



Nature Conservation Council

The voice for nature in NSW

Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

9 July 2015

SUBMISSION - STATE ENVIRONMENTAL PLANNING POLICY REVIEW 2015

Dear Sir/Madam,

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing 150 member organisations across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We welcome the opportunity to comment on the *State Environmental Planning Policy Review 2015*. Our members have a strong interest in planning and development issues, and are strongly committed to securing positive environmental outcomes in their local area. Many State Environmental Planning Policies (**SEPPs**), including deemed Regional Environmental Plans (**REPs**), continue to play a key role in helping secure positive environmental outcomes across the State.

We recognise that there is merit in reviewing existing SEPPs to determine their ongoing relevance and application, and to repeal or consolidate SEPPs where appropriate. That said, it is important that as part of that process existing protections are not lost or weakened.

With respect to the 16 SEPPs currently under review:

- We strongly support the proposal to reinsert Coffs Harbour local government area into Schedule 1 of SEPP 44.
- We object to the proposed repeal of North Coast Regional Environmental Plan 1988 and the Lower South Coast Regional Environmental Plan (No 2). The overarching environmental protection provided by those REPs has not been adequately picked up in relevant LEPs.
- In the case of Regional Environmental Plans, consideration should also be given as to whether the general aims and objectives of those plans are adequately captured in other instruments.
- We do not oppose the repeal of a number of minor SEPPs that no longer have application, including Sydney Regional Environmental Plan No 18 – Public Transport Corridor, State Environmental Planning Policy No 29 – Western Sydney Recreation Area, State Environmental Planning Policy No (SEPP 53 Transitional Provisions) 2011.

We also note that we have been asked to comment on an Explanation of Intended Effect but have not seen the actual text of the draft *State Environmental Planning Policy (Integration and Repeal) 2015* (proposed SEPP) or new provisions that will be included in LEPs. Once the Government has considered feedback from this consultation process, we strongly urge further consultation on both a draft SEPP and specific LEP provisions.

Our submission will provide some introductory comments on the important role of SEPPs and the *State Environmental Planning Policy Review 2015*, and then respond to proposed reforms to the 16 identified SEPPs.

STATE ENVIRONMENTAL PLANNING POLICIES

A number of SEPPs (including deemed REPs) have played a critical role in addressing environment issues of State significance since the commencement of the *Environmental Planning and Assessment Act 1979* (EPA Act). As the highest level of environmental planning instrument in the EPA Act hierarchy of planning instruments, they contain statutory provisions that play an important role in protecting some of our most vulnerable species and habitats. For example:

- **SEPP 14 Coastal Wetlands** prevents the clearing, draining, filling or construction of levees on mapped coastal wetlands without the consent of the Director-General.
- **SEPP 19 Bushland in Urban Areas** provides protection for urban bushland by restricting disturbance to urban bushland without consent from the council.
- **SEPP 26 Littoral Rainforest** protects important rainforest areas by restricting activities that harm littoral (coastal) rainforest without the consent of the Director-General.
- **SEPP 44 Koala Habitat Protection** protects important koala habitat by requiring development on core koala habitats is controlled subject to a management plan.
- **SEPP 71 Coastal Protection** regulates significant coastal developments near sensitive coastal zones, within 100 metres above the high water mark of the sea, a bay or an estuary or on land.
- **Sydney Harbour Catchment SEPP** includes broad strategic principles and specific development standards and has application to sensitive foreshore and marine areas.

Other SEPPs regulate the impacts of certain types of development on the environment, for example:

- **SEPP (Building Sustainability Index: BASIX) 2004** establishes standards for sustainable residential development.
- **SEPP No 62 (Sustainable Aquaculture)** aims to encourage sustainable aquaculture.
- **SEPP No 55 (Remediation of Land)** aims to provide for a state-wide planning approach to the remediation of contaminated land.
- **SEPP 65 (Design Quality of Residential Apartment Development)** has implications for public open space, natural features and drainage lines, bushland and trees, and the enhancement of the habitat values through the design process¹.

¹ We note that NCC has raised concerns with recent proposed changes to SEPP 65. See our submission on the proposed changes to State Environmental Planning Policy 65 and the draft Apartment Design Guide. Download [here](#).

That said, we note some of our overarching concerns with the wide use of SEPPs to create and alter Government policy without sufficient oversight. For example:

- There is no specific environmental assessment required for making a SEPP, although there are consultation (not concurrence) requirements with respect to threatened species.
- Community consultation is at the discretion of the Minister. We submit that there should be mandatory community consultation in relation to the making and amendment of SEPPs.
- It would also be appropriate for SEPPs to be subject to disallowance by Parliament.²

These safeguards are particularly important in light of the controversies that have sometimes surrounded the use of SEPPs to drive Government policy without adequate checks and balances³.

In spite of these overarching concerns, we recognise the key role SEPPs currently play in addressing a wide range of state-wide environmental challenges. We were therefore significantly concerned by proposals put forward as part of the Government's NSW Planning System Review and *Planning Bill 2013* to repeal existing State Environmental Planning Policies and replace them with a consolidated suite of non-legislative State Planning Policies. This lower status in itself reduces the protections contained in the existing SEPPs. In our view there was a real risk that many of the important protections provided for by SEPPs could be lost or weakened as part of that process.

It is with an awareness of the Government's planning reform agenda that our members and supporters now come to the *State Environmental Planning Policy Review 2015*. There has been no clear indication from Government on its overarching reform agenda since the *Planning Bill 2013* was prorogued, yet the Government is moving ahead with many of its initiatives – Regional Growth and Infrastructure Plans, Priority Precincts and now the *State Environmental Planning Policy Review 2015*. Without a clear explanation from Government regarding its intentions – for example, does the Government still intend to replace the myriad of State Environmental Planning Policies and 117 Directions with non-statutory planning policies? – our members and supporters are concerned that important State Environment Planning Policies are once again at risk.

We understand that at this stage the Government is proceeding with changes to 16 SEPPs as outlined in the *State Environmental Planning Policy Review 2015*. However, we understand that other SEPPs are under review. In light of the Government's previously announced position regarding SEPPs, and community concern around losing important environmental protections, we strongly urge the Government to clarify its intentions for the remaining SEPPs.

We also suggest that any future review of SEPPs be delayed until important processes such as the Biodiversity Legislation Review and finalisation of Vegetation Mapping for the Sydney Region are completed as they will have implications for the future role and provisions of SEPPs⁴.

² We note the decision of the Court of Appeal in *Minister for Planning and Infrastructure v Sweetwater Action Group Inc* [2011] NSWCA 378 finding that the Minister's decision to recommend the SEPP was the exercise of an executive power and therefore cannot be challenged in judicial review proceedings.

³ For example, multiple changes to *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries)* 2007 since 2013 have been seen by the community as favouring individual mining projects and not in the public interest.

STATE ENVIRONMENTAL PLANNING POLICY REVIEW 2015

Aside from our comments above, we recognise that there is merit in reviewing existing SEPPs to determine their ongoing relevance and application, and to repeal or consolidate SEPPs where appropriate.

The current approach to the SEPP review is to remove policy and controls that are now superseded by Regional Strategies, Standard Instrument local environment plans or existing State Environmental Planning Policies.

There are a number of overarching issues to consider when taking this approach:

- The Department is in the process of rolling out new Regional Growth and Infrastructure Plans, which will replace existing Regional Strategies. Therefore, the Department must ensure that any protections that are removed from SEPPs on the basis that they are included in Regional Strategies are carried over into new Regional Growth and Infrastructure Plans.
- The aims and objectives of SEPPs can often be different to Regional Strategies and LEPs. The Department should consider whether the aims and objectives of SEPPs been adequately reflected in Regional Strategies and LEP.
- REPs and SEPPs frequently include strategic planning elements that do not belong within an LEP. Consideration should be given as to whether these have been identified and incorporated in new Strategies and Action Plans.
- To be effective, new policies, strategies, action plans, LEPs and DCPs must have as their foundation a sound evidence base, as was envisaged by the NSW Government when the Planning Reforms were originally proposed.

Further, in the case of the North Coast and Far South Coast, deferral of environment protection zones in new LEPs means that REPs still have a key role to play while these issues are resolved. Our members in those areas strongly oppose the repeal of the North Coast Regional Environmental Plan 1988 and Lower South Coast Regional Environmental Plan (No 2) until those issues are resolved.

We would also suggest that the repeal of the North Coast and Far South Coast REPs and Illawarra Regional Environmental Plan No 1 also be put off until new Regional Growth and Infrastructure Plans, that contain the same level of environmental protections, are put in place.

In considering the proposed changes to the 16 SEPPs that form part of the *State Environmental Planning Policy Review 2015* we have considered these overarching issues, as well as specific feedback from NCC member groups, including those in the Illawarra, South Coast, Hunter and North Coast Regions.

⁴ For example, Vegetation Mapping for the Sydney Region remains in draft form only and there is confusion amongst practitioners, agencies and stakeholders regarding the status of different data sets. Any proposals to amend or repeal SEPP 19 - Bushland in Urban Areas should be delayed until the Vegetation Mapping has been ground-truthed and formally adopted by the NSW Government and is publicly available to inform zoning and land-use planning decisions. In the absence of the Vegetation Mapping there is a heightened risk of the permanent loss of vulnerable and endangered species and ecological communities, and the closing off of potential Green Corridors identified as a high priority in the Vegetation Mapping.

We also note that we have been asked to comment on an Explanation of Intended Effect but have not seen the actual text of the draft *State Environmental Planning Policy (Integration and Repeal) 2015* (proposed SEPP). Once the Government has considered feedback from this consultation process it would be useful to consult on the final text of the proposed SEPP before it is made by the Governor.

Our position and comments on each of the 16 SEPPs are outlined in further detail below.

- **Illawarra Regional Environmental Plan No 2 – Jamberoo Valley**

Illawarra Regional Environmental Plan No 2 – Jamberoo Valley is highly valued by the local community in protecting the sense of place of the Jamberoo Valley. The Jamberoo Valley contains significant areas of high conservation value and areas of prime agricultural farmland. The landscape values of Jamberoo are widely recognised and should be protected.

The Explanation of Intended Effect suggests that the Illawarra Strategy, Shellharbour LEP 2013 and Kiama LEP 2011 have now implemented the relevant provisions of IREP 2 and that in the future the extent of land zoned for housing will continue to be managed through the Illawarra Urban Development Program and guided by the Kiama Urban Strategy. We note that both the Illawarra Urban Development Program and the Kiama Urban Strategy are guiding documents only and do not provide the security for the community of Jamberoo that the Jamberoo Village boundary will be retained into the future.

We are concerned that the aims and objectives of IREP 2 including the general aim to conserve the agricultural, environmental and aesthetic values of the Jamberoo Valley are not adequately captured elsewhere.

We understand that the Jamberoo community is deeply concerned with the proposed repeal of IREP 2 and we strongly urge that the concerns of the Jamberoo community be adequately addressed before IREP 2 is repealed.

- **Lower South Coast Regional Environmental Plan (No 2)**

The aims of the Lower South Coast Regional Environmental Plan include:

- to develop regional policies that protect the natural environment and promote the orderly and economic development and use of land and other resources in the region, consistent with conservation of natural and man-made features, and
- specify regional policies to guide the preparation of local environmental plans and for development control.

One of the Department's justifications for repealing this REP is that the aims and objectives are now reflected in the South Coast Regional Strategy 2006-31, Bega Valley LEP 2013 and Eurobodalla LEP 2012. We do not agree with this position.

We note that it is unclear what future role the South Coast Regional Strategy 2006-31 will have once the new Illawarra Regional Growth and Infrastructure Plan is finalised. We understand that the Illawarra RGIP is intended to replace the South Coast Regional Strategy. If that is the case, then consideration must be given as to whether the Illawarra RGIP adequately captures information from the Lower South Coast Regional Environmental Plan. We also note that the Illawarra RGIP does not

apply to the Eurobodalla region and therefore the Lower South Coast Regional Environmental Plan would still have a role to play in that region.

We also note the contention in the Eurobodalla local government area regarding the excising of E3 zones from the final Eurobodalla LEP 2012. Our members in the area have significant concerns that the important natural areas of the region have not been adequately protected by the LEP. There is therefore still a role for the Lower South Coast Regional Environmental Plan to play in providing oversight on important environmental issues at a regional scale.

For these reasons, NCC does not support the proposed repeal of Lower South Coast Regional Environmental Plan (No 2).

- **Sydney Regional Environmental Plan No 18 – Public Transport Corridor**

NCC does not have any concern with the proposal to repeal Sydney Regional Environmental Plan No 18 – Public Transport Corridor.

- **Sydney Regional Environmental Plan No 19 – Rouse Hill Development Area (1989)**

We recognise that Sydney Regional Environmental Plan No 19 – Rouse Hill Development Area is unlikely to have continued relevance now that much of the land covered by SREP 19 is within the area covered by State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and relevant local environment plans.

We do note however that SREP 19 – Rouse Hill Development Area includes specific aims and objectives, including:

2(1)(b):

- (i) to conserve and enhance areas of high landscape, flora and fauna value and, in particular, to protect the Hawkesbury River and its tributaries from the potential impact of urban development,
- (ii) to conserve areas of cultural, historical and architectural significance,
- (iii) to manage the impact of urban development on the environment by controlling development which otherwise would cause pollution.

Consideration should be given as to whether these aims and objective have been adequately picked up by other instruments. For example, we note that there are no specific references to protection of the Hawkesbury River in The Hills LEP 2012 as per SREP 19 (2 (1)), while SEPP (Sydney Region Growth Centres) 2006, under Appendix 11 The Hills Growth Centre Precincts and Appendix 12 Blacktown Growth Centres Precinct Plan, does aim to “protect and enhance riparian corridors and areas of significant native vegetation by establishing development controls that prevent the clearing of existing native vegetation within the Precincts.

- **State Environmental Planning Policy No 59 – Central Western Sydney Regional Open Space and Residential**

Again, we recognise that State Environmental Planning Policy No 59 – Central Western Sydney Regional Open Space and Residential has been progressively implemented through local environment plans. Prior to its repeal consideration should be given as to whether the general aims and objectives of the SEPP are adequately captured by other instruments. In this case some of the aims of SEPP 59 include to provide for the optimal environmental and planning outcomes for the land to which this Policy applies by conserving those areas that have a high biodiversity or heritage, scenic or cultural value and, in particular, areas of remnant vegetation, and ensuring that extractive industries are carried out in an environmentally acceptable manner.

- **State Environmental Planning Policy No 29 – Western Sydney Recreation Area**

NCC does not have any concern with the proposal to repeal State Environmental Planning Policy No 29 – Western Sydney Recreation Area. We understand that the two lots of land to which SEPP 29 applies have been zoned RE2 Private Recreation under the Blacktown LEP 2015.

- **State Environmental Planning Policy No (SEPP 53 Transitional Provisions) 2011**

We understand that State Environmental Planning Policy No (SEPP 53 Transitional Provisions) 2011 was put in place to provide transitional provisions for certain development applications for dual occupancy development within the Ku-ring-gai local government area. If this SEPP no longer has application, we do not object to its repeal.

- **State Environmental Planning Policy No 39 – Spit Island Bird Habitat**

We support ongoing protection of the Spit Island bird habitat within the Towra Point Aquatic Reserve. We note that the benefit of protecting this area through a SEPP is that it provides State leadership and oversight, and protection is not left to the discretion of councils in their LEPs (although we do recognise the role of the Minister in making the final LEPs). We note that SEPP 39 must not be repealed until the new provisions of Sutherland and Rockdale LEPs are in force.

- **State Environmental Planning Policy No 32 – Urban Consolidation (Redevelopment of Urban Land) 1991**

While we do not have specific concerns regarding the repeal of SEPP 32, we note here the broad concerns of our members regarding the Government's recent initiatives for addressing urban consolidation and growth. In particular, our members are concerned that many of the Government's recent initiatives, including the roll out of Priority Precincts and the development of Regional Growth and Infrastructure Plans and Subregional Delivery Plans are occurring outside of a clear legislative process. This means community expectations are difficult to manage and there is a lack of transparency and accountability. We urge the Government to put in place a clear legislative framework for future strategic planning processes.

- **Hunter Regional Environmental Plan 1989 (Heritage)**

The Hunter Regional Environmental Plan 1989 (Heritage) was introduced in 1989 to conserve the Hunter Region's environmental and cultural heritage items and conservation areas which contribute to the character of the historic landscapes of the Region. Most councils in the Hunter Region did not have adequate (or any) heritage provisions in their LEPs. The schedules of heritage items and heritage conservation areas that it introduced were based on recommendations from various previous studies, such as the Hunter 2000 report by the National Trust in the early 1970s.

We recognise that since then councils have progressively incorporated the heritage items and conservation areas into their LEPs. The Explanation of Intended Effect identifies, in Table 1, heritage items and conservation areas that have not yet been transferred into LEPs. It is proposed to transfer those items into relevant LEPs except where further investigation and the relevant council confirms that protection is no longer warranted. We question whether further investigation is warranted given that these items were originally identified for inclusion in Hunter Regional Environmental Plan 1989 due to lack of adequate protection. There is a real risk that not requiring these items to be automatically transferred to LEPs means the protections that have been in place since 1989 will be lost.

We strongly urge the Government and councils to undertake further consultation with the community with respect to any item in Table 1 that, after further investigation and consideration by council, will not be transferred into the relevant local environment plan.

- **North Coast Regional Environmental Plan 1988**

NCC does not support the repeal of the North Coast Regional Environmental Plan 1988. We have significant concerns that the environmental protections provided by the North Coast Regional Environmental Plan have not been adequately reflected in Local Environment Plans on the North Coast.

The North Coast Regional Environmental Plan contains objectives and regional policies for the future planning and development of land within the region, including the preparation of local environmental plans.

The North Coast REP underpinned, as it was intended to, the development of draft north coast LEPs and the identification, by councils, of environment protection zones. The subsequent decision by Government to intervene to defer the making of environment protection zones in the new LEPs and undertake a review of environmental zones in North Coast LEPs was strongly opposed by NCC and local environment groups.

The decision to excise the environment zones from the North Coast LEP was not, in our view, based on evidence. Rather we understand that the decision was made in response to concerns about property rights raised by a small minority of rural land owners. We find it particularly concerning that the public interest in the proper protection of areas of high conservation value could be undermined by narrow private interests.

The Explanation of Intended Effect provides that ‘underlying zones derived from previous LEPs continue to apply in these areas and provide suitable protection consistent with the REP’. We do not consider this statement to be accurate as the assessments undertaken by Councils identified numerous additional areas needed to satisfy the REP’s criteria that were not previously zoned for protection.

Repealing the North Coast REP before the issue of North Coast E zones has been resolved means that the important objectives and regional policies for the future planning and development of land within the region contained in the North Coast REP can be ignored.

The North Coast REP must remain in force until the issue of “deferred matters” is determined and the E zones and environmental clauses that have been nominated by councils, in consultation with the community, are restored to far north coast LEPs.

- **Illawarra Regional Environmental Plan No 1 1986**
- **Jervis Bay Regional Environmental Plan 1996**

We recognise that controls contained in both IREP No 1 and Jervis Bay REP have been progressively implemented through local environment plans. However prior to the repeal of these two instruments consideration should be given as to whether the aims and objectives and environment protections of the REPs are adequately captured by other instruments, including the relevant LEPs and the Illawarra Regional Growth and Infrastructure Plan which we understand is due to be finalised shortly.

In particular, we note that in finalising the Shoalhaven Local Environment Plan, the Shoalhaven City Council and Department compromised on many aspects of the South Coast Regional Strategy, for example uses were added to E2 and E3 zones and biodiversity overlays were removed from Residential, Commercial and Industrial zone. Consideration must be given as to whether the LEP does in fact provide the same level of protection as the REPs.

The Illawarra has areas of significant biodiversity and conservation value including the largest subtropical rainforest in SE Australia, most of which lies on the volcanic soils of Kiama and of which only 12% to 15% remains, and Coomandery Swamp at Seven Mile beach, which is the largest freshwater coastal wetland in the state representing 40% of this ecosystem type in the state. It is therefore important to make sure that protections for these important areas are retained.

NCC strongly supports retaining both the IREP and the JBREP for the “certain lands” at Culburra Beach, as these matters were deferred from Shoalhaven LEP. NCC has a long-standing history in calling for adequate protection for Lake Wollumboola and its catchment. This area is of outstanding natural and Aboriginal cultural conservation value and is internationally significant habitat for migratory birds and native water birds. Both the Lake and the Crookhaven River and estuary are recognised as Wetlands of National Importance and must be afforded adequate protection.

- **Orana Regional Environmental Plan No 1 – Siding Spring 1990**

At this stage, NCC does not oppose the proposal to update controls to protect Siding Springs Observatory and transfer these into relevant Local Environment Plans and State level provisions. However we note that exact wording of updated provisions and accompanying guidelines are not available for public comment.

- **Riverina Regional Environmental Plan No 1**

At this stage, NCC does not oppose the proposal to update controls in Riverina Regional Environmental Plan No 1 and transfer these into relevant Local Environment Plans. However we note that exact wording of updated provisions are not on exhibition and urge the Government to undertake further consultation on final provisions and proposed SEPP.

- **State Environmental Planning Policy No 15 – Rural Landsharing Communities**

At this stage, NCC does not oppose the proposal repeal State Environmental Planning Policy No 15 – Rural Landsharing Communities and allow for flexible local clauses. However we note that specific changes are not on exhibition and urge the Government to undertake further consultation on local plan provisions.

- **State Environmental Planning Policy No 44 (Koala Habitat Protection) application to Coffs Harbour local government area**

NCC strongly supports the proposal to reinsert Coffs Harbour local government area into Schedule 1 of SEPP 44. This proposal will allow Coffs Harbour council to finalise its updated Koala Plan of Management, which will provide important protection for core koala habitat.

We further acknowledge the important role SEPP 44 plays in the protection of koala habitat and strongly support the continued operation of this SEPP.

CONCLUSION

We recognise that there is merit in reviewing existing SEPPs to determine their ongoing relevance and application, and to repeal or consolidate SEPPs where appropriate. However it is important that existing environmental protections are not lost or weakened in the process.

With respect to the 16 SEPPs currently being reviewed:

- We strongly support the proposal to reinsert Coffs Harbour local government area into Schedule 1 of SEPP 44.
- We object to the proposed repeal of North Coast Regional Environmental Plan 1988 and the Lower South Coast Regional Environmental Plan (No 2). The important protections those REPs have not been adequately picked up the relevant LEPs.
- We do not oppose the repeal of a number of minor SEPPs that no longer have any application, including Sydney Regional Environmental Plan No 18 – Public Transport Corridor, State Environmental Planning Policy No 29 – Western Sydney Recreation Area, State Environmental Planning Policy No (SEPP 53 Transitional Provisions) 2011.
- Particularly in the case of identified Regional Environmental Plans, consideration should be given to whether the general aims and objectives of those plans are adequately captured by other instrument.

We also note that we have been asked to comment on an Explanation of Intended Effect but have not seen the actual text of the draft *State Environmental Planning Policy (Integration and Repeal) 2015* (proposed SEPP) or new provisions that will be included in LEPs. Once the Government has considered feedback from this consultation process, we strongly urge further consultation on both the final text of the proposed SEPP and any new provisions to be added to local environment plans.

We would be happy to participate in further discussions in respect of the Department's review of SEPPs. Please do not hesitate to contact Cerin Loane, Policy and Research Coordinator, on (02) 9516 1488 in relation to this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K. Smolski', with a stylized, flowing script.

Kate Smolski
Chief Executive Officer