



northern  
beaches  
council

30 January 2018

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

Our Ref: 2017/540802

Dear Sir/Madam

**Northern Beaches Council Submission on Explanation of Intended Effect draft State Environmental Planning Policy (Environment)**

Thank you for the opportunity to comment on the Explanation of Intended Effect (EIE) on the draft State Environmental Planning Policy (SEPP) (Environment). Four of the seven Regional Environmental Plans and State Environmental Planning Policies that are being repealed and replaced by the draft SEPP (Environment) are relevant to the Northern Beaches Council area and are identified in our submission.

The repeal of seven Regional Environmental Plans and State Environmental Planning Policies and the inclusion into the draft SEPP (Environment) assists with a reduction in the duplication of planning provisions. However, there is a concern that by condensing these planning policies and plans that cover a diverse range of locations and environments with specific issues that:

- The intent of the specific REPs and SEPPs will be lost
- A one size fits all approach to different geographical areas may have a detrimental effect on the environment and the unique features of these areas. These areas differ by environmental condition, population, land uses and community involvement.
- Removing some planning provisions from SEPPs and SREPs and placing them in local environmental plans will see a decrease in the hierarchy of legislation resulting in less protection of the environment and the unique features of these localities.
- Moving some existing principles, aims and objectives to Ministerial Directions may see a decrease in environmental protection and have an adverse effect on key environmental assets, particularly during appeals of development applications in the Land and Environment Court, as Ministerial Directions are not considered when assessing development applications.
- The absence of specific definitions or conflicting meanings needs to be addressed. Council urges the Department to critically review and closely consider the potential implications of utilising the Standard Instrument definitions in the draft SEPP (Environment).

- The list of definitions should be reviewed to include terms such as 'significant seagrasses'.
- There is a notable decrease in critical Habitat and Foreshore and Waterways areas Mapping compared to the SREP Sydney Harbour Little Penguin Critical Habitat Map (2005) and SREP Foreshores and Waterways Area Map (2005).
- The transition of the development control plan into one or more design guidelines will decrease the weighting they provide during appeals.
- It is important that the new SEPP retains considerations in relation to the cumulative environmental impact of development.
- Sydney Harbour and the Hawkesbury Nepean will not be protected by the intended redrafting of planning provisions for catchments and for waterways into separate sets.
- The Department needs to consider how Division 2A section 83C of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) will impact and potentially undermine the intent of the provisions as outlined in Clause 44(b) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, as Clauses 13, 14 and 15 will be moved to new Ministerial Directions.
- The Department needs to clarify and give more thought to deleting 'water catchments' from Schedule 1 of SEPP (Housing for Seniors or People with a Disability). Northern Beaches Council see this as a push to allow more inappropriate seniors housing in areas of environmentally sensitive land.

Please see a detailed submission attached. Please note that given Council's meeting schedule and the closing date of the EIEs public exhibition period of the 31 January 2018, this submission has not been reported to the Council for adoption.

Should you have any questions in relation to the above, please do not hesitate to contact my office on 9942 2652.

Yours faithfully



**David Kerr**  
**General Manager Planning, Place & Community**

## **Northern Beaches Council Submission on the Explanation of Intended Effect draft SEPP (Environment)**

Four of the seven Regional Environmental Plans and State Environmental Planning Policies that are being repealed and replaced by the draft SEPP (Environment) are relevant to the Northern beaches Council.

They are:

State Environmental Planning Policy No. 19—Bushland in Urban Areas

State Environmental Planning Policy No. 50—Canal Estate Development

Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No.2-1997)

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Council has reviewed the Explanation of the Intended Effect and has the following comments.

### **Repeal and Replace Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 'Harbour SREP' policy framework is significant in the protection and management of the Sydney Harbour foreshores as a region of key iconic value for Metropolitan Sydney and the State.

In particular Council highlights the importance of this policy in terms of local zoning matters, strategic sites (esp. Manly Wharf), interface issues, marina exclusions.

#### **General**

Council is concerned that by redrafting the current planning provisions for catchments and waterways into separate sets the protection of Sydney Harbour will be decreased.

Both Sydney Harbour and its foreshores are to be considered as an integrated whole in reflecting current uses, needs and future planning by providing a framework for appropriate uses that are consistent with the vision for the Harbour and dealing with the public good over the private good for whenever and whatever change is proposed for Sydney Harbour or its foreshores.

The general objectives of 'Catchments' will be based on a set of intended principles. While the Statement of Intention outlines that the new SEPP is to apply the principles of total catchment management, the stated principles for catchments appear to be limited to values associated with watercourses only.

There is a concern that values related to ecological diversity, recreation, scenic quality, economy, tourism, heritage and cultures will be lost if they do not remain associated with the wider Harbour Foreshores catchment and not just watercourses.

### Planning Principles (page 34)

The extent of the Sydney Harbour Catchment is currently mapped in the Harbour SEPP in a manner that strategically determines the extent to which Planning Principles are applied. At the southern foreshores of Northern Beaches Council it is apparent that based on studies undertaken with the drafting of the 'Harbour SREP', the catchment boundary was determined having regard to the relationship of foreshore land with the waterway with a clear emphasis on a visual catchment.

Council requests that this mapping of the Sydney Harbour Catchment is transferred directly to the draft SEPP (Environment).

The 'Harbour SREP' provides a set of clear planning principles for the wider Sydney Harbour Catchment and particularly for the Foreshores and Waterways Area of the Harbour. The stated intention of the new SEPP is to transfer these sets of principles to Ministerial Directions.

While these principles are a consideration in the preparing environmental planning instruments, development control plans, environmental studies and master plans, Council argues that these principles should not be confined to just that purpose. In particular, planning principles for land within the Foreshores and Waterways Area should be retained including the principles as follows:

- (a) development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores,

### Definitions (page. 34)

Consistency of definitions is paramount and there is support for the Department for its endeavours in this area. However during its review of this section, including Attachment C, a number of anomalies that require further consideration and/or clarification have been identified, these are outlined below:

- The table contained in Attachment C does not provide sufficient justification for retaining the 'Harbour SREP/ definition when a similar Standard Instrument (SI) definition is available. Examples are highlighted below:

| <b>Harbour SREP definition</b>       | <b>SI definition</b>                                 |
|--------------------------------------|--|
| boat shed                            | boat shed  |
| charter and tourism boating facility | charter and tourism boating facility                 |
| commercial marina                    | marina   |
| commercial port facility             | port facility  |
| community facility                   | community facility                                   |
| private marina                       | marina   |
| recreational or club facility        | recreation facility (outdoor) and community facility |
| waterway                             | waterway   |

- The table contained in Attachment C fails to provide any justification for the retention of a 'Harbour SREP' definition when a SI definition is available, such as the community facility, boat shed, charter and tourism boating facility and waterway definition. It is imperative that further explanation and justification is provided in these circumstances.
- Attachment C indicates that the SI definition of *mooring pen* will be utilised. Council has concerns with the SI definition for *mooring pen* as the emphasis of 'singular' and 'permanent' have been removed creating a scenario in which multiple mooring pens can be configured to represent a pseudo marina structure, which is not the original intent of a mooring pen. Council received an application (DA N0447/16) to establish 14 mooring pens and ancillary access gangways for casual berthing only. Advice sought from Transport for NSW confirmed that the approach undertaken in the Development Application was supported as "no auxiliary services will be provided and it appears for casual berthing only".

The SI definition of ***mooring pen*** means an arrangement of freestanding piles or other restraining devices designed or used for the purpose of berthing a vessel.

- (d) development along the foreshore and waterways should maintain, protect and enhance the unique **visual qualities** of Sydney Harbour and its islands and foreshores,

Better align water zones in the Harbour Regional Environmental Plan with the Standard Instrument (Page 35)

Currently the majority of the Sydney Harbour Foreshore adjoining the Northern Beaches Council area is zoned W2 Environmental Protection which provides a high level of protection of natural and cultural values of waters and allows long term management enhancement and rehabilitation.

Council is concerned that in any alignment of zone objectives with Standard Instrument Order Zone W1 Natural Waterways, that the existing level of protection is retained. In comparing the existing 'Harbour SREP' zone with the Standard Instrument Zones the following distinctions are noted:

- The Standard Instrument Zone objectives do not provide for protection of adjoining foreshores generally, being limited to reference to the waterway only
- The Standard Instrument Zone W1 objectives do not allow for the protection, enhancement and rehabilitation of cultural values.

Update matters for consideration into clear themes and align them with modern planning instruments (page 37)

Some matters of consideration under Part 3 Division 2 will be consolidated and transferred to the draft SEPP (Environment).

Council is concerned that the intent of these clauses will be changed and removed thereby providing no protection during the development application process in terms of biodiversity, ecology and environmental protection, public access, harbour maintenance and interrelationships, scenic quality, views and boat storage facilities.

Council considers it important for Matters for Consideration cl.21 (Biodiversity, ecology and environment protection) to be retained as noted above, in particular Clause 21(h) 'cumulative environmental impact of development'.

The Department needs to clarify which provision of cl22 will be amended to consider potential public access routes and identify these routes in the maps in the development control plan.

Council raises concerns that if matters for consideration cl.25 - Foreshore and Waterways Scenic Quality & cl 26 Maintenance, protection and enhancement of views principles are to be transferred to ministerial directions that the relevant planning principles are maintained.

Move wetland provisions to State Environmental Planning Policy (Coastal Management) (Pages.37-38)

- Duplication of controls and protections should be avoided, especially as protections are sanctioned by Acts.

*Posidonia australis* complex seagrass meadows ecological community (Manning-Hawkesbury) is listed and protected as a Threatened Community (classified as Endangered) under the Environment Protection Biodiversity Conservation Act 1999 (EPBC Act 1999), while the Fisheries Management Act 1994 (FM Act 1994) list *Posidonia australis* seagrass on Port Hacking, Botany Bay, Sydney Harbour, Pittwater, Brisbane Water and Lake Macquarie as endangered population under Part 2 Schedule 4.

Council recognises that *Posidonia australis* doesn't represent all seagrass meadows throughout Sydney Harbour and not all seagrass meadows maybe classified as 'significant'. The Explanation of Intended Effects (EIE) does not offer a definition of the term 'significant seagrasses' so it is difficult to accurately consider the scope, potential duplication and consequence of the proposed mapping. Given this, Council requests the Department gives further consideration to the definition and scope of 'significant seagrasses' and proposed mapping to ensure duplication is avoided.

Update and modernise provisions for strategic foreshore sites (Page 41)

The Department needs to consider how Division 2A section 83C of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) will impact and potentially undermine the intent of the provisions as outlined in Clause 44(b).

The EIE states that development consent must not be granted for the carrying out of development on a strategic foreshore site unless there is a master plan for the site and the masterplan has been taken into consideration by the consent authority.

Clause 44(b) explains that the master plan must address the planning principles in Part 2 of the Harbour Regional Environmental Plan (clauses 13, 14 and 15). But the draft SEPP (Environment) will see these 3 clauses removed and transferred to new Ministerial Directions. The Department must demonstrate how this will work as the removal of these planning principles into Ministerial Direction will remove them from being considered during the development assessment process.

The Harbour Regional Environmental Plan identifies 28 strategic foreshore sites. Strategic Foreshore Sites of importance to Northern Beaches Council include North Head, St Patrick's Estate and Manly Wharf.

### Special Purposes Areas

The Special Purposes (Boat Repair Facilities and Commercial Marinas) provisions apply to area of North Harbour being mapped and identified as Manly Boatshed and Davis Marina to effectively control increased scale and intensity of these uses consistent with the objectives of the existing W2 Environmental Protection Zone. In particular, the land mapped under the Harbour SEPP known as Manly Boatshed and Davis Marina are subject to particular objectives and purposes which are intended to be retained.

The retention of Special Purposes Areas in the new SEPP in relation to existing boat repair facilities known as Manly Boatshed and Davis Marina is supported.

### Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (Page 41)

The provision of additional detailed design requirements and criteria in relation to natural resource protection is supported; however council is concerned that the placement of such provisions in a guideline provides insufficient legal status and weight during appeals.

The Department needs to consider how Division 2A section 83C of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) will impact and potentially undermine the intent of the provisions as outlined in Clause 44(b).

Concerns are raised over the proposed transitioning of the DCP into one or more design guidelines that will cover the current content and provide updated guidance to consent authorities based on design principles and landscape character. The concerns relate to the lack of weight given to guidelines in the assessment process.

Maps for ecological communities (five terrestrial and six aquatic) as well as for landscape character types are currently linked to two separate sets of performance criteria. These will be reviewed and consolidated to develop a combined landscape based approach to visual and ecological character for the whole Harbour. This approach is supported as it will continue to recognise the unique visual and environmental characteristics of different parts of the harbour

It is requested that any proposal to remove guidelines from the Harbour DCP should not proceed without first consulting and allowing appropriate opportunities for councils to review their own DCPs in this regard and make any amendments as appropriate to retain relevant foreshore planning controls and guidelines.

The Department must demonstrate that any updated critical habitat provisions are consistent with the Biodiversity Conservation Act 2016 - page 38 and draft mapping related to the proposed SEPP.

Concerns are raised that SREP Sydney Harbour Little Penguin Critical Habitat Map (2005) compared to the proposed Critical Habitat Map for the draft SEPP (Environmental) shows a notable decrease in the extent of the Critical Habitat Area B Little Manly Beach area on the new map. The Department needs to rectify this inconsistency and amend the draft SEPP (Environment) map.

Concerns are raised that the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Foreshores and Waterways Area Map encompasses more foreshore

land than the draft SEPP (Environment) Seagrasses and Rocky Foreshores area. As noted above the Department needs to rectify this inconsistency and amend the draft SEPP (Environment) map.

Amend the objectives of Zone W8 Scenic Waters Passive Use to align with the land use table (page 43)

Other adjoining zones of strategic importance include the Scenic Waters Zones around Seaforth Point (both Active - W6 and Passive - W8) and the W5 Water Recreation Zone. The objectives of Zone W8 Scenic Waters: Passive Use is proposed to be amended to clarify the intent is to support development of public and community facilities, and to clearly prohibit private facilities in the zone.

The proposed amendment to objectives which clarify that prohibited nature of private facilities in the zone is supported

Allow an additional use in the Zone W7 Scenic Waters: Casual Use subject to strict controls (Page 43 – 44)

As previously raised in the 'Definition' sub section above, the Standard Instrument (SI) definition of mooring pen removes clear reference to 2 crucial words which exist in the HRP mooring pen definition, being 'single' and 'permanently'.

The SI definition is silent on these 2 critical elements of the Harbour SREP definition and recent advice from Transport for NSW confirms that their interpretation of the SI definition differs significantly from the original intent of the term, which related to permanent boat storage structure for a singular vessel. Therefore the assumptions underpinning the commentary outlined in this subsection are flawed and inaccurate.

Council urges the Department to critically review and closely consider the potential implications of utilising the SI definition of mooring pen and in particular reversing the current prohibition of mooring pens in waterways zoned W7.

Council strongly advocates for the review of the SI definition of mooring pen, with reference to the issues raised to ensure the original intended outcome of the definition has not been inadvertently altered.

Attachment C – Definitions analysis. (Page 73)

The draft SEPP (Environment) intends to delete the meaning 'temporary structure', as it has the same meaning as in the Act. However standard instrument LEPs refer to a various maximum numbers of consecutive days. Also the existing schedule refers to Temporary Uses as for up to 2 years

## **6 Temporary structures**

- (1) The erection of a temporary structure for a period of not more than 60 days, whether consecutive or not, in any period of 12 months.
- (2) In this clause, **temporary structure** includes a booth, tent or other temporary enclosure (whether or not part of the booth, tent or enclosure is permanent), and also includes a mobile structure.

Whilst the retention of the Harbour SREP is supported, there are a number of matters which could be improved in terms of clarity on the relevant planning authority, updated



definitions to reflect the standard instrument LEP Dictionary and greater clarity regarding exceptions to permissibility e.g. cl.18(2) and cl.37.

### **Repeal and Replace Sydney Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No 2 – 1997) (Page 23)**

The aims of the Sydney Regional Environmental Plan (SREP) No 20 – Hawkesbury – Nepean River (No 2 – 1997) are to protect the environment of the Hawkesbury-Nepean River system from current and future land uses. The SREP No 20 – Hawkesbury-Nepean River (No. 2 – 1997) relates to the areas of the Northern Beaches Council.

#### Simplify the proposed SEPP by avoiding duplication with other legislation (Page 23)

Provisions in the Hawkesbury Nepean Regional Environmental Plan that are addressed in other legislation or planning instruments can be repealed without impacting on the protection of the catchment

#### Part 2 Clauses to be repealed (page 24)

The following clause is incorrect

- Part 1 Clause 1 - Where this Plan Applies this is actually Part 1 Clause 2

#### The Repeal of Clause 6 (2) Environmentally Sensitive Areas

The note associated with Clause 6 (2) of the Hawkesbury Nepean Regional Environmental Plan describes environmentally sensitive areas in the Hawkesbury-Nepean catchment as ; the river, riparian land, escarpments and other scenic areas, conservation area sub catchments, national parks and nature reserves , wetlands , other significant floral and faunal habitats and corridors and known and potential acid sulphate soils.

Concern is raised that by repealing Clause 6 (2) Environmentally Sensitive Areas and revising the section to integrate it with other riverine corridor controls diminishes the intent as well as the protection and enhancement of the other areas described in the note.

Council requests that the draft SEPP (Environment) should retain Clause 6 (2).

#### Move wetland provisions to State Environmental Planning Policy (Coastal Management) – page 25

No concerns are raised with the inclusion of mapped coastal wetland in the State Regional Environmental Plan for the Hawkesbury Nepean River into the draft SEPP (Coastal Management). This will give:

- increased protection with the inclusion of a mapped 100 metre buffer around the wetlands

Council requests that the freshwater wetlands that will be transferred to the draft SEPP (Environment) should have the same protection as those that fall under the draft SEPP (Coastal Management).

## General

It is considered that improved protections of the Hawkesbury-Nepean catchment are not achieved by the intended redrafting of planning provisions for catchments and for waterways into separate sets.

### **Repeal and Replace State Environmental Planning Policy No. 19 – Bushland in Urban Areas – pages 28 to 32**

The aims and objectives of State Environmental Planning Policy No. 19 – Bushland in Urban Areas are to protect and preserve bushland within the urban areas in 40 local government areas.

The majority of the provisions of SEPP 19 will be transferred to SEPP (Environment) and updated.

Council names will be updated to reflect recent council amalgamations and boundary changes.

Clause 8 ( Plans of Management) will be reviewed and duplicate sub clauses that are also found in section 36 of the *Local Government Act 1993* will be removed.

Clause 10 will be removed and delivered through a Ministerial Direction as it pertains to the preparation of local environmental plans. The new Ministerial Direction is intended to function the same way as Clause 10: Preparation of local environmental plans listed below:

No concerns are raised regarding the repeal and incorporation of the clauses 8 and 10 from SEPP No.19 – Bushland in Urban Areas.

A new circular - Urban Bushland is being finalised for consultation. It will provide further information and detail regarding the application of SEPP 19. The circular will replace planning Circular No. B13 and No.114. Council requests the opportunity to comment on the new circular – Urban Bushland.

### **Repeal and Replace State Environmental Planning Policy No. 50 – Canal Estate Development**

This SEPP is relevant to the whole of the Northern Beaches Local government area. The provisions prohibiting the development of canal estates across NSW will be retained in SEPP (Environment), with the exception of land where SEPP (Penrith Lakes Scheme) 1989 applies.

The Northern Beaches Council raises no concern with the repeal of SEPP No. 50 Canal Estate Development and its incorporation into the draft SEPP (Environment).

### **Part 3 – Proposed amendments to other planning legislation (Pages 51 -53)**

Provisions within the existing SEPPs that relate to the making of local environmental plans can no longer be included in a SEPP. All provisions in the seven existing SEPPs that relate to the preparation of local environmental plans will be transferred into a new or updated Ministerial Direction.

As part of the proposed new SEPP (Environment), new Ministerial Directions are proposed to:

- guide councils when preparing local environmental plans in the Hawkesbury Nepean, Georges River and Sydney Harbour catchments
- guide councils when preparing local environmental plans affecting Sydney Harbour Foreshores and Waterways
- guide councils when preparing local environmental plans affecting urban bushland

The Northern Beaches Council does not support separating the management of catchment and waterways in the proposed Ministerial Directions as catchments and waterways do not exist separately in the real world.

The basic principles of catchment management recognises that the effects of land and water use and environmental impacts are interconnected, that actions in a catchment will have cumulative impacts on other areas downstream, and that an holistic approach to the planning and coordination of land and water management is therefore essential.

Therefore the following Ministerial Directions are not supported.

- Creating a new Ministerial Direction – Catchment Protection – page 51.
- Creating a new Ministerial Direction – Sydney Harbour Foreshores and Waterways - page 52

### **Creating a new Ministerial Direction – Urban Bushland (Page 53)**

SEPP 19 contains provisions for the preparation of local environmental plans in clause 10. The clause ensures that when a council is drafting local environmental plan provisions for any land to which SEPP 19 applies, other than rural land, it considers the general and specific aims of the SEPP, and gives priority to retaining bushland unless significant environmental, economic, or social benefits arise which outweigh the value of the bushland. This should be transferred to a new Ministerial Direction as it is the appropriate mechanism to guide plan making.

As the new Ministerial Direction is intended to function largely the same way as clause 10 of SEPP 19 no objections are raised.

### **Other Planning Instruments (Pages 11 and 56)**

#### **Development in water catchments under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (page 11)**

It is proposed to amend SEPP (Housing for Seniors or People with a Disability) 2004 to allow seniors' housing and housing for people with a disability development proposals in water catchments including drinking water catchments to be assessed under the SEPP Seniors.

The removal of 'water catchment' from Schedule 1 of SEPP (Housing for Seniors or People with a Disability) 2004 will have implications for the Northern Beaches Council.

The Department needs to clarify and give more thought to deleting 'water catchments' from Schedule 1 of SEPP (Housing for Seniors or People with a Disability). This is seen as a push to allow more inappropriate seniors housing in areas of environmentally sensitive land and it not supported.

End of Comments