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Australia's property industry

Creating for Generations

1 July 2021

Committee Secretary
Regulation Committee
NSW Parliament
Macquarie Street
SYDNEY NSW 2000

Dear Committee Secretary

Inquiry into State Environmental Planning Policies (SEPPs)

Thank you for the opportunity to appear before your inquiry into the above as Disallowable Instruments Under the Interpretation Act 1987

I write on behalf of Mr Allan Hansell, who is currently engaged as a Policy and Communications Consultant to the Property Council of Australia, and myself to advise that we have reviewed the uncorrected Hansard of our appearance before the Regulation Committee's hearing on 7 June 2021 and have no corrections to make to the transcript.

During that hearing we took two questions on notice and our responses to those questions are provided below:

1. **Question:** [The NSW Farmers Association has] "suggested that sometimes there is a tension between the SEPP and existing legislation and that the tension is unable to be resolved – in fact, they are contradictory. Have you had any experience of that? If so, what is it and how could that be resolved in a better way?"

Answer: We are not aware of any direct tension between a SEPP and an existing piece of legislation. Our understanding is that SEPPs are at the top of the hierarchy of planning instruments established under the Environmental Planning and Assessment Act. If a situation transpired where a SEPP operated in conflict to existing law, then we would expect that the law would take precedence over the SEPP which, as mentioned earlier, is only a planning instrument.

2. **Question:** "Just following up on Ms Cusack's comments before about what we would probably call a SEPP impact statement...Would you be able to provide some thoughts as to what should possibly go into that?"

Answer: Consistent with our oral evidence to the Committee (in response to questioning from the Hon. Catherine Cusack at page 26 of the uncorrected Hansard transcript), we support greater transparency measures with respect to how SEPPs relate back to the primary legislation of the Environmental Planning and Assessment Act.

This is important to foster greater community understanding as to the important coordination role that SEPPs play, supported by the primary legislation, while also ensuring that stakeholders that may be affected by the introduction of a SEPP gain a better appreciation why this planning tool is necessary to help guide appropriate development and environmental protection. While some people may not like the aims and objectives of a particular SEPP, they will be likely to better understand and appreciate the reasons why a SEPP has been brought into being if greater transparency is applied to the process.

We do not believe, however, that this should be introduced as part of a broader new obligation on Government to produce a 'SEPP Impact Statement', but rather included as part of the Department of Planning, Industry and Environment's (DPIE) consultation processes that would occur either before or after the introduction of a SEPP and included in the SEPP itself.

The Property Council believes that the introduction of a new requirement for SEPP Impact Statements would potentially introduce more unnecessary bureaucracy into the planning system for little benefit which would represent a new burden on DPIE that would take resources away from the delivery of reforms that would produce a more efficient and less complex planning system.

A more targeted recommendation to Government would be to ask it to publish a Planning Efficiency and Simplification (PEAS) Statement. Our suggestion is that a PEAS Statement would be published to provide information, with not only every SEPP but also with every new planning reform, as to how the proposed reform contributes to the central goal of a simpler and more efficient planning system.

The Productivity Commission White Paper 2021 – Rebooting the Economy 2021 recommends (at Recommendation 7.3) that the Government “by 2023, deliver an end-to-end review of the NSW planning system relative to other jurisdictions, and use this process to identify drivers of delay and uncertainty in planning processes”, after which the Government should “by 2025, implement measures to address the drivers of delay and uncertainty, and bring New South Wales in line with best-practice”.

Our proposal for a PEAS Statement has the benefit of complimenting the direction of the Productivity Commission's recommendation while introducing a new discipline on Government that steers the Government towards satisfying the recommendation as well.

I can be contacted on _____ or at _____ you
require any further information.

Yours sincerely,

NSW Acting Executive Director