

18 January 2017

Director Environment and Building Policy
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam,

Submission - Draft Coastal Management SEPP, Standard Instrument (Local Environmental Plans) Amendment and draft Local Planning Direction

Thank you for the opportunity to provide comment on the draft Coastal Management SEPP and associated documents which have been proposed for coastal areas.

The following comments have been made under the relevant headings in relation to the draft Coastal Management SEPP, Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016 and draft Local Planning Direction to assist the Department in finalising the documents.

Draft Coastal Management SEPP

Clause 2 - Commencement: The Policy is proposed to commence on the day which it is published on the NSW Legislation website. This would be problematic for councils affected by the SEPP as adequate time is required to update Geographic Information Systems, Property Information Systems and Section 149 Planning Certificate templates in accordance with any new planning circular issued by the Department. It is suggested that the clause be revised so that the Policy commences 14 days after it is published on the NSW Legislation website.

Planning Circular PS 16-003 identifies a new circular will be issued just before the draft SEPP commences to provide guidance to councils on how to notate planning certificates under s149(2) of the Environmental Planning and Assessment (EP&A) Act 1979 in relation to Clauses 1(1) and 7 of Schedule 4 of the EP&A Act 1979.

The current planning circular philosophy of advising whether the whole or part of a site is affected by the draft SEPP is inconsistent with Council's current method of stating advices regarding which SEPPs apply under Clause 1(1) of Section 149 (2) certificates. As SEPPs contain area, issue and zoned based requirements, Council currently only reference SEPPs that apply in Hornsby Shire under this clause. Property information systems cannot easily be configured to identify the SEPPs that apply to each individual parcel of land or whether the whole or part of a site is affected. It is suggested that the new planning circular only require councils to specify that the SEPP applies under Clause 1(1) of Section 149 (2) certificates.

Clause 7 of a Section 149(2) Certificate is required to identify Council and other public authority policies on hazard risk restrictions. A number of the categories of mapping of the "coastal zone" are land constraints

rather than hazard/risks. Therefore, inclusion of a notation referencing the Coastal Management SEPP under Clause 7 where coastal zones apply could be incorrect. It is suggested that a more detailed notation in relation to the Coastal Management SEPP be promoted for inclusion in Section 149 (5) Planning Certificates instead.

Clause 6 - Identification of Coastal Management Area and Clause 7 - Relationship with other EPIs:

Coastal Management Areas as defined by Clause 6 of the draft SEPP does not take into consideration 'degraded' wetland areas. This has created differences between Council's and the Department's latest mapping of wetland areas. Similarly, the mapping of wetlands for the preparation of *Sydney Regional Environmental Plan (SREP) No. 20 (Hawkesbury-Nepean River – No. 2 – 1997)* was undertaken 25 years ago based on different mapping methodologies/technologies and differs significantly to the draft SEPP wetland mapping.

Development proposed in draft SEPP designated wetlands would be required to comply with the land use strategies and matters of consideration of the draft SEPP. Development proposed in *SREP No. 20* wetlands would be required to comply with the land use strategies and matters of consideration of *SREP No. 20*. Development proposed in LEP designated wetland areas (i.e. land generally zoned E2 Environmental Conservation and/or identified on the Terrestrial Biodiversity Map) would be required to comply with the land use strategies and matters of consideration of the *HLEP 2013*.

Clause 7 of the draft SEPP prevails in the case of any inconsistency between environmental planning instruments. However, duplication of process may still occur for the assessment of development when a development proposal is located on land individually covered by more than one set of planning controls and where the draft SEPP does not override regional or local planning controls. It is suggested that the Department should further review the interrelationships between all environmental planning instruments in the coastal zone across the State to provide a clear and streamlined approval process for all councils.

Clause 9 – Repeals: The Policy repeals a number of SEPPs but does not repeal or part repeal any deemed SEPPs. Clause 11(16) 'Land Uses in Riverine Scenic Areas' and Clause 11(19) 'Development in Mapped Wetlands' of *SREP No. 20* result in duplication of approval processes and matters for consideration for various development types in Hornsby Shire. The draft SEPP in conjunction with various planning controls in the *HLEP 2013* will provide adequate protection for development in the coastal zone in Hornsby Shire. It is suggested that the draft SEPP be amended to exempt Hornsby Shire from having to comply with Clauses 11(16) and 11(19) of *SREP No. 20* upon the making of the draft SEPP. Further discussion regarding the existing or proposed planning controls that will provide similar protection to Clauses 11(16) and 11(19) of *SREP No. 20* is contained under the following two headings concerning Clauses 11 and 12, and Clauses 14 and 15 of the draft SEPP.

Clauses 11 and 12 – Development in or close to Coastal Wetlands: The clauses establish the permissibility of the carrying out of certain work, declare certain development as designated development and specify various matters of consideration for development in or close to the wetlands of Hornsby Shire. As already identified, the *SREP No. 20* Wetlands Map does not align with the draft SEPP Coastal Wetlands Map. Accordingly, there is potential for the need to consider an application under two similar but separate policies with different approval processes and heads of consideration. In particular, Clause 11(19) 'Development in Mapped Wetlands' of *SREP No. 20* establishes the permissibility of the carrying out of certain work, declares certain development as designated development, specifies certain Departmental concurrences and identifies relevant additional matters for consideration.

Clause 11 and 12 of the draft SEPP in conjunction with various planning controls in the *HLEP 2013* (i.e. E1 National Parks and Nature Reserves and E2 Environmental Conservation Zonings, and Terrestrial Biodiversity provisions) will provide adequate protection for development in or close to the coastal wetlands. It is suggested that the draft SEPP be amended to exempt Hornsby Shire from having to comply with Clause 11(19) of *SREP No. 20* upon the making of the draft SEPP.

Clauses 14 and 15 – Development on land in the coastal environment area and coastal use area: The clauses establish matters for consideration for development in the coastal environment area and coastal use area. The *SREP No. 20* Scenic Significance Map covers a slightly more expansive area than that of the draft SEPP Coastal Environment Area and Coastal Use Area mapping but is generally the same. Clause 11(16) – Land Uses in Riverine Scenic Areas of *SREP No. 20* establishes the permissibility for certain works. These works now require consent under various other planning instruments. The works requiring consent under *SREP No. 20* and similar requirements under other environmental planning instruments are listed below.

<i>Works requiring consent under Clause 11(16)</i>	<i>Other EPIs</i>
Subdivision	Clause 2.6 Subdivision – consent requirements of <i>HLEP 2013</i>
Clearing	Clause 5.9 Preservation of trees or vegetation of <i>HLEP 2013</i> and Clause 1B.6.2 Vegetation Preservation of <i>HDGP 2013</i>
Erection of structure > 50sqm or one storey	Clause 5.7 Development below MHWL and Clause 6.5 Limited development on foreshore area of <i>HLEP 2013</i> , and <i>SEPP (Exempt and Complying Development Codes) 2008</i> Non Complying Land (i.e. Clauses 1.17A, 1.18 and 1.19)
Stabilising the riverbank	Environmental Protection Works under Clause 11 of Coastal Management SEPP

Also, the matters for consideration under Clauses 14 and 15 of the draft SEPP are very similar to matters for consideration under Clause 11(16) of *SREP No. 20*. It is suggested that the draft SEPP be amended to exempt Hornsby Shire from having to comply with Clause 11(16) of *SREP No. 20* upon the making of the draft SEPP.

Clause 19 – Hierarchy of development controls if overlapping: The clause establishes a hierarchy for the purposes of consideration of the Coastal Management Area development controls if one or more of the areas are mapped on a parcel of land. Reference to “a single parcel of land” in the clause suggests that if a development is proposed on a part of a property that is affected by lower order coastal management area mapping but a portion of the property (not related to the proposed development) is affected by higher order coastal management area mapping that the higher order coastal management area development controls will prevail, albeit that the coastal management issue is not relevant to the proposed development. Similarly, this suggests that if development is proposed on part of a property not mapped as being in the coastal zone but another disparate part of the property is mapped as being within the coastal zone, that councils must consider the development controls.

It is suggested that the clause be refined to clarify what planning controls should be considered for proposed development on part of a property outside the mapped categories. It may be appropriate to remove reference to “a single of parcel of land” and instead advise that the higher order Coastal Management Area development controls should only apply to development proposed “on land where various categories of Coastal Management Area are mapped and there is inconsistency between the controls”.

Clause 21 – Coastal protection works: The clause establishes whether coastal protection works and emergency coastal protection works require consent or not or whether they form exempt development. Clauses 4, 4A and 4B of Schedule 4 of the *Environmental Planning and Assessment Regulations 2000* identify advices that must be included on Section 149 (2) Planning Certificates in relation to existing and temporary coastal protection works placed on private land or on public land adjacent to that land pursuant to the *Coastal Protection Act 1979*. As the draft SEPP facilitates coastal protection works and emergency coastal protection works similar to that under the *Coastal Protection Act 1979*, the Department should consider whether Schedule 4 of the EP&A Regulations should be revised to include relevant advices.

Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016

Clause 5.5 Development within the coastal zone of the *Standard Instrument* is proposed to be deleted by the Order. The making of the draft SEPP in conjunction with the deletion of Clause 5.5 of the *HLEP 2013* is considered to be a positive initiative by the Department as it will remove duplication of matters of consideration and better target issues relating to type of coastal issue.

Draft Local Planning Direction - Coastal Management

Ministerial Direction 2.2 – Coastal Protection is the current Section 117 Direction and is concerned with implementing the principles of the NSW Coastal Policy within coastal zones as identified in the *Coastal Protection Act 1979*. It is considered that its revocation and replacement with the draft Coastal Management Ministerial Direction will result in a clearer definition where the Direction applies and of the relevant Coastal management guidelines.

Clause 6 of the draft Ministerial Direction provides the opportunity for planning proposals prepared by councils to amend mapping in the draft SEPP. This is considered to be a positive initiative by the Department as it facilitates greater accuracy in mapping through timely “bottom up” planning by councils. Councils readily have access to the latest vegetation mapping and scientific data attained by undertaking local planning studies and/or when received with development applications.

Should you require clarification in relation to the above comments, please do not hesitate to contact Ante Zekanovic, Strategic Planner on 9847 6762.

I trust this information is of assistance to the Department in finalising the draft Coastal Management SEPP and associated documents.

Yours faithfully



Jason Rawlin
Acting Manager
Strategic Planning Branch

TRIM Reference: F2004/07488