

Woollahra staff submission to SEPP (Environment)

Explanation of Intended Effect

Woollahra Council staff thank you for the opportunity to make this submission on the Explanation of the Intended Effect (EIE) for the proposed draft State Environmental Planning Policy (Environment) 2017 (the new SEPP). Our submission focuses on the proposed repeal of State Environmental Planning Policy No. 19—Bushland in Urban Areas (SEPP 19) and Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Harbour SREP), which currently apply to the Woollahra local government area.

We provide in principle support for the intent to consolidate the documents. However, the EIE and consultation documents contain insufficient detail for us to be satisfied that the proposed new SEPP “maintains and improves environmental protections in existing State Environmental Planning Policies” (page 8). In saying this we are particularly mindful that the current Harbour SREP arose from a very collaborative process involving Sydney Harbour councils and State agencies and we have an expectation that this collaboration and goodwill would also apply to the preparation of the new draft SEPP.

Our detailed analysis of the proposed changes is provided below.

Bushland

We generally support proposed changes to the “bushland” part of the proposed new SEPP, but make the following comments:

- The EIE states that activities that do not require consent for the disturbance of bushland in clause 6 of SEPP 19 will be transferred into the new SEPP, but also updated to align with the current and legislative context. We would like the opportunity to view the actual provisions in the draft SEPP and comment on the proposed changes before the SEPP commences.
- The EIE identifies that guidance for preparing plans of management for bushland areas will continue to be set out in both the new SEPP and the *Local Government Act 1993*. We consider it would be more efficient to have the provisions in the same statutory instrument.
- A new term “public bushland” is proposed, but insufficient information is provided for us to understand the consequences of this. In particular, what are the potential impacts on private properties, and will the exempt and complying development provisions need to be amended to exclude public bushland? We seek further information on these matters and an opportunity to provide comment before the new SEPP is finalised.
- We also suggest that public bushland and adjoining land be mapped for the purpose of making notations on section 149(2) certificates consistent with the approach taken in the Draft Coastal Management SEPP. For the purpose of mapping adjoining land we recommend two methods. One would involve dimensions of either 50m or 100m. A second option involves mapping land parcels that abut public bushland.

Waterways

The EIE states that the “policy intent of the existing Harbour Regional Environmental Plan will continue. Some amendments to existing provisions are proposed to improve the protections for Sydney Harbour” (page 34). We support this intention, but our analysis of the

EIE does not provide us with confidence that the new SEPP will achieve this, and we provide the following comments for your consideration:

- Attachment B of the EIE:
The table for the Harbour SREP in Attachment B of the EIE identifies that existing clauses 2 and 20-27, 33, 34 and 36 are proposed to be transferred to the new SEPP. We support the continued and ongoing operation of these current clauses and would like the opportunity to comment on the actual provisions in the draft SEPP to confirm that the intent, scope and effect of the Harbour SREP clauses have been faithfully transferred into the new SEPP.
- Definitions:
We support the proposal to align definitions in the Harbour SREP with the Standard Instrument definitions to provide for consistency. We also note that the current DCP for the Harbour SREP includes a number of references to “cumulative environmental impact” and we request that the new design guidelines define this term or include an example of a best practice approach for identifying the extent of cumulative impact assessment.
- Waterway zones:
The EIE states that the naming and numbering of 3 waterway zones in the Harbour SREP are proposed to be changed to achieve a better alignment to zones in the Standard Instrument with similar intent and purpose. However, the EIE does not specifically identify how the 6 other waterway zones will be addressed. The EIE provides insufficient detail to make an accurate assessment of the changes to the zonings and we would like the opportunity to comment on the draft zones including the objectives and permissible land use before the new SEPP commences.
- Matters for consideration:
Currently many of the subclauses in Division 2 (matters for consideration) in the Harbour SREP use of the word “should” instead of “must”. We recommend that the wording for the matters of consideration be addressed when transferred to the new SEPP to provide for greater certainty and clarity in the assessment process.
- Heritage items:
The EIE identifies that 37 of 139 heritage items listed in the Harbour SREP are also listed in a local environmental plan (LEP) or the State Heritage Register usually for a landside component of the item, or are on the State Heritage Register. We consider it would be more efficient to have the provisions in the same statutory instrument and avoid duplication. However, if the same item is to appear in both the LEP (for the land based component) or the new SEPP (for the water based component) we suggest that the Department checks the LEP listing of these heritage items and applies the same item name, address and property description as in the relevant LEP to ensure consistency.
- Masterplan considerations:
The Harbour SREP, clause 44b (Nature of master plans) requires Council to consider the provisions of clauses 12-15 (Planning principles) in the preparation of a masterplan. If these clauses are transferred to a Ministerial Direction how will this affect clause 44b?
- Mapping:
Areas to be mapped in the new SEPP, such as wetlands, seagrasses and rocky foreshores, should be checked and verified with each council before the draft SEPP is finalised to ensure consistency in the data sets, and that the SEPP reflects the most up-to-date information.

- Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (SREP DCP):

- The replacement of the SREP DCP with detailed design guidelines is generally considered acceptable, however, the new guidelines must not override Council's DCP controls. For example, this is what happened with the implementation of clause 6A of SEPP 65 and the Apartment Design Guide (ADG), with the ADG overriding certain controls in Council's DCP. We would be opposed to such an approach for the SEPP Environment and its detailed design guidelines, and request to see the proposed guidelines and to allow further comment.

- The EIE states that land based design requirements in the SREP DCP will not be carried over into the guidelines as these are better managed by councils and are often addressed by council DCPs (page 41). Although there are merits to this approach, it does not recognise that some of the matters in the SREP DCP may not be addressed in the council DCP. For example, the Woollahra DCP 2015 does not adequately include provisions for:

- promoting foreshore access
- requiring that buildings should not obstruct views of landmarks and features
- minimising the location and direction of bright lights which may result in reflectivity and navigation
- floor levels of ground level units to be 1m above the existing ground level
- requiring materials and colours to be sympathetic to the surrounds in areas outside of HCAs
- discouraging the use of boxy rectangular structures and flat roof development
- screening of pools that protrude above existing ground level
- considering the cumulative visual impact

If these existing SREP DCP controls for land based requirements are not carried over to the new guidelines Council will need to consider what amendments may need to be made to the Woollahra DCP. We will require a reasonable time (approx. 6 months) to prepare, exhibit and approve amendments to the Woollahra DCP. Therefore, the current SREP DCP land based controls should remain in force for a specified time to allow controls to update their DCPs.

- Zone W8 Scenic Waters: Passive Use:

We support proposed amendments to the objectives of Zone W8 Scenic Waters: Passive Use to clarify that the intent is to support development of public and community facilities, and to clearly prohibit private over water development.

- Subdivision on foreshore land:

- We support the proposed amendment to permit subdivision on foreshore land but seek confirmation that this amendment will facilitate the subdivision of Roads and Maritime Services land where the land is to be sold. Note: A recent amendment to the SEPP (Infrastructure 2007) permitted the subdivision of Roads and Maritime Services land in or adjacent to Sydney Harbour but only for the purpose of entering or renewing a lease of 5 years or more.

- We also request that the proposed amendment applies to all land on the foreshore, and not only to land owned by Roads and Maritime Services. There are multiple parcels located in the foreshore area, owned publicly or privately, which may require a development application for the purpose of land subdivision. Woollahra Council staff have been involved in numerous discussions with stakeholders on this matter, and we would like the opportunity to view the provisions in the draft SEPP and comment on the proposed changes.

Ministerial Direction - Catchment Protection

The EIE identifies that a new Ministerial Direction - Catchment Protection will be established to reflect matters in the Georges River Regional Environmental Plan, Hawkesbury Nepean Regional Environmental Plan, and the Harbour SREP “combining all catchment management and water quality provisions” (page 51). However, there are only 5 draft planning principles listed in the EIE for this direction (pages 51-52).

The draft list of planning principles does not reflect the scope and depth of matters in clause 13 (Sydney Harbour Catchment) of the SREP, despite Attachment B of the EIE identifying that action for clause 13 is to “Update and TRANSFER to Ministerial Direction”.

We request that all of the matters relevant to catchment management and water quality in clause 13 of the Harbour SREP are transferred to the new Ministerial Direction for Catchment Protection.

Ministerial Direction - Sydney Harbour Foreshores and Waterways

The EIE outlines the proposal to create a new Ministerial Direction for the Sydney Harbour Foreshores and Waterways. The EIE identifies that this direction will replace clauses 14 and 15 of the Harbour SREP which currently set out the planning principles for:

- the foreshores and waterways area: the principles concentrate on maintaining and improving public access, protecting visual qualities and retaining land required to support the working harbour, and
- heritage conservation: the principles recognise the exceptional heritage significance of the harbour and its foreshore and protecting key heritage sites and locations.

The draft planning principles for the Ministerial Direction are listed on page 52 of the EIE.

These draft planning principles satisfactorily transfer and reflect matters currently in clause 14 of the Harbour SREP regarding the foreshores and waterways area. However, the draft list does not reflect any of the matters in clause 15 for heritage conservation despite Attachment B identifying that the action for clause 15 is to “Update and transfer to Ministerial Direction”.

We request that all of the matters in clause 15 of the Harbour SREP are transferred to the new Ministerial Direction for Sydney Harbour Foreshores and Waterways or to the existing Ministerial Direction 2.3 Heritage Conservation.

Furthermore, the EIE identifies that the principles in the SREP clause 13, Sydney Harbour Catchment “largely concentrate on catchment management, water quality and the protection of natural features and biodiversity” and will be reflected in the new Ministerial Direction - Catchment Protection. However, numerous planning principles in clause 13 seem more relevant to the Ministerial Direction for Sydney Harbour Foreshores and Waterways and should be included in that direction, such as subclauses:

- (b) the natural assets of the catchment are to be maintained and, where feasible, restored for their scenic and cultural values and their biodiversity and geodiversity,
- (c) decisions with respect to the development of land are to take account of the cumulative environmental impact of development within the catchment,
- (f) development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour,

- (g) the number of publicly accessible vantage points for viewing Sydney Harbour should be increased.

Page 54 of the EIE also states that:

“In giving planning effect to the above principles:

- *Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good*
- *the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores*
- *protection of the natural assets of Sydney Harbour has precedence over all other interests.”*

These are the central tenants to the planning principles and we request that these are included as the objectives for the new Ministerial Direction.

Conclusion

Woollahra Council staff support the intention to prepare new a SEPP and Ministerial Directions but at this stage do not have sufficient information to be satisfied that the new controls will deliver a planning framework that “maintains and improves environmental protections in existing State Environmental Planning Policies” as stated in the EIE (page 8).

In particular, Attachment B of the EIE document provides a clause by clause summary identifying how each clause in the current environmental planning instruments is to be addressed in the new Draft SEPP. Attachment B identifies that most of the existing clauses will be “transferred” to the new SEPP or Ministerial Directions, however:

- the EIE does not contain sufficient details or any draft SEPP provisions to demonstrate this, and
- where the EIE has included lists of draft planning principles for the new Ministerial Direction - Catchment Protection (page 51) and the Ministerial Direction – Sydney Harbour Foreshores and Waterways (page 52), the list of planning principles do not reflect the same scope and detail of the existing SREP clauses.

On this basis we are not satisfied that the EIE and consultation documents provide a reasonable degree of certainty about the provisions in the new SEPP and Ministerial Directions.

The current Harbour SREP arose from a collaborative process involving Sydney Harbour councils and State agencies and was the culmination of significant work arising from the Sydney Harbour Councils Agreement, August 2001. In contrast we find the EIE documents to be superficial and an inadequate approach for consulting on such significant planning instruments.

We support the continued operation of the current clauses in the Harbour SREP and SEPP 19 and request the opportunity to comment on the actual provisions in the draft SEPP, draft Ministerial Directions and draft detailed design guidelines before these are made, to confirm that the intent, scope and effect of the existing provisions have been adequately and faithfully transferred into the new planning instruments.

Please contact our Strategic Planning Team on 9391 7087 to discuss opportunities for further consultation in the preparation of the new SEPP.



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