

3 November 2011

Thank you for the invitation to make suggestions regarding the “bedrock principles” that should underlie the new Act that will replace the Environmental Planning & Assessment Act 1979.

Our members view the current Act as a particularly bad piece of legislation due to the way it allows councils and the government to ignore one of the foundational principles of Australian society – respect for property rights – when drafting planning instruments. Every control sanctioned by the Act erodes ownership rights, and there is nothing to limit this process. It is “carte blanche” for planners, the government, and the council. This has led to a situation where landowners are now little more than caretakers, forced to follow strict rules laid down by others about how they use their land.

Among the detrimental effects of the legislation upon our members are the following:

- Devaluation of property values due to restrictions upon subdivision implemented by decreeing minimum lot sizes in the LEP that are far larger than demanded by the market and common sense. In our case, the minimum lot size is 10 hectares; whereas the demand is for lots no larger than 2 hectares.
- Devaluation of property values due to so-called “environmental” zones, or “bio-diversity overlays”, that seek to permanently quarantine large parts of members’ private property from development;
- Devaluation of property values by severely restricting the amount of land that can actually be used, through so-called “site coverage” rules in the DCP. In our case, 95% of a minimum lot size property is rendered useless.
- A myriad of additional restrictions in the LEP & DCP which either prohibit activities and uses outright, or require “permission”, often at considerable cost.

In addition to these direct effects upon landowners, there is the wider, societal cost of restricting development. While the restrictions depress property values in our area, they simultaneously and unavoidable increase property prices in the remaining areas where development is permitted, to the extent that urban land prices in Sydney are now among the highest in the world. Not only has this made it extremely difficult for young people to enter the property market, it also distorts the allocation of capital, leading to lower overall productivity.

Our association submits that the only way to address these detrimental effects is to ensure that above all else, the new Act must **first protect property rights**. This could be achieved by:

- Allowing challenges to planning decisions, including zoning decisions, based upon argument that the plan unduly impacts upon property rights;
- Defining property rights in the Act as the intrinsic right of an owner to use and manage his property as he sees fit, as long as such use does not diminish the equal right of any other owner;
- Requiring decisions of planning authorities to include a statement of impact upon property rights;
- Removing those parts of the current Act which grossly invade property rights;
- Require planning decisions to be justified by a wide-ranging, quantitative evaluation of the costs and benefits, including opportunity costs.



**Gaye Wheatley**

**Secretary**