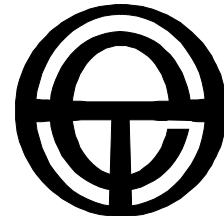


TOTAL ENVIRONMENT CENTRE INC.

LEVEL 2, 362 KENT STREET, SYDNEY, NSW 2000

Ph: 02 9299 5599 - 02 9299 5680 Fax 02 9299 4411

www.tec.nccnsw.org.au



COASTAL PROTECTION STATE ENVIRONMENTAL PLANNING POLICY (SEPP)

A STATORY PLANNING BLUEPRINT FOR THE NSW COAST

The following submission is based on a fundamental need for the coastal SEPP to be the equivalent of a strictly regulating, statutory planning blueprint covering the entire coast. The blueprint should reverse the current planning process by placing the land's natural limits, and its capability and suitability for development ahead of the current developers' demand-driven and growth regime. Unless the planning process is turned around so that the environment and residential amenity is given priority over the self interests of developers, achieving true coastal protection will be impossible.

1. REVERSAL OF DEVELOPER-DRIVEN PLANNING PROCESS NEEDED

When planning is in the hands of the developers, development will always work against the community and the environment. On the NSW coast planning is driven by the development industry. The way this is occurring includes the following:

- Developers set the planning agenda by initiating rezoning and development plans. It is taken for granted that this is the way council based planning should work and includes councils themselves selling or rezoning land for development.
- The majority desires and health and welfare of a local and broader community, protection of the biotic and abiotic environment and concerns for future generations are usually outweighed by developer desires through council, state or the legal components of the planning process.
- Developers either become councillors or fund and back councillors that will support their ambitions above all else. They rarely indicate to the community in pre-election propaganda their intentions to only vote for more development, once elected.
- The legal process is stacked against the community and environment in favour of developers in several ways:

1. Common law traditionally places personal “rights”, especially with regard to property, over the public interest .
2. Developers always have automatic right of appeal against council decisions or controls imposed against their proposals and tend to use the legal system to “threaten” councils if their proposals are not approved. Councillors either use court costs as an excuse to approve a controversial development or lose millions of dollars defending decisions in the court.
3. The community has extremely limited appeal rights and rarely has the funds or resources to fight a development in court or to buy the level of expertise, consultants and barristers needed for a successful appeal.
4. Legislation and policies designed to protect the environment contain so many loopholes and are so imprecise that they can easily be fought and defeated in courts. The law relies heavily on the discretion of decision makers and the judiciary.
5. Even when a development proposal is struck down in the courts, there is nothing to stop the developer from coming back again and again with the same proposal
6. Developers are increasingly using defamation threats as a way of silencing objectors.
7. There are few if any efforts to prosecute developers for breaching plans or legislation such as through ignoring development controls or illegally clearing land.

RECOMMENDATIONS

While far broader action would be needed to reverse the developer driven planning process, such as changes to various statutes, and by separating planning control and policy from the private sector and market processes, the SEPP can go a long way towards regulating land use to the point that developers can no longer be in control.

The SEPP should be the equivalent to a highly regulatory and statutory coastal planning blueprint which lays out clearly and unambiguously what can be developed and where. It should not elevate the development industry above residential amenity and the natural environment. Such a SEPP should negate the continuous conflict that arises as each proposal for rezoning or development is lodged, as it will clearly lay the foundations for each council area’s land use.

The development industry should have no more say than any other citizen in the development of such a blueprint and must comply with its outcome.

2. LIMITING GROWTH – COASTAL LAND IS A FINITE RESOURCE

All council areas along the coast are basing plans for the next 20 years on predicted population rises of almost double current levels. Land currently zoned for environmental protection, public use or prime agricultural for example, is being released for new residential subdivisions, resorts and golf courses. This is invariably occurring following proposals and lobbying by the development industry. The result is that hundreds of small and large urban sprawl style subdivisions and resorts are continuously being proposed and approved along the NSW coast. When this land is developed – there is likely to be another round of predicted population rises and land releases. To continue to base planning on speculated growth and developer demands as is currently the case is unsustainable even in the short term.

RECOMMENDATION

The natural limits of the environment should provide the limits to population and development that are needed along the coast. This can be achieved through the above mentioned planning blueprint which should be based around the capacity, suitability and capability of the natural environment, existing built environment and infrastructure to cope with any further proposed development.

3. NATURAL ENVIRONMENT FEATURES EXCLUDING OR LIMITING DEVELOPMENT

There is a considerable range of natural features on the coast, whose fragility, inappropriateness for development, habitat significance, or “service” importance - for example in providing clean air, water, land stability or drainage - either excludes or severely limits development. These features include:

- Land affected by Acid Sulfate Soil
- Natural coastal vegetation
- Land containing threatened species or threatened ecological communities
- Prime agricultural land
- SEPP 14 coastal wetlands
- SEPP 26 Littoral Rainforest
- Coastal lakes
- Creeks and rivers
- Intertidal zones and the nearshore ocean (health and protection of)
- Flood prone land
- Coastal erosion zones – immediate (shorline), 50 year and 100 year
- Slope constraints – (no development on slopes >20%)
- Headlands, Cliffs and escarpments
- Estuaries
- Whole catchments that are already under severe pressure from existing development

- Foreshores and dunes
- Wildlife corridors
- Threatened species habitat
- Bushfire danger zones
- Public land kept for reserves, public use and conservation (crown land and council owned land)
- National Parks and adequate buffer zones around them.
- Any aquatic system that is already suffering negative impacts from development such as rivers that cannot cope with further pollution or nutrient loads
- Buffer zones around all the above natural features and around land such as industrial sites, contaminated sites, sewerage treatment plants etc

The above examples are not exhaustive but give an indication of the numerous natural and related features that need to be considered in devising any development or environmental plans.

RECOMMENDATIONS

- **A list of natural environment features, including those above, should be included in the planning blueprint SEPP as areas that cannot be developed under any circumstances or will result in severely restricted development. This must be incorporated into all local council plans and development considerations.**
- **Development moratoriums should be placed over areas where full assessments of such features have not been undertaken or completed.**

4. LIMITS TO INFRASTRUCTURE AND SERVICES

The provision of sustainable and cost effective infrastructure for residents and visitors along the coast is currently either provided after a new development or rezoning has been approved or is provided to enable further unsustainable development to occur without regard to the broader environmental impacts that future development will have.

RECOMMENDATIONS

Sewage

Coastal rivers, estuaries and the nearshore ocean are already under huge pressure from the levels of sewage being discharged into them. There is a need to consider the limits of existing sewerage systems and the natural environment in each coastal area, to deal with possible increases in sewage. Any upgrading or improvement to existing sewerage systems should be for the purpose of achieving reuse, improved treatment and disposal for existing development rather than to enable more growth.

Development proposals should be considered in the light of existing sewerage systems to cope with the extra load.

Stormwater

Increased areas of coastal land are losing natural filtering and drainage capacity as they are replaced with hard surfaces, while increased nutrient loads, sediment and pollutants in stormwater are impacting on marine and freshwater quality and flow. It is essential that as much naturally vegetated land as possible is retained and aquatic systems are protected to provide natural filtering and drainage control.

Traffic and parking

Currently new roads are built and old ones straightened, widened or realigned to fit development and growth demands. A vicious circle is created in which better roads attract more traffic and more development opportunities and more development creates demand for more roads and parking. The potential for further development reliant on cars should be limited by the capacity for existing roads to cope with traffic, and town centres to cope with parking. Improvements in bus and train services should be given priority over road improvements and new development proposals should be considered in light of this

Waste

Local councils should be working towards reducing waste produced in their jurisdiction as well as refusing to take waste from outside. The capacity of existing landfill sites and other waste facilities to deal with increased waste, recycling and reuse opportunities, should be considered before rezoning and development is increased.

Bushfire services

All new development proposed for high danger bushfire zones should be rejected. Bushfire, rural and other fire personnel both paid and volunteer should not have their lives put at risk or their services stretched as a result of bad development decisions that have resulted in development being placed in outlying high bushfire danger zones.

5. HERITAGE PROTECTION

RECOMMENDATIONS

Non-Aboriginal built heritage

All coastal towns and villages should have a heritage study that could recommend precincts and buildings for protection. Any development in these areas should fit in with the character of existing buildings, and heritage buildings recommended for protection should be retained.

Aboriginal heritage

- **The protection of Aboriginal sites of significance should be given priority over proposed developments.**
- **There is a need for a development moratorium in areas where no assessment has been made for Aboriginal sites of significance**

6. RETENTION AND PROTECTION OF PUBLIC LAND

Currently councils are fast selling off their community, environment protection and even crown land for development. Much of this land was historically put aside for protection and public use because it was recognised that some areas should not be developed such as those that formed wildlife corridors, were in high bushfire danger zones or were valuable areas of open public space

RECOMMENDATION

An immediate ban on any further sale of council owned or crown land should be made. Any future sale should be based on an assessment of whether that land was originally retained for environmental or public reasons. If this was the case it should remain as public land and serving the purpose for which it was originally obtained.

7. IMPACT ASSESSMENTS

Currently the only impact assessments required to help determine the appropriateness of a development or rezoning proposal is when a tokenistic and limited Environmental Impact Assessment and sometimes species assessment is required. Little weight is given to the assessments as they only have to be considered by decision makers and the assessors are hired by the developers so are unlikely to ever recommend against a development occurring.

RECOMMENDATIONS

- **All the following assessment requirements should be implemented in a planning blueprint with clear guidelines included that should be followed by assessors and decision makers.**
- **Assessments should be undertaken by independently accredited assessors (not those chosen by the developer) and the relevant agencies.**
- **The weight given to such assessments should be more than factors to consider – they should form the basis for decisions.**

- **Environmental and Species Impact assessments should be mandatory for all development and rezoning proposals.**
- **In addition to the current environmental and species impact assessments it should be mandatory that the following assessments are also carried out on all development and rezoning proposals:**

7a. CUMULATIVE IMPACT ASSESSMENT

RECOMMENDATIONS

- **Cumulative Impact Assessments should be mandatory for all rezoning and development proposals.**
- **Proposals should be considered in light of expected indirect, repetitive, continuous or delayed effects. These would include:**
 - 1. Frequent repetitive impacts such as waste, sewage and stormwater discharge.**
 - 2. Increased built density and resultant loss of native vegetation, open public space, overshadowing etc.**
 - 3. Compounding effects such as synergistic effects from upstream development on downstream natural and human communities, multiple developments in a single catchment or sewage outflows into one part of the ocean that could be swept by currents to a beach further north or south.**
 - 4. Time delays from pollutants with carcinogenic and other effects that only appear over time.**
 - 5. The effects of a development far from its source – downstream or on the atmosphere.**
 - 6. Impacts on biological systems that have a cascading effects – eg loss of keystone species.**
 - 7. Indirect impacts such as the need for secondary development arising from a primary proposal, such as new roads or hazard reduction trails or sewage infrastructure that then open up an area for yet more development .**
- **The most up to date comprehensive State of the Environment report in each council area and state agency inventories should be utilised to understand existing environmental problems. In addition what development already exists and other developments that are in the pipeline or likely to be proposed (where zoning already**

allows them to) should be taken into consideration when considering cumulative impacts.

7b. MARINE IMPACT ASSESSMENT

There is a severe lack of consideration of the impacts of coastal development on the marine environment – including connected ecosystems such as estuaries, wetlands, coastal rivers, foreshore vegetation, the intertidal zone. In fact impacts on the ocean are not even considered in coastal planning. The recent growth in aquaculture proposals is also a planning and environmental problem that has not been given sufficient thought. The health of fisheries (i.e. fish habitat, water quality etc), the community, recreationists (surfers, swimmers etc) and even the tourism industry is so closely tied to the type and level of terrestrial activity along the coast that this aspect should no longer be ignored in the coastal planning and development process..

RECOMMENDATION

- **A Marine Impact Assessment that assesses impacts of proposed coastal plans and development on the marine environment, fish habitats, ocean health, etc should be a compulsory part of coastal planning and development. It should include ecosystems closely connected to the ocean such as estuaries, coastal wetlands, lakes, foreshores and intertidal zones such as rock platforms. The SEPP should require that such an assessment is carried out.**
- **Aquaculture proposals should be deemed designated developments and receive full impact assessments (as recommended here) and close monitoring. The precautionary principle should always be used when considering aquaculture proposals.**

7c. COMPREHENSIVE AND LONG TERM SOCIAL, ECONOMIC AND HEALTH IMPACT ASSESSMENTS

Currently all development proposals are automatically regarded as beneficial for an area with “jobs and progress” cited as the reasons for approval and benefits only measured as short term and by what is good for the developer. Impacts such as the increased cost of providing infrastructure and public services – often to outlying areas, the impact on air and water quality and flow, increased unemployment from an increased population (a factor now being acknowledged by some councils eg Gosford and Wyong), and the cost of repairing the environment where damage is extensive are not considered.

RECOMMENDATIONS

Social impact Assessment

Such as the effects of increased traffic, less open space, loss of beach access, increased unemployment from an increased population in an area with low employment opportunities or where there is an over-representation of one age class of loss of tourism as a result of over development destroying an area's attractiveness.

There is a need to consider the social *needs* of an area – such as the need for low cost housing as opposed to the current trend of developer driven high cost waterfront residential mansion style estates for example, the need for services such as health and educational services etc should also be a component of planning which is currently ignored.

Economic Impact Assessment

The economy is currently only considered on a short term basis of what is good for certain developers or businesses. The provision of infrastructure, such as sewerage, waste and stormwater, the rehabilitation of natural areas impacted by development through weed invasion, soil erosion, eg, and the impact on fisheries are some of the areas that must be included in a complete long term cost-benefit analysis of any planning or development proposal.

Also considered should be values that can't be measured economically such as the value of retaining a place for future generations or for biodiversity.

Health Impact Assessment

The direct and indirect health impacts of proposals must be considered, such as impact on marine and freshwater quality, loss of open space, increased noise and air pollution, loss of filtering by natural bushland and pollution of recreational areas such as swimming areas impacted by sewage outfalls, are some examples of how development can impact on the health of a community. These are some of the health areas that must be considered in any planning or development process.

7d. ENVIRONMENT AGENCY ASSESSMENTS

Assessments by agencies such as the NPWS and DLWC are only matters decision makers have to consider so no matter how strongly the agencies recommend against a proposal that recommendation is not enough to prevent damage to the environment or community if it the decision maker is in favour of allowing the development to go ahead.

RECOMMENDATION

- **Reports and recommendations by agencies such as the NPWS, DLWC, and EPA should form the basis for decisions rather than just being matters to be considered.**

- **Decision makers should also refer to plans, policies and guidelines produced by agencies such as the NPWS’s recent Biodiversity Planning guide.**

7e. ASSESSMENT OF THE ECOLOGICAL FOOTPRINT OF PROPOSED DEVELOPMENT

RECOMMENDATION

- **Energy efficient house design, compost facilities, water reuse (incl. stormwater), use of native plants in public spaces, recycled plantation timber use and other “sustainability” issues need to be included at the planning stage for future developments in order to reduce the ecological footprint. Also to be considered are issues such as pet ownership in areas adjacent to native bushland or other natural areas .**

7f. INDEPENDENT ACCREDITATION PROCESS FOR ASSESSORS

Currently anyone can claim to be an environmental consultant and be hired by developers to do an environmental impact assessment on their proposal. Because developers hire their own assessors whose recommendations are rarely going to clash with the desires of that developer (ie no one is going to bite the hand that feeds them) such assessments are more often an endorsement for a development than a proper study of a threatened area.

RECOMMENDATION

- **There should be an independently approved list of environmental consultants with approval eg from the NPWS, EPA and other agencies. Assessors can be chosen from the list by councils with community approval to assess particular plans and developments. The developer should pay for the assessment. The list should be reviewed every year.**
- **All assessments should follow the guidelines (see above recommendation)**

8. DIRECTIONS FOR DECISION MAKERS

At the moment councils can quite legitimately make “development at-all-cost” decisions provided they at least “consider” environmental and other impacts before their decisions.

RECOMMENDATIONS

- **There is a need to give clear direction and guidelines through the planning blueprint to decision makers with regard to the weight they place on certain factors. For**

example more weight is currently given to short term economic factors than biodiversity whereas the latter should be a fundamental concern and given more weight than the former in order to achieve sustainability. Factors that favour the community and environment over individual self interest should always receive more weight.

- **Decision makers should no longer just “consider” environmental and community factors but should be made to carry out comprehensive assessments of factors, including those listed above and use them to form the basis of their decisions.**

9. THE PRECAUTIONARY PRINCIPLE

The current tendency is for development to be given preference over concerns for the natural environment where it cannot be shown inconclusively that the environment will be impacted. The precautionary principle was one of the tenets of ecologically sustainable development (an object of the EP&A Act) because it was recognised that complete scientific proof of impact is impossible and should therefore not be used as an excuse to allow any development or exploitation of the natural environment.

RECOMMENDATION

The precautionary principle – ie where it is suspected unacceptable impacts on the natural environment would occur such as loss of threatened species etc from a development – should be applied at all times. In other words – where there is doubt, the development or rezoning should not go ahead.

10. COMMUNITY , ENVIRONMENT AGENCY AND MARINE STAKEHOLDER COLLABORATION IN THE PLANNING PROCESS

10a. COMMUNITY COLLABORATION

Collectively, the people that make up a community represent a wealth of social and environmental knowledge. They are the ones that will have to live with any negative impacts from inappropriate plans and developments and often have the foresight and intense knowledge of an area to understand what those impacts could be before they occur.

The current system is highly undemocratic because the impacts of a proposal that will effect many are ignored in favour of one (the developer). Most people feel that they have little control over the shape that their local community will take under this system, especially when faced with a continuous stream of development applications and subsequent approvals by their councils.

RECOMMENDATIONS

Rather than tokenistic opportunities to put in submissions or attend meetings, there should be far more community input and control over planning and development in each council area. The following are some ways in which this can be achieved:

- The aforementioned coastal planning blueprint should be drawn up with as broad community input as is possible. The development industry should be given no more weight than any other person in the community.**
- All committees involved in planning and development decisions should be truly representative of the community, including representatives from all local community, environment and resident groups, as well as “stakeholders” that represent the natural environment, future generations, the broader community and so forth. This should provide a far more informed and balanced approach to planning than the current development driven one. Developers should be just one voice in many on such committees. And majority opinion should prevail over the opinion of one or two developers (which is the current situation).**
- Funding and resources should be provided for the community to participate fully on such committees.**
- Components that can’t be measured such as community values and concerns for the natural and built environment and ethical considerations such as the good of the broader community and future generations as opposed to profits or desires of one or a few individuals should also be included in considerations**
- Provision should be made for funding and other resources to be provided at council elections to enable more councillors representative of the broader community and natural environment to be elected – rather than those representing developer interests only**
- All decisions should be open to debate and input . All development proposals should be debated in open council meetings. . All committees that make planning decisions should be open to the public. There should be no delegation of decision making on rezoning and development proposals to staff**
- There should be exhibition of and availability of all plans and DA’s for anyone who requests a copy in the format they request. Availability of such documents should be made well before committee or council meetings held to consider such matters.**
- Future generations should also be considered as part of the community so each development or rezoning proposal should be looked at in light of how it will help shape or impact on the local area in the future not just how it will affect current citizens.**

10b. COLLABORATION WITH ENVIRONMENT AGENCIES

RECOMMENDATION

Environment agencies such as the NPWS and DLWC should be included in the planning process to a far greater degree than is currently the case to give expert advice guidance and recommendations on environmental matters such as stormwater, threatened species, conservation value of land etc. This advice should form a fundamental part of the planning process as well as being a compulsory factor in decision making.

10c. COLLABORATION WITH MARINE STAKEHOLDERS

RECOMMENDATIONS

- The planning blueprint and all future rezoning and development proposals should include input from marine users and agencies such as NSW Fisheries . Surfers, swimmers, tourist ventures reliant on healthy oceans (eg diving and whale watching ventures), local commercial and recreational fishers, and others concerned and connected with the ocean and estuaries should be able to contribute to the coastal planning process via planning committees and through collaboration on the coastal planning blueprint.
- Recommendations, reports and advice should be adopted by decision makers when considering development and rezoning proposals.

11. ILLEGAL ACTIVITY

11a. BANNING OF LAND CLEARING AND UNDERSCRUBBING

There are extensive problems with illegal and damaging clearing and underscrubbing occurring along the coast prior to development applications or rezoning proposals being approved or even submitted.

RECOMMENDATIONS

- The SEPP should ban land clearing and underscrubbing along the coast unless it is approved under the conditions of a development approval.
- Any illegal clearing undertaken prior to development or subdivision approval should automatically rule out the right to submit a development application and incur a heavy fine or jail term

11b. BREACH OF DEVELOPMENT CONTROL PLANS AND APPROVALS CONDITIONS

RECOMMENDATIONS

- **Any breach of development control plan guidelines or approvals conditions should result in prosecution and the requirement that the development is adjusted to fit these requirements even if it means demolition and starting again**
- **Continuous breaches should result in cancellation of development approval.**

12. DEVELOPER USE OF FALSE OR MISLEADING ADVERTISING AND PR

The use of PR and other means to “sell” a development to the community by any developer wishing to smooth the approvals path frequently results in use of false or misleading advertising and PR tactics. For example the words “green” or “eco” or “environmentally friendly” are used for most proposals now, regardless of their environmental impact simply because one component could be considered “green” such as solar power hot water!

RECOMMENDATION

- **There should be clear guidelines, drawn up by environmental groups and agencies as to what constitutes an “eco” or “green” development. Location, size, cumulative and many other impacts should be considered. These guidelines should be used to independently assess and then reject or approve developments or proposals wanting to use such terms.**
- **All developers should be banned from using such terms unless they comply with the guidelines**

13. REVIEW OF ZONING, ENVIRONMENTAL AND DEVELOPMENT CONTROL PLANS

RECOMMENDATIONS

- **Once the coastal planning blueprint SEPP has been completed, all existing LEPs, DCPs and Strategies should be assessed against the blueprint and revised where necessary.**
- **A rezoning moratorium needs to be in place until the planning blueprint and the Coastal Assessment has been completed.**

- **Major individual development proposals should be assessed against the criteria that will be used to assess planning and development for each council area under the blueprint until it is completed.**

14. MONITORING AND AUDITING OF COUNCIL PLANNING AND DEVELOPMENT PROCESSES AND CONTROLS AND COMPLIANCE WITH THE BLUEPRINT.

RECOMMENDATIONS

- **Each year every council on the coast should submit a report that is publicly available on planning and development within their boundaries. The report should summarize all major development proposals and approvals for the previous year, show how those developments will lead to better environmental outcomes of the coast and/or how they could be impacting on the coast and mitigation measures. It should also include a summary of community involvement in the planning process and what will be done to improve environmental and community outcomes in future.**
- **The State of the Environment report should include and assess this report.**

Jeff Angel
Director

15 August, 2001