



SYDNEY COASTAL COUNCILS GROUP INC.

councils caring for the coastal and estuarine environment

SUBMISSION

Environment SEPP
Explanation of Intended Effect

January 2018

SYDNEY COASTAL COUNCILS GROUP Inc.
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Reference: 001-18BA

31 January 2018

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

Submitted online

Dear Director Planning Frameworks,

Re: Submission on Environment SEPP Explanation of Intended Effect

The Sydney Coastal Councils Group (SCCG) welcomes the opportunity to provide a submission on the Environment SEPP Explanation of Intended Effect.

Established in 1989, the SCCG is a Regional Organisation of Councils with twenty-eight years' experience in leading sustainable coastal management. The SCCG comprises ten Member Councils who represent approximately 1.3 million Sydneysiders.

The SCCG Strategic Plan 2015 – 2019 sets out three guiding principles which encapsulate the core vision, mission and goals of the SCCG, namely to:

1. Restore, protect and enhance the coastal environment, its associated ecosystems, ecological and physical processes and biodiversity
2. Facilitate the sustainable use of coastal resources, now and in the future
3. Promote adaptive, integrated and participatory management of the coast.

As managers, planners, and authorities with responsibility for ensuring positive environmental, social, and economic outcomes for the community and the coastal and estuarine environment, our Member Councils share an interest in ensuring that the Environment SEPP will protect and direct sustainable management and use of Sydney Harbour, our waterways and natural environment as a whole.

General comments on the Environment SEPP Explanation of Intended Effect are provided below:

- SCCG notes, as per its letter to the Department of Planning and Environment dated 20 April 2017, that the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, as it currently stands enforces holistic planning guidelines that ensure appropriate and considerate developments are sanctioned in Sydney Harbour. It must be ensured that this same outcome is achieved through the consolidation of this SREP into the Environment SEPP.
- SCCG is in favour of consolidating seven SEPPs into the Environment SEPP with the caveat that all essential and significant information from each of the seven individual SEPPS, that protects the environment, is carried over and made implicit within the Environment SEPP.
- Consistent planning provisions for catchments, waterways, bushland and protected areas is supported.

- Ministerial Directions to specifically guide preparation of LEP's in Georges River Catchment and Sydney Harbour Catchment, and for urban bushland are supported. However, further information must be provided on timeframes for when these Ministerial Directions will be developed and disseminated to Councils, and the timeframe that Councils will have to amend their LEP's. Where conditions are not provided in the Environment SEPP, instead being included in the Ministerial Directions only - it could become a potential concern for the environment if there is a delay in the development of Ministerial Directions.
- SCCG is supportive of including a consideration of protecting and maintaining water quality and flows, native plants, animals, habitat and ecosystems; and recreation, scenic and environmental amenity; when determining development proposals.

It is recommended that this SEPP goes further in providing Standard Instrument LEP planning provisions for Water Sensitive Urban Design.

- Attachment B provides a table which shows the existing clauses and the recommendation for the consolidated Environment SEPP. This is helpful and welcomed. However, it does not provide sufficient detail on what amendments/updates will be made and lacks sufficient clarity on what might be lost in the consolidation process. With respect to transparency the EIE should provide this level of detail, or the draft Environment SEPP itself must be exhibited for public comment.

Greater Metropolitan Regional Environment Plan No.2 Georges River Catchment

- It is proposed to repeal Clause 9 (2) Bank Disturbance with the justification that 'bank disturbance' is addressed in the Standard LEP 'flood planning provisions'. Bank disturbance can occur for reasons other than flooding – if this is the case, would this be addressed by the flood planning provisions? Provisions for bank disturbance other than flooding should be provided for in the Environment SEPP.
- Proposed to repeal Clause 9(4) industrial discharges, Clause 9(6) onsite sewage management and Clause 9(8) sewer overflows, as these are addressed under the POEO and LG Act. Each of these issues can cause significant environmental damage, and whilst covered by the various Acts in terms of penalties for offences, it is necessary that provisions/requirements for specific high-level management of on-site sewer systems and pipes; and industrial sites remain within the Environment SEPP.

Sydney Regional Environment Plan No. 20 Hawkesbury Nepean River

- Proposed to repeal the term 'Environmentally sensitive area' Clause 6(2). This is only supported if the terminology of the area replacing 'Environmentally sensitive area' affords the same amount of protection.
- Proposed to transfer heritage provisions local and state to the LEP. If these provisions are removed from the Environment SEPP and put into the LEP, what consequences will there be for heritage? – there needs to be a clear indication of which other SEPP's and in what circumstances the LEP heritage provisions can be overridden.
- Page 25 – proposes to remove wetland provisions from the Environment SEPP where they overlap with the Coastal Management SEPP. The SCCG agrees with the premise of reducing duplication and removing inconsistency and conflicting provisions regarding wetlands, however, the Coastal Management SEPP has not yet been proclaimed. There is a risk and concern that the Environment SEPP proposes to leave out provisions for coastal wetlands based on the assumption that the Coastal Management SEPP will be proclaimed – if this is not the case – than coastal wetlands will not be covered in the SEPP. If the Coastal Management SEPP is not

proclaimed prior to the completion of the Environment SEPP, the wording of the Environment SEPP should be such that it 'provides provisions for coastal wetlands until the Coastal Management SEPP is in force'.

SEPP 19 – Bushland in Urban Areas

- With reference to the proposed Ministerial Direction – urban bushland to be developed (pg. 53). The Ministerial Direction will require councils to consider two principles when drafting LEPs; including *'shall give priority to retaining bushland, unless it is satisfied that significant environmental, economic or social benefits will arise which outweigh the value of the bushland'* which is to be transferred from SEPP 19, Clause 10. This principle is inadequate in protecting important remnant urban bushland. There needs to be definitions for 'satisfied' and 'significant', as these terms could be open to inconsistent and subjective interpretation unless there was consistent application of an assessment tool to determine the value with respect to environmental/social/economic/intrinsic value criteria.
- There is an opportunity in developing principles for the new Ministerial Direction to amend and improve upon the wording of this principle to ensure adequate protection to Sydney's urban bushland.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

- SCCG is supportive of the transfer of water quality/catchment management aims being consolidated into a catchments section of the Environment SEPP.
- The EIE notes in general terms aims that will be carried over into the Consolidated Environment SEPP, but does not explicitly state those that will not be carried over. Aims that may be lost must be clearly stated.
- SCCG supports the consolidation of 9 water zones in the SREP to the 3 zones provided in the Standard Instrument LEP.
- Retaining considerations such as disturbance of submerged sediments is supported.
- It is recommended that local Councils be involved in any process being undertaken to update mapping related to for example but not limited to; vegetation, acid sulphate soils and heritage.
- Alignment with the Coastal Management SEPP is supported. However, it is proposed (Pg. 37/38) to remove wetland provisions from the Environment SEPP and to amend the associated existing Harbour Regional Environmental Plan Wetland Map where it overlap with wetlands included in the draft Coastal Management SEPP. The SCCG agrees with the premise of reducing duplication however, the Coastal Management SEPP has not yet been proclaimed. There is a risk and concern that the Environment SEPP proposes to leave out provisions / mapping for coastal wetlands based on the assumption that the Coastal Management SEPP will be proclaimed – if this is not the case – than coastal wetlands will not be covered in the Environment SEPP at all. If the Coastal Management SEPP is not proclaimed prior to the completion of the Environment SEPP, the wording of the Environment SEPP should be such that it 'provides provisions / mapping for coastal wetlands within Sydney Harbour until the Coastal Management SEPP is in force'.
- SCCG does not support the transition of the Sydney Harbour Foreshore and Waterways Area Development Control Plan into one or more design guidelines, given the weight of a DCP as a statutory document rather than design guidelines which are generally voluntary. This is only acceptable if the Environment SEPP is strongly worded and requires 'development to be consistent with mandatory design guidelines'. Further comprehensive consultation with planning and approval authorities will be required throughout the review and development of any such proposed guideline(s).

- Combining mapping of ecological communities and landscape character types in a combined landscape-based approach is supported as long as the consolidated set of performance criteria does not weigh visual characteristics above ecological characteristics.
- It must be ensured that 'land only developments' currently covered under the Sydney Harbour Foreshore and Waterways Area Development Control Plan, are addressed in individual council DCP's. How does this address 'land only development' on land that is not owned/managed by local Councils?
- SCCG supports the updating of the Sydney Harbour Foreshore and Waterways Area Development Control Plan to include mandatory requirements for design innovation for berthing infrastructure to improve environmental outcomes, particularly with regard to reducing impacts on seagrass.
- The Sydney Harbour Foreshore and Waterways Area Development Control Plan should also incorporate stronger consideration and mandatory requirements for boat pump outs, as the current system and compliance regime is inadequate.
- SCCG supports clarification of objectives of Zone W8 Scenic waters with regard to development of public and community facilities.
- The proposed amendment to Clause 18A 'will ensure that subdivision is possible regardless of provisions in LEPs that extend outside the LGA boundary'. SCCG does not consider it appropriate for a state government body (RMS) to have carte blanche on subdividing harbour land that may impact on the harbour foreshore, waterway and community/public good and access.
- The transfer of planning principles (Clause 13, 14 and 15) to two Ministerial Directions. The draft planning principles (pg. 52) to be included within the proposed Ministerial Directions should incorporate principles of Water Sensitive Urban Design, and Integrated Water Management considerations as mandatory.
- The Final draft planning principles within the proposed four new Ministerial Directions should be exhibited for consultation.

SCCG engaged HWL Ebsworth Lawyers to provide further legal commentary on the Environment SEPP Explanation of Intended Effect, as a component of the SCCG submission. This legal commentary will be sent to the Department of Planning and Environment separately, as additional information to this submission.

If you have any queries regarding this submission, please contact the undersigned on 02 9246 7791.

Yours sincerely,



Geoff Withycombe
Executive Officer





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