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Further Reflections on the Queensland Coastal Plan

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In a paper presented at the UDIA Qld Coastal Plan briefing in July 2011, the head of HopgoodGanim's Planning and Environment practice, David Nicholls, considered how the Coastal Plan will affect decision-making at a number of levels across government.

The Coastal Plan has not yet commenced due to ongoing consultations between the State government and stakeholders. A working group of stakeholders has been formed to review the current, uncommenced version of the Plan, and it seems likely that the final version will be amended.

Here, David shares some reflections on the planning and economic issues raised by the State Planning Policy for Coastal Protection (SPPCP). The [earlier paper](#) should be read first to appreciate the statutory context in which the SPPCP will be applied.

Reflections on the State Planning Policy for Coastal Protection

Certain development is currently **not** caught by the SPPCP at all. Section B.9 states that the SPPCP does not apply to:

- building work that is assessable only against the *Building Act 1975*; or
- operational work - that is, clearing an area of general or high ecological significance to the extent necessary for a domestic housing activity.

The glossary defines the term 'domestic housing activity' by referencing the *Sustainable Planning Regulation 2009*, which defines the term to mean "the construction or use of a single residence on a lot and any reasonably associated building or structure".

So what development is **not** exempted from the operation of the SPPCP? Material Change of Use for a domestic housing activity on an existing lot is currently not exempted. Within developed urban areas, planning schemes may encourage increased density in order to take advantage of existing infrastructure and services by allowing lots to be split into smaller ones, or for single residences to be replaced with duplexes. All rights afforded by planning schemes to undertake such development are affected by the SPPCP. Also, intensification of commercial uses in areas such as coastal shopping centres, including by incorporating mixed uses in those centres, remains affected by the SPPCP, even though it may be encouraged by planning schemes. It is therefore necessary to read the relevant provisions of the SPPCP to see whether, and how, development of that type is regulated.

Policy B.7 deals with development within the coastal management district (CMD), and B.8 deals with development within the coastal zone, but outside the CMD. Each provision explains the development in those areas to which the SPPCP applies. The overall exemptions referred to in the preceding paragraph apply despite these two provisions.

It is important to appreciate that the new extended erosion prone area (EPA) based on projected sea level rise has not necessarily been included in the CMD. In many instances where the new EPA currently extends past property boundaries in developed beach side suburbs, the CMD has not been correspondingly extended. In this regard, I refer to my earlier paper concerning the ease with which the CMD may, in the future, be amended under the recent amendments to the Coastal Act. A consequence of those amendments is that it will now be much easier to declare such areas as within the CMD. Only a regulation is required. The preliminary actions/considerations that were previously imposed on the Minister have been repealed.

When reading the SPPCP, it is very important to have a good grasp on the defined terms relating to 'coastal hazards' because they govern whether particular development is regulated. In this regard, it should be remembered that:

- the term 'Coastal Hazard Area' means an 'erosion prone area' or a 'storm tide inundation area';
- the term 'erosion prone area' is defined under the Coastal Act and is created by being declared through the regulatory mapping;

- the 'Storm Tide Inundation Area' (STIA) is an area determined to be inundated by defined 'Storm Tide Event' by applying the methodology in Annex 3 to the policy. The regulatory mapping identifies these areas; and
- there is a third category of coastal hazard defined by the Coastal Act. It is "the permanent inundation of land due to a sea level rise of 0.8 metres by 2100" (relative to 1990).

These three defined coastal hazard areas often overlap on the regulatory maps, but sometimes they are separated. Whether they coincide will depend on the relevant topography. In coastal areas where the height of the dunal system increases to the west of the coast, there may not be any storm tide or permanent inundation effects on private property or infrastructure, but the EPA may have been extended well into and beyond the frontal dunes. In flatter coastal areas and flood plains, the permanent and storm tide inundation areas will usually overlap with and extend beyond the EPA.

Policy 2.2.1 states broad restrictions on the types of development that could happen in the 'Coastal Hazard Area', recalling that this term is defined as encompassing both the STIA and the EPA. It does this by stating the forms of development in a coastal hazard area that "complies with this policy".

Policy 2.3.1 requires other forms of permanent development to be located outside an EPA. Therefore permanent development within the EPA is precluded unless it "complies" under Policy 2.2.1, even if the land has not been included in a CMD. That policy prevails over Policies 2.3 to 2.5.

Terms in the SPPCP have the same meaning as those used in the Sustainable Planning Act. Consequently, unless the context clearly requires otherwise, where the term 'development' is used, it means all of the components of 'development' according to the definition of that term in the Sustainable Planning Act, including reconfiguration of a lot (ROL).

Bearing in mind that the term 'High Coastal Hazard Area' only picks up the part of the EPA that is within the CMD, some confusion arises due to the inconsistency between Policy 2.3.1 on the one hand, and Policies 2.2.1 and 2.3.2 to 2.3.5 on the other.

Policy B.8 deals with 'development' to which to SPP applies "within the coastal zone but outside the CMD". It states that the SPP applies to development that includes:

- "(b) Reconfiguring a lot within the **Coastal Hazard Area** that would result in an increase in the number of lots and an increase in the number of residential dwellings or premises." (Emphasis added).

Therefore, the SPPCP applies to ROL within the new EPA or the STIA. What is the form of the relevant regulatory control? Policy 2.2.1 states the development that may occur in a Coastal Hazard Area. The only aspect of Policy 2.2.1 capable of covering ROL seems to be 2.2.1(d) which is as follows:

- "(d) Redevelopment that does not increase the risk to people and property from exposure to adverse coastal hazard impacts."

The term "Redevelopment" is defined as follows:

"Redevelopment: **Development** on an already developed site including infill development. Redevelopment includes, but is not limited to, the expansion of a building footprint or addition of a structure, reconstruction or remodelling an exterior, demolition of existing development and replacement with an alternative **structural development, whether or not a reconfiguration of lot is involved** or the establishment of an alternative type of use and associated land disturbing activities."

Accordingly, the possibility of splitting, for example, a 900 square metre lot into two 450 square metre lots within the EPA, but outside the CMD, comes down to whether it would increase the risk referred to in Policy 2.2.1(d).

The only other reference to ROL in Policy 2.3 is found in Policy 2.3.6, which only applies to reconfiguration **within the CMD**. In that case, any land in the EPA must be surrendered unless there is substantial development seaward of the subject land.

As previously mentioned, the new regulatory mapping places thousands of allotments in seaside suburbs and villages in the EPA, based on projected accelerated dunal erosion due to sea level rise. The extent of the new EPA varies depending on dunal topography. To use an example from an area with which I am familiar, at Peregrin Beach on the Sunshine Coast, residential lots and roads are separated from the beach by a band of bushland varying between 200 and 400 metres wide. This is a common feature along many of the Sunshine Coast beaches. The dunes at Peregrin, for example, rise away from the beach behind the bushland reserve to varying degrees. The EPA extends through the bushland reserve and into the first and sometimes the second line of residential lots, depending on how steeply the dunes rise. However, the CMD stops at the first road or property boundary.

Currently the SPPCP appears to prevent a single dwelling being built or replaced on those residential lots. It clearly puts up a barrier to even moderate increases in infill densities, because the clear intent of the SPPCP is to not allow **any** increase in the number of people or the value of property exposed to coastal hazards.

The 'High Coastal Hazard Area', by definition, also includes land that is projected to be permanently inundated due to a 0.8 metre sea level rise relative to 1990 levels, as well as the part of the storm tide inundation area projected to be temporarily inundated to a depth of a metre or more in a defined storm tide event. Within these areas, the restrictions in Policy 2.5 apply regardless of whether the land is in a CMD.

It is understood that the extended EPA does not coincide with the CMD, because it has been assumed that future generations will choose to defend existing developed areas, usually by armouring the coastline at the point where infrastructure or property boundaries would be subject to erosion.

The minimal exemptions from the SPPCP referred to above will operate with respect to aspects of development assessment. The effect of the SPPCP on regional and local planning instruments and the impacts this will have on the future development prospects for affected land is a separate matter with the potential to affect property rights, without compensation. How will the exemptions apply in that respect?

The Land Use Planning Principle and the individual policies beneath it contain some very strong statements about how planning instruments should be drafted to reflect the SPPCP. The general exemptions from the SPPCP referred to earlier will apply with respect to Policies 1.1 to 1.11, with the consequence that local governments should not amend their schemes in a way which runs counter to the exemptions. The reason for this is that the SPPCP prevails over a local planning instrument to the extent of any inconsistency pursuant to Section 43 of the Sustainable Planning Act, and local governments are required to amend or make their planning schemes in a way which reflects State Planning Policies.

Despite this, future development potential of the kind explained earlier in this paper is clearly within the ambit of the policies, which planning schemes will be required to reflect. This seems likely to have detrimental consequences if planning schemes ultimately reflect the SPPCP as it is presently drafted. For example, they will be required to place restrictions on infill opportunities by requiring redevelopment to be at single dwelling rates rather than duplexes or multiple dwellings, because Policy 1.4 does not contain any equivalent to Policy 2.2.1(d), which allows redevelopment that does not increase risks. This runs counter to the South East Queensland Regional Plan, which calls for increased infill densities. It will also place restrictions on the ability of commercial centres to expand, even moderately, to cater for community needs. It may mean that planning schemes will require new facilities located further away from the coast, with potential for loss of vitality and stagnation of existing centres, and consequential loss of convenience for local residents. There is some potential here for disruption to centres' hierarchies under planning schemes. This does not seem to be a sensible policy if it is assumed that future generations will opt to defend existing urban areas.

Local governments may seek to compensate for the lost capacity for residential density and commercial uses by increasing densities and use rights to accommodate the necessary growth outside the EPA. Alternatively, they may seek to address this issue through an 'adaption strategy' - which they are now required to include in their planning schemes pursuant to the SPPCP - by proposing future defensive measures seaward of urban infrastructure, residential areas and centres. They are, however, required by the SPPCP to examine and state the cost of such defensive measures and explain how the measures will be funded and over what period the work will be carried out. Such measures are likely to be costly. The SPPCP seeks to force local governments to commit to those forward strategies over the next three to five years.

I doubt that we have scratched the surface regarding the potential complexities the SPPCP will create for the drafters of the next generation of planning schemes under the Sustainable Planning Act. The new generation of planning schemes must be drafted **before** the adaption strategies have been determined. There is no doubt that property owners, whether

they are developers or private citizens, whose land is now mapped under the policy, will be detrimentally affected in one way or another, because redevelopment potential for infill is diminished. Simultaneously the extent of land that is potentially suitable for greenfield development will be reduced. Is the consequence of this likely to be a de facto population cap?

The responsibility for, and the future costs associated with, implementing the SPPCP has been passed through to local governments by the State. The economic impact of the SPPCP's implementation has not been estimated and the State Government has not prepared a regulatory impact statement. Given that the policy is aimed at impacts that are predicted to arise in 50 to 100 years time, it is reasonable to question why time was not taken to analyse the likely consequences of the Policy. Surely it would be preferable to work through all of the planning and economic consequences of the Policy before implementing it? Why has the important step of devising adaption strategies been left to be worked out by local governments after commencement of the SPPCP? Why not first obtain some clarity as to the form of such Planning Scheme provisions and of their likely practical and financial consequences?

It remains to be seen whether the SPPCP will reduce the exposure of local governments to civil liability for damages for approving development that is subsequently inundated as a consequence of sea level rise. One can only speculate as to the likelihood of such liability arising. There seems to be a strong element of risk assumption in people acquiring lower lying coastal land in the period since the relationship between climate change and sea level rise has become widely publicised and referenced in statutory instruments and official government sponsored documents.

If one of the drivers behind the SPPCP was fear of future liability, one must question whether the policy approach actually resolves that concern. However, the immediate and medium-term negative economic consequences of the policy are very real. Ultimately, those additional economic costs must be carried by the community. Loss of property rights and reduced asset value will fall on affected property owners, without compensation. The costs of adaptive infrastructure will in the most part have to be paid for by local governments. How will this be financed? The interesting question is whether such costs will be spread through the community through the rating system or other broadly based revenue streams, or whether local governments will be forced to use the infrastructure charging regime under the Sustainable Planning Act to pay for coastal defensive infrastructure. It is impossible to conceive how the infrastructure charging system, which is presently struggling to remain sustainable, could cope with another 'network' category, nor how it would be fair and equitable to focus the burden of those costs on the purchasers of new development products. This is a question the State has required local governments to answer in preparing their adaption strategies. Why is this the sole responsibility of local governments?

Demographic trends about where people live and work in Queensland clearly show that a significant proportion of the population have settled in coastal areas. Further, there is a very clear societal preference to live, work and recreate in coastal areas. This demographic trend is likely to be particularly pronounced as the 'baby boomers' age and seek to retire to coastal areas. Likely population increases over the same period as the predicted sea level increases further accentuate this phenomenon. The SPPCP, in combination with other related restrictions on land use such as the South East Queensland Regional Plan, is akin to putting a cork in a bottle of water and then heating it. There will be adverse social and economic consequences to such a planning approach unless steps are taken now to plan to relieve the inevitable built up of pressure. It appears that in preparing the SPPCP, nothing has been done to quantify the extent of greenfield and infill development opportunities that will be lost, nor how this can be compensated so as to maintain an appropriate land supply to meet future needs. Without compensatory land supply housing, un-affordability will be exacerbated.

Lastly, a further comment must be made about the disconnection between the extended EPA and the CMD. It seems almost counter-intuitive that land which is thought to be truly at risk of erosion is not in the CMD. It must be of concern to owners of property now mapped as within the EPA that the potential for a regulation to be passed also including their land in the CMD hangs over them like the damoclean sword. What checks and balances are in place to guide the exercise of such regulation-making power? What policy considerations will influence any such changes to the CMD? Will affected land owners be consulted? These are reasonable questions the policy makers should answer.

The SPPCP raises a number of complex interrelated planning and economic issues in the context of seeking to combat a long-term, uncertain, future risk. Unfortunately, to date, these issues do not appear to have been considered.

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