

**CALTEX**

Caltex Australia

Our Ref 22176

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

20th January, 2017

To the Director Environment and Building Policy,

Thank you for the opportunity to comment on the draft *State Environment Planning Policy (Coastal Management) 2016* (draft Coastal Management SEPP).

In general, Caltex supports the aim of the Coastal Management SEPP to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016 (NSW)*.

Our submission has focused on relevant Parts, Sections (s.), associated Clauses (cl.) and Schedules from the draft Coastal Management SEPP that we consider relevant to our current and future operations.

In particular we have concerns regarding the new constraints that the provisions of this draft SEPP would have upon our operation at Kurnell. The Kurnell Terminal is the largest import terminal of its kind in the southern hemisphere and plays a critical role in providing fuels to the NSW and ACT market, including Sydney Airport. The proposed mapping for the draft Coastal Management SEPP would now define large areas of the southern part of the Kurnell site as Coastal Wetlands and as a consequence designate existing operational areas of the terminal itself as 'proximity area for coastal wetland'.

This new designation could potentially introduce a suite of operational constraints for the Kurnell site, with similar constraints introduced over our assets elsewhere. In particular the provisions of Clause 11 and Clause 12 mean that minor works (e.g. new drainage infrastructure), which may have previously been considered local or complying development will now, in certain cases, require an Environmental Impact Statement. This level of investigation and the requirement for an EIS for what might be minor works is not considered the best use of Caltex's or government resources.

Therefore we request that the proposed amendments and comments to the draft Coastal Management SEPP outlined on Attachment 1 to this letter be considered.

Thank you for your consideration of these points.

Yours sincerely,
Caltex Australia Petroleum Pty Ltd

Robert Rynsaardt
Property and Contracts Manager

CALTEX AUSTRALIA PETROLEUM PTY LTD
2 Market St, Sydney NSW 2000 | Postal: GPO Box 3916, Sydney, NSW 2001



Corporate Office:
Level 24
2 Market Street
Sydney NSW 2000
Mail: GPO Box 3916
Sydney NSW 2001
Telephone: (02) 9250 5000
Facsimile: (02) 9250 5742
www.caltex.com.au

NSW Banksmeadow Office:
Corner Foreshore Drive and
Penrhy Road
Banksmeadow NSW 2019
Mail: PO Box 441
Matraville NSW 2036
Telephone: (02) 9250 5000
Facsimile: (02) 9695 3646

VIC/IA3/SA Newport Office:
Newport Customer Service Centre
411 Douglas Parade
Newport VIC 3015
Mail: PO Box 57
Melbourne VIC 3015
Telephone: (03) 9287 9555
Facsimile: (03) 9287 9572

QLD/NI Lytton Office:
Tanker Street (off Port Drive)
Lytton QLD 4178
Mail: PO Box 794
Wynnum QLD 4178
Telephone: (07) 3877 7333
Facsimile: (07) 3877 7464

WA Fremantle Office:
85 Bracks Street
North Fremantle WA 6159
Mail: PO Box 39
North Fremantle WA 6159
Telephone: (08) 9430 2888
Facsimile: (08) 9335 3062

Attachment 1

Clause 11 Development of coastal wetlands or littoral rainforest land

With regards to the proposed stipulations of this clause we request that the following points are considered:

1. A new subclause should be added that allows proponents on a project by project basis to propose amendments to the boundaries of the Coastal Wetlands and Littoral Rainforest Area Map if they can show that the areas shown on the maps do not actually contain the habitat and/or communities that the policy is aiming to protect. A review of this map indicates that in certain areas aerial photography has been used to assume the presence of ecological habitats and communities. This high level mapping is appropriate when developing a State Policy framework, but not at a project or activity level. As such, we request that a subclause be included that allows proponents to provide survey information from appropriately qualified ecologists that can confirm or revise the boundaries shown on the Coastal Wetlands and Littoral Rainforest Area Map. This subclause should also allow these discussions to take place ahead of submitting a development application, perhaps through a scoping meeting with the consent authority.
2. That Clause 11(1ciii) be removed so that private companies can complete environmental protection works on their land under the existing development control provisions. The completion of environmental protection works by all parties and not just public authorities (refer to clause 11(3)) is of benefit to society and the environmental as a whole. Planning policy should not make the delivery of these works more onerous.
3. A new subclause should be added that allows the maintenance or upgrade of existing infrastructure on private land in the coastal wetlands and/or littoral rainforest zone to be consented under complying or local development if those provisions already exist and no significant adverse impacts upon the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest are expected. This could be agreed at a scoping meeting ahead of submitting a development application. In practical terms, this allows companies to manage their land appropriately without onerous assessment requirements for what might be minor works.
4. Cl 11(1)(a) makes specific reference to the Native Vegetation Act which will shortly be repealed by the Local Land Services Amendment Act 2016. It is unclear from the draft SEPP what the definition of native vegetation after the repeal has occurred.
5. Cl 11(1)(b) makes reference to the removal of marine vegetation, despite the removal of this vegetation already being covered under s205 of the Fisheries Management Act 1994. Would this SEPP override the FM Act in this regard?
6. Cl 11(1)(c)(i-iv) It is not clear why certain types of development have been specifically mentioned when in Cl 11(1) (d) includes 'any other development' – surely levees, drainage works etc are all still 'development' as defined in the Act?

We believe the first point made for this clause is important. Without this provision, the inaccuracies in how the previous 'coastal zone' (i.e. by applying a blanket buffer area along the coast) was defined will be repeated in the new policy framework.

Clause 14, Clause 15 - Terminology

Adverse Impact vs Significant Impact

In a number of places throughout Clauses 14 and 15 it is stated that a consent authority should not grant development consent for a project unless it is satisfied that the proposed development “*is not likely to cause adverse impacts*” upon a particular environmental aspect or value. For example, Clause 14 (1a) is shown below:

14 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is wholly or partly within the coastal environment area unless the consent authority is satisfied that the proposed development:

(a) is not likely to cause adverse impacts on the biophysical, hydrological (surface and groundwater) and ecological environment, and

This requirement that a development must be unlikely to cause an adverse impact sets a much higher threshold for a project to achieve than the text used in Clause 14 (1b) which requires that a consent authority should not grant development consent for a project unless it is satisfied that the proposed development “*is not likely to significantly impact*” a particular environmental aspect or value. Clause 14 (1b) is shown below:

14 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is wholly or partly within the coastal environment area unless the consent authority is satisfied that the proposed development:

(b) is not likely to significantly impact on geological and geomorphological coastal processes and features or be significantly impacted by those processes and features, and

The terminology here is important because the use of ‘adverse impacts’ includes all adverse impacts be they significant or non-significant. This means that for particular environmental aspects the proponent of a development will need to demonstrate that the development has a neutral or beneficial impact. In most circumstances this is not going to be possible and is not consistent with Environmental Impact Assessment theory or the intention of Section 111 and 112 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Development will inevitably result in certain impacts. As such, those impacts that are adverse but non-significant need to be considered in the assessment of a development application but they should not be the reason for development consent being refused.

Equally, certain impacts are harder to quantify than others (e.g. visual, heritage, ecology etc.). The proponent may contend that a potential impact is neutral whereas the consent authority may counter that it is adverse but non-significant. In this case a development would be refused on the basis of a potential impact that would be largely immaterial elsewhere.

Ultimately language such as ‘no adverse impact’ can lead to proponents including unnecessary mitigation which may in turn jeopardise the viability of projects. It is also likely to lead to numerous Land and Environment Court cases depending on how consent authorities apply this requirement.

As such, Caltex recommend that in the appropriate locations in Clauses 14 and 15, that the phrase “*is not likely to cause adverse impacts*” is replaced with “*is not likely to result in a significant impact*”.

Approval of Development with Significant Impacts

As a related point, in certain cases development in the areas captured by this SEPP will result in significant impacts. The wording of the various clauses in the draft SEPP means that even if the recommended change suggested above was accepted, that certain development resulting in significant impacts upon one or more environmental aspects would not be able to be consented. For example, a development might have a significant impact on a single threatened species and may still be consented at the discretion of the Minister taking into account other social and economic benefits / considerations. Even if the word significant was inserted into the clauses mentioned above, under the scenario noted previously, development consent would be refused. Therefore we suggest that the wording within the draft SEPP is reviewed to avoid inconsistencies with the spirit of the EP&A Act.

Surf zone

Cl14(1)(g) states “*will not adversely impact upon the use of the surf zone*”. The ‘surf zone’ and the ‘use of the surf zone’ is not defined in the draft SEPP. We have concerns that this lack of clarity may affect our coastal operations.