



EDO Qld.

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*Using the law to protect
our environment.*

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12 June 2013

The Hon Jeff Seeney
Deputy Premier,
Minister for State Development, Infrastructure and Planning State Planning Policy
By Email: singleSPP@dsdip.qld.gov.au

Dear Minister,

Draft single SPP attractive concept but needs major revision

The concept of a single State Planning Policy ('draft SPP') is an attractive one. However, we do not support finalisation of the single SPP without major changes.

The draft SPP has been too hurried for a major reform even if it is an attractive idea. The draft SPP needs to be rethought with more detailed consultation with all stakeholders but especially individual local government and active community groups. Many community groups have taken an active interest in planning and development over many years.

What would be helpful is a detailed discussion paper to assist stakeholder response comparing the 13 existing State Planning Policies to the draft proposed single SPP. Many of the guidelines supporting the draft SPP are not available which impedes meaningful response.

We are happy to be involved in more detailed consultation.

Summary

The following deficiencies are that the draft SPP:

1. does not protect the Great Barrier Reef ('GBR'), which is an iconic tourist destination and worth 6 billion dollars each year to the Queensland economy or respond to the UNESCO recommendations on protecting the GBR;
2. does not require local planning instruments to stop material dredged from land from being disposed of in coastal waters, and is far weaker than SPP3/11;
3. is the opposite to best practice planning as it ignores well-accepted principles of ecologically sustainable development ('ESD') as expressed in the purpose of the *Sustainable Planning Act 2009* (Qld). ESD is used in planning legislation throughout Australia;
4. contains conflicting and at times vague policy statements which creates uncertainty and inefficiency- the very opposite of what a single SPP was designed to achieve;

5. only expresses an interest in certain protected wildlife, that are within the definition of 'matters of state environmental significance', which means remaining wildlife species are not given any consideration, let alone protection from moving to vulnerable or extinct categories. Koala species within South East Qld ('SEQ') continue to have slight protection and outside SEQ no express protection;
6. ignores the impacts of development and planning on energy use and thus climate change- and fails to acknowledge that reducing greenhouse gas emissions will help three of the four pillars of the Queensland economy and reduce hardship for future generations of Queenslanders; and
7. has not been subject to sufficient public debate amongst affected communities. This is also true of the radical proposal for a Single Assessment and Referral Agency ('SARA') instead of existing concurrence agencies and the still unseen State Development Assessment Provisions ('SDAP') criteria for SARA to apply.

More detailed comments are attached.

Yours faithfully,

Environmental Defenders Office (Qld) Inc

A handwritten signature in black ink that reads "Jo-Anne Bragg." The signature is written in a cursive, slightly slanted style.

Jo-Anne Bragg
Principal Solicitor
Environmental Defenders Office (Qld) Inc

DETAILED COMMENTS ON DRAFT SPP - 12 JUNE 2013

- 1. The draft SPP does not protect the Great Barrier Reef ('GBR'), which is an iconic tourist destination and worth 6 billion dollars each year to the Queensland economy or respond to the UNESCO recommendations on protecting the GBR.**

Protection of the universal values of the GBR is inadequately provided for in the draft SPP. Whilst there is some level of protection for the coast (see section 2. below) the draft SPP does not contain clear and unqualified protection of areas of 'high ecological significance' or the outstanding universal values of the GBR.¹

In fact, the GBR is not specifically mentioned at all in the draft SPP except for one minor mention under the 'preamble' to the Healthy Waters State Interest:

*"All elements of the water cycle are interdependent. Therefore, it is important that water use is managed on a total water cycle basis, balancing uses of water, maximising opportunities for recovery and reuse and avoiding or minimising impacts of stormwater and waste water discharge on waterways. This will lead to the enhancement and protection of the environmental values of receiving waters, such as bays and the Great Barrier Reef."*²

More to the point, there is no specific reference to the GBR in any of the Local Government Development Assessment Provisions within the draft SPP.³ There is only reference, generally, to 'coastal waters', 'coastal values' and 'coastal resources' within the 'coastal zone' and/or 'coastal management district'.⁴

There are also no specific references to the GBR in the current draft Healthy Waters Guideline.⁵ The guideline is material which supports the interpretation of the 'State Interest'. Whilst we note that guidelines are yet to be developed for the other relevant State Interests - Coastal Environment and Biodiversity⁶ - at the moment, there does not appear to be any unqualified protection of the universal values of the GBR in the draft SPP.

Solution:
Specific reference should be made to the Outstanding Universal Values of the GBR with careful reference to the recommendations of UNESCO in 2012.

- 2. The draft SPP does not require local planning instruments to stop material dredged from land from being disposed of in coastal waters, and is far weaker than SPP3/11**

In the preamble to the Coastal Environment State Interest, false assumptions are made about the location and practices of dredging:

*"Public expectation is for unrestricted access to the coast from both the land and the water. Access to coastal waters and the foreshore is highly desirable for local communities and visitors. Access can also provide significant benefits to the community through a number of recreational uses (e.g. recreational fishing) and for commercial operations (e.g. tourism and commercial fishing)."*⁷

We submit that the public expectation is not for 'unrestricted access to the coast...' and that any 'expectation' for coastal access must also be balanced against the obligation (and public

‘expectation’) that the State Government has to do all it can to protect the inherent values of the GBR.

The draft SPP does improve the position on dumping of spoil from the current coastal SPRP. However, this provision only applies:

*(1) to the extent the SPP is not identified in a planning scheme or regional plan as being appropriately reflected in the planning scheme or regional plan, and
(2) the development application is for development (excluding development for a dwelling house) on land in a coastal management district.⁸*

This is only an improvement for development applications lodged before the SPP is reflected in the planning scheme. There is therefore no guaranteed protection that the development does not result in the disposal of material dredged. Unfortunately this is inferior to the provisions of SPP 3/11.

Whilst there is some level of protection for ‘coastal waters’, the draft SPP does not contain clear and unqualified protection of areas of high ecological significance.

The definition of ‘matters of state environmental significance’ is too restrictive: we’d like to discuss this term further

A theoretical example below demonstrates the problem:

Theoretical Example: Smith Construction

Smith Construction wishes to carry out dredging in Queensland coastal waters for a new proposed maritime development that is likely to have a significant impact on the Great Barrier Reef World Heritage Area. The dredging will disturb sediments and the spoil will be contaminated but there are no land disposal sites at a reasonable price so Smith Construction wishes to dump the spoil in coastal waters.

- Old Prior SPP 3/11 clearly said no to dumping contaminated spoil in coastal waters.
- New Coastal SPRP made 8 October 2012 does not contain a clear no to dumping of contaminated spoil in coastal waters. The new Coastal SPRP made under the *Sustainable Planning Act (2009)* Qld is clearly weaker than the Prior SPP 3/11.
- Proposed draft single SPP as discussed above is better than the SPRP but inferior to the prior SPP3/11.

Commonwealth and Queensland regulators have various powers to consider and potentially refuse the proposal. However the Queensland government proposes to reduce the number of State referral agencies to a single agency in the Department of State Development, Infrastructure and Planning and so remove key decision-making powers from the Queensland Department of Environment and Heritage Protection. In short, protection against dredging and dumping of contaminated spoil in coastal waters is weaker since the New Coastal SPRP and likely to remain weak with if the draft SPP is adopted and the single referral agency proposal is implemented by the Queensland government.

Solution:

We'd like to discuss the section on coastal protection in detail.

3. **The draft SPP represents the opposite to best practice planning as it ignores well-accepted principles of ecologically sustainable development ('ESD') as expressed in the purpose of the Sustainable Planning Act 2009 (Qld). ESD is used in planning legislation throughout Australia.⁹**

There are specific purposes of the SPA that a SPP should seek to fulfil. The current draft SPP does not advance the purpose of the SPA as it does not apply the 'precautionary principle' nor seek to apply the 'principle of intergenerational equity'.

A 'State planning policy' is defined in section 40 of SPA as an instrument that:

- (a) is made under division 2 and part 6, or division 3 [of SPA]; and*
- (b) advances the purpose of [SPA] by stating the State's policy about a matter of State interest.*

Moreover, if a function or power is conferred on an entity under SPA, the entity must perform the function or exercise the power in a way that advances the SPA's purpose.¹⁰ Under the SPA, the Minister is given the 'power' to make the draft SPP¹¹ and therefore has a duty to exercise the power to advance the SPA's purpose.

The purpose of the SPA is defined in section 3:

"The purpose of this Act is to seek to achieve ecological sustainability by:

- (a) managing the process by which development takes place, including ensuring the process is accountable, effective and efficient and delivers sustainable outcomes; and*
- (b) managing the effects of development on the environment, including managing the use of premises; and*
- (c) continuing the coordination and integration of planning at the local, regional and State levels."*

Under section 5 of the SPA, "advancing the Act's purpose" includes:

"(a) ensuring decision-making processes:

- (i) are accountable, coordinated, effective and efficient; and*
- (ii) take account of short and long-term environmental effects of development at local, regional, State and wider levels, **including, for example, the effects of development on climate change;** and*
- (iii) apply the **precautionary principle;** and*
- (iv) seek to provide for **equity between present and future generations;**..."*

There is no application in the draft SPP of the precautionary principle (iii above).

There is also, no reference to the effects of development on climate change (ii above).

There is also no consideration in the draft SPP of “...*the sustainable use of renewable natural resources and the prudent use of non-renewable natural resources by, for example, considering alternatives to the use of non-renewable natural resources.*”¹²

In fact, the word ‘renewable’ is not mentioned in the draft SPP. There is only consideration of [the State’s] “*significant mineral, coal, petroleum, gas, and extractive resources...in order to support the productive use of mining resources and a strong resource industry and supply of energy and construction materials...*”

Solution:

Revise the ‘table 1’ principles and strategies as well as giving thoughtful consideration throughout the draft SPP to reflect the principles of ESD.

4. The draft SPP contains conflicting and at times vague policy statements which creates uncertainty and inefficiency- the very opposite of what a single SPP was designed to achieve.

Example of Conflicting Policy Statements

There are instances in the draft SPP where conflicting State Interests are expressed. For example, under the ‘State interest - mining and extractive resources’, the local planning instrument is to reflect the SPP by “identifying and protecting key resource areas (KRAs) ... including the core resource/processing area[s], separation area[s] and transport route/transport route separation area[s] either through an extractive industry zone[s], extractive resources overlay ...”¹³ Compare this with ‘State interest-biodiversity’ items (1) and (2) of ‘Making or amending a local planning instrument.’¹⁴

Examples of Ambiguity

The draft SPP sets out 6 basic *principles* and *implementation strategies* which are intended to apply across the whole SPP when it is approved.¹⁵ These principles and strategies are vaguely worded particularly with respect to the environment. It is anticipated that their application in practice will be broad, uncertain and open to a variety of interpretations by Local Governments and developers.

For instance, one of the implementation strategies to ‘protect and enhance Queensland’s natural and built environments and places’ is to ensure that:

“planning instruments support the maintenance of ecological processes and environmentally sensitive areas and enable the sustainable use and management of natural resources.”

The term ‘Environmentally Sensitive Area’ (‘ESA’) has a specific meaning within the *Environmental Protection Regulation 2008* (Qld) (‘EP Regs’).¹⁶ Presumably this is the meaning to which the draft SPP refers. There are, under the EP Regs, different categories of ESAs (A and B) and, of course, many parts of the environment that are not defined as ESAs that still require specific recognition and protection in the draft SPP. It is problematic that ESAs are not mentioned anywhere else in the draft SPP including, most relevantly, in the Local Government Development Assessment Provisions to inform the requirements for future development.

On another note, using the terms ‘mineral, coal, petroleum, gas...’ is confusing to the interpretation of the draft SPP. This is because ‘gas’ is included in the definition of ‘petroleum’ under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld)¹⁷ and therefore has a specific meaning under resources legislation. Similarly, ‘coal’ is included in the definition of a ‘mineral’ under the *Mineral Resources Act 1989* (Qld).¹⁸ In addition, both industries (mining and gas) share the same *Environmental Protection Act 1994* (Qld) terminology - ‘resource activities’.¹⁹ It is confusing to talk separately of mineral coal, petroleum and gas when resource legislation terms them another way.

Lastly, the term threatened ‘species’ used in the definition of *matter of state environmental significance* (‘MSES’) in the glossary to the draft SPP²⁰ is not contained in the *Nature Conservation Act 1992* (Qld) (‘NCA’). This is confusing and may result in uncertain application of the draft SPP and an overall decrease in protection of the protected wildlife which the NCA seeks to conserve. Our threatened wildlife deserves clear unequivocal protection in planning instruments such as the SPP.

Solution:

To be consistent, terminology used throughout the draft SPP should reflect the exact terminology in the legislation that it derives from. Certain terms have very specific meanings in environmental laws such as the *Environmental Protection Act 1994* (Qld) and the *Nature Conservation Act 1992* (Qld). Vague or inconsistent drafting risks decreasing any protections they might have been afforded under the SPP.

5. The draft SPP only expresses an interest in certain protected wildlife, that are within the definition of ‘matters of state environmental significance’, which means remaining wildlife species are not given any consideration, let alone protection from moving to vulnerable or extinct categories.

In the draft SPP (under the ‘Biodiversity’ state interest), the Local Government Development Assessment provisions apply only to situations where a development application relates to land affected by a MSES.²¹ MSES are listed in the draft SPP glossary.²²

There are problems with the limited categories of MSES in the glossary. Some of the main concerns are set out below.

Protected Areas

In the glossary definition of MSES, ‘Protected Area Estates’ include all classes of protected areas under the NCA except ‘Nature Refuges’ and ‘Coordinated Conservation Areas’ (‘CCAs’).

This ignores that CCAs and Nature Refuges play an important role in conserving the wildlife of our State and thus they should not be excluded from the definition of MSES in the draft SPP. Even though Nature Refuges are privately owned, the planning system should still provide support and protection for our State’s biodiversity, for example, when considering adjacent land uses.

Solution:

The definition of MSES in the glossary to the draft SPP should be amended to include all *protected areas* under the *Nature Conservation Act 1992* (Qld). The MSES should not exclude Coordinated Conservation Areas or Nature Refuges. There are also areas of high ecological significance and general ecological significance outside reserves which need to be considered as part of the MSES.

Threatened ‘Species’

The glossary definition of MSES includes ‘threatened species’ under the NCA (including plants, animals and animal breeding places).

Firstly, it is problematic that the term ‘threatened species’ is used as it is not defined in the NCA nor in the draft SPP. Any reference to threatened species is not in keeping with a consistent interpretation of the provisions of the NCA and will result in inconsistency and vague interpretation of the SPP. Unequivocal language will result in reduced protection for important biodiversity in Queensland.

The term ‘*threatened wildlife*’ is, however, defined in the NCA.²³ It means ‘*native wildlife that is prescribed under the NCA as:*

- (a) *extinct in the wild wildlife; or*
- (b) *endangered wildlife; or*
- (c) *vulnerable wildlife.*’

Assuming the draft SPP is making reference to *threatened wildlife* (rather than threatened species) then those three categories are still insufficient to protect Queensland’s important biodiversity.

There are, in total, six categories of ‘protected wildlife’ under the NCA. Protected wildlife also includes:

- (d) rare wildlife; or
- (e) near threatened wildlife; or
- (f) least concern wildlife.²⁴

No protection will be granted to these important categories of protected wildlife under the draft SPP. Without protection in the draft SPP, rare or near threatened or least concern wildlife will soon become threatened wildlife.

Solution:

Firstly, the definition of MSES in the glossary to the draft SPP should be amended to reflect the specific language used under the NCA. Secondly, specific reference should be made to protect of *all* categories of protected wildlife under the NCA.

Environmentally Sensitive Areas (ESAs)

One of the ‘implementation strategies’ set out in the draft SPP is:

“Ensuring planning instruments support the maintenance of ecological processes and environmentally sensitive areas and enable the sustainable use and management of natural resources.”²⁵

As mentioned above, there is no specific mention of ESAs in the draft SPP at all apart from that strategy. The question must be asked: how this be part of an integral implementation strategy if that is their only reference in the draft SPP?

Solution:

The definition of MSES in the glossary to the draft SPP should be amended to include all *Environmentally Sensitive Areas* (ESAs) as defined in the *Environmental Protection Regulation 2008* (Qld) which have not already been covered by the MSES definition or other State Interests (such as Cultural Heritage). Please

Koala Habitats

There is no specific mention of protection of koala habitat across Queensland in the draft SPP. This is inadequate and should be changed.

The koala is listed as ‘vulnerable wildlife’ under the *Nature Conservation (Wildlife) Regulation 2006* (Qld) (i.e. defined as ‘threatened’ under the NCA) but only for the south-east Queensland bioregion.²⁶ For every other area in Queensland, it is listed as ‘least concern wildlife.’²⁷ Under the biodiversity state interest in the draft SPP, it would not be entitled to be protection.

Whilst the South East Queensland Koala Conservation State Planning Regulatory Provisions (‘SPRP’) will still apply after the single SPP is finalised²⁸ it is important to note that those protections don’t go far enough to protect koala habitat.

The SPRP are applied in certain mapped areas by certain Councils only when assessing development applications, which must comply with the SPRP. The SPRP protects a small proportion of mapped areas from certain clearing, but otherwise only requires koala-friendly design and offsets to be imposed.

Solution:

Specific reference should be made to protection of *all* koala habitats across Queensland within the SPP not just specific Koala habitats in certain Council areas. Alternatively, the definition of MSES should be amended to include all forms of protected wildlife under the NCA. This way the biodiversity state interest would capture all Koala habitats.

6. The draft SPP ignores the impacts of development and planning on energy use and thus climate change- and fails to acknowledge that reducing greenhouse gas emissions will help three of the four pillars of the Queensland economy and reduce hardship for future generations of Queenslanders.

Climate change, greenhouse gases and global warming are not mentioned at all in the draft SPP.

The Queensland Government released a report in 2010, *Climate Change in Queensland: What the science is telling us*; that predicts extreme changes in Queensland’s weather patterns due to the effects of climate change. Queensland will likely experience flooding, erosion, damage

in coastal areas, cyclones, increase in hot days and warm nights, reduction in rainfall, longer dryer periods and challenges in meeting demand for water in urban and agricultural areas.²⁹

Solution:

Climate change should be a separate State Interest in the SPP.

7. The draft SPP has not been subject to sufficient public debate amongst affected communities.

The Planning Reform Information Sessions were all held during business hours making it hard for community members to attend. Ten sessions were held over the entirety of the State however this was simply not sufficient or effective to engage with active and interested local communities especially given the radical nature of the reforms.

¹ Note there is a guideline currently under review on protecting wetlands of high ecological significance in Great Barrier Reef catchments which could possibly address some inadequacies.

² Draft SPP at page 32.

³ The ‘assessment provisions’ are the requirements in the draft SPP that a development is to be assessed against with respect to that particular State Interest.

⁴ Note: The ‘coastal zone’ is smaller than the ‘GBR World Heritage Area’: see <http://www.dsdip.qld.gov.au/resources/map/gbr-catchment-coastal-zone-map.pdf>

⁵ The *draft Healthy Waters Guideline* can be found here: <http://www.dsdip.qld.gov.au/resources/policy/state-planning/draft-spp-guideline-healthy-waters.pdf>.

⁶ See here: <http://www.dsdip.qld.gov.au/about-planning/draft-state-planning-policy-guidance-material.html> (click on ‘environment and heritage’)

⁷ Draft SPP page 27.

⁸ Draft SPP page 28.

⁹ For example, see *Environmental Planning and Assessment Act 1979* (NSW) s 5(a)(vii).

¹⁰ SPA, s 4.

¹¹ SPA, s 44.

¹² SPA, s 5 (1)(b).

¹³ Draft SPP, page 20

¹⁴ Draft SPP, page 25

¹⁵ The principles and implementation strategies are designed to guide the development of planning instruments. The principles “...apply to and underpin all state interests articulated through the SPP and are to be applied by both the state and local governments... They will be applied by the state in the development of state planning instruments and processes, and to assist local government in the consideration ... of state interests...” (draft SPP page 4).

¹⁶ *Environmental Protection Regulation 2008* (Qld), dictionary.

¹⁷ *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 10.

¹⁸ *Mineral Resources Act 1989* (Qld) s 6.

¹⁹ *Environmental Protection Act 1994* (Qld) s 107.

²⁰ Draft SPP page 25.

²¹ Draft SPP page 25.

²² Draft SPP page 60.

²³ NCA dictionary definition - ‘threatened wildlife’

²⁴ NCA dictionary definition - ‘protected wildlife’

²⁵ Draft SPP page 5, column 2.

²⁶ *Nature Conservation (Wildlife) Regulation 2006* (Qld) schedule 3, section 5(2).

²⁷ *Nature Conservation (Wildlife) Regulation 2006* (Qld) schedule 6, section 4.

²⁸ See draft SPP, footnote 5, page 25.

²⁹ See The Queensland Government released a report in 2010, *Climate Change in Queensland: What the science is telling us*, available at: <http://www.longpaddock.qld.gov.au/about/publications/pdf/climate-change-in-queensland-2010.pdf> page 1