

Australian Property Institute Limited

SUBMISSION

DRAFT STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2016 AND DRAFT S.117(2) LOCAL PLANNING DIRECTION – COASTAL MANAGEMENT

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TABLE OF STATUTES AND DERIVATIVE DOCUMENTS CITED:

Environmental and Planning Assessment Act 1979.

Draft State Environmental Planning Policy (Coastal Management) 2016.

Draft Local Planning S.117(2) Planning Direction – Coastal Management.

State Environmental Planning Policy No 14-Coastal Wetlands.

State Environmental Planning Policy No 26-Littoral Rainforests.

State Environmental Planning Policy No 71-Coastal Protection.

1. Preface

- 1.1 The Australian Property Institute (the Institute) is the leading and contemporary membership organisation for property professionals which develops and supports our members to advise the community and business. The Institute is impartial, objective and independent.
- 1.2 The Institute members can be found across all sectors of the property profession, in private practice and in the public sector. This broad base of qualified and skilled professionals is unique to the Institute. The Institute is committed to building and maintaining a strong base for the future of the property profession through broadening the expertise and knowledge of membership.
- 1.3 This submission to The Department of Planning and Environment (DPE) by the Institute on the tranche of two draft documents¹ is part of ongoing research efforts and dissemination of factual and dispassionate information about property rights in Australia
- 1.4 The Institute records its appreciation for the invaluable and numerous discussions that occurred during the preparation of the submission with members of the Submission Committee. This submission however does not necessarily represent the views of any of the individual members of the Submission Committee, sitting strictly extra-curially.

2. Introduction

- 2.1 This submission responds to the invitation by the DPE to garner feedback on the two draft documents (amongst others) by Friday 23 December 2016 The Institute welcomes the opportunity to respond to the Department's invitation for feedback.
- 2.2 Currently, strategic planning and development applications under the *Environmental and Planning Assessment Act 1979* for activities in the coastal zone is dealt with in three overarching state environmental planning instruments, namely:

*State Environmental Planning Policy No 14-Coastal Wetlands,
State Environmental Planning Policy No 26-Littoral Rainforests,
State Environmental Planning Policy No 71-Coastal Protection.*

- 2.3 In addition to these three state environmental planning instruments the relevant *Local Environmental Plan (LEP)* and/or relevant Development Control Plan (DCP) for the particular local government area inform such strategic planning and development applications, and may require additional considerations when development applications are to be assessed in particular.
- 2.4 A key question in preparing feedback by the Institute's Submission Committee has been to ascertain the impact of the interaction between the proposed *State Environmental Planning Policy (Coastal Management) 2016 (SEPP Coastal Management)* and the proposed *Local Planning S.117(2) Planning Direction – Coastal Management (S.117 Direction)*. That key question from the standpoint of the Institute focuses on draft *Clause 7* of the proposed *S.117 Direction* which essentially permits the Minister to approve a planning proposal that is inconsistent with the

¹ *Draft State Environmental Planning Policy (Coastal Management) 2016: Draft Local Planning S.117(2) Planning Direction – Coastal Management.*

proposed *SEPP Coastal Management*. The Institute is also crucially aware of the interrelationship between property values and perceived impacts at a broader socioeconomic level as set out in *s.79C (1) (b), (c), and (e) Environmental Planning and Assessment Act 1979*, and notes with approval that the two draft documents also attempt to address such values and impacts.

- 2.5** The Institute is concerned that the proposal for Regional Plans for the coastal regions of the Hunter, Central Coast, Illawarra, South East, and the North Coast appear to have an uncertain relationship with the proposed *SEPP Coastal Management*. It is unclear whether such Regional Plans will be of the same statutory status as the former *State Regional Environmental Plans (SREPs)* or will form a new class of statutory instrument apparently informing the *SEPP Coastal Management*.
- 2.6** To facilitate the preparation of this submission by the Institute, the following section of this submission has been drafted to respond to the various questions posed in the document entitled *Coastal Management State Environmental Planning Policy: Explanation of Intended Effect*² and the draft *S.117 Direction*. However the Institute looks forward to providing any further advice and consultation on this submission to the DPE if requested. For any further information or clarification, or to arrange a meeting please contact Stephen Child, Member Services Manager - NSW at schild@api.org.au or on (02) 9299 1811.

3. Comments and Recommendations

3.1 Mapping Coastal Management Areas

Question 1: Should councils be able to propose changes to the maps for all or some of the coastal management areas?

Response:

The Institute considers that any proposals to change maps for all or some of the coastal management areas at the volition of councils would lead to unnecessary inconsistency and uncertainty as to the overall mapping on a state-wide basis.

3.2 Explanation of the Provisions

Question 2: Should the development controls be included in the proposed Coastal Management SEPP or as a mandatory clause in council LEPs?

Response:

The Institute considers that the development controls should be included in the proposed coastal management SEPP and mirrored as mandatory clauses in the council LEPs to ensure consistency of application.

3.3 Development Controls for Coastal Management Areas

3.3.1 Coastal Management Area 1: Coastal Wetlands and Littoral Rainforests Area

Question 3: Do the proposed development controls for mapped coastal wetlands and littoral rainforests remain appropriate for that land?

² Office of Environment and Heritage (2016) *Coastal Management State Environmental Planning Policy: Explanation of Intended Effect* (Sydney).

Question 4: Do you support the inclusion of a new 100m perimeter area around the mapped wetlands, including the application of additional development controls?

Response:

The Institute considers that the current development controls do remain appropriate for mapped coastal wetlands and littoral rainforests. It is assumed that the proposed new 100m perimeter area around the mapped coastal wetlands will include littoral rainforests and should include development controls that reflect the adjacent controls for wetlands and littoral rainforests. Indeed, it was considered that the new 100m perimeter area may be in many circumstances inadequate and should be the subject of detailed mapping of such perimeters.

3.3.2 Coastal Management Area 2: Coastal Vulnerability Area

Question 5: Are the Proposed development controls for mapped coastal vulnerability areas appropriate for that land?

Response:

Yes.

3.3.3 Coastal Management Area 3: Coastal Environment Area

Question 6: Are the proposed development controls for coastal environment areas appropriate for that land?

Question 7: Is the inclusion of the catchments of the 15 sensitive lakes (listed in Schedule 1) within the coastal environment area appropriate?

Response:

Yes.

3.3.4 Coastal Management Area 4: Coastal Use Area

Question 8: Which is the best option for mapping the coastal use area? Is the proposed approach to mapping of the coastal use area for the Sydney metropolitan area appropriate?

Response:

The Institute considers that option 1 would be the most appropriate, however it is not agreed (as stated earlier) that local councils can increase or decrease the area. The proposed approach appears appropriate for the Sydney metropolitan area.

Question 9: Should councils be able to propose variations to the Coastal Use Area maps over time to take into account local characteristics and circumstances?

Response:

As stated earlier, no.

3.3.5 Proposed Development Controls

Question 10: Are the proposed development controls for mapped coastal use areas appropriate for that land?

Response:

Yes.

3.4 Other Matters Relating to Development

3.4.1 Exempt and Complying Development

Question 11: Should the current exempt development and complying development provisions be retained for coastal management areas?

Question 12: Should consideration be given to applying other controls for these areas? For example, what types of exempt and complying development might be appropriate in coastal wetlands and littoral rainforests or in the catchments of sensitive coastal lakes and lagoons?

Response:

The appropriateness of exempt and complying development for coastal management areas remains problematic, and the submission committee considered that the protection of the coast could be compromised through the impact of a multitude of development which could occur through the use of exempt or complying development permissions.

3.4.2 Emergency and Temporary Coastal Protection Works

Question 13: Should any provisions be retained to allow the use of emergency coastal protection works in emergency situations? What limitations should be put on such works being undertaken by private individuals or public authorities?

Response:

The Institute notes that emergency coastal protection works, if undertaken by a public authority provide for such works as exempt development if *inter alia* removed within thirty days of placement. The Institute considers that such works ought not to be undertaken by private individuals.

3.5 Draft Local S.117 Planning Direction – Coastal Management

Response:

The Institute is concerned that draft *Clause 7* of the proposed *S.117 Direction* will enable inconsistent planning proposals supported by a study prepared for a proponent to be approved by the Minister notwithstanding the inconsistency. It is a truism that Ministerial powers such as *S.117 Directions* ought to reside with the relevant Minister the exercise of which only occur in extreme circumstances. It is concerning that *Clause 7* specifically identifies inconsistent planning proposals which presumably could be isolated re-zoning applications supported by draft development applications prepared by consultants on behalf of private parties or government instrumentalities.

APPENDIX 1

AUSTRALIAN PROPERTY INSTITUTE INC.

The Australian Property Institute, (formerly known as the Australian Institute of Valuers and Land Economists), has enjoyed a proud and long history. Originally formed in South Australia over 87 years ago in 1926, the Institute today represents the interests of approximately 8,000 property experts throughout Australia.

The Institute, the nation's peak professional property organisation and learned society, has been pivotal in providing factual, independent and dispassionate advice on a broad range of property issues addressed by the Commonwealth and State/Territory governments and their agencies since the Institute was formed.

In addition, the Institute's advice has increasingly been sought by international bodies such as the United Nations, the Food and Agriculture Organisation (FAO) and the World Bank, evidencing a level of expertise within the Institute and its membership, which is recognised regionally and globally.

As a professional organisation the primary role of the Institute is to set and maintain the highest standards of professional practice, education, ethics and discipline for its members. Institute members are engaged in all facets of the property industry including valuation, property development and management, property financing and trusts, property investment analysis, professional property consultancy, plant and machinery valuation, town planning consultancy, property law, research and education.

Membership of the Institute has become synonymous with traits and qualities such as professional integrity and client service, industry experience, specialist expertise, together with tertiary level education and lifelong continuing professional development.

APPENDIX 2

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