COMMENT ON DRAFT QUEENSLAND COASTAL PLAN

Paul Cohen : 8/27/3: #2358496

RECOMMENDATION:

That Council:

1. note the report on the Draft Queensland Coastal Plan; and

2. make a submission to the State Government on the Draft Queensland Coastal Plan on the grounds set out in Attachment 1.

INTRODUCTION:

The State Government recently released the Draft Queensland Coastal Plan for public consultation. The Coastal Plan aims to:

- maintain physical coastal processes;
- conserve and protect coastal resources;
- continue public awareness and appreciation of coastal resources;
- retain and enhance public access to the coast;
- protect life and property from coastal hazards (such as coastal erosion and storm tide inundation);
- identify opportunities for suitably located maritime development; and
- ensure ecologically sustainable development of the coastal zone.

The Draft Queensland Coastal Plan consists of two components; State Policy, Coastal Management and State Planning Policy, Coastal Protection. These two documents are supported by three Guidelines to assist in interpretation and implementation:

- State Policy Guideline, Coastal Management;
- Guidelines Coastal Hazard; and
- State Planning Policy Guideline, Coastal Protection.
This report provides a summary of the draft Queensland Coastal Plan content and outlines those matters that Cairns Regional Council should make a submission to the State Government about.

**BACKGROUND:**

As mentioned, the State Government recently released the Draft Queensland Coastal Plan for public consultation. The Queensland Coastal Plan will replace the numerous Regional Coastal Management Plans with a single consistent planning and management framework. This is supported by guidelines which also explain, provide interpretation and assist implementation of the framework across all of Queensland’s Coastal zones.

**Wet Tropical Coast Regional Coastal Management Plan**

At present the State Coastal Plan is given regional direction for implementation through the Wet Tropical Coast Regional Coastal Management Plan (December 2003). The Regional Coastal Plan is the State Policy from which Cairns Regional Council seeks guidance in relation to decisions made about development and activities in its coastal zone. In comparison to the Draft Coastal Plan, it is more generic in regulating development, but does provide very similar consideration to coastal management operations and plans, such as shoreline erosion management plans. Its use is primarily as a State Planning Policy to which development in the Coastal Management District and coastal localities is to comply with.

Coastal setback lines, Coastal Management Districts and scenic quality are the main elements to which an assessment of development is substantially afforded under the Regional Coastal Management Plan. It also provides policy direction on activities such as tourism, dredging, fishing, extractive industry, among the many. While these activities may have implications for coastal protection and coastal management, the Regional Coastal Plan generally provides little in the way of measurable assessment criteria to which developers and councils can demonstrate compliance performance.

When the Queensland Coastal Plan is adopted, the Wet Tropical Coast Regional Coastal Management Plan will become superseded.

**Draft Queensland Coastal Plan**

A review of the State Coastal Management Plan found, among many things, that it lacked policy integration between state and local governments and between government agencies. Also, it had not been successfully integrated into local government planning schemes rendering it ineffective in many instances. Further, inadequacies were found in the State Coastal Plan’s ability to guide and streamline development assessment. In particular, the following issues were found with the document in relation to development:
● the coastal plan is difficult to interpret;
● there are inconsistencies between government agencies application of the policy;
● there are contradictions in policy;
● assessment procedures are overly restrictive (particularly for the provision of essential maritime services and infrastructure); and
● there are no clear and transparent risk criteria for assessment officers to apply in the approvals process.

In addressing these concerns, two distinct policy documents were produced along with supporting guidelines. One deals with management of coastal resources, the other with interest in protecting coastal resources. Both documents relate to processes and development within the coastal zone, which is defined as 5km landward of the shoreline or 10 metres AHD whichever is further from the shoreline.

**Draft State Policy Coastal Management**

The purpose of the draft management policy is to provide direction and guidance on managing coastal land in Queensland in line with the objectives of the Coastal Act. The policy can apply to activities, decisions and works that are not assessable development under the planning legislation and therefore not subject to the State Planning Policy Coastal Protection. The Coastal Management Policy applies to land in the coastal zone.

The Coastal Management Policy does not mandate the immediate preparation of new local government policies and tools, but can be implemented through the following:

● Management and rehabilitation strategies, programs and regional plans.
● Tools/policies developed by local government, natural resource management bodies, community groups or State government entities.
● Local laws prepared by local government in accordance with the *Local Government Act 1993*.
● Funding grants and subsidy schemes.
● Local government corporate plans.
● Conditioned leases and permits.
● Land covenants.
● Codes of practice.
● Infrastructure plans.
● Environmental offset requirements and agreements.
The Coastal Management Policy outcomes ensure coastal resources are protected and maintained by:

a) Preparing management plans (or similar tools) to direct strategic, efficient and effective management practices.

b) Reflecting potential climate change impacts in decision making about the use and management of coastal resources.

c) Providing infrastructure and services to facilitate effective management of coastal resources.

d) Regulating the use of coastal resources to allow public benefits from those resources to be realised, while restricting uses that result in a loss of associated values.

e) Implementing planned maintenance, protection and rehabilitation activities.

f) Improving collaborative management efforts, knowledge sharing, community awareness and increased participation in coastal management activities.

Draft State Planning Policy Coastal Protection

The SPP provides for the protection of the coastal zone in urban and non-urban areas. The Policy outcomes seek to ensure new development does not cause risk to public safety, private property and allows for natural coastal processes. Coastal hazards and the impacts of climate change are the two main points of focus. Together they are used to determine the storm tide inundation level and provide correlating elements (time and asset life) to address the impacts of climate change over time in new development.

The SPP must be implemented through the development assessment process under the planning legislation and, more importantly, must be integrated into a planning scheme. Council must consider implementation of the SPP for any amendment that is considered not to be a minor amendment and when implementing the Far North Queensland Regional Plan 2009-2031.

Mapping of the coastal zone and a development assessment code are provided within the SPP.

COMMENT:

A detailed submission has been prepared on the draft Queensland Coastal Plan and is attached to this report. The issues and suggested solutions raised in the submission are summarised below.

- Clarify the definition of development commitment to give certainty about the role of assessable development in relation to “explicitly anticipated” and the “note” about what is considered not a development commitment.

- Define “Habitable Rooms” as per the Building Code of Australia.
● Split the development assessment code into “infrastructure, maritime and protection works” and “other assessable development”.

● Ensure drafting of the development assessment code does not provide specific outcomes that refer to other specific outcomes - they should be “stand alone” criteria/statements to which development can achieve compliance.

● Ensure the SPP and the development assessment code uses the same terminology that is to be applied in planning schemes so there is consistency between state and local government planning documents, as is the purpose of the draft QPlan.

● Use the terms “moderate hazard zone” instead of “low hazard zone”.

● DERM provides the mapping data and layers to local governments at no cost to ensure effective implementation.

CONSIDERATIONS:

Corporate and Operational Plans:

The Draft Queensland Coastal Plan is not a Council policy. However, it will have implications for carrying out matters to advance the purpose of the Corporate Plan. In particular, the following Objectives of the Corporate Plan will relate to the matters that coincide with the Coastal Plan:

1.1 Deliver improved management of the region’s natural resources and biological diversity for sustainability and ecosystem health.

1.2 Achieve greater recognition of the natural environment as an integral part of the region’s identity and fundamental to quality of life.

1.3 Provide strong community leadership through the adoption, maintenance and promotion of coordinated environmental frameworks with stakeholders.

1.4 Further improve the treatment, recycling and disposal of household and commercial waste.

1.7 Deliver more environmentally sustainable Council operations and facilities.

1.9 Implement relevant legislation and local laws.

3.1 Implement an integrated approach to planning by Council and stakeholders.

3.2 Deliver integrated provision of physical and social infrastructure in existing and future parts of the region.

3.5 Plan for the impacts of climate change, including mitigation and adaptation measures.

4.4 Deliver effective long-term maintenance and renewal of existing infrastructure and community assets.
Statutory:

When adopted the Queensland Coastal Plan will be a statutory instrument. It will inform planning scheme amendments or development and will inform Council’s considerations for coastal protection and operational matters. The Queensland Coastal Plan is prepared under the Coastal Protection and Management Act 1995 (the Coastal Act). It has application under the Coastal Act, Integrated Planning Act 1997, Land Act 1994 and Nature Conservation Act 1992.

Policy:

The Draft Queensland Coastal Plan is a draft State Policy. When adopted, the Coastal Plan will be a consideration when preparing a Local Government Coastal Management Plan or when making or amending a planning scheme.

Financial and Risk:

There is no risk or financial consideration for this matter at this stage. There will be a cost implication when the SPP needs to be included in the planning scheme as part of a major amendment or as part of the preparation of a new scheme. Council has requested that DERM provide the mapping data and layers to local governments at no cost to ensure effective implementation.

Sustainability:

The objective of the Draft Queensland Coastal Plan is to ensure protection and management of Queensland’s coastal zone occurs and is sustainable in all principles – economic, social and environmental.

CONSULTATION:

The Draft Queensland Coastal Plan is a State Government policy proposal. It is out for public consultation and comment.

This report has been developed with comment from Infrastructure Management in conjunction with Planning Strategies.

OPTIONS:

Council has three options in relation to this matter.


2. Make a submission to the State Government on the Draft Queensland Coastal Plan on alternative or additional grounds to that set out in Attachment 1.

CONCLUSION:

The draft Queensland Coastal Plan contains a series of documents which advance the purpose of the Coastal Protection and Management Act 1995 and the planning legislation. While the draft Coastal Management Policy is considered to be appropriately drafted, the complementary draft State Planning Policy Coastal Protection requires refinement. It is recommended that Council makes a submission to the State Government on the Draft Queensland Coastal Plan on the grounds set out in Attachment 1.

ATTACHMENTS:

Attachment 1 - Submission to State Government on Queensland Coastal Plan


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Attachment 1 - Submission to State Government on Queensland Coastal Plan

Introduction

It is appreciated that the standard submission form provides a consistent way of collecting comments and submission content. However, given that Cairns Regional Council is an organisation that values all aspects of coastal management and protection, the qualitative survey opinions are not completed in this submission. Notwithstanding, comments and suggested improvements are given in the format provided by the form.

Part 1 – General Structure and content of the draft Queensland Coastal Plan

The structure of the draft Queensland Coastal Plan is considered to be appropriate for implementation. Interpretation of the draft Coastal Management Policy and the draft Coastal Protection State Planning Policy is given clear guidance by its supporting guidelines and will make implementation an achievable outcome.

Part 2 – Policy topics covered

No comment in relation to the Policy topics covered by the draft Queensland Coastal Plan.

Part 3 – Draft State Policy Coastal Management

The draft State Coastal Management Policy is considered to provide a suitable framework for preparing and implementing coastal management plans. Cairns Regional Council presently uses tools and methods provided by the Coastal Management Policy and its supporting guidelines.

Part 4 – Draft State Planning Policy Coastal Protection

Development Commitment

The definition of Development Commitment is vague and is of significant concern to development assessment officers and infrastructure managers. The definition does not provide the clarity necessary to give local governments’ confidence that historic land uses with correlating urban zones in planning schemes are sufficient grounds to be considered a development commitment.

In particular concern is raised about part b) and the Note for the definition of Development Commitment, which respectively state:

b) development, other than private marine access structures or coastal protection works, that is:
   i) consistent with a relevant statutory regional plan or any applicable State Planning Regulatory Provision; and
   ii) explicitly anticipated by and consistent with the specific relevant zone (or equivalent), all applicable codes, and any other requirements of the relevant planning scheme; or
AND

Note: A development commitment does not include circumstances where the regional plan or planning scheme makes the principle of the use subject to further planning or environmental assessment.

Of concern for part b) is that most local government planning schemes, including the CairnsPlan and the Planning Scheme for the Douglas Shire 2006, make a substantial effort to ensure development is assessable so that local governments can ensure satisfactory outcomes are achieved in constrained or areas dependent on particular built form elements (such as centres and medium and high density residential areas). The fact that a zone exists and has a particular purpose has no bearing on what is considered consistent with a zone or planning area in an outcomes/performance based planning system. A zone may anticipate a predominant form of development but it does not mean that assessment of development will not reveal an alternative way of meeting the code outcomes and performance. The term “explicitly anticipated” alludes to the fact that no other acceptable measure/outcome can be considered under a code.

The Note which considers a development commitment not to include circumstances where a planning instrument makes (the principle of) development subject to further planning or environmental assessment can be interpreted as being applicable to any form of assessable development. In any instance where a constraint, environmental or built form related assessment requires a demonstration of compliance, it could be considered to be subject to further environmental or planning assessment and would therefore not be a development commitment under this definition.

Part b) and the Note, when considered together could be interpreted as meaning that no assessable development is a development commitment.

Habitable Rooms

The draft SPP does not provide a definition for Habitable Room. While other statutory documents may define this concept, particularly the Building Code of Australia, it is important to provide a clear understanding within the SPP. A term such as development is defined under the planning legislation, but is carried forth into the glossary for the SPP. The issue with not defining the concept of habitable room is that in the context of a material change of use proposal (not building work), minimum floor levels would need to be at the storm tide inundation level. It is better not to leave the concept to interpretation.

To provide a specific example why this is important; the Cairns CBD is the principal activity centre, not just for the Cairns Regional Council local government area, but for the Far North Queensland Region. Cairns Regional Council has had a long standing minimum floor level for the 1 in 100 ARI storm event of 2.6m AHD (adjacent to esplanade areas) with substantial development in the CBD being established with habitable floors around or above this level.
With consideration for storm tide inundation and sea level rise, the draft SPP would incur a minimum habitable room level of 3.58m AHD or higher. Where new development is to occur in the CBD the floor level of a commercial tenancy at ground level could be approximately 1 metre above the adjacent sites, if the commercial tenancy is considered a habitable room (i.e. someone could inhabit the floor space with an activity). If this were to be the case, development could be stifled because the footpaths could not service new development without significant detriment to existing development and infrastructure.

Development Assessment Code

The structure of the draft Development Assessment Code is overly complicated, making it difficult to understand what specific outcomes apply to different forms of development.

At present the draft code considers impacts of development under headings of:

- Coastal hazards – storm tide inundation.
- Coastal hazards – coastal erosion and inundation due to sea level rise.
- Areas of High Ecological Significance.
- Ecological values.
- Scenic preference values.
- Coastal dependant development.
- Urban settlement pattern.
- Maritime development outside of a maritime development area and strategic port land.

An additional annexure to the draft state planning policy, Minimum Requirements, provides acceptable circumstances for not achieving the policy outcomes but where compliance with the policy is considered as being achieved (i.e. a performance assessment). This is related to section 4.7 and 4.8 of the draft State Planning Policy which also incorporates development commitment as an acceptable circumstance for not achieving the policy outcomes.

The development assessment code has been drafted to categorise assessment by the constraints and hazards which could apply in the coastal zone. It meets basic drafting principles in that it reduces duplication to an extent, but does not make the different types of development distinguishable in its structure – i.e. making a material change of use different to operational work. One of the key measures of the draft Queensland Coastal Plan is that management is dealt with in a different manner to protection, yet infrastructure considerations highly influence the manner in which local governments will deal with coastal management issues.
By distinguishing protection works, maritime or essential infrastructure from other development activities such as subdivision of land and land use activities, clarity about how the code applies to development can be achieved in a more effective manner. It is considered satisfactory to use the constraint classification as a means of categorising elements within the code to help arrange the assessment criteria.

When drafting a code that can apply to development, it is unsatisfactory for a specific outcome to refer to another specific outcome. For example, specific outcome SO3-27 states Development not identified in SO3-26 avoids adverse effects on areas of high ecological significance. This is inappropriate because in the context of a planning scheme code (which it will need to become) no individual should be able to pick and choose Outcomes to which development should achieve compliance. Proper drafting of SO3-27 would be along the lines of Development not within the urban footprint avoids adverse effects on areas of high ecological significance.

Drafting of particular specific outcomes should be stand alone criteria/statements to which development can achieve compliance, yet they must be read as a whole. Therefore if the specific outcome does not qualify in specific terms what the development is, then use the generic term other development not the phrase “development not mentioned in…” and ensure the rest of the specific outcome is drafted to provide its intent. When drafting the code, the drafter must be mindful that this will need to be implemented in the planning scheme.

**Consistency of Planning Terminology**

Continuing in line with the above paragraphs, the SPP uses terminology that will need to be incorporated into a planning scheme or the draft QPlan (the Standardised Planning Scheme Provisions prepared under the Sustainable Planning Act) to help interpret a planning scheme concept/term. The SPP uses the terms specific outcome and probable solution whereas the QPlan uses the terms performance outcomes and acceptable outcomes respectively. There should not be a difference between the two documents because the SPP needs to be implemented in the planning scheme.

Further, terms such as development commitment and habitable room will help interpret how to determine the storm tide inundation level and how to design development. These terms need to be carried into the QPlan as they will also be included in local government planning schemes.

Local governments will be mindful of the lack of consistency between terminology used across SPPs. Development commitment under the draft State Planning Policy Coastal Protection differs to that of SPP1/03: Mitigating the Adverse Impact of Flood, Bushfire and Landslide. These considerations must be given by the state government prior to formal adoption of the Queensland Coastal Plan.
Low and High Hazard Zones

The terminology Low Hazard Zone and High Hazard Zone could suggest to a community member, that one area has a high storm tide inundation risk, while the other area has little to no risk. This is not the case. The low risk area is still at risk. In past experience Cairns Regional Council has found that labelling something of low value or low risk it is generally subject to very little consideration by the development industry and the community. Whereas something of moderate risk, while less than high, is considered with greater weight than something associated with low values. Similarly, the use of numbered categories could ensure the same weighted consideration of the intended users of the document through local government planning scheme.

Suggested Solutions

- Clarify the definition of development commitment to give certainty about the role of assessable development in relation to “explicitly anticipated” and the “note” about what is considered not a development commitment.

- Define Habitable Rooms as per the Building Code of Australia.

- Split the development assessment code into “infrastructure, maritime and protection works” and “other assessable development” giving clarity to.

- Ensure drafting of the development assessment code does not provide specific outcomes that refer to other specific outcomes - they should be “stand alone” criteria/statements to which development can achieve compliance.

- Ensure the SPP and the development assessment code uses the same terminology that is to be applied in planning schemes so there is consistency between state and local government planning documents, as is the purpose of the draft QPlan.

- Use the terms “moderate hazard zone” instead of “low hazard zone”.

Part 5 – Maps and Supporting Information

The mapping provides sufficient detail relating to the coastal zone so as to implement the State Planning Policy. It is recommended that the Department of Environment and Resource Management provides the mapping data and layers to local governments at no cost to ensure effective implementation at the local level.

Part 6 – Other Comments

No other comments.