best concepts contained therein to be shifted across to the Objectives.
- There must be specific clarification that Sydney's Metropolitan rural lands are excluded from this DP SEPP. Otherwise developers will be subdividing for half a kilometre (5 minutes walk = half a kilometre) around local centres such as Brooklyn, Kurrajong, Galston, Picton, and the periphery of Blue Mountains townships such Leura, Wentworth Falls or Blackheath.

- There must be gradations in lot sizes that the UDG is applied to, depending on whether the proposal is for a) Metropolitan Sydney, Newcastle and Wollongong; b) Suburban Sydney, Newcastle and Wollongong; and c) & d) Regional towns depending on population size. There must not be a one-size-fits-all across the whole of NSW.
- There must be gradations in the minimum gross residential densities that the UDG requires. There must not be a one-size-fits-all-developers across the whole of NSW.
- Residential density recommendations must be expressed unambiguously in lot sizes or in floor space ratios as currently used in LEPs.
- There must be a differentiation in the Urban Design Guide for different residential Land Zones. This is a major flaw in the UDG. For instance, it is far easier to achieve a minimum of 30 dwellings per hectare in an R4 High Density Residential zone than in an R3 Medium Density or R2 Low Density Residential Zone.
- The proposed concept of "mixed and diverse neighbourhoods" is extremely concerning to BPN. As proposed in the Draft, this would not just permit but actively encourage R4 High Density and R3 Medium Density dwellings within the same 1ha site as R2 dwellings.
- BPN considers it to be unacceptable for what appears to be a developer-friendly Draft Design and Place SEPP (and the Draft Urban Design Guide which conspicuously wasn't exhibited as part of the EIE), to override council planning instruments.
- BPN and its member groups are adamantly opposed to allowing R4 high density and R3 medium density in the same block as R2 low density. Objective 15 could be used by the development industry to build unit towers wherever they wish.
- Generally, the proposed 19 Objectives for good urban design must be fortified by moving the Design Criteria so that they are included in the Objectives and moving the Assessment Guidance points so that they are included in the Design Criteria.
- Some of the specific points made included:
 - Neighbourhood density minimum dwelling numbers per hectare are far too high for regional areas.
 - Where LGAs have LEP Lot Size Maps, Floor Space Ratio Maps and/or Zoning Maps, these must take precedence over "Neighbourhood density" requirements of the SEPP.
 - Include mandatory requirements to protect sensitive ecological areas, maintain wildlife corridors and provide for subdivision patterns and building setbacks suitable for tree planting.
 - There must be no "alternate design solutions" for provision of tree canopy or green space.
 - Parking and charging stations should be provided for e-bikes at regular intervals.

- Separated cycle ways should be provided on streets where the speed limit exceeds 40km/hour.
- Mandatory minimum tree canopy targets for road reserves and open space must be increased.
- Minimum canopy targets for Residential land and Open Space must not include street trees. As targets for residential and streets are the same, there would then be no tree canopy in private open spaces.
- Nine Tree Canopy Objectives and eighteen new Tree Canopy Design Criteria were provided by BPN, to enhance and protect to the urban tree canopy and existing urban forest.
- Public open space criteria must not be met by existing open space located outside the development boundary or by inclusion of publicly accessible private open space in the calculation.
- One of the shortest Objectives in the UDG was for Heritage. This Objective and the Design Criteria must be expanded considerably. Recommendations were provided.
- The Objectives and Design Criteria for scale and massing of buildings must not override LEP Height of Buildings maps.
- It is not appropriate to have 6 storey apartments directly adjacent to and overlooking parks, particularly where there is children's play equipment.
- Amenity standards that apply to all housing including boarding and student housing and medium density housing should be included in Built Form Objectives and Design Criteria.
- In order to deliver net zero emissions the development must be clearly able to demonstrate that it meets the necessary criteria in relation to
 - embodied carbon emissions, ongoing emissions and technologies.

Sustainability in Buildings and BASIX -

- The SEPP should not just recommend, but require urgent minimisation of energy use and greenhouse gas emissions, maximisation of energy efficiency and provision of essential energy needs with renewables.
- As the desired life of new buildings is beyond 2050 with its net zero emissions target as set by the Federal and NSW governments, the SEPP should not just recommend, but require all new buildings (residential and non-residential) to be designed to achieve net zero emissions immediately and all existing buildings to be retrofitted to achieve the same by 2035.
- There needs to be a ban on the use of gas in new residential and non-residential buildings, as methane leakage from pipes and at the point of ignition contribute to a greater serious greenhouse gas emissions problem through the whole gas extraction and delivery system.
- The Design and Place SEPP must not be voluntary, but be prescriptive in consistently requiring raised sustainability standards with associated metrics across the building sector.
- Contrary to the stated aim of achieving “certainty”, the proposed ‘principles-based’ approach raises flexibility in interpretation and thus uncertainty around effectiveness

and enforceability. This approach is thus opposed, as is the concept of inadequately defined “alternative pathways”.

- Standard requirements must allow for review every few years to be consistent with updated scientific evidence so as to adequately mitigate and adapt to increased global warming inertia arising from climate change.
- The NSW Government should show leadership by exceeding the planned inadequate 2022 updates to environmental performance standards in the National Construction Code.
- Rather than legislation requiring “consideration”, this must include mandatory “performance standards” and avoid voluntary “performance targets”. Eg “All new homes and all other developments must meet or preferably exceed the performance standards and relevant targets of BASIX”.
- “Mandatory consideration” of Emissions and Resource Efficiency must be “mandatory requirements” and must also apply to precincts and all other development.
- Competing provisions in BASIX targets, other environmental planning instruments and/or DCPs should be allowed to exceed the current policy position highest standards if they are designed to provide better environmental outcomes.
- Sustainability targets for environmental performance, including those currently embedded in the online BASIX tool, should be converted to mandatory quantitative requirements.
- The SEPP’s applicability should be for all development including alterations and additions that exceed a value of say \$20,000 (not the current \$50,000) and for the installation of a pool or spa of more than say 20,000 litres (not as recommended for more than 40,000 litres).
- Although the reference for non-residential development to meet or exceed relevant NABERS targets, including for emissions reductions by 2030, 2040 and 2050 sounds worthwhile, these “targets” should be improved and made a mandatory minimum rather than “where possible”.
- BPN supports the elimination of the use of “thermal comfort” as it is too subjective and prefers the measurable use of “thermal performance”.
- Newly proposed measures for BASIX performance assessment and compliance must be designed to result in better measurable local outcomes and sufficient funding provided to Councils to regulate this with expert assessors and compliance officers.
- BPN recommends that the proposed move away from BASIX must not be done despite so-called “consultation” until proper consultation and analysis has been done on alternative “flexible” pathways, and only after the work in relation to these alternatives has been completed.

- BPN also expresses its concerns among others, about the so-called “independent pathway” outside BASIX using a “suitably qualified ... accredited assessor” instead of an expert BASIX assessment. Our members’ experiences with so-called “independent” private certifiers has left us extremely wary of any such new experiment.
- The current BASIX process for energy and water benchmarking should be continued and improved, rather than transferring it to the weaker national standard of NatHERS.
- The new SEPP should include enforceable standards for stormwater retention and Water Sensitive Urban Design in all developments.
- There are many other design features that should be required or at least recommended in all new developments such as green vegetated roofs and walls, as in Biophilic Design, rather than all too frequent heat absorbing dark coloured tile roofs and unshaded walls. However green roofs and walls must not be used as an offset for other vegetation or tree canopy cover.
- The SEPP should include increased BASIX water standards and we suggest the need for a review of the effectiveness of the SEPP in two years.
- Recognition of embodied carbon and setting a pathway to regulation is also important. This should include comprehensive and transparent reporting frameworks.
- Electric vehicle fast charging points in all new car parking stations, frequent kerbside charging points and electric vehicle ready buildings are important to be mandated, as well as cycling infrastructure.
- Maximum mature tree retention, canopy cover, planting and green space requirements are referred to elsewhere in this submission, but should preference diverse locally endemic native planting and drought tolerant plants.
- Buildings need to be urban heat ready for future increasing heat stress.
- Building standards must be updated with best available future climate projections, drawing on the recently updated NSW Government NARCLiM climate modelling.
- It is good that the Cost Benefit Analysis section notes a cost savings over time, but should acknowledge that earlier, more significant savings, will result from reduced energy and emissions.

Design Verification Statement -

- BPN agrees with the proposed amendments to the EP&A Regulation to require a Design Verification Statement for urban design and development. We are concerned however with the discretionary approach which we consider will result in non-compliance and/or litigation around definitions.

- BPN maintains that the only truly independent review can be made by a consultant that is not directly engaged by the developer. We believe that a rotating panel of expert reviewers will provide the only truly independent review that the community can have confidence in.

Design Review Panels -

- BPN is supportive of the adoption of Design Review Panels on the basis they are provided with clear terms of reference and mandatory minimum quantitative standard around the objectives as outlined in the above table.
- Appointees to the panel must be qualified and experienced practitioners in architecture, landscape and/or urban design to ensure that developments can be properly interrogated and tested against the relevant Objectives and Design Criteria.
- The Design Review Panel should not be regarded as simply an advisory body. Sign off by the Panel must be obtained prior to the assessment of the proposal by the consent authority and the Panel's assessment that the development satisfies the objectives of the SEPP should be a mandatory requirement to consent.

Footnote: As mentioned earlier in this BPN Annual Report, the Minister for Planning and Homes Anthony Roberts has stopped the Draft Design and Place SEPP from being implemented. BPN is of the opinion that the Draft SEPP was a mixed bag. It did remove some of the worst excesses of the original Explanation of Intended Effects but it also did water down some of its better innovations. It also included too many poorly defined objectives that could have allowed the development industry to drive a fleet of bulldozers through its many vague definitions.

Overall though, the Department and the Government Architect did an enormous amount of good work to get the Design and Place SEPP to exhibition, for which the BPN Leadership Group thanked them. The Draft Design and Place SEPP and the accompanying Draft Apartment Design Guide, Draft Urban Design Guide and the BASIX and Sustainability Guide did not deserve to have been summarily canned by the Minister, especially before the community's submissions had been considered by the Department and Minister.

• **Infrastructure Contributions (from Development)**

The goal of this DPIE/Productivity Commission Review is to deliver a set of recommendations that will:

- *“Fund the infrastructure needed to support our growing communities”*
 - The detailed BPN Submission made recommendations relevant to this, especially BPN's strong objection to DPIE's Draft Practice Note recommending against “Value Capture”, which was supported by the Commission. “Value capture” is really a fair public share of high land value increases resulting from re-zoning. This Commission recommendation was opposed widely by many Councils, other peak bodies, community representatives and Local Government

NSW.A NSW Upper House Inquiry also recommended deferral of any related legislation until further details were provided, as some Councils estimated this decision could deprive their growing communities of many millions of dollars for parks, libraries, community centres, roads, cycleways and paths.

- Astonishingly though, the Commission's recommendation to abolish public share / value capture was supported by the Department (DPIE). The Department's *Infrastructure Contributions System Improvements - Submissions Report* stated that *"The exhibited position on Value Capture is maintained, as it is the Government's policy position"*. Surely submissions arising from public exhibitions are meant to be taken into consideration by the Government, rather than the outcome of public exhibitions being pre-determined by a Government policy position. Public exhibitions must not simply be box-ticking consultation exercises.
- The recommendation not to proceed with value capture will result in a multi-billion windfall for the property and development industry.
- For 'growing communities' to be properly supported with adequate community facilities, it is essential that developer contributions must be restored and then increased to maintain livability standards.
- BPN recommended a contribution system with a much higher public value ("capture") share of independent expert assessed land value uplift for development. Independent valuers need to be appointed by individual Councils from a panel of valuers and the cost of the valuation invoiced by Council to the developer. BPN will consult further about the possibility of support for phasing in a 75% public share policy similar to the ACT's "Betterment Levy". However, BPN would prefer that site-specific and spot rezoning planning proposals be prohibited.
- *"Lead to an infrastructure contributions system that is simple to understand, transparent and principles-based"*
 - On Public participation and notification, BPN noted that the public is at a great disadvantage because of the complexity, inaccessibility and inadequate transparency of information, policies and procedures.
 - Planning proposals and development agreements must also be publicly notified longer in advance to the community before decisions are made on them.
 - Where planning agreements are used as a trade-off against existing planning controls, they undermine confidence in the planning system and are often viewed by the public as a form of legal bribery. Independent Commissioner Against Corruption's Chief Commissioner, Peter Hall, QC, has said "In the commission's experience, deviations from development standards are often

associated with alleged and actual corrupt conduct". This is also a risk with spot rezoning and site specific agreements.

- The public trade-off for planning agreements is always at some loss to the community eg. increased congestion; safety concerns; loss of bushland; loss of deep soil planting zones; loss of privacy and overshadowing of neighbours by increases in height; significant increases in density not foreseen in planning controls from changes to Floor Space Ratios.
- *Meet the objectives of certainty and efficiency to support our stakeholders and boost investment in NSW*
 - BPN believes that good development with increased section 7.11 & s.7.12 contributions and an acceptable public value share (inclusive of any State Special Infrastructure Levy where relevant) independently assessed will give certainty that there are sufficient funds for the resulting increased community population's infrastructure needs. This arrangement should also be efficient, transparent and provide the currently missing fairness caused by inadequate public value share.
 - Concern that value sharing will impact upon development feasibility and will reduce housing affordability as the developers 'pass on' these costs to end purchasers was refuted by reference to various experts, including an expert planning consultant saying this "*should not have a negative impact on the feasibility of future development or housing affordability.*" Clear reasons were given for this statement and BPN agreed with this.

Evidence given to Parliamentary Inquiries and Independent Planning Commission

• Parliamentary Inquiry into Heritage Act

- In July 2021, the Better Planning Network made a submission to the Legislative Council Standing Committee's on Social Issues Inquiry into the Heritage Act 1977. Over 300 submissions were received. BNP was one of 43 witnesses invited to give evidence at the Committee's hearings.
- Details of BPN's written submission to the Parliamentary Inquiry are contained in the "Submissions" section of this AGM Report. BPN was invited to provide verbal evidence to the Inquiry which BPN accepted.
- BPN's submission and evidence were cited 17 times in the Report. Many of BPN's recommendations to the Inquiry on how to improve the design and operation of the Heritage Act were taken up by Committee, which made 26 recommendations to Government.
- In line with BPN's goal of fostering more meaningful community consultation in planning decisions and its advocacy for less ministerial interference in the decision

making process, BPN was particularly pleased to see Recommendations 5 and 6 in the Report:

- *That the Heritage Act 1977 provide increased opportunity for community participation and co-design in the identification, protection and management of heritage and that this participation and co-design include Indigenous members of the community.*
- *That State Significant Developments are only able to override heritage concerns after the Minister has consulted with the Heritage Council of NSW and is satisfied that there is a clear net benefit to the community for proceeding with a State Significant Development which results in a diminution of an item's heritage.*

- In its response to the Report, the Government supported 25 of the 26 Recommendations but unfortunately only noted Recommendation 6.

- **Parliamentary Inquiry into Biodiversity Conservation Act Offset Scheme**

- In August and October of 2021 BPN made an original and a supplementary written submission to the Legislative Assembly's Environment and Planning Committee's Inquiry into the Integrity of the NSW Biodiversity Offset Scheme (BOS). This Inquiry was set up in response to reports of failures and alleged rorting of the BOS in a series of articles authored by the Guardian Australia's Lisa Cox.
- BPN's original submission discussed the integrity of BOS with respect to its application and impact on a landscape scale. It cited the failure of the Northwest and Southwest Growth Centres' Biodiversity Offset Program to conserve enough land to compensate for environmental damage caused by large-scale greenfield development in the Sydney region.
- BPN argued that the Government is about to repeat and amplify these past mistakes with the proposed implementation of the Cumberland Conservation Plan. It will allow development on land in South West Sydney that was meant to be set aside as biodiversity offsets for the Growth Centres, including 1,000 hectares of the critically endangered Cumberland Plains Woodlands. It will also inadequately protect the habitat for the South West Sydney Koalas, the last remaining healthy and expanding koala population in NSW.
- BPN's supplementary submission addressed the application of the BOS in the Development Application (DA) approval process, citing two recent controversial DAs as examples of how the price of biodiversity offset credits under the market-based BOS is flawed.
- The Inquiry is ongoing. BPN was invited to give verbal evidence to the Committee on 22 October 2021 which it accepted.
- BPN fully concurred with the observations and recommendations made in both the EDO and the NCC submissions to this Inquiry.
- While EDO and NCC extensively explained the problems with the integrity of the Biodiversity Offset Scheme in their submissions, BPN endeavored to also provide

real life, on-the-ground examples of the outcomes of the application of the BOS within the Sydney Basin.

- The BPN submission to the Inquiry, dated 31 August 2021, addressed the integrity of the BOS with regard to its application and impacts at a Strategic scale, using the example of the Growth Centres' Biodiversity Offset Program, and at a Landscape scale using the example of the Cumberland Plain Conservation Plan.
- BPN tabled an additional submission document dated October 2021. This additional document addressed the impacts at a Local development scale, by providing two individual examples of recent development applications and the impacts of the BOS on the critically endangered ecological communities on those sites and the threatened species that inhabit those communities.
- Assessment at Strategic and Landscape scale is important, but as our earlier submission shows that becomes too inflexible. If the integrity of the vegetation degrades from say clearing or from bushfires, or if fauna newly inhabits the land as the koalas are doing in the Greater Macarthur region, or if vegetation becomes critically endangered, there doesn't seem to be sufficient mechanisms to be able to adjust the Scheme at a Strategic or Landscape Offset Level.
- And at an individual site level, insufficient measures are being taken to avoid or mitigate impacts. It's a very common situation that developers simply don't provide the information necessary on which approvals can be based.
- Contrary to a determination by the NSW Threatened Species Committee, the BOS does not assign an equivalent value to poor and good condition critically endangered ecological communities.
- It is an absurd conundrum that under the market based Biodiversity Offset Scheme it is cheaper to clear good condition Threatened Ecological Communities than it is to clear poorer condition TECs. This occurs because there are more poorer condition TECs traded than TECs in good condition. Hence the prices are higher because there is a greater level of trading. Two recent documented examples were provided.
- The market based Biodiversity Offsets System of credits must be reformed to reflect the scarcity of the TECs, not the availability of credit trades.
- In accordance with the *NSW Threatened Species Scientific Committee Final Determination*, the Sydney Turpentine-Ironbark Forest in the Sydney Basin Bioregion is a Critically Endangered Ecological Community. All occurrences, regardless of their condition, are covered by the Determination. While the Determination considers even low condition STIF to be a CEEC, the Biodiversity Offsets Scheme does not even consider it to be a Threatened Ecological Community for the purposes of ecosystem credits. This further skews the market-based system of the Biodiversity Offset Scheme with regard to the most endangered ecological communities.

- The Biodiversity Offsets System of credits must align with the NSW Threatened Species Scientific Committee Final Determinations with regard to what constitutes an Endangered Ecological Community, instead of relying on a Vegetation Integrity (quality) score.
- The BOS is not designed to sufficiently deter the cumulative impacts on threatened fauna species like the Powerful Owl, exacerbating the risk that NSW's threatened species will become functionally extinct.
- There must be a more robust assessment and avoidance of cumulative impacts on Threatened fauna species required under the Biodiversity Offset Scheme and the Biodiversity Assessment Method.
- The removal of trees with hollows must be avoided not mitigated, otherwise Threatened species could become functionally extinct within the Sydney Basin. Loss of nest trees must factor much higher in BOS credits. The provision of nest boxes must not be used as a mitigating measure for the loss of trees with hollows.
- Despite the Biodiversity Conservation Act, the BC Regulation and the Biodiversity Assessment Method stating that determination of a Serious and Irreversible Impact (SAIL) is to be made in accordance with the Regulation's four SAIL Principles, and the BC Act stating that criteria to assist in the determination is provided in the Guidance, ultimately it is left to the subjective opinion of the decision-maker as to whether there will be a serious and irreversible impact as a result of a development.
- If a development gives rise to any of the four Principles of SAIL or any of the criteria that apply to those Principles are met, then a development **MUST** be considered to have a serious and irreversible impact. It must not be left to a subjective opinion of the decision-maker.
- The Biodiversity Conservation Act, Regulation and Offsets Scheme must protect and preserve the Threatened Ecological Communities, and particularly the Critically Endangered Ecological Communities, as originally intended. No clearing of CEECs can be permitted. As a last resort, if the Act, Regulation and Scheme cannot protect TECs, size thresholds may have to be assigned to each TEC which currently does not occur, because the current BOS is being used to permit clearance of virtually any size area of TEC, large or small.
- Prohibition of developments in TECs and CEECs that are SAIL entities must apply to all developments, including State Significant Development and State Significant Infrastructure.
- All relevant information required by the Biodiversity Assessment Method must be provided to the decision-maker to enable them to make a properly informed decision, particularly on SAIL developments. Developers must not be permitted to refuse to provide such information.

- The definition of "remnant" as contained in the *Native Vegetation Act 2003* must be included in the Biodiversity Assessment Method. Currently there is no definition even though "remnants" are referenced in the Biodiversity Assessment Method
 - Mitigation measures that are proposed for a rezoning or a development application under the Biodiversity Offset Scheme must be actualized for that rezoning or DA, they must not be allowed to be used for successive DAs without the measures ever being provided for the previous DAs or rezoning.
 - Prior poor performance in native vegetation management must not be rewarded by accepting improved vegetation management as a mitigation measure.
 - Offset credits must not be reduced by taking into account mitigation measures that are not actualized, are undefined or inadequate, or rewards the developer for prior poor performance in native vegetation management.
 - Biodiversity credits or other actions that benefit the biodiversity values of impacted land must only be applied after any steps are taken to avoid or minimise those impacts.
 - The BOS inexplicably and dangerously allows the clearing of critically endangered ecological communities by offering developers the option to pay monies into the Biodiversity Conservation Fund.
 - Biodiversity Offsets must not be permitted for Critically Endangered Ecological Communities (CEECs) and cash payments to the Biodiversity Conservation Fund in lieu of offsets for all TECs must not be permitted.
 - Clearance of native vegetation must not occur until credits are retired.
 - A roster system of consultants must be established to prevent developers from selecting consultants that provide reports on biodiversity that are favourable to the developer but fail to avoid detrimental outcomes on biodiversity.
 - No Threatened Ecological Communities are safe from extinction under the current NSW Biodiversity Offsets Scheme. The Biodiversity Offset Scheme has and is failing miserably in its ability to protect Critically Endangered Ecological Communities. The integrity of the BOS is no longer in doubt, it is seriously compromised.
- **Independent Planning Commission hearing - Narrabri Underground Mine Stage 3**
 - Excessive coal and gas mining is detrimental not only to the needs of people for a healthy environment, but is also detrimental for community well-being - social, environmental and economic.
 - Better Planning Network knows that if we are not planning seriously for strong urgent climate action, we are planning for climate catastrophe.

- The United Nation's Intergovernmental Panel on Climate Change reported that "to provide a 93% mid-value probability of not exceeding [a dangerous post industrial increase of] 2°C, the concentration (of atmospheric greenhouse gases) would need to be stabilised at, or below, 350 ppm CO² equivalent, that is, well below current levels of about 500ppm CO²e, which means no carbon budget left for 2°C."
- The Protection of the Environment Administration Act 1991 is worthy of revisiting with respect to the Narrabri coal mine. The Act specifies the following in *Part 3 - Objectives of the Environmental Protection Authority*, which the Narrabri mine would find impossible to achieve:
 - (a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development; and
 - (b) to reduce the risks to human health and prevent the degradation of the environment
- Using the application of the precautionary principle, public and private decisions should be guided among other points by:
 - (a) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
 - (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, and
 - (c) conservation of biological diversity and ecological integrity - namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration.
- The polluter should pay - that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement.
- Climate change is happening now and we must play our part as the tenth biggest national greenhouse gas emitter in the world and NSW should do so too, as the State with the highest population in Australia. Our national population is only about 0.3% of the world's, but our CO²e emissions are about 1.2% and the exported emissions nearly double that.
- It is clear that we have a responsibility to move more quickly this decade, with more than a modest 50% emissions reduction by 2030, and preferably by 75% as urged by Australia's Climate Council.
- This Narrabri coal mine proposal on the other hand, is guaranteeing an increase in GHG emissions as is shown by the graphics provided by Lock the Gate Alliance, based the DPIE's Environmental Assessment report.

- Rather than the requirement to “minimise the release of GH gas emissions from the project”, it indicates an increase in GHG emissions over nearly 30 years of operation, here almost a quadrupling of CO² equivalent emissions by 2037, which is seven years after the Climate Council says we should have a 75% emissions cut.
- The Stage 3 coal mine if approved will make this target very difficult, if not impossible to achieve and will support unacceptable global emissions.
- The NSW Government has announced a 50 per cent emissions reduction by 2030, with Treasurer and Energy Minister Matt Kean declaring that this emissions reduction target and a quicker move towards 100% renewable energy, “*will drive down household and business energy costs, create jobs and grow our economy.*” The Business Council of Australia has also supported a 46 to 50 per cent reduction by 2030.
- BPN acknowledges Matt Kean’s leadership in renewable energy, but the NSW government’s coal and gas industry expansion more than negates his good work. This Narrabri coal mine extension has the largest GHG footprint of any coal mine assessed to date since the IPC was formed in March 2018 (Scope 1, 2 and 3).
- Yet it’s never been cheaper or easier for Australia to invest in clean energy, clean industries and clean jobs which will make our country more prosperous and resilient, and protect more ecosystems.
- This Independent Planning Commission should reject this polluting coal mine and in doing so, it will have the strong support of the public. As shown in the latest Climate of the Nation report, 75% of Australians expressed concern about climate change - the highest level of concern since this survey began.

- **Independent Planning Commission hearing - Western Sydney Incinerator**

- BPN objected to a giant waste incinerator being built at Eastern Creek in Western Sydney by making a written submission and speaking at an Independent Planning Commission Conciliation Conference.

Communications:

Facebook <https://www.facebook.com/BetterPlanningNetwork> - BPN has been very active on social media. The wide variety of topics posted on the Facebook page has generated a lot of interest. It is particularly pleasing that there is an ongoing stream of new people liking and commenting on the posts which indicates an ever widening reach for BPN. Currently over 5,000 people follow the BPN Facebook page.

Recent posts have covered topics as diverse as waste incinerators, Koalas, the Design and Place SEPP, housing affordability, Crown Lands, native fauna annihilation, the floods,

planning timelines, COVID workplace returns, National Parks, World Heritage listings, light rail, climate change, influence of the development lobby, ICAC, the list is endless.

Some noteworthy points regarding Facebook include the observation that after the 2021 Facebook stoush with the Federal Government, in which the BPN page was disabled along with many others as being a carrier of news items, the number of people reached by the BPN page dropped dramatically. Anecdotally this was also noted on other BPN member pages. However the BPN page still often reaches many thousands of people with a substantial proportion of them, sometimes over 30%, engaging with the posts.

It is notable that when a media article is directly shared, the reach and engagement numbers plummet dramatically. Whereas if the BPN post simply quotes from the article and provides the media link, instead of directly sharing the story, there is a much greater Facebook reach while still ensuring that plagiarism is not an issue.

Another more obvious key to reaching a wider audience is the content of the first few words. A headline works best with key words that are trending at the time triggering the best reach. And obviously the more comments, shares and likes, the wider the audience. While there are no doubt a host of observations that can improve members' individual social media reach, we hope these few tips assist you to widen your audience. And please do share our BPN Facebook posts.

Twitter @BetPlanNetwork - BPN has an active Twitter account which extends opportunities for engagement with community members, social commentators and the media. BPN Twitter account has over 2,000 followers. We actively promote the tweets of member groups and supporters on this platform by retweeting, liking and commenting. The aim is to increase awareness of important local planning issues in the Twitter community and we are pleased that our content is also shared by prominent commentators and activists.

Some of the recent topic covered on the BPN Twitter have included:

- Proposed changes to the rezoning process in NSW
- Impact of Lendlease development on Koalas
- Coal mining in regional areas
- Transport and infrastructure
- Affordable housing
- Willow Grove
- Urban heat islands

Newsletters - BPN has also been providing members with ongoing notifications in the planning sphere via newsletters. Members have been provided with links to Policy & Legislation pages, planning reforms, various submission links and COVID legislation information. Unfortunately due to ongoing difficulties with NationBuilder, for many members these newsletters were going into their email Promotional or Spam folders and not being seen. So this year BPN has resorted to sending direct emails which has resulted in far more members receiving information. Could the people that are nominated as the contact person for member groups please ensure that any newsletters and other information is circulated to all their members.

Meet and Greet - BPN organized a meet and greet lunch for members at the Kirribilli RSL, Lavender Bay in April last year which was attended by more than 20 members. After a very pleasant lunch and informal discussions, a round table conversation was held which covered local and statewide planning issues that were the main priorities for the attending members and canvassed what actions it was felt BPN could take to progress stronger community input and better planning outcomes.

While there was terrific discussion around these topics, with agreement that the community needed to get on the front foot with input into planning matters instead of being reactive as most campaigns are forced to be. However it was disappointing that none of the members attending felt they had the time or availability to offer support to the Leadership Group.

We reiterate, there is so much more that BPN could do and we encourage members that are dedicated to the BPN aims of a robust and visionary planning system for NSW, that includes a collaborative and authentic community partnership engagement approach, to either nominate for a position on the Leadership Group or to offer your time for task-specific sub-committees.

Nature Conservation Council Public Liability Insurance:

BPN continues to be covered under the Nature Conservation Council public liability insurance policy. Any BPN member group or member that wishes to be covered by this policy for an event must advise BPN of the details of the event, who will in turn advise NCC. Failure to notify BPN/NCC will mean that you are not covered by the Policy. A copy of the Certificate of Currency must be obtained from BPN to ensure that your event and/or the situation will be covered.

Please note that under the terms of the Policy, *"Personal Injury or Property Damage directly or indirectly caused by, arising from or in connection with the participation of any Insured or Named Insured in any demonstration, protest march, civil sit-in, or any similar industrial action of any description"* is excluded from the Policy.

BPN Goals achieved:

Better Planning Network is guided by BPN's Constitution which interrelates membership in a structure. BPN has:

- Provided strong advocacy and monitored and responded to changes and challenges that occurred in the areas of planning, regulation and assessment.
- Provided submissions and given evidence on important relevant draft legislation and planning developments
- Communicated directly and effectively with Government decision makers
- Held face-to-face meeting with member groups in between COVID lockdowns

- Communicated with BPN NSW member groups, affiliates and other bodies, forming commonalities across areas to increase effectiveness through shared information and strategies
- Raised the profile of the BPN as a stakeholder and consistently accepted invitations to be a stakeholder with NSW policy makers.
- Reviewed and adapted strategically with many changes throughout 2020-2021

BPN Goals for 2022:

The Leadership Group (LG) should:

- Represent BPN membership to remain strong in advocacy to all levels of government
- Represent BPN membership and remain strong in advocacy when engaged in consultation where Industry, Lobby Groups and Developers are influencers and stakeholders
- Work with our members who are willing to support and assist in the writing of submissions to gather more knowledge and fact, and together to submit excellent documents while continuing to meet deadlines set by the policy makers
- Continue to engage in submission writing. Each is a valuable source, for detail and fact
- Continue to assist membership in local matters when requests are made

Leadership Group tasks:

- Review the use and function of NationBuilder with a view to changing to a website only format
- Review the 2017-2021 BPN Strategic Plan to guide our ongoing work
- Build and strengthen membership
- Build media relationships to make BPN a first stop place for commentary on planning matters
- Consider building a members only Facebook presence
- Increase face-to-face and potential Zoom contact with members

BPN LG continues to adapt to system changes and represent the BPN Members with strength and integrity on matters of policy and development, action and implementation.

Better Planning Network Leadership Group

