

20th January 2017

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

Submitted via DPE online portal

SUBMISSION: DRAFT COASTAL MANAGEMENT STATE ENVIRONMENT PLANNING POLICY

The following submission has been prepared by Port of Newcastle (PON) in response to the draft State Environmental Planning Policy Coastal Management 2016, exhibited for public comment.

Port of Newcastle (PON) is the manager of the Port of Newcastle under a 98 year lease from the NSW Government, which commenced on 30th May 2014. PON has a range of functions including managing 792 hectares of land holdings, maintenance of the shipping channel including 20 operational berths, survey and maintenance dredging. Of PON's land holdings approximately 200 hectares is vacant and is to be developed for additional port facilities and supporting infrastructure, consistent with the objectives of the State Environmental Planning Policy(Three Ports) ('the Ports SEPP') 2013.

PON supports the Department's objectives to promote a coordinated approach to coastal management through the new coastal management framework. However, it should also be acknowledged that shipping ports and their supporting lands, whilst located within the coastal environment, are state significant precincts due to their importance to the NSW economy. As an island nation largely dependent on maritime trade, the development of port infrastructure and facilities, as well as ongoing operational activities such as maintenance dredging, is critical in allowing Australia to trade with the rest of the world.

PON has reviewed the draft Coastal Management SEPP in view of the relationship with the Ports SEPP, and specifically the Port of Newcastle. PON has formed a view that the application of the draft Coastal Management SEPP could hinder the future development and operation of the port. Accordingly, PON requests that the port area identified within the Ports SEPP be wholly excluded from the application of the draft Coastal Management SEPP, based on the following matters:

(i) Relationship with Ports SEPP

It is noted that Clause 7 provides that in the event of an inconsistency between the Coastal Management SEPP and the Ports SEPP, the Ports SEPP prevails to the extent of the inconsistency.

The primary purpose of the Ports SEPP is to enable essential, day-to-day development on land within the Port Lease Area to be undertaken by the port operator and port tenants as exempt or complying development (subject to specified criteria and conditions), thereby promoting the efficient operation of the ports. For example, Schedule 2 of the Ports SEPP identifies the construction of new wharfs, mooring infrastructure and loading facilities, as Complying Development. Clause 30 of the Ports SEPP permits the removal of trees and vegetation located within the Port Lease Area without development consent following an environmental assessment. It is critical that Clause 7, together with Clause 18, clearly permit activities or development that are identified as exempt development, complying development, or development permitted without consent (i.e. a Part 5 activity), pursuant to the Ports SEPP.

(ii) *Development of Coastal wetlands and land in proximity to coastal wetlands*

It is also noted that the 'Coastal Wetlands' and 'Proximity Area for Coastal Wetlands' mapping is more extensive than the wetlands identified in the current SEPP 14, and covers land identified as Port Lease Area. Some of this land is already developed or approved for the development of port facilities and critical infrastructure. This includes the new Terminal 4 Coal Terminal, rail corridors and rail discharge facilities. The drafting of Clauses 11 and 12 may sterilise the land from future development.

In this regard, it is noted that Clause 12 does not apply to land within rural zones (R1, R2 etc.). PON requests the Department considers a similar exemption to land zoned SP1 – Special Activities or that is identified as Port Lease Area under the Ports SEPP.

(iii) *Coastal Environment Area*

The Coastal Environment Area map includes PON's berths and operational lands, as well as significant parcels of vacant waterfront land. In this regard, Clause 14 of the draft SEPP would require any development requiring consent under Part 4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* not to be granted, if the development was likely to cause adverse impacts on the biophysical, hydrological (surface and groundwater) and ecological environment, or cause adverse impacts on the water quality of the marine estate. The development of port infrastructure, facilities and related activities is critical to the continued operation of the Port. However, development such as capital dredging, land reclamation or land excavation required to support the construction and operation of new port facilities, is likely to change, alter or impact upon these environments, even if only for a temporary duration.

(iv) *Coastal Use Area*

Most of PON's remaining land is designated as Coastal Use Area. This land includes essential infrastructure, as well as back-up storage land, storage facilities and vacant land. Clause 15 of the draft SEPP requires that development consent must not be granted, unless the consent authority is satisfied that a proposed development will not adversely impact on the visual amenity and scenic qualities of the coast.

A port by its nature contains tall structures such as silos, ship loaders, conveyer structures and cranes, all of which have a visual impact on a locality. Essential infrastructure such as navigation towers and communications infrastructure are also required to be located on high prominent geological features such as headlands. This is an example where the drafting may be too subjective or allow for too strict an interpretation. This can lead to delays and uncertainty in the development assessment process.

In comparison to the clauses in the draft SEPP, Clause 8 of the current State Environmental Planning Policy No. 71 – Coastal Protection provides a clear list of matters for consideration required to be taken into account by a consent authority when determining a development application to carry out on land to which the policy applies. Pursuant to the Ports SEPP, large scale development port infrastructure has been expressly declared as either State Significant Development ('SSD') or State Significant Infrastructure ('SSI') or will be otherwise subject to the development assessment process under Part 4 of the EP&A Act, and determined by the Minister for Planning. This provides for a greater level of assessment and consideration of the likely impacts of that development, including impacts of the physical environment of a locality. It is suggested that the requirements in Clause 12, 14 and 15 of the draft SEPP need to be balanced against the practical operational and development requirements of a port, consistent with the recognition by the NSW Government of the importance of ports to the NSW economy.

If the whole exclusion of the port area from the land to which the Coastal Management SEPP applies is not feasible, it is requested that the Department consider re-drafting provisions to ensure that both the future development of essential infrastructure and port facilities, and the continual operation of the port, is permitted and that the assessment of such development, is balanced and appropriate.

If you have any further enquiries regarding this matter, please contact Rebecca Johnston PON's Planning Officer on 294088219 or Rebecca.johnston@portofnewcastle.com.au.

Your sincerely

A handwritten signature in black ink that reads "Geoff Crowe". The signature is written in a cursive, flowing style.

Geoff Crowe
CHIEF EXECUTIVE OFFICER