



OUT17/13697

Felicity Greenway  
Director Industry and Infrastructure Policy  
NSW Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

Dear Ms Greenway

***Review of State Environmental Planning Policy (Infrastructure) 2007***

The Department of Primary Industries (DPI) appreciates the opportunity to contribute to the review of State Environmental Planning Policy (Infrastructure) 2007 (the SEPP).

DPI has a strong interest in ensuring that the SEPP remains current, promotes best practice and adequately captures the range of crucial infrastructure and services that public authorities provide to the community. DPI utilises the SEPP both as a proponent for facilities such as research stations, and as a specified authority or consent authority for the *Marine Estate Management Act 2014* and *Fisheries Management Act 1994*.

A summary of DPI's key points are as follows:

- Consent requirements under the *Marine Estate Management Act 2014* should be referenced more broadly throughout the instrument where applicable to ensure that potential impacts to marine parks and aquatic reserves are addressed.
- A new clause be inserted that requires public and private water supply authorities to obtain consent from the Department of Industry prior to constructing sewer reticulation systems that have the potential to impact priority oyster aquaculture areas
- Prescribed zones for existing research stations be amended to reflect the zoning of existing research stations in relevant local environmental plans

Further detailed comments are attached for your consideration which includes a copy of the draft SEPP clauses with DPI's recommendations included.

DPI notes that correspondence with the Department of Planning and Environment has occurred previously regarding clause 106 of the SEPP that allow a person licenced under the *Water Industry Competition Act 2006* to undertake development of sewerage systems without consent. The proposed amendments provide some clarity to address this issue. Metropolitan water functions have now transferred to the Planning and Environment Cluster.

I note that this letter does not constitute consultation with respect to fish and marine vegetation as required under section 34A of the *Environmental Planning and Assessment Act 1979*.

For further information please contact Kate Johnson, Policy Officer on (02) 4916 3964 or via email at [kate.johnson@dpi.nsw.gov.au](mailto:kate.johnson@dpi.nsw.gov.au)

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M Isaacs', is positioned above the printed name.

Mitchell Isaacs  
**Director, Planning Policy & Assessment Advice**

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## DPI comments on *State Environmental Planning Policy (Infrastructure) 2007*

### **Strengthening the profile of marine parks and aquatic reserves and consent requirements under the *Marine Estate Management Act 2014*.**

Construction activities associated with development permissible without consent, exempt or complying development provisions can impact on marine parks and aquatic reserves declared under the *Marine Estate Management Act 2014*. This includes water quality impacts as a result of runoff after soil disturbance, sewer overflows and stormwater discharge, physical damage to seagrass communities and aquatic biosecurity risks. It is important that the instrument make clear that development within or adjacent to a marine park or aquatic reserve consider and mitigate these potential impacts as part of an environmental assessment process, and obtain necessary approvals from the Department of Primary Industries.

It should be noted that consent requirements for a public authority span both the *Marine Estate Management Act 2014* (s55 and 56) and s5 of the *Marine Estate Management Regulation 2009*.

Section 55 and 56 of the *Marine Estate Management Act 2014* address the considerations a public authority proponent needs to make when preparing and assessing a matter under Part 4 or Part 5 of the *Environmental Planning & Assessment Act 1979*. Clause 5 of the *Marine Estate Management Regulation 2009* deals with the specific requirement to obtain consent by the relevant Ministers (as opposed to development consent) for work in a marine park or aquatic reserve. Consent under the *Marine Estate Management Regulation 2009* may be required for matters assessed via Part 4 or Part 5 of the EP&A Act. Some development captured in the SEPP (exempt development, for example) include where an activity does not require a Part 4 or Part 5 assessment yet the activity still triggers the need for an approval under the *Marine Estate Management Regulation 2009*.

Consequently, **DPI recommends** a reference to the *Marine Estate Management Act 2014* in the SEPP needs to also capture approval or consent requirements under the *Marine Estate Management Regulation 2009*.

This should also be reiterated for the specific divisions within the SEPP where the type of infrastructure is more likely to interact with a marine park or aquatic reserve. It is recommended that the references to consent requirements for land reserved under the *National Parks and Wildlife Act 1975* should be duplicated for land reserved under the *Marine Estate Management Act 2014*.

Amendments to Division 9 'Gas transmission or distribution and pipelines' and Division 21 'Telecommunications and other communication facilities' have not been considered as part of the proposed SEPP amendments. **DPI suggests** that the above recommendation be incorporated in these Divisions as part of the amending instrument.

### **Recommend new clauses for sewerage systems**

Sewage reticulation systems as defined in the Standard Instrument LEP are designed to incorporate emergency relief overflow structures (commonly referred to as EROS or ERS). These structures divert raw sewage to the receiving environment in the event of a power outage or wet weather inundation that exceeds the capacity of the sewer network. The aim of an ERS is to minimise public health risks or damage to infrastructure. In coastal areas these ERS can direct sewage into estuaries where commercial edible shellfish aquaculture occurs.

All commercial oysters and mussels produced in NSW are harvested in accordance with the NSW Shellfish Program, established by the *Food Regulation 2015* under the Seafood Food Safety Scheme. The NSW Food Authority manages the NSW Shellfish Program and licences

approximately 300 businesses in the shellfish sector, made up of around 270 oyster farmers and 30 shellfish wild harvest businesses.

Human or animal faecal matter in water that has the potential to create a public health hazard is one of the key risks to the edible shellfish aquaculture industry and is a major focus of the classification process for shellfish harvest areas described in the Australian Shellfish Quality Assurance Program Operations Manual (ASQAP Manual). Shoreline surveys that assess the reliability of sewage infrastructure, presence of overflow devices, bacteriological water quality monitoring, mapping of pollution sources are examples of indicators taken into consideration when determining classification.

A harvest area which has sewage treatment plant outfall(s) or other point sources of public health significance within or adjacent to the harvest area has a Closed Safety Zone established adjacent to the outfall(s) which has been established in accordance with Section 3.8.2 of the ASQAP Manual. Shellfish harvesting is then prohibited in these areas.

Part 3A of State Environmental Planning Policy 62 – Sustainable Aquaculture requires a consent authority to consider whether a development may have an adverse impact on oyster aquaculture development or a priority oyster aquaculture area. Consultation with the Director General of the Department of Primary Industries (DPI Fisheries by delegation) is required for these developments, and development consent may be refused if a development adversely affects oyster aquaculture.

This provision has been extremely beneficial for the oyster industry and addresses impacts as a result of onsite sewage management systems constructed in association with developments that require consent.

The SEPP provisions relating to sewage reticulation systems that allow development permissible without consent on any land for public authorities or any person licenced under the *Water Industry Competition Act 2006* mean there is no oversight in the planning system to regulate impacts to shellfish aquaculture as a result of sewer overflows. This is a major issue when sewage overflows are one of the key risks to the industry. According to the NSW Food Authority, 42 harvest area closures were implemented in NSW during 2015/16 for human health reasons as a result of water pollution events, with each closure lasting a minimum of 21 days.

The NSW Food Authority and DPI Fisheries works extensively with local government water service providers and State Owned Corporations to mitigate risks to the shellfish industry as a result of sewer overflows. There is no formal requirement for consultation or concurrence with DPI however.

**DPI strongly recommends** that, where sewerage reticulation systems have the potential to impact priority oyster aquaculture areas as defined in SEPP 62 or marine parks and aquatic reserves as defined in the *Marine Estate Management Act 2014* that a new clause be drafted that states consent or concurrence is required by the Department of Primary Industries.

## **Research stations**

**DPI recommends** that the prescribed zones for existing research stations be expanded to incorporate the following land use zones:

- E2 Environmental Conservation
- E3 Environmental Management
- SP1 Special Activities
- SP2 Infrastructure

A research station is defined in clause 90 as *a facility operated by a public authority for the principal purpose of agricultural, **environmental**, fisheries, forestry, minerals or soil conservation research, and includes any associated facility for education, training, administration or accommodation.*

Therefore DPI considers it appropriate that appropriate environmental zones be captured as prescribed zones for this provision, to reflect the intended use of the research station. The existing Port Stephens Fisheries Institute has an E2 zone applied to all or part of the sites and is affected by this provision.

Research stations are also co-located with tertiary education campuses such as the Beef Industry Centre and the University of New England, Wagga Wagga Agricultural Institute and Charles Sturt University and Gosford Primary Industries Centre at University of Newcastle Ourimbah campus. These sites generally have an SP1 or SP2 zoning applied to the entirety of the lot which incorporates research stations.

### **Land use conflict in rural zones for police, emergency services and correctional facilities**

The establishment of police or emergency services facilities in rural land use zones has the potential to create land use conflict. Division 6 of the instrument currently specifies RU1, RU2, RU3 and RU4 zones are being prescribed zones where these developments are permissible without consent by or on behalf of a public authority.

While DPI acknowledges that these facilities provide crucial services to the community, a key objective of rural zoning is to minimise conflict between land uses. DPI recommends that a land use conflict risk assessment be undertaken as part of the environmental assessment by public authorities.

DPI's Land Use Conflict Risk Assessment Guide can be found at:

[http://www.dpi.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0018/412551/Land-use-conflict-risk-assessment-LUCRA-guide.pdf](http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0018/412551/Land-use-conflict-risk-assessment-LUCRA-guide.pdf)

Development for the purpose of correctional centres may be carried out by or on behalf of a public authority with consent on land in a prescribed zone. This includes RU2 Rural Landscape and RU4 Primary Production small lots zones.

It is proposed as part of the amendments to the SEPP that alterations and additions to correctional centres are permissible without consent in any zone.

**DPI recommends** that a requirement to obtain a site compatibility certificate be required for correctional facilities or complexes that can impact on or be impacted by primary production activities in rural zones.

Further detailed changes to the Schedules in the amending instrument that capture the recommendations above are provided in red text for your consideration in the Appendix.

**Proposed amendments to State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016**

Note: DPI's recommended changes in red and highlighted in grey

**Schedule 1      Amendment of State Environmental Planning Policy (Infrastructure) 2007—consultation and notification**

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**[7]      Clause 16 Consultation with public authorities other than councils**

Omit clause 16 (2) (a) and (b). Insert instead:

(a) development adjacent to land reserved under the *National Parks and Wildlife Act 1974* or to land acquired under Part 11 of that Act—the Office of Environment and Heritage,

(a1) development on land in Zone E1 National Parks and Nature Reserves or in a land use zone that is equivalent to that zone—the Office of Environment and Heritage,

(b) development adjacent to a marine park or aquatic reserve declared under the *Marine Estate Management Act 2014*—the Department of Industry, Skills and Regional Development,

**Schedule 2      Amendment of State Environmental Planning Policy (Infrastructure) 2007—exempt and complying development generally**

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**[7] Clause 20C General conditions of complying development certificates** (Corrects terminology.)

Omit “Run-off and erosion” from clause 20C (8). Insert instead “Erosion and sediment”.

Insert after clause 20C (8):

Erosion and sediment controls including works to maintain separation of clean and dirty water must be installed before disturbing the ground surface

**Schedule 4      Amendment of State Environmental Planning Policy (Infrastructure) 2007—correctional centres and correctional complexes**

**[1]      Clause 25 Development permitted with consent** (Redundant provision. Clause 25 (1) applies as the land concerned is in a prescribed zone.)

Omit clause 25 (2).

Insert after clause 25 (3) (h)

(4) Consent must not be granted for development of a kind referred to in subclause (1) unless the consent authority is satisfied that the Secretary has certified in a site compatibility certificate that, in the Secretary's opinion, the development is compatible with the surrounding land uses.

....

## **Schedule 6      Amendment of State Environmental Planning Policy (Infrastructure) 2007—electricity transmission or distribution**

...

### **[4] Clause 41 Development permitted without consent**

Omit clause 41 (1) Insert instead:

(1) Development for the purpose of an electricity transmission or distribution network may be carried out by or on behalf of an electricity supply authority or public authority without consent on any land. However, such development may be carried out without consent on land reserved under the *National Parks and Wildlife Act 1974* or Marine Parks and aquatic reserves reserved under the *Marine Estate Management Act 2014* only if the development:

(a) is authorised by or under these Acts, or

(b) is, or is the subject of, an existing interest within the meaning of section 39 of that Act the *National Parks and Wildlife Act 1974*, or

(c) is carried out on land to which that Acts applies over which an easement has been granted and is not contrary to the terms or nature of the easement, or

(d) is an electricity work to which section 53 of the *Electricity Supply Act 1995* applies.

Insert at the end of clause 41 (2) (a) (iii):

, and

- (iv) installation of overhead wires and associated component parts, including support structures, and
- (v) construction of access tunnels or access tracks,

## **Schedule 12      Amendment of State Environmental Planning Policy (Infrastructure) 2007—parks and other public reserves**

### **[1] Clause 65 Development permitted without consent**

Insert "or acquired under Part 11 of that Act," after "*National Parks and Wildlife Act 1974*," in clause 65 (1) (a).

Omit “*Fisheries Management Act 1994*” in clause 65 (1) (c). Insert instead “*Marine Estate Management Act 2014*”

## Schedule 13      Amendment of State Environmental Planning Policy (Infrastructure) 2007—port, wharf or boating facilities

...

### [7]      Clause 68 (4)

Omit clause 68 (4). Insert instead

(4) Development for the purpose of wharf or boating facilities may be carried out by or on behalf of a public authority without consent on any land. However, such development may be carried out on land reserved under the *National Parks and Wildlife Act 1974* or marine parks and aquatic reserves reserved under the *Marine Estate Management Act 2014* only if the development is authorised by or under these Acts.

### [8]      Clause 68 (4A)

Omit clause 68 (4A). Insert instead

(4) Development for the purposes of associated public transport facilities for a public ferry wharf may be carried out by or on behalf of a public authority without consent on any land. However, such development may be carried out on land reserved under the *National Parks and Wildlife Act 1974* or marine parks and aquatic reserves reserved under the *Marine Estate Management Act 2014* only if the development is authorised by or under these Acts.

## Schedule 16      Amendment of State Environmental Planning Policy (Infrastructure) 2007—roads and traffic

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### [6]      Clause 94 Development permitted without consent—general

Omit clause 94 (1) Insert instead:

(1) Development for the purpose of a road or road infrastructure facilities may be carried out by or on behalf of an electricity supply authority or public authority without consent on any land. However, such development may be carried out without consent on land reserved under the *National Parks and Wildlife Act 1974* or Marine Parks and aquatic reserves reserved under the *Marine Estate Management Act 2014* only if the development:

(a) is authorised by or under these Acts, or

(b) is, or is the subject of, an existing interest within the meaning of section 39 of ~~that Act~~ the *National Parks and Wildlife Act 1974*, or

(c) is carried out on land to which ~~these Acts~~ *these Acts* apply over which an easement has been granted and is not contrary to the terms or nature of the easement.

Insert after clause 94 (1):

(1A)      Development for any of the following purposes may be carried out by or on behalf of a public authority without consent on land in a prescribed zone:

(a) bus depots,



(b) permanent road maintenance depots and associated infrastructure (such as garages, sheds, tool houses, storage yards, training facilities and workers' amenities).

## Schedule 18      **Amendment of State Environmental Planning Policy (Infrastructure) 2007—stormwater management systems**

...

### [2]      **Clause 111 Development permitted without consent**

Insert after clause 111 (1) “However, such development may be carried out on land within or adjacent to marine parks and aquatic reserves reserved under the *Marine Estate Management Act 2014* only if the development is authorised by or under this Act.”

Insert after clause 111 (2) (c):

(d) buildings, including buildings containing amenities for staff, that have a height of not more than 5m above ground level (existing).

**Note.** The term **building** is defined in the *Environmental Planning and Assessment Act 1979* as including any structure.

### [3]      **Clause 111A**

Insert after clause 111:

#### **111A      Development permitted with consent**

Development for the purpose of a stormwater management system may be carried out by any person with consent on any land.

### [4]      **Clause 112 Exempt development** (Together with the insertion of proposed clause 112 (2), corrects sentence construction.)

Omit “and complies with clause 20 if the development involves no greater soil or vegetation disturbance than necessary and does not involve any increase in stormwater drainage or run-off from the site concerned”. Insert “However, such development may be carried out on land within or adjacent to marine parks and aquatic reserves reserved under the *Marine Estate Management Act 2014* only if the development is authorised by or under this Act.”

### [5]      **Clause 112 (2)**

Insert at the end of clause 112:

- (2)      Development is exempt development under this clause only if the development:
  - (a)      complies with clause 20, and
  - (b)      involves no greater soil or vegetation disturbance than necessary, and
  - (c)      does not involve any increase in stormwater drainage or run-off from the site concerned.

## Schedule 17      Amendment of State Environmental Planning Policy (Infrastructure) 2007—sewerage systems

### [1]      **Clause 105 Definitions** (Aligns terminology with the Standard Instrument.)

Omit the definitions of *biosolids treatment facility*, *sewage reticulation system*, *sewage treatment plant*, *sewerage system* and *water recycling facility*.

Insert in alphabetical order:

*biosolids treatment facility*, *sewage reticulation system*, *sewage treatment plant*, *sewerage system* and *water recycling facility* have the same meanings as in the Standard Instrument.

### [2]      **Clause 106 Development permitted with or without consent** (Ensures that certain development is permitted to be carried out without consent by or on behalf of a person who is not a public authority only if a network operator's licence is required under the Water Industry Competition Act 2006 before the development is carried out and the development consists of the construction or operation of water industry infrastructure (within the meaning of that Act). The amendment made by item [5] is a related amendment.)

Omit clause 106 (1)–(3). Insert instead:

(1) Development is carried out in the *prescribed circumstances* if the development:

- (a) is carried out by or on behalf of a public authority, or
- (b) consists of the construction or operation of water industry infrastructure and a network operator's licence is required to be held (whether or not by the person carrying out the development) before the development may be carried out.

(2) Development for the purpose of sewage treatment plants or biosolids treatment facilities may be carried out without consent on land in a prescribed zone in the prescribed circumstances.

(2A) In any other circumstances, development for the purpose of sewage treatment plants or biosolids treatment facilities may be carried out with consent on land in a prescribed zone.

(3) Development for the purpose of water recycling facilities may be carried out without consent on land in a prescribed zone in the prescribed circumstances.

(3A) In any other circumstances, development for the purpose of water recycling facilities may be carried out with consent if:

- (a) the land on which the development is carried out is in a prescribed zone, or
- (b) the development is ancillary to an existing land use.

(3B) Development for the purpose of sewage reticulation systems may be carried out without consent on any land in the prescribed circumstances.

(3C) In any other circumstances, development for the purpose of sewage reticulation systems may be carried out with consent on any land.

(3D) Development for the purpose of water recycling facilities or sewage reticulation systems may be carried out on land reserved under the *National Parks and Wildlife Act 1974* or land within or adjacent to marine parks and aquatic reserves reserved under the *Marine Estate Management Act 2014* only if the development is authorised by or under these Acts.

3E Development for the purpose of sewage reticulation systems is subject to Part 3A of *State Environmental Planning Policy No 62 – Sustainable Aquaculture*