



PLAN MAKING

Schedule 1 ss55-60

1. The process for Making Local Environmental Plans

Background

The original Act had detailed provisions for the exhibition of planning studies from which planning proposals were to be based. Since that time, numerous amendments have been made and what is required to support a new Local Environmental Plan (LEP) is now confused and unclear.

It has also been suggested that the 'one process fits all' is not appropriate and that the process should more closely reflect the nature of the proposal. Further, it is felt that the proponent should have a clearer idea as to whether the approval of the Minister is likely to be forthcoming before going to the expense of detailed studies.

What the amendment does

The legislation creates a new set of procedures for studies and consultation, hearing and drafting of LEPs.

The legislation also provides for a 'gateway' process whereby some detail of the proposal is given to the Director General (for a determination by the Minister) of how the rezoning should proceed, including any further studies and proposed consultation processes.

Assessment

Efficiency and effectiveness

This process is potentially more efficient and effective in that consultation processes should be able to be tailored to the nature of the rezoning and its potential impact. This could save landowners and councils money and time in terms of the number or amount of studies and consultation.

Rezoning is a two-step process involving two ministerial level considerations and decisions. This could finish up being more complex but is in place of the existing process of getting a section 65 certificate from the Director General.

Probity

The Minister can approve a rezoning *before* there is any formal community consultation. This may be viewed as a 'done deal' by the time it is presented to the community. Presumably preliminary work could be accessed via the provisions of the *Freedom of Information Act*.

Recommendation

Supported in principle however there is a need to see further details of the proposal.

2. Relevant Planning Authority

Schedule 1, s54

Background

Regional Environmental Plans (REPs)

REPs were used by the Director General to rezone areas of special interest, although they were originally conceived as general area-wide policy plans to be detailed in Local Environmental Plans

(LEPs) initiated by councils. With REPs being removed from the Act, there is a need for a power for the State to initiate a LEP.

Spot Rezoning

One of the main ways to make money out of development is to increase the development potential of a site. Obtaining a spot rezoning can be used to achieve this objective, and the power to initiate a rezoning therefore is an important power.

The intention of the original Act was that only a council could initiate a spot (local) rezoning. Unfortunately the lack of transparency has meant that it has been a source of undue influence in Local Government.

Early on Local Government's monopoly over spot rezonings was undermined by a SEPP that rezoned the Castlereagh Waste Depot. There have been other examples of SEPP spot rezonings. Despite the use of SEPPs the push to enable other than council initiated spot rezonings has gone on. The major change came with Part 3A. Part 3A is a spot rezoning power because it gives the Minister the power to approve development regardless of existing planning controls and, indeed, a number of other environmental laws.

What the amendment does

The proposed amendment of s54 will widen the list of those who can initiate a LEP to include the Director General or *any other body identified* by Regulation:

- where the Minister thinks it is of state or regional environmental planning significance;
- to tidy up 3A decisions;
- to implement changes to the standard instrument;
- where the PAC or a JRPP recommends;
- where council failed to comply with obligations at all or *in a satisfactory manner*.

Assessment

Efficiency and effectiveness

The proposed amendment fails to satisfy the objectives of efficiency or effectiveness. The amendment is poorly drafted and confuses different sets of powers. It effectively gives the Minister or the Director General the power to spot rezone as well as prepare area wide LEPs and development control plans (DCPs).

It would be simpler to have just one way of making new planning control documents instead of keeping different processes for SEPPs, LEPs and DCPs, largely distinguished by the authority that can initiate or change the controls. All control documents should be titled the same, regardless of who can initiate changes. Over time it would then be possible to move to one integrated document for each parcel of land.

Probity

These provisions effectively give the Director General of Planning and other bodies (yet to be detailed in the regulation), with Ministerial support, the right to initiate amendments to LEPs.

The proposed amendment is a probity risk. It widens the range of bodies and processes by which a spot rezoning can be initiated thus increasing, without any improvement in transparency, the probity risks of the current process involving local government.

Recommendation

The Associations believe these provisions are:

- Contrary to the original intent of the Act (to limit spot rezoning to local government initiatives);
- Can be achieved through a SEPP or the use of Part 3A; and
- Lack probity.

If these provisions are to be included in the legislation, there should be a requirement for a compulsory panel hearing as part of the process.

3. State Environmental Planning Policies

Part 3 Division 2

Background

The original scheme of the Act was that general State policies (SEPPs) would set the overall objectives and directions for State planning, regional plans (REPs) would be broad cadastral policy plans and Local Environmental Plans (LEPs) would be detailed land use controls. Only Local Government would have the right to initiate LEPs.

SEPPs have in fact been used for many different purposes including spot rezonings as well as what have been effectively regulations or amendments to the Act itself. The role of Parliament has been severely downgraded via this process.

Further, because SEPPs were supposed to be broad policy statements without any direct effect on property values, SEPPs could be made without any requirements for public participation. There have been many examples of overnight SEPPs that are not broad policy statements.

What the amendment does

Makes it clear that a SEPP can be about any matter of State or regional environmental planning significance (s37). Includes a section (38) that allows the Minister, if he wants to, to publicise a draft SEPP and seek submissions.

Assessment

Efficiency and effectiveness

No change to current legislation except the Minister can make regional plans without any requirement for exhibition or taking submissions.

Probity

Previously, REPs had requirements for publicity and submissions. Now the Minister can arrange for a SEPP to deal with a regionally significant matter without having to give any prior exhibition. However this is the current situation with SEPPs.

Recommendation

The legislation should include a provision that mandates that draft SEPPs *have* to be publicised and submissions received. If objections cannot be satisfied there should be a compulsory hearing by a panel (the situation in Victoria).