



Better Planning Network Inc.

SUBMISSION : COASTAL REFORMS NSW

20.01.2017

To Whom It Will Concern:

BPN welcomes reforms in this context, including a new SEPP.

BPN recognizes the inherent problems associated with managing the NSW coast. It is a dynamic geography, exacerbated by the fact and threat of climate changes and consequent rising sea levels.

Set against this dynamic process we have the certainty of Torrens freehold titles, the finality of Development consents that have been acted on and a general expectation of entitlement to compensation for loss of property rights.

Previous attempts at addressing this wicked problem have been high on rhetoric but disappointing in performance, it is to be hoped that this latest attempt to codify and strengthen the law, will see a more sustained and effective effort.

Geographic controls meet standard zone controls

The new SEPP continues the tradition of passing specific parcels of legislation in an attempt to overcome past failures. Inevitably the lack of holistic solutions leads to further stop gaps that compound those previous missteps.

Overlapping land use zoning templates arise to address different geographies with different environmental issues of concern - coastal, catchments, threatened species, heritage. In many cases these measures result from these separate legislative systems from separate Planning and Environment Ministers.

As a consequence of this proliferation, the controls under specific legislation *overlie* the State wide set of land uses. Which in NSW, contains heavily standardized land use zoning controls with detailed quantitative controls.

It is generally left to users of the system to muddle along with what affects what, with, for example, the very measurable standards in the LEPs being overlaid by the vaguer statements in the different areas of the SEPP.

Each of the four different Areas in the SEPP have different criteria to be considered when making development control and rezoning decisions. Latter decisions are to become more important as the State's system moves to increasing use of spot re-zonings by Planning Proposals.

For example, for the Coastal Use Area, decision makers *'must be satisfied that development will not impact adversely on the visual amenity or scenic qualities of the coast, including coastal headlands'*.

This is a worthy statement but it's weakness is evident when laid over the highly specific controls of, for example, the Randwick council controls.

The 'Use Area' in Randwick is quite extensive (presumably from the cliff line to the ridge line). But the Standard Instrument controls do not appear to appreciate the need for a set of urban design controls that have regard to the visual quality when viewed from the ocean.

On the contrary, notwithstanding somewhat similar criteria under the earlier Coastal Protection legislation, large dwellings jostle with each other for a view, with every last permitted Floor Space being exploited.

BPN Recommends

- That the Government move the recording of development controls generally onto a parcel rather than a general land zone format. The Planning Portal provides a cadastral planning register that could accommodate the recording of a single level of controls integrating what are, at present to be found in layers of separate unintegrated control documents.

This would enable landowners to immediately discover what the controls over their parcel were. It would also force the planners to address the general ineffectiveness of vague statements (such as the one provide)] in combating the certainty of the general State wide standardised controls.

- Failing this rationalisation of the States planning control system BPN recommends that the wording of the policies under each Area be reviewed to strengthen their force and effectiveness.
- Once the concept of parcel formats for writing integrated controls over land is accepted, a more fundamental reform would then do away with the need for separate legislations for separate geographies and different environmental concerns.
- Instead of the trade-offs at the time of individual applications there could be a process of working through those trade-offs at the time of making geographically specific integrated controls. One could still have specific advisory bodies to represent specialist interests during the trade-off process. The result could be greater certainty with greater ability to respond to real environmental challenges.

Passing The Bad News Buck

These reforms can be seen as the State Government's avoidance of responsibility for giving the bad news to landowners whose zoned land is not suitable for the selected purpose because the coast line has moved or because global predictions raise the strong likelihood that it will.

There can be much pain and frustration associated with communicating this reality to those who have invested in land previously and appropriately zoned. The proposed SEPP leaves Councils in the front line to deliver the bad news.

The task of determining just what allowance is to be made for increasing sea levels and East Coast Lows has been left to individual Councils, albeit with scientific assistance and final State certification although not necessarily approval.

While a lead role for local political representatives is to be welcomed, past performance does not engender assurance. For example, at the time of its approval, quite strong objections to the now “slipping into the sea high-rises” at Collaroy. Objections that were essentially ignored by the developer influenced Council.

Local pressures are not always supportive of long term planning, especially when it delivers bad news and diminishes expectations to noisy, litigious landowners.

BPN Recommends

- That the State Government provides a clear benchmark for sea rises for Councils to meet in managing their coastal areas
- That Coastal Management Programs be required to demonstrate how they meet to State benchmark for sea rises.

Concluding Comment

With corrections to overcome the limitations of the standard land use zone fundamentals of the NSW Planning system, the total package of legislation is to be welcomed.

As with the Minister's general planning system reforms, the recognition that there is a distinction between a strategic program and development controls is to be especially welcomed.

At the present time there some solace that the Planning Portal gives applicants a fair warning that there may be some qualitative criteria that could modify the development rights laid down in the more 'certain' LEP/DCP controls.

More broadly and with regard to these proposed changes, a significant shift remains necessary. True strategic planning could well be achieved if reforms generally focused on the needs of the different geographies of the State.

Rather than being designed to accommodate the need for standardisation by Parliamentary Counsel, the Departmental checkers and the oft mythical developers who want to have the same controls everywhere.

A more fundamental reform would then do away with the need for separate legislations for separate geographies and different environmental concerns. Instead of the trade-offs at the time of individual applications we could then have a process of working through those trade-offs at the time of making geographic specific integrated controls.

One could still have specific advisory bodies to represent specialist interests during the trade-off process. The result could be greater certainty with greater ability to respond to real environmental challenges.