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Submission:

SEPP (Environment) Explanation of Intended Effect

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The Better Planning Network Inc. (BPN) is an incorporated, volunteer-based, not-for-profit association established in 2012 in response to the then O'Farrell Government's proposed overhaul of NSW planning legislation. Our aim is to advocate for a robust and visionary NSW planning system designed to achieve Ecologically Sustainable Development as defined in the *Protection of the Environment Administration Act 1991 (NSW)*.

The SEPPs included in the Proposal are:

Managing catchments

1. State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
2. Greater Metropolitan Regional Environmental Plan No. 2 – Georges River
3. Sydney Regional Environmental Planning Policy No. 20 Hawkesbury Nepean River (No.2-1997)

Protecting urban bushland

1. State Environmental Planning Policy No. 19 – Bushland in Urban Areas

Protecting waterways

1. Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
2. State Environmental Planning Policy No. 50 – Canal Estate Development

Protecting special areas

1. Willandra Lakes Regional Environmental Plan No.1 – World Heritage Property

Comments

The Explanation of Intended Effect says that the purpose of the changes is to re-organise the existing SEPPS to reflect the recent changes in our planning system. However what this means in reality is not at all clear as we do not have access to the detail. Because of this our comments are general. We do regret that the detail is not available as this would enable us to provide more fully informed responses to the proposal.

The gap between apparently benign and positive aims and reality

The overall statement includes:

"Government's aim to reduce unnecessary regulation and transform the planning system into one that is efficient, easy to understand and simple to use."

The critical question here is for whom? In many cases planning documents have, depending on the agenda, become more vague and flexible, very technical, based on predictive assumptions that are not reliable and are, on exhibition for short time periods.

An example of such documents is the Environmental Impact Statement (EIS) on the WestConnex stage 4. This EIS has:

- no details of the smoke stacks and impacts on water quality in the nearby creeks and bay;
- no assessment of the need for future social infrastructure such as schools;
- significant increases in development at Barangaroo;
- no rationale for cutting down significant numbers of trees. An example is the case where space was created for the light rail because the stadium lobby group said that putting the tracks closer to the leased public land would affect their profits.

The existing SEPPS do not currently deliver their intent. For example the Waterways SEPP states:

".....recognise Sydney Harbour as an outstanding natural and public asset of national significance and provide protection to its environmental, cultural, recreational and aesthetic qualities and to its function as a working waterway and tourist destination."

".....protect Sydney Harbour for current and future generations by guiding development on harbour foreshores, protecting critical habitat and managing the use of harbour waters."

Both these statements imply that development is the priority, not environmental protection. The supporters of recreational marinas and linked land facilities, tourism destinations (restaurants, bars, event locations) think Barangaroo and the proposed plans for the Bays Precinct are examples of planned and significant development occurring.

If this intensive development continues, how will the environment, water, adjacent land and air quality be protected?

The Waterways section also states:

"The proposed new SEPP will include specific aims and objectives for the Sydney Harbour foreshores and waterways, including recognising the Harbour's qualities as an outstanding natural and cultural heritage asset of national significance. The aims of the Harbour Regional Environmental Plan to recognise the Harbour as a public resource, owned by the public, to be protected for the public good and to give precedence to the public good over private interests will also be maintained in the 'Waterways' part."

These aims are admirable but require details of how they can be achieved, given that the development at Barangaroo consists of a linear park with low trees, much concrete and privately owned restaurants and bars.

The Hawkesbury Nepean river is included in this section but, in comparison to the statement for Sydney Harbour, little indication is given as to how it might be treated.

Impacts of economic and business plan first rule

The existing SEPPs are not working well at present because the assessment process and linked business plans give a higher value to economic factors than to social and environmental factors. This is unlikely to change, given the proposal states that the new Environment SEPP is being developed merely as a 'tidying up' exercise following the changes that have been made to legislation and regulations. The message is that the highest priority is development and profits for government and private corporations. Offsets are particularly problematic as they signal support for residential and commercial development over environmental protection.

Linked initiatives, such as the Greener Places Draft Policy and the Greater Sydney Commission (GSC) green grid, are to be applauded. However if these approaches are reduced to the provision of a tree on the street outside a new dwelling and another in the backyard, as was mentioned at the recent Greening Sydney launch, then it could legitimately be called a mere PR exercise. The question is if and when the GSC green grid will be included in District plans.

One size fits all approach

A single policy covering catchments, urban bushland, waterways and special areas may result in a one-size-fits-all approach that will miss the complexities and local nuances of land, water,

catchments and special areas.

What loopholes does flexibility provide?

In the Protected Areas (Willandra Lakes) it states:

".....require consent authorities to consult the Local World Heritage Advisory Committee about the impact of any proposed development on world heritage values, consider any comments of the Committee and implement them where possible."

"Where possible" implies a loophole for development and should be removed.

Cost shifting to Councils

The Water Quality section states:

"To streamline this process, WaterNSW has delegated its concurrence role to Councils for developments posing a lower risk to water quality. This represents approximately 90% of applications."

This implies further administrative work will be delegated to Councils, which will likely cause them problems of resourcing. The trend to shift administrative responsibility to Councils while removing local decision-making powers removes Councils, the level of government closest to the people, from their democratic decision-making role and makes them simply an administrative arm of the State Government.

'Simplifying' the process

It is proposed to "Simplify the proposed SEPP by removing duplication with other legislation".

A list of examples is provided at Part 2 p17. One example, Clause 9(2) Bank Disturbance Standard Instrument, states:

"...local environmental plans have 'Flood Planning' provisions which adequately address the issue of bank disturbance. Where a non-Standard Instrument local environmental plan applies in the catchment, the Standard Instrument Flood Planning provision will be inserted".

We query such a change as the non-standard LEP may contain a better provision to the standard provision. This tidying up exercise may be based on decisions that actually weaken the provision.

Increased Ministerial discretion

The Explanation of Intended Effect states:

"Provisions within the Georges River Regional Environmental Plan that are related to local plan making will be updated and are to be moved to a new 'Catchments Protection' Ministerial Direction. Current provisions that are proposed to be updated and addressed in the Ministerial Directions include:"

Clause 5 'Aims and objectives'

Clause 8 'General Principles'

Clause 9 'Specific Planning Principles' (except for those identified to be repealed above)."

Similarly provisions within the Hawkesbury Nepean Regional Environmental Plan related to local plan making "will be updated and are to be moved to a new Ministerial Direction. The following current provisions contain plan making guidance suited to a Ministerial Direction:

Clause 3 'Aim of This Plan'

Part 2 'General Planning Considerations, Specific Planning Policies and Recommended Strategies'

Clause 6(3) 'Water Quality'

Clause 6(10) (a) 'Urban Development' - rezoning or subdivision of land • Clause 6(11) 'Recreation and Tourism'

There is an increasing amount of discretion given to the Minister in decisions concerning planning matters. A single individual with the power to set aims and objectives, policies and strategies, water quality, rezoning and subdivision removes planning from the democratic process.

Zoning

The proposal states that "...feedback from Councils has revealed that land formerly captured by SEPP 19 as 'land zoned or reserved for public open space' is not consistent with terms in the Local Government Act 1993, such as 'community land.' Therefore, a new term, 'public bushland' is proposed to replace the reference to land zoned or reserved for public open space. The term will cover land that is:

1. zoned under the Standard Instrument zones excluding RU1, RU2, RU3, RU4, and RU5 zoned land*, and
2. owned or managed by Council or a public authority, or reserved for acquisition for open space or environmental conservation by Council or a public authority, and
3. has vegetation which meets the definition of bushland.

This appears to be a reasonable 'tidy up' but we will need to see the definition and the interpretation before we can confirm.

Devil is in the detail

1. Heritage provisions in the various existing SEPPs will be moved to LEPs.

Clarification is needed as to whether the existing SEPPs will be moved in their present form or changed.

2. It is proposed to move "extractive industry prohibition provisions to the SEPP (Mining, Petroleum and Extractive Industries)" and "wetland provisions to the State Environmental Planning Policy (Coastal Management)".

Again clarification of the details is needed.

Overall, clarification is needed as to how a series of policies in the SEPP will modify the risk of a one-size-fits-all approach.