



New Planning System Team
Department of Planning and Infrastructure
GPO Box 39
Sydney NSW 2000

Re: The Walter Burley Griffin Society's response to the New Planning System for NSW Green Paper

Committee members of the Walter Burley Griffin Society Inc. have read *A New Planning System for NSW Green Paper*, attended the community information evening held by the NSW Department of Planning on the proposed changes to the NSW planning system entitled 'the Green Paper' on 14 August 2012, and prepared the following response:

As the Society's website states: "Established in 1988 in Sydney, Australia, the Society commemorates the lives and works of Walter Burley Griffin (1876–1937) and Marion Mahony Griffin (1871–1961) and promotes the environmental ideals and community life they fostered in Australia". One of the main aims and objectives of the Society is to "promote the preservation and conservation of landscape designs, buildings and other works designed by or having an association with the Griffins".

The Griffins' extensive and unique architecture, landscape architecture and urban planning in Sydney, Leeton and Griffith, NSW is widely recognised. The Griffin Conservation Area at Castlecrag, Sydney, is of not just local and state significance but also has national and international recognition.

The most significant Griffin design principle at Castlecrag is the subordination of the built form to the landscape. At Castlecrag, Willoughby City Council (WCC) established the Griffin Conservation Area (GCA) and put in place the Development Control Plan requirements to preserve its unique character, and to ensure that Castlecrag remains a special character area.

To protect the Griffin principles at Castlecrag, WCC engaged a heritage expert to prepare a Local Environment Plan (LEP). After extensive community consultation this plan was adopted in 1995. It created the Griffin Conservation Area and listed all the Griffin houses at Castlecrag as heritage items of state significance. The following year WCC adopted DCP19 (Heritage and Conservation) which created controls designed to preserve the heritage of Willoughby City and the Griffin Conservation Area.

Following further extensive community consultation, this DCP was amended and became WDCP Part H in 2004.

Willoughby City Council has defended the Griffin Conservation Area against unsympathetic development a number of times in the NSW Land and Environment Court over the last ten or more years.

In each judgment handed down in relation to the Griffin Conservation Area at Castlecrag the Court has upheld the Griffin principles and Willoughby City Council's DCP that protects them.

In Mackenzie Architects P/L v Willoughby Council NSWLEC 1280 (2010) , Commissioner Morris concluded the judgment by stating: "The planning principles for the Griffin Conservation Area must be upheld to ensure that the importance of this area is not lost to large scale, non-sympathetic forms of development that do not respect the natural environment and landscape setting".

Thus it is with great concern that we interpret the Green Paper to imply that the NSW Department of Planning proposes to abandon Development Control Plans (DCPs) that protect conservation areas and heritage items, and repeal all State Environmental Planning Policies (SEPPs) that protect bushland.

This would be a very retrograde step especially when European and Asian countries are strengthening their planning laws in relation to development performance and sustainability. The NSW Department of Planning should be aspiring to international best practice and to ensure that the new planning legislation embraces the necessary policies and development controls to protect the built and natural heritage for future generations.

DCPs

Development Control Plans (DCPs) need to be retained. They should not be abandoned or dissolved into a watered down development principles. In particular, it is absolutely essential that the DCP for the Griffin Conservation Area is retained and not abandoned by the NSW Government.

In a NSW Land & Environment Court judgment handed down concerning a proposed development in the GCA, on 4 September 2008, Commissioner Hoffman stated that "... given the importance of the conservation area and its very specialised character it is necessary to apply the statutory and control requirements [of WDCP] in order to conserve it into the distant future".

Only with DCPs is there sufficient guiding design detail and sufficient development controls to adequately protect conservation areas and heritage items from the inappropriate development. The mandatory LEP template introduced by the NSW Government in 2009 disallows diagrams and other detail necessary to adequately protect heritage.

Heritage items

Heritage items can only be conserved and maintained with the existence of the DCPs that protect them from inappropriate modifications and adjoining development. The Green Paper is silent on how the thousands of heritage items throughout NSW that have local and regional significance plus the hundreds of other heritage items of state significance are to be protected under the proposed new planning system.

Our particular concern is the Griffin heritage items in NSW. Until 2009 they were all listed as having state significance in the LEPs, but now as required by the NSW Government's LEP Template, they are listed as of local significance except for the few

on the State Heritage Register. All the remaining Griffin architecture in NSW needs to be recognised at the state, national and international level as very important items in the development of our architectural heritage.

Conservation Areas

Conservation Areas need to be retained. The nationally and internationally significant Griffin Conservation Area at Castlecrag must be retained to ensure it is conserved for the community and future generations.

The Green Paper fails to give a clear message regarding the retention of Conservation Areas. It proposes a new "Suburban Character Zone", which appears to be an additional zone for areas of lesser heritage significance where "there is clear evidence in support for the character of an area to be preserved . . . by excluding medium or high density development". (page 45)

Undoubtedly the character of the GCA needs to be preserved but its unique special nature and intrinsic qualities cannot be preserved by the mere exclusion of medium and high density development. In order to preserve the Griffin legacy in the GCA many other aspects need to be excluded. These aspects are detailed in the DCP, which has been prepared with heritage expertise and extensive community consultation.

SEPPs

The Green Paper states: "All State Environmental Planning Policies (SEPPs) ... will be repealed" (page 31). All SEPPs should not be repealed. For reasons of sustainability, conserving the environment, bushland, water quality, habitat and quality outcomes it is essential to retain many of the SEPPs.

Planning controls need to balance economic development, neighbourhood amenity and ecological sustainability and the SEPPs provide the means to do this. The Green Paper fails to demonstrate how this balance will be addressed under the new planning system.

The Griffin Conservation Area has an extensive bushland foreshore reserve bequeathed to the people of Willoughby City by Walter Burley Griffin and Marion Mahony Griffin. All the bushland foreshore reserve and the interconnected network of bushland reserves and walkways are downhill of residential area and infill development. It is thus essential that SEPPs protecting the bushland and the water catchment are retained for environmental protection.

Section 117 Directions

The society strongly supports and encourages the standard Ministerial Section 117(2) provisions issued to Councils in relation to Heritage Conservation. The objective of the direction to; '*conserve items, areas, objects and places of environmental heritage significance*' is particularly relevant for us in the conservation of the Griffins' work throughout Sydney. It is of a concern to the society that these heritage directions are proposed to be repealed and it is not apparent how these heritage conservation objectives will be replaced.

Public participation

The Green Paper states: "Community and public interest will be at the centre of the new planning system" (page 19), and that: "Engaging effectively with the community on whose behalf we operate is integral to the successful transformation of planning" (page 20).

The Green Paper then proceeds to boldly assume that providing public participation at the strategic planning stage but at no other stage is appropriate and in the community's best interest. This is not the case.

Strategic planning is not an aspect of planning that most in the community can understand or engage with. Most people don't understand planning and development proposals until they are happening next door. To deny NSW citizens a voice apart from the broad brush strategic planning stage is to deny them a voice in all the detail that will personally affect them and the rights attaching to their properties.

This denial of a right to be heard would amount to a denial of natural justice, which could be open to challenge in the Courts. The people of NSW must have a right to be heard if their rights are adversely affected by a proposed development application. If instead, it is the intention of the Green Paper to remove or vary the rights attaching to properties in NSW, then the NSW Government will need to provide just compensation to all NSW property owners.

The Green Paper states that "Development assessment in NSW is ... too detailed and too adversarial" (page 47). Streamlining the planning system in the way proposed by the Green Paper through denying comment, at a meaningful stage, from people affected will have the potential for every application needing to be decided by a Court, ie be much more adversarial.

Infrastructure contributions

The Green Paper does not deliver what it purports to establish "a fair and affordable system for infrastructure contributions" (p74). In the past developer contributions have helped fund the restoration of heritage items (most recently Walter Burley Griffin's iconic Willoughby Incinerator which is now, as a result, a wonderful community asset with regional art gallery) and improvements to the network of walkways in the Griffin Conservation Area.

Thus the Section 94 developer contributions have been vitally important for Willoughby City Council to fund many of the heritage capital work programs within the Griffin Conservation Area at Castlecrag. This funding has been used to implement the Griffin Reserves Plan of Management over the past 10 years.

The Society supports the use of developer contribution funding by Councils to help protect and promote heritage areas and items. Funding achieved entirely through a rate base would not be sufficient for heritage capital work projects, and as such, it is our fear these projects would not be realised in the future if Section 94 contributions were repealed. The Society opposes changes to Section 94 developer contributions.

Ambit claims

The real problem with the NSW planning system does not rest in the processes or the controls but what is submitted into the processes by developers. The Green Paper should be directed at confirming the processes and strengthening the controls to create certainty and eliminating ambit claims from development applications.

In the many challenges to development applications in the GCA that the Society has been involved in, the common thread is a development application that exceeds what is permitted by the controls. In each case, the Society and affected property owners have been forced to defend the controls. On no occasion has the Society asked for anything different from what the controls allow. Where the applications have proceeded to the Land and Environment Court for determination, Willoughby Council

has been forced to spend public money defending clearly stated controls against a developer wanting more than is permitted.

It is thus of great concern that the Green Paper appears to promote ambit claims. The diagram on page 57 illustrates a scenario that exceeds the building envelope by about 300%. Promoting ambit claims and breaching planning controls agreed by the community would be irresponsible.

Conclusion

The Walter Burley Griffin Society Inc. objects strongly to the many aspects in *A New Planning System for NSW* Green Paper that will be potentially damaging to the Griffin heritage and environment of NSW.

It is of critical importance that the existing planning controls protecting all Griffin heritage items and the Griffin Conservation Area at Castlecrag are retained intact.

The Green Paper's present focus on rapid development would clearly be at the expense of the environment, sustainability, the community's heritage and the property rights of individuals. The Society requests that the Green Paper be significantly reconsidered and that the future changes to the NSW planning system would ensure strengthening of the environmental and the heritage controls and focuses on protecting our suburbs and cities from inappropriate development.

If the NSW Government genuinely wants improved processes and outcomes for planning, then it should do so through carefully considered strategies that take account of all factors not just the spurious claim of improving the economy.

The Green Paper's claim of "improving people's quality of life" (p47) will not be achieved by its proposals. The Green Paper's over-riding focus is clearly to "reduce costs and speed up delivery of development" (p48) and these will not be achieved by its proposals either.

To disadvantage the environment, sustainability, heritage and all the people of NSW in an attempt to favour developers, as the Green Paper does, will be disastrous for NSW and its citizens in the short and long term. The lack of processes and controls proposed in the Green Paper would mean that the quality of built environment and the quality of life in NSW and this great city of Sydney would be very significantly diminished. The Green Paper, if it were to be approved, would be very damaging to NSW.

Yours sincerely,

Kerry McKillop
Secretary

12 September 2012

cc

The Premier, The Hon Barry O'Farrell
The Hon Brad Hazzard, Minister for Planning and Infrastructure
The Hon Gladys Berejiklian, Member for Willoughby
Mr Nick Tobin, General Manager, Willoughby City Council
Mr John McKee, General Manager, Ku-ring-gai Council