

Statement of Intended Effect

Proposal to amend *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP)* to permit subdivision for the purposes of a 'continuing use' as development that is permitted with consent in the waterways zones

1.0 Introduction

The proposed SEPP will amend *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* ('SREP') to permit subdivision with development consent for the purposes of a 'continuing use' in the waterways zones (being zones W1, W2, W3, W4, W5, W6, W7 or W8) under the SREP.

2.0 Background

In March 2011, an amendment was made to the SREP to provide for long term leases by allowing subdivision in limited circumstances in the waterways zones ('March Amendment').

The March Amendment was made to implement a decision of the previous NSW Government which made changes to NSW Maritime's ('NSWM') leasing policy with respect to lands vested in NSWM on which waterside structures are, or are proposed to be, erected. In order to give effect to this policy, where lessees agree to enter into a long term lease, NSWM is required to subdivide land (ie including land in the Harbour). This is because the *Conveyancing Act 1919* requires the subdivision of land for the registration of leases longer than five years.

The March amendment permitted subdivision with development consent in the waterways zones to create lots to be used only for the purposes of:

- development the subject of an existing development consent or a project approval under Part 3A of the Act or that is an existing use,
- exempt development or development or an activity that may be carried out without development consent, and
- any other development that is authorised under an Act of the Commonwealth.

However, when the March amendment was made, a class of development authorisation known as a 'continuing use' was unintentionally omitted. This has created an outcome which is inconsistent with the intent of the March amendments which sought to provide for the subdivision and facilitate the long term leasing of land for the purposes of all lawful development.

Development is a continuing use if it was lawfully being carried out immediately before an environmental planning instrument commences which has the effect of making the development unlawful unless it is authorised by the granting of a development consent. As large parts of Sydney Harbour were not subject to environmental planning instruments until the 1990s, any waterside structure erected before this time would either be development that is a continuing use or an existing use. Without this amendment, NSWM would not be able to enter into long term leases for land and parts of the Harbour on which waterside structures (eg wharves, jetties, etc) are situated, because the land on which the structure is built would not be able to be subdivided.

3.0 Objective of the proposed amendment

The proposed SEPP would amend clause 18A of the SREP to permit subdivision of land with development consent where the resulting lots are to be used for the purposes of development that is a continuing use.

It will not involve in any other amendments to the SREP.

4.0 Land to which the amendment would apply

The amendment would apply to all land currently within the waterways zones in the SREP being the W1, W2, W3, W4, W5, W6, W7 or W8 zones.