

24 November 2017

Director, Legislative Updates  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

## **Review of the Environmental Planning and Assessment Regulation 2000**

NSW Ports welcomes the review of the *Environmental Planning and Assessment Regulation 2000* (the Regulations) and the opportunity to provide a submission to the review. NSW Ports is responsible for managing the port and freight assets of Port Botany, Port Kembla, the Cooks River Intermodal Terminal, and the Enfield Intermodal Logistics Centre. To this end, NSW Ports supports increased efficiencies in the planning system that allow for reductions in administrative burdens and complexities, ultimately assisting in productivity increases across New South Wales.

### **A More Modern and Accessible Regulation**

NSW Ports supports efforts to modernise the NSW planning system including a simplification of provisions, standardisation of administrative requirements, and an update of provisions to reflect advancements in technology, innovation, and communication methods. Such modernisation would benefit both NSW Ports as a proponent of developments as well as our many tenants who interact with the planning system every day through exempt, complying, and State Significant Development provisions of relevant legislation, including the Regulations.

NSW Ports further supports the proposed changes of the draft *Environmental Planning and Assessment Amendment (ePlanning) Regulation 2017* as well as any required amendments to the Regulations in order to support online lodgement of development applications and the removal of administrative requirements around landowner consent signatures which are not required in other jurisdictions (i.e. Victoria).

### **Development Assessment and Consent**

#### *Designated Development*

NSW Ports notes that the review provides an opportunity to consider whether the current classes of designated development within Schedule 3 of the Regulations remain appropriate.

In general, NSW Ports supports the alignment of designated development as identified within the Regulations with the *Protection of the Environment Operations Act 1997* (the POEO Act) and in particular, the scheduled activities of that Act.

NSW Ports believes there is an opportunity to reduce some of the more overly-restrictive criteria that triggers designated development under the Regulations which do not appear to be consistent with the triggers of the POEO Act. In particular, many of the categories of designated development under the Regulations include triggers related to distance to natural waterbodies. As the manager of both Port Botany and Port Kembla, the majority of developments categorised under designated development headings and within the Port precincts would be captured by these environmental criteria, despite potentially not warranting the classification of designated development and creating additional administrative burden. Such developments that could be present at a port facility include certain cement works within 40 metres of a natural waterbody (clause 7), all chemical storage facilities within 40 metres (clause 10), all concrete works within 100 metres (clause 14), and all railway freight terminals within 40 metres (clause 28).

With the exception of railway freight terminals (due to clause 27 of *State Environmental Planning Policy (Three Ports) 2013*) (the Ports SEPP), designated development at Port Botany and Port Kembla generally automatically triggers State Significant Development (SSD).

The retention of these distance triggers could potentially exclude development from being exempt development under clause 24 of the Ports SEPP or could result in minor developments triggering SSD under clause 27 of the Ports SEPP rather than a standard Part 4 process with the Minister as the consent authority. Given the likelihood of Port developments being in the vicinity of waterbodies, consideration should be given to exempting Port lands from the distance-related environmental triggers of Schedule 3.

#### Modification of Development Consents

Clause 122 of the Regulations sets the requirements for the making of a notice of determination for applications to modify a development consent. Specifically, there is a requirement for the notice in writing of the determination of the application to be made.

Given the likelihood of multiple modifications over the life of a project, it would be appropriate for updated Regulations to require a consolidated set of conditions to be issued for every modification, rather than just an instrument of consent. This would assist applicants, the community, and consent authorities in understanding the existing sets of conditions for a project without having to search through multiple historic instruments of consent.

**Environmental Assessment**

NSW Ports notes that under the Ports SEPP, the definition of 'public authority' includes the Port Operator (i.e. NSW Ports). This definition allows NSW Ports to undertake certain developments without development consent (provided they do not trigger State Significant provisions) including maintenance dredging, navigation and emergency response facilities, environmental protection works etc. Any amendments to the environmental assessment requirements of the Regulations should consider that entities other than public authorities (as defined by the Act) may be undertaking development without consent.

Should you wish to discuss the above matters further, please do not hesitate to contact me on (02) 9316 1131 or via email [greg.walls@nswports.com.au](mailto:greg.walls@nswports.com.au).

Yours sincerely,

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name 'Greg Walls'.

Greg Walls  
**Planning Manager**