

**OVERCOMING THE LEGAL IMPEDIMENTS
TO URBAN PLANNING FOR SUSTAINABILITY
IN THE SYDNEY GREATER METROPOLITAN REGION**

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CERTIFICATE OF AUTHORSHIP/ORIGINALITY

I certify that the work in this thesis has not previously been submitted for a degree nor has it been submitted as part of the requirements for a degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me. Any help that I have received in my research work and the preparation of the thesis itself has been acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

Karla Sperling

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PREFACE

In 1992 I became aware that Shellharbour Council proposed to rezone a large area of prime agricultural land and bushland for urban development, near where I live on the urban fringe of Wollongong. I phoned the planning department, spoke to a planner and asked why this land needed to become a housing estate. I have never forgotten the exact words of her reply. She said: “Because the last one is almost full”! From that moment, this thesis had to be written.

The explanation provided by that planner was an accurate statement of how and why, for 200 years, decisions about the development of Sydney have been made. Since the colonisers first polluted the Tank Stream and Sydney expanded in the direction of clean water, the ecological footprint of the settlement has widened.

It is hoped that the following pages will be part of the process of finding a better way...

LIST OF ABBREVIATIONS

ADI	Australian Defence Industries
AMCORD	Australian Model Code for Residential Development
BCA	Building Code of Australia
CBD	Central Business District
DA	Development Application
DCP	Development Control Plan
DoP	Department of Planning
DMR	Department of Main Roads
DUAP	Department of Urban Affairs and Planning
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EPA Act	Environmental Planning and Assessment Act 1979
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
ESDWGs	Ecologically Sustainable Development Working Groups
FCCC	Framework Convention on Climate Change
GMR	Greater Metropolitan Region
IGAE	Intergovernmental Agreement on the Environment
LAP	Local Approval Policy
LEP	Local Environment Plan

LES	Local Environment Study
LGA	Local government area
LG Act	Local Government Act 1993
NGRS	National Greenhouse Response Strategy
NPWS	National Parks and Wildlife Service
PEP	Protection of the Environment Policy
REF	Review of Environmental Factors
REP	Regional Environment Plan
ROC	Regional Organisation of Councils
RTA	Roads and Traffic Authority
SEPP	State Environmental Planning Policy
SEDA	Sustainable Energy Development Authority
SLAPP	Strategic Litigation Against Public Participation
TCM	Total Catchment Management
UDIA	Urban Development Institute of Australia
UDP	Urban Development Program
vkt	vehicle kilometres travelled per capita

ABSTRACT

Urban sustainability is a desired future. The problem investigated in this thesis is how to achieve it, in the context of planning law which applies to residential development and infrastructure in Sydney. Two questions are addressed. First, what is urban planning for sustainability? Second, how can the legal impediments to urban planning for sustainability in Sydney be identified and overcome? The second of these is the research question considered by the thesis, which aims to make a valuable contribution to knowledge about the design of planning processes to facilitate the transition from the unsustainable city, to the sustainable city.

The thesis commences with a discussion of the recent international urban sustainability literature. It is argued that planning focussed on protecting amenity or changing density (whether higher or lower), is insufficient for achieving urban planning for sustainability, which is defined as planning intended to reduce the ecological footprint and improve the liveability of the city. An original theoretical framework, comprising a set of eight criteria which form a sustainability planning process, is proposed as a checklist for identifying the legal impediments to sustainability. These criteria are termed Sustainability Planning Elements.

The general discussion in the early chapters gives way to particular practical applications of the theory in the latter chapters. Legal research methods and analysis were used to investigate the presence or absence of the Sustainability Planning Elements in the planning laws which apply in Sydney. Any planning instrument, statute or court decision which does not contain the elements is identified as an impediment to sustainability. Conversely, where the elements are present, the law can be regarded as facilitating sustainability.

The research findings contained in the thesis are intended to demonstrate how the impediments could be overcome by incorporating sustainability planning processes in planning law. The findings propose methods which include:

- modifying the exercise of discretion in the consideration of development proposals;
- imposing positive sustainability planning duties;
- making planning decisions conditional on an application of the sustainability planning elements;
- placing the onus on the proponent to satisfy the decision maker that development approval ought to be granted;
- making sustainability a fundamental or primary planning objective.

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