development by stating that the new planning process is designed to 'progress delivery of infrastructure that is essential to state development and the economy'.[75]

Concurrences

Finally, the Planning Bill and White Paper propose a reworking of certain government concurrence and referral powers. The White Paper states that a comprehensive whole of government review of referrals, concurrences and other planning related approvals will be undertaken within four months of its release.[76] Part of this review will consider the current 232 clauses in environmental planning instruments across NSW that trigger government agency input with the aim of reducing the apparent inefficiencies and delays in the present planning process.[77]

The reforms propose to remove unnecessary concurrences and referrals, place some concurrence and referral matters under the purview of councils, develop standardised conditions, guidelines and tools and establish a 'one stop shop[78]' within the Department for the remaining concurrences and referrals.

Conclusion

The White Paper and Planning Bill affirm the view that the proposed NSW planning reform is fundamentally concerned with promoting up front strategic planning, removing roadblocks in the assessment and approval system and thus promoting development and economic activity. The NSW Government will now be working on a response to the White Paper and draft Bill and it is anticipated that a formal bill will be introduced into Parliament either late this year or early in 2014.

75 Ibid 171.
76 Ibid 103.
77 Ibid 104.
78 Ibid 105.

QUEENSLAND

by Dr Justine Bell

Draft State Planning Policy

The Queensland Government has released a draft of the new State Planning Policy (SPP) as mentioned in previous issues. The SPP will replace a number of existing policies, consolidating them into a single document.

The principles underpinning the SPP are to:

- support the efficient approval of appropriate development
- facilitate effective delivery of sustainable planning outcomes
- protect and enhance Queensland's natural and built environments and places
- maximise transparency and accountability of planning instruments and decisions
- enable positive responses to change, challenges and opportunities
- consider infrastructure needs required to support development.

These principles are reflected in policies pertaining to the five state interests, being:

- housing and liveable communities
- economic growth of the four pillars of the Queensland economy, being agriculture, development and construction, mining, and tourism
- environment and heritage
- hazards and safety, including air, noise and emissions, hazardous materials, and natural hazards
- transport and infrastructure.

Given the length of the draft SPP and accompanying materials, this update will not address the entire policy, but will provide an overview of the natural hazards policy.

Natural hazards policy

The natural hazards section of the policy applies to both the creation of local planning instruments, and development assessment processes. The natural hazards covered by the policy are flood, bushfire, landslide, and coastal hazards (including erosion prone areas and storm tide inundation areas).

In the context of making a planning instrument, the risk of, and the adverse impacts from, natural hazards are to be avoided, minimised or mitigated to protect people and property and enhance the community's resilience to natural hazards.

Local planning instruments are to reflect the SPP by:

- reflecting the outcomes of a natural hazard investigation, including natural hazard maps for the local government area
- reflecting the outcomes of a natural hazard risk assessment
- reflecting the development potential of land by ensuring development in new and existing areas avoids or mitigates the risks of natural hazards to an acceptable or tolerable level
- for development in a coastal hazard area, ensuring that erosion prone areas in a coastal management district are maintained as development-free buffers or where permanent buildings or structures exist, coastal erosion risks are avoided or mitigated.

The planning instrument also has to reflect the SPP's mandatory requirements, which are documents specific to each hazard. The mandatory requirements are a crucial part of the regime, and contain most of the essential detail.

In the context of development assessment, the SPP applies to material changes of use, reconfiguration of a lot, and operational work. Development is required to address the natural hazard and associated risks to people, property, economic activity, social wellbeing and the environment by achieving the following performance outcomes:

- development compatible with the level of risk
- development siting, layout and access that responds to the potential hazard and minimises risk to personal safety
- development that is resilient to natural hazard events by ensuring siting and design accounts for potential risks of natural hazards to the property
- development that directly, indirectly and cumulatively avoids an unacceptable increase in the severity of the natural hazard, and does not significantly increase the potential for damage on the site or to other properties
- the release of hazardous materials is avoided
- natural processes and the protective function of landforms and/or vegetation are maintained in natural hazard areas.

Additionally, in coastal hazard areas, decision-makers must ensure that:

- erosion-prone areas are maintained as development-free buffers or where permanent buildings or structures exist, coastal erosion risks are avoided or mitigated
- coastal protection work is undertaken only as a last resort where erosion presents an imminent threat to public safety or property, and property cannot reasonably be relocated or abandoned, and the coastal protection work is located on private land to the maximum extent reasonable, and the work does not increase the hazard risk for adjacent areas.

Again, these must be addressed in accordance with the mandatory requirements applicable to the natural hazard.

Mandatory requirements – coastal hazards

The mandatory requirements define 'coastal hazard' more broadly than the SPP, to include coastal erosion, storm tide inundation and sea level rise inundation. Sea-level rise is not treated as a separate hazard; it adds to and is combined with coastal erosion and storm tide inundation. The mandatory requirements also specifically acknowledge climate change and sea-level rise.

The mandatory requirements also distinguish between the creation of local planning instruments, and development assessment processes.

For the creation of local planning instruments, there are four mandatory and sequential policies:

- reflecting the outcomes of a natural hazard investigation – the existing statewide hazard maps will be used where more detailed regional assessments have not yet been undertaken
- reflecting the outcomes of a natural hazard risk assessment – this appears to be similar to the adaptation strategies required under the old Queensland Coastal Plan, except the focus is acute threats such as storm surge, rather than chronic sea-level rise. It requires identification of risks, and measures to address and manage risks
- reflecting the development potential of land by ensuring development in new and existing areas avoids or mitigates the risks of natural hazards to an acceptable or tolerable level
- ensuring the erosion-prone areas are maintained as development free buffers.

A local planning instrument also needs to clearly articulate how it addresses coastal hazards through the strategic framework, settlement pattern theme/natural hazard theme, zones and local plans, zone codes, or overlay maps and codes, and planning scheme policies.

In terms of development assessment, the mandatory requirements repeat the SPP requirements, and state that performance outcomes are addressed when:

- development decisions avoid new development for urban purposes within non-urban zones in areas that are mapped as high coastal hazard area
- un other areas, development is not to result in an increase in exposure of the community to coastal hazard risks either by avoidance or mitigation.

Furthermore, where development is immediately adjacent to the coast, it:

- maintains or enhances coastal ecosystems and natural features, such as dunes, mangroves and coastal wetlands, between development and tidal waters where they protect or buffer communities and infrastructure from sea-level rise and coastal inundation impacts
- maintains native vegetation communities, dune crest heights and sediment volumes of dunes and near shore coastal landforms to avoid wave overtopping and maintain the protection function of the landform against coastal erosion
- maintains physical coastal processes outside the development footprint for the development, including longshore transport of sediment along the coast
- avoids increasing the risk of shoreline erosion for areas adjacent to the development footprint.

Where these measures are not practical, increased risks to development are to be mitigated by location, design, construction and operating standards.

Mandatory requirements – flooding hazards

Again, the mandatory requirements distinguish between the creation of local planning instruments, and development assessment processes. For the creation of local planning instruments, there are three mandatory and sequential policies:

- reflecting the outcomes of a natural hazard investigation, including maps
- reflecting the outcomes of a natural hazard risk assessment
- reflecting the development potential of land by ensuring development in new and existing areas avoids or mitigates the risks of natural hazards.

Development assessment processes are required to addresses the natural hazard and associated risks to people, property, economic activity, social wellbeing and the environment by achieving the following performance outcomes:

- development compatible with the level of risk associated with the natural hazard
- the development siting, layout and access responds to a potential natural hazard and minimises risk to personal safety
- the development is resilient to natural hazard events by ensuring siting and design accounts for the potential risks of natural hazards to property
- the development directly, indirectly and cumulatively avoids an unacceptable increase in severity of the natural hazard and does not significantly increase the potential for damage on the site or to other properties
- the development avoids the release of hazardous materials as a result of a natural hazard event and
- natural processes and the protective function of landforms and/or vegetation are maintained in natural hazard areas.

Status of draft SPP

Public submissions on the draft SPP closed in June 2013. It is anticipated that a final SPP addressing the public comments will be released later this year. This column has only addressed a small part of the SPP, and further reference should be made to the document.

Vegetation Management Act amendments

Amendments to the *Vegetation Management Act 1999 (Qld)* were assented to on 23 May 2013. The object of the amendments is to reduce red tape, and support the four-pillar economy model adopted by the Queensland government in 2012. Queensland's vegetation management laws have been heavily criticised over the past decade for unfairly restricting farming practices,[79] and the amendments seek to redress this by allowing for sustainable land use (s 3(1)(h)).

79 See Justine Bell, 'Tree clearing, hunger strikes and Kyoto targets – the need for a middle ground' (2011) 28 *Environmental and Planning Law Journal* 201 for a summary.

Under the *Vegetation Management Act 1999*, broad-scale land clearing is effectively prohibited, unless the clearing is for a purpose listed in s 22A of the Act. Activities listed in s 22A may be assessed. Prior to the amendments, only the following activities were listed:

- for a project declared to be a significant project under the State Development and Public Works Organisation Act
- necessary to control non-native plants or declared pests
- to ensure public safety
- for establishing a necessary fence, firebreak, road etc
- a natural and ordinary consequence of other assessable development which was approved
- for fodder harvesting
- for thinning
- for clearing of encroachment
- for an extractive industry
- for clearing regrowth vegetation in a wild river area.

Importantly, these restrictive provisions prevented land clearing to establish pastures. Under the new amendments, the following additions have been made to s22A:

- necessary environmental clearing
- high value agriculture clearing
- irrigated high value agriculture clearing.

To further reduce administrative burdens, the amendments require the development of codes for self-assessable development. Under the new s 19O, clearing for the following purposes will be self-assessable:

- controlling non-native plants or declared pests
- relevant infrastructure activities for which the clearing cannot reasonably be avoided or minimised
- fodder harvesting
- thinning
- clearing of encroachment
- an extractive industry
- necessary environmental clearing
- in a category C area
- in a category R area.

Other amendments include:

- streamlining mapping – replacing the regional ecosystem map, the remnant vegetation map and the regrowth vegetation map with a single map
- changes to penalties, and enforcement provisions
- removal of references to the *Wild Rivers Act.*

The changes to the Vegetation Management framework in Queensland may address some of the restrictions criticised in the past, but further biodiversity losses are also likely.

SOUTH AUSTRALIA

by Victoria Shute

Planning law reform builds momentum

South Australia's planning and development system, which has traditionally favoured and facilitated low-density residential developments, is currently undergoing unprecedented change.

Planning and development in South Australia is primarily governed by the *Development Act 1993* (SA) (the Act).[80] Since the Act commenced on 1 January 1994, it has been amended (on the author's count) 619 times through 45 separate amending Acts.

In recent times, a number of amendments reflect a clear intent to significantly alter the way in which planning policy and development assessment occurs in South Australia. There is now a particular focus on increasing housing density and infill development in the Greater Adelaide area and on streamlining development assessment processes (particularly planning assessment processes involving councils) for residential development. The changes include the introduction of the 'Residential Code' which provides for codified planning assessment of certain forms of residential development.

Under the Act, a development application may be classified by a relevant authority (i.e. a council or the State Development Assessment Commission) as either complying, merit or non-complying. [81]

The relevant authority must grant Development Plan consent to complying developments – there is no discretion to refuse such an application on planning grounds.

Merit developments are subject to a full assessment against the relevant Development Plan and can either be approved or refused by a relevant authority.

80 A summary of the Development Act 1993 and the development assessment process was published by the author and a colleague in (2012) 11(2) LGOVR 28.

81 *Development Act 1993* (SA), s35