

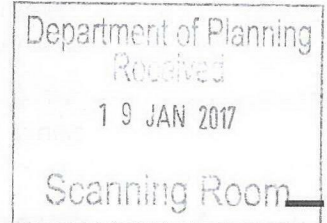
Director Environment and Building Policy  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001



13 January 2017

Dear Sir/Madam

## Submission on Draft Coastal Management SEPP



Thank you for the opportunity to provide a submission on the draft *State Environmental Planning Policy (Coastal Management) 2016 (Draft SEPP)*.

### 1. About ARTC

ARTC is the rail infrastructure manager for the Defined Interstate Rail Network, providing a one stop shop for freight rail transport across Australia.

In this role, ARTC delivers a wide range of rail infrastructure projects and manages the operation of rail infrastructure. ARTC has responsibility for the management of over 8,500 km of standard gauge track in NSW, Queensland, Victoria, South Australia and Western Australia. In NSW, this includes the Hunter Valley rail network, various Sydney metropolitan freight lines and significant coastal areas, including around Sydney and Newcastle ports and Kooragang Island.

One of ARTC's key tasks is to facilitate the delivery of products to ports for export. This means that coastal infrastructure is of critical importance to ARTC's operations.

Most of ARTC's activities in NSW are covered by *State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)*, and are governed by the environmental impact assessment scheme in Part 5 of the *Environmental Planning and Assessment Act 1979 (Planning Act)*. In addition, some of ARTC's projects are State Significant Infrastructure (SSI), and so ARTC carries out assessments of those projects under Part 5.1 of the Planning Act.

With ARTC's extensive experience in delivering major rail infrastructure projects in NSW, and its current focus on the Inland Rail programme, ARTC has a strong desire to help deliver improvements in the EIA and approval process in NSW.

### 2. Recent planning pathway complexities for ARTC coastal projects

Some ARTC projects in coastal areas in recent years have been subject to a great deal of regulatory complexity, due to the interactions between several SEPPs, such as the ISEPP, *State Environmental Planning Policy (State Significant Precincts) 2005*, *State Environmental Planning Policy (Three Ports) 2013 (Ports SEPP)*, *State Environmental Planning Policy No 14 - Coastal Wetlands (SEPP14)* and *State Environmental Planning Policy No 26 - Littoral Rainforests (SEPP26)*.

One of the issues was that it was very difficult to determine whether the relevant ARTC project was permissible without consent (which is the usual course for ARTC projects), permissible only with consent (which is highly unusual for ARTC projects), or a combination of both. In some cases, it appeared that the relevant ARTC project would be partly permissible without consent and partly permissible with consent, which would have added significant time, cost and uncertainty to the project. ARTC had several discussions with DP&E about this, during DP&E's review of the Ports SEPP.

Following DP&E's review of the Ports SEPP, various amendments were made to the Ports SEPP which alleviated a number of ARTC's concerns in relation to the Port of Newcastle. While the outcome was not a complete removal of the planning pathway complexities, it enabled a more certain and efficient outcome for some projects.

ARTC believes it is very important to avoid regulatory outcomes like the situation described above prior to the amendment of the Ports SEPP.

### **3. Repeal of SEPP14 and SEPP26**

ARTC supports the repeal of SEPP14 and SEPP26, and the related amendments to the ISEPP, which the Draft SEPP would achieve.

ARTC agrees with the approach of dealing with coastal management in a holistic fashion. The proposed repeal and amendments also remove some of the anomalies and complexities which arose out of the relationship between the ISEPP and SEPP14.

### **4. Ports**

The relationship between coastal management and ports is significantly clearer under the Draft SEPP.

The Ports SEPP is now expressed to prevail over the Draft SEPP to the extent of any inconsistency (clause 7(2) of the Draft SEPP). Because clause 6(3) of the Ports SEPP preserves the operation of the ISEPP in circumstances where the ISEPP provides that development is permissible without consent, Part 5 (or potentially Part 5.1) of the Planning Act would apply to ARTC projects that constitute "*rail infrastructure facilities*" under clause 79 of the ISEPP in the usual way in most situations.

ARTC also welcomes the proposed extension of this position to Port Kembla and Port Botany in addition to the Port of Newcastle in the Draft SEPP.

However, the effectiveness of the Ports SEPP in preserving the "without consent" status of development under the ISEPP operates only within a very specific area identified in the Ports SEPP. Given the linear nature of many ARTC projects, this area has cut across port-related ARTC projects previously. In such cases, the potential for dual approval pathways under the Planning Act (see part 2 of this submission above) remains.

This is particularly concerning given the reach of clause 11 of the Draft SEPP, which is addressed in part 7 of this submission below.

ARTC proposes that the scope of operation of the relevant provisions of the Ports SEPP be extended to cover the whole of a project which falls partly within the specified Port area, to avoid this result.



## 5. Relationship with the ISEPP

The Draft SEPP proposes to amend the ISEPP to provide that only clauses 11, 12 and 21 of the Draft SEPP prevail over the ISEPP. Subject to its comments below, ARTC welcomes this proposed amendment.

## 6. Maps

As ARTC understands the Draft SEPP, the key trigger for its operation is the extent to which development takes place within one or other components of the "coastal zone". Each component of the "coastal zone" is defined by reference to maps.

One of the issues which ARTC identified with SEPP14 was that the maps which accompanied it were often out-dated and not representative of the environment to which they related. For example, at a number of places in and around Newcastle, various areas of hardstand or significant ballast and other heavy rail infrastructure were nevertheless identified as SEPP14 wetlands.

It is clearly important to ensure that the proposed maps identify coastal wetlands accurately and they do not capture land areas inappropriately, particularly land in the vicinity of ports areas, where the Draft SEPP would prevail over the ISEPP.

## 7. Development captured by the draft Coastal Management SEPP

Clause 11 of the Draft SEPP would require development consent for various types of development on land which is "wholly or partly" within designated coastal wetlands or littoral rainforests.

Clauses 11(1)(a)-(c) set out specific types of development for which development consent will be required. These are broader than the development types described in the equivalent provision in SEPP14.

In addition, clause 11(1)(d) provides that "any other development" also requires development consent. This is a very unusual provision, given the list of specific development types immediately above it in clauses 11(1)(a)-(c).

The effect of clause 11(1) is especially significant since clause 11(2) makes development captured by clause 11(1) "designated development" under the Planning Act, meaning that (among other things) an EIS is required and third parties may challenge the merits of any development consent which is granted.

ARTC is very concerned about the effect of clause 11, particularly outside the specific areas identified in the Ports SEPP. Given that clause 11 of the Draft SEPP is intended to prevail over the ISEPP except in the case of emergency or routine maintenance activities, there is the potential that clause 11 will preclude Part 5 of the Planning Act from controlling any ARTC projects where any part of those projects falls outside the specific ports areas and within the coastal zone.

ARTC suggests that further consideration be given to revising clause 11, and particularly:

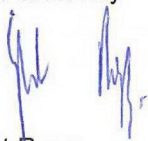
- excluding its effect for development which is not within designated coastal wetlands or littoral rainforests (ie. removing the words "or partly");
- further refining the types of development specified in clause 11(1)(a)-(c);
- removing clause 11(1)(d); and

- making clause 11 subject to the ISEPP for more than just emergency or routine maintenance activities or development which is within the specific ports areas in the Ports SEPP.

ARTC would appreciate an opportunity to discuss its submission with DP&E.

Would you please advise me of a time that would suit DP&E for a discussion.

Yours sincerely



Stuart Ross  
**Environment Manager**