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# State Planning Policy

## State Development Assessment Provisions

### Planning Regulation

*What do these State instruments mean  
for the  
environment and community?*

Revel Pointon, Solicitor  
LAWJAM



# A'n'A

(Acronyms and abbreviations)

- » **SPP**: State Planning Policy
- » **SDAP**: State Development Assessment Provisions
- » **Reg**: Planning Regulation

# These are important instruments!

- » **SPP** – Policies must be reflected in regional and local planning instruments, and assessment decision making
- » **SDAP** – Provides detailed criteria for assessing impacts to state interests
- » **Planning Regulation** - Provides for regulation of numerous key features of the planning legislation, not just State interests

# State Planning Policy

## High level policy document

Sets out ‘**state interests**’: an interest that the Minister considers—

- *affects an **economic or environmental interest** of the State or a part of the State;*
- *affects the interest of ensuring the Planning Act’s **purpose** is achieved.*



**State interest policies must be reflected in regional and local plans, and considered in assessment**



# State Planning Policy

## » *How to read the SPP*

- **Criteria in boxes most important!**
- Various state interests concern environment and community issues
- Re. environment and heritage: *Biodiversity; Coastal Environment; Cultural Heritage; Water Quality*
- Others: *Liveable Communities, Energy and Water, Agriculture, Mining an Extractive Resources*

# State Development Assessment Provisions (SDAP)

## » *What do they do?*

- Provide the criteria by which SARA needs to consider development applications affecting state interests
- Intended to replace role of concurrence agencies



# SDAP

- » Codes cover many areas of community interest, incl:
  - *community amenity*
  - *coastal protection*
  - *Environmentally Relevant Activities*
  - *vegetation clearing*
  - *Qld heritage*
  - *wetland protection*
- Don't match up directly with state interests



# SDAP

## » *How to read the SDAP*

Various codes, more than one may apply to a site

Hierarchy of application of a code:

- If development proposal **complies** with **acceptable outcomes** = satisfies relevant **performance outcome**.
- If it complies with the performance outcome = satisfactory outcome
- If **does not comply** with the **performance outcomes** = must comply with the **purpose of the code**.



# SPP: General policy around coastal protection – should be reflected in the local planning scheme and regional plan

## State interest—coastal environment

The coastal environment is protected and enhanced, while supporting opportunities for coastal-dependent development, compatible urban form, and safe public access along the coast.

### **Making or amending a planning scheme and designating land for community infrastructure**

Where does the state interest apply?

All local government areas partially or wholly located in the coastal zone.

The planning scheme is to appropriately integrate the state interest by:

- (1) facilitating the protection of coastal processes and coastal resources, and
- (2) maintaining or enhancing the scenic amenity of important natural coastal landscapes, views and vistas, and
- (3) facilitating consolidation of coastal settlements by:
  - (a) concentrating future development in existing urban areas through infill and redevelopment, and
  - (b) conserving the natural state of coastal areas outside existing urban areas, and
- (4) facilitating coastal-dependent development in areas adjoining the foreshore in preference to other types of development, where there is competition for available land on the coast, and
- (5) maintaining or enhancing opportunities for public access and use of the foreshore in a way that protects public safety and coastal resources, and
- (6) including the SPP code: Ship-sourced pollutants reception facilities in marinas (Appendix 2) or similar development assessment requirements.

**SDAP:**  
 Detailed criteria SARA  
 must assess applications  
 impacting coastal areas  
 against,  
 as referral agency or  
 assessment manager

## State code 8: Coastal development and tidal works

### 8.1 Purpose statement

The purpose of this code is to ensure that development is designed and located to:

1. protect life and property from the impacts of **coastal erosion**
2. maintain **coastal processes**
3. conserve **coastal resources**
4. maintain appropriate public use of, and access to and along, **state coastal land**
5. account for the projected impacts of climate change, and
6. avoid impacts on **matters of state environmental significance** and, where avoidance is not reasonably possible, minimise and mitigate impacts, and provide an **offset for significant residual impacts** where appropriate.

In addition to the above, the purpose of this code is to ensure that development involving operational works which is not assessed by local government is designed and located to protect life and property from the impacts of **storm tide inundation**.

Editor's note: Guidance on achieving compliance with the performance outcomes and acceptable outcomes in the code is provided in the State Development Assessment Provisions guideline – state code 8: coastal development and tidal works, Department of Environment and Heritage Protection, 2016. Guidance for determining if development will have a significant residual impact on a matter of state environmental significance is provided in the Significant Residual Impact Guideline, Department of State Development, Infrastructure and Planning, 2014.

### 8.2 Performance outcomes and acceptable outcomes

All development should demonstrate compliance with the relevant provisions of table 8.2.1.

Development involving operational work should also demonstrate compliance with the relevant provisions of table 8.2.2.

Development involving operational work which is not assessed by local government should demonstrate compliance with the relevant provisions of table 8.2.1, table 8.2.2 and table 8.2.3.

**Table 8.2.1: All development**

Performance outcomes	Acceptable outcomes
<b>Development in the erosion prone area</b>	
<p><b>PO1</b> Development does not occur in an <b>erosion prone area</b>, unless the development:</p> <ol style="list-style-type: none"> <li>1. cannot feasibly be located elsewhere</li> <li>2. is one of the following types of development:               <ol style="list-style-type: none"> <li>a. <b>coastal-dependent development</b>, or</li> <li>b. <b>temporary, readily relocatable or able to be abandoned</b>, or</li> <li>c. <b>essential community infrastructure</b>, or</li> <li>d. <b>redevelopment of an existing permanent building or structure that cannot be relocated or abandoned</b>.</li> </ol> </li> </ol>	No acceptable outcome is prescribed.
<p><b>PO2</b> Development other than <b>coastal protection work</b>:</p> <ol style="list-style-type: none"> <li>1. avoids impacting on <b>coastal processes</b>, and</li> <li>2. ensures that the protective function of landforms and vegetation is maintained.</li> </ol> <p><small>Editor's note: In considering reconfiguring a lot applications, the state may require land in the erosion prone area to be surrendered to the State for coastal management purposes under the Coastal Protection and Management Act 1995.</small></p>	No acceptable outcome is prescribed.
<p><b>PO3</b> Development is located, designed and constructed to minimise the impacts from <b>coastal erosion</b> by:</p> <ol style="list-style-type: none"> <li>1. locating the development as far landward as practicable,</li> </ol>	No acceptable outcome is prescribed.

How is *climate change*  
reflected in the  
SPP and SDAP?

# Climate change

- » Adaptation and resilience recognised in guiding principles, and through policies
- » *Coastal protection* - sea level rise accounted for, land surrender possible requirement
- » *Natural hazards* - bush fires and flooding etc
- » *Agriculture* - mention of impacts on land suitability

## However...

- » Mineral and extractive resources section does not mention climate change commitments and need to move away from fossil fuels...

# Climate change



## Renewable energy

- » 'Energy and water supply' State interest:
  - » provides requirement to **enable** renewable energy
  - » needs requirement to **identify** and **protect** sites highly suitable for large and medium scale renewables
  - » need to consider issues such as **solar access**

How is *biodiversity*  
protected in the  
SPP and SDAP?

# Biodiversity

- » Similar to current policy, including specific requirement for net gain in koala habitat in SEQ
- » Need to require **enhancement** of corridors, not just maintenance, as in current
- » Should clarify how to ‘protect’, and when to ‘avoid’, and when OK to mitigate
- » Consistency in language with offsets framework, consider ‘minimise’ v ‘mitigate’ impacts



How is the *Great Barrier Reef*  
protected through  
the SPP and SDAP?

# Great Barrier Reef

- » More reference in SPP to need to protect GBR and its outstanding universal values - however, **still limited reference in actual criteria**
- » No reference to Reef in SDAP
- » Need to consider impacts of development upstream to GBR
- » Consider having SDAP Code for impacts to water quality in GBR Catchments
- » Need to consider **cumulative impacts** in planning

# Overall comments...

- » Development to be avoided, but if not possible, can mitigate impacts — **Need to limit this discretion to ‘essential’ development**
- » Need more **positive requirements to enhance** environmental values, not just maintain
- » Need to better reflect the principles of ESD in policy, **precautionary principle**, intergenerational equity
- » SDAP performance outcomes need more detail in many cases

# Planning Regulation

- Lists **publically accessible documents**, and **how**, e.g. when must be listed on website — Schedule 24
- Lists **accepted** (Sch 7 - no assessment needed) and **prohibited** development (Sch 10 - not allowed)
- Empowers when agencies can comment on development applications e.g. concurrence or advice role
- Now states that applications **must be assessed against SDAP** when applies – stronger than current version
- Can provide for longer public notice periods (Planning Act, s53(4)(b)(ii)) - but not provided in draft?



# Planning Regulation

- » *What **information** do you think you should have an **explicit right to access** under the planning framework, and **how** would access be easiest for you?*
- » *Are there **development types** or **areas** where development should be **prohibited**?*
- » *Are there certain **developments** or **areas** for which applications should be subject to **longer public notification**?*

## Part 12

## Koala habitat area

### Division 1

### **Prohibited development**

#### **13 Prohibited development—material change of use in priority koala assessable development area**

- (1) A material change of use of premises for an urban activity is prohibited development to the extent the premises are in—
  - (a) a priority koala assessable development area; and
  - (b) a koala habitat area; and
  - (c) an area designated under a local categorising instrument for conservation, open space, rural or rural residential purposes.
- (2) However, subsection (1) does not apply to a material change of use—
  - (a) that is accepted development; or
  - (b) that is exempted development; or
  - (c) for a single dwelling on a lot larger than 2000m<sup>2</sup>; or
  - (d) that, if a development application were made for the material change of use, must be assessed against the assessment benchmarks prescribed under schedule 13 [Assessment benchmarks for development in koala habitat area], section 2, 3, 4 or 5.

Excerpted – Schedules 16 and 17

### Schedule 16

#### Development for which a notification period of at least 30 business days applies—purposes

##### section 17

A material change of use, assessable against a planning scheme, temporary local planning instrument, master plan or preliminary approval to which section 242 of the Act applies, for any of the following—

- (a) an aerodrome that is, or is proposed to be, used by commercial operators not normally living at the premises;
- (b) a large outdoor sport and recreation facility including, for example, a golf course, a major sporting venue and a racing circuit, but not including a golf course of 30ha or less or a golf driving range;
- (c) a tourist resort complex—
  - (i) with accommodation for more than 1000 people, including staff; or
  - (ii) on an offshore island;
- (d) a body of water (including an artificial lake but excluding an effluent pond or the like), that has, or would have after the change of use, a total surface area of more than 5000m<sup>2</sup>.

### Schedule 17

#### Development for which a notification period of at least 30 business days applies—areas

##### section 17

A material change of use (other than for a dwelling house, outbuilding or farm building) assessable against a planning scheme, temporary local planning instrument, master plan or preliminary approval to which section 242 of the Act applies, or reconfiguring a lot, if the premises—

- (a) are completely or partly below a floodline adopted by the local government and the development involves filling an area greater than 5000m<sup>2</sup> below the floodline; or
- (b) share a common boundary with a Queensland heritage place; or
- (c) contain or share a common boundary with or are within 100m of the boundary of—
  - (i) an area that is a critical habitat, a protected area, subject to a conservation agreement or an area of major interest under the Nature Conservation Act 1992; or
  - (ii) the wet tropics area under the Wet Tropics World Heritage Protection and Management Act 1993; or
  - (iii) a fish habitat under the Fisheries Act, if the proposed development—
    - (A) has impact on riparian vegetation; or
    - (B) results in alteration of natural flow patterns; or
    - (C) requires the construction of a levee; or
    - (D) does not contain stormwater management; or
    - (E) allows contaminated runoff; or
    - (F) disturbs instream habitat; or
    - (G) requires drainage of the fish habitat; or
- (d) contain or share a common boundary with a wetland management area or a wetland protection area.

# How to get submissions in:

» <http://betterplanning.qld.gov.au/better-planning-home/planning-policy-review.html>

1. **online** submission form

2. **email** to [planningpolicy@dilgp.qld.gov.au](mailto:planningpolicy@dilgp.qld.gov.au)

including your name, and residential/business address or electronic address.

3. **in writing to:**

The Honourable Jackie Trad MP

Deputy Premier, Minister for Infrastructure, Local Government and Planning and Minister for Trade and Investment

c/- State Interest Feedback

Planning Group

Department of Infrastructure, Local Government and Planning

PO Box 15009

CITY EAST QLD 4002



# South East Queensland Regional Plan

- » Currently open for comment until 3 March
- » Brisbane EDO and DILGP Law Jam: **February 16th**
- » Consider – does it integrate SPP adequately?



# EDO Qld Advice Line

- Free advice service for public interest environmental legal questions
- Every Tuesday evening (**but send through your questions anytime!**)

- **Direct enquiries to:**  
[edoqld@edoqld.org.au](mailto:edoqld@edoqld.org.au)  
07 3211 4466

