

20 January 2017

Mr Luke Walton
Director Environment and Building Policy
NSW Department of Planning & Environment
GPO Box 39
Sydney NSW 2001

Dear Mr Walton

DRAFT COASTAL MANAGEMENT STATE ENVIRONMENTAL PLANNING POLICY

Thank you for providing the Port Authority of NSW (Port Authority) with the opportunity to review and comment on the draft State Environmental Planning Policy (Coastal Management) 2016 (Coastal Management SEPP). The Port Authority has significant concerns about the Coastal Management SEPP and the implications it would have on the ports, port facilities and shipping in NSW and the ability to develop and facilitate this essential infrastructure for the State. We met with representatives from the Department of Planning & Environment, including yourself and Felicity Greenway, on 21 December 2016 to express some of our concerns with the draft Coastal Management SEPP as well as with the Coastal Management Act 2016 (CM Act). We further elaborate on these concerns below.

The Port Authority objects to the Coastal Management SEPP applying to ports, port precincts, port facilities, shipping channels and navigation and emergency response facilities for the following reasons.

1. Objects of the CM Act and Aim of the Coastal Management SEPP

- The Objects of the CM Act do not recognise the importance of ports and shipping, including shipping channels, to NSW. The aim of the draft Coastal Management SEPP consequently focusses on protecting the environmental assets of the coast and managing development in the coastal zone, while making no provision for a consent authority to support any proposed port development requiring development consent, if that development is likely to cause 'adverse impacts' on the biophysical, hydrological and ecological environment. It is difficult to imagine a major port-related development that would not be likely to cause an adverse impact. Normally, a consent authority is able to consider the merits of a development including any adverse impacts in the context of the justification for the proposal, any positive impacts (e.g. economic, social), mitigation measures proposed and conditions and environmental offsets imposed on that development.
- While the Port Authority supports the likely intention of this legislation with respect to protecting the coastal environment, it cannot support the impacts this would have on ports and

SYDNEY

ABN: 50 825 884 846

YAMBA

PO Box 143
Yamba NSW 2464
T: 61 2 6646 2002

NEWCASTLE

PO Box 663
Newcastle NSW 2300
T: 61 2 4985 8222

SYDNEY

PO Box 25
Millers Point NSW 2000
T: 61 2 9296 4999

PORT KEMBLA

PO Box 89
Port Kembla NSW 2505
T: 61 2 4275 0100

EDEN

PO Box 137
Eden NSW 2551
T: 61 2 66461596

www.portauthoritiesnsw.com.au

shipping, which must be located in the coastal zone and are essential infrastructure to the State of NSW, not only as defined in the CM Act [section 4(1)] but also due to their economic importance.

2. Coastal Environment Area and Coastal Use Area

- Following on from comments made in point 1, the Port Authority considers that the wording of Division 3 and Division 4 of Part 2 of the Coastal Management SEPP would make it virtually impossible for a consent authority to grant development consent to port related development.
- Based on the current mapping, it would seem that all port facilities in the State will be wholly or partly mapped as coastal environment areas and coastal use areas. The additive nature of the provisions and restrictions to granting consent of clause 14(1) and 15(a) would seemingly make it impossible for a consent authority to grant consent to all sorts of port-related developments.
- Port areas are specialised precincts to allow for the efficient movement of passengers and freight between land and sea. As mentioned in point 1, Port developments would likely involve impacts on the biophysical, hydrological and ecological environment and although those impacts may be mitigated and offset to an acceptable degree, they often cannot be entirely avoided. Similarly, it is likely that port development would involve impacts on visual amenity and although those impacts may be mitigated and it may be argued that the impacts are justified, they likely cannot be entirely avoided. It is therefore considered that port land should not be included in the coastal environment area or coastal use area.

3. Coastal Management SEPP Mapping

- There is no justification as to why ports and port facilities have been included in the mapping of the Coastal Environment Area, which seems to be rather arbitrary and general and cover the whole of State waters, estuaries, coastal lakes and lagoons and land adjoining these features. The management objectives of the coastal environment area under section 8(2) of the CM Act do not allow for, or consider the importance of, ports and port facilities. Simply put, the management objectives for the coastal environment area do not recognise the existence of port facilities within the coastal zone or the importance of port facilities to the State of NSW.
- The above comment also generally applies to the management objectives of the coastal use area (section 9(2) of the CM Act), which do not recognise the unique nature and importance of ports and that they are inherently located within the coastal zone of the State.
- It is noted that this is despite the CM Act defining essential infrastructure to include infrastructure for the purposes of ports, shipping and harbours.
- It is also noted that the coastal environment and coastal use mapping appears to be based on outdated data regarding coastal alignments and developments without any sort of detailed review having occurred to ensure that it adequately reflects present-day conditions.

4. Coastal Wetlands and Littoral Rainforest Areas

- The Port Authority considers the wording of clause 11(1) of the Coastal Management SEPP to be highly problematic.
- It requires development consent, and in conjunction with clause 18, prohibits carrying out development without development consent under another environmental planning instrument, such as the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP), on "land wholly or partly identified as coastal wetlands or littoral rainforests on the Coastal Wetlands and Littoral Rainforests Area Map". The Port Authority considers that a public authority that is permitted to carry out development without consent under another environmental planning instrument should not be prohibited from doing so, given the public authority's requirement to fully consider environmental impacts under section 111 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and other relevant State and Commonwealth legislation.
- Furthermore, it applies not just to mapped areas of coastal wetlands and littoral rainforests but to land wholly or partly identified as coastal wetlands or littoral rainforests on the Coastal Wetlands and Littoral Rainforests Area Map. In practice this could mean that proposed

development captured under clause 11 that is permitted without development consent under the ISEPP (for example), which is several hundred metres away from mapped coastal wetlands or proximity areas for coastal wetlands (or littoral rainforest or proximity area for littoral rainforest) but contained on the same Lot and DP, would now require development consent.

- An example is Lot 1 DP 1165618, which includes a small area of mapped coastal wetland and proximity area for that wetland in Penrhyn Estuary. This large lot also includes a public bird viewing platform, a public boat ramp, a beach and adjoining waters. The Port Authority could, for example, be required or desire to undertake some sort of earthworks over 1.5 km away from the mapped coastal wetland but because it is on the same lot and DP, development consent would be required under clause 11. This sort of development, which may have absolutely no impact on the small mapped area of coastal wetland, would otherwise be permitted as development without consent under the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP). The Port Authority does not consider this reasonable or desirable as an outcome.
- Another example would be development for the purpose of a coastal navigational aid, which would normally be development without consent under clause 68(2)(a) of the ISEPP. However, if the navigational aid is on, or proposed to be on, a lot that also has a mapped area of littoral rainforest, even if it is kilometres away, then development consent would seem to be required due to clause 11 of the Coastal Management SEPP. This situation could easily occur with the large lots of Sydney Harbour National Park, as an example.
- If the restrictions under clause 11 remain, then they should only apply to land mapped as coastal wetlands or littoral rainforests and perhaps the associated mapped land in proximity to these areas, not to “land wholly or partly identified” as such.
- Similarly, if the restrictions under clause 12(1) remain, they should only apply to land mapped as “proximity area for coastal wetlands”, not to “land wholly or partly identified” as such.

5. Interaction with the State Environmental Planning Policy (Infrastructure) 2007

- The Port Authority considers that the provisions of Division 13 of the ISEPP should prevail over the Coastal Management SEPP in the event of an inconsistency to help ensure that the Port Authority can continue to carry out development without consent under this Division.
- Clause 7(2) of the Coastal Management SEPP clarifies that the Three Ports SEPP prevails over the Coastal Management SEPP in the event of any inconsistency. Whilst this provision is acknowledged, it is considered that this clause does not go far enough in providing regulatory certainty. It is also considered that equal provisions must be given for port facility development by a public authority outside of the Three Ports SEPP area, which is generally captured by Division 13 of the Infrastructure SEPP and Schedule 7 of the State Environmental Planning Policy (State Significant Precincts) 2005. To be clear, it is noted that there are port facilities outside of the Three Ports SEPP areas including Glebe Island, White Bay, the Overseas Passenger Terminal, and facilities at the Ports of Eden and Clarence River (Yamba), which are all owned and managed by the Port Authority, as well as private port facilities such as Viva at Gore Cove in Sydney Harbour and Caltex at Kurnell in Botany Bay.
- Clause 3.4[1] of Schedule 3 of the Coastal Management SEPP proposes to replace clause 8 (2)-(4) of the ISEPP with the clauses noted in 3.4 [1] of Schedule 3. Following from comments made above in point 4, replacing the reference to SEPP No 14 – Coastal Wetlands with a reference to the Coastal Management SEPP in clause 8(2) of the ISEPP is considered problematic given that clauses 11 and 12 of the Coastal Management SEPP refers to land “wholly or partly identified” as “coastal wetlands” or “proximity area for coastal wetlands”. SEPP No 14 only applies to land mapped as coastal wetlands in that SEPP. The Port Authority therefore requests that restrictions under clause 11 and 12 should only apply to land mapped as coastal wetlands or proximity area for coastal wetland, not to land wholly or partly identified as such.

In order to address the concerns noted above, significant re-drafting of the Coastal Management Act 2016 and the draft Coastal Management SEPP would be required. It is therefore suggested that port facilities, port precincts, shipping channels, navigation and emergency response facilities, and areas defined under the State Environmental Planning Policy (Three Ports) 2013 are excluded from the land to which the Coastal Management SEPP applies.

Please don't hesitate to contact me at rbennett@portauthoritynsw.com.au or 9296 4674 with any questions.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ryan Bennett', with a long horizontal flourish extending to the right.

Ryan Bennett

Senior Planning & Sustainability Manager