

# State Environmental Planning Policy (Biodiversity and Conservation) 2021 Amendments

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This document answers frequently asked questions about changes to the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP)

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## **What has happened to the proposed State Environmental Planning Policy (Environment)?**

In 2017–2018, the NSW Department of Planning and Environment publicly exhibited an explanation of intended effect (EIE) for a proposed new State Environmental Planning Policy (Environment). The feedback we received helped us refine our policy.

In March 2022, as part of the department's consolidation state environmental planning policy (SEPP) review program we transferred the 7 SEPPs grouped under the planned Environment SEPP unchanged into chapters 6 to 12 of the BC SEPP.

Instead of creating the planned Environment SEPP, we have updated the existing BC SEPP, as well as relocating relevant provisions from the 7 SEPPs into local environmental plans (LEPs) and Ministerial Directions.

Recently, we delivered the changes we exhibited in the EIE for the planned Environment SEPP by:

- replacing chapters 8 to 11 of the BC SEPP with a new Chapter 6, which consolidates and updates 4 chapters about water catchments (Georges River catchment, Hawkesbury–Nepean River catchment, Sydney Harbour catchment and Sydney drinking water catchment)
- repealing 3 chapters (6, 7 and 12) of the BC SEPP for bushland in urban areas, canal estate development and Willandra Lakes Region World Heritage Property and transferring these provisions and other local matters such as flood planning to the relevant LEPs
- transferring local plan-making provisions from the BC SEPP to Ministerial Directions for water catchment protection, Sydney Harbour foreshores and waterways area, public bushland, and the Willandra Lakes Region, in line with section 9.1 of the *Environmental Planning and Assessment Act 1979*, which is consistent with the current NSW planning framework
- updating the Sydney Drinking Water Catchment Ministerial Direction
- making a consequential amendment to the Environmental Planning and Assessment Regulation 2021 to make sure that when determining authorities (such as councils) conduct activities in regulated catchments, the environmental impacts are considered.

### What changes has the department made and why?

Most of the amendments to the BC SEPP simply updated, transferred, and consolidated provisions, without changing the aim of the policy. However, we have made a small number of changes for the Sydney Harbour catchment to make sure the development of land in Sydney Harbour is orderly.

We have:

- **updated the objectives of Sydney Harbour Zone 8** to make clear that this zone:
  - aims to support development of public and community facilities
  - prohibits private over-water development, which is consistent with the provisions in the land-use table.
- **permitted subdivision on the Sydney Harbour foreshore land**, if it:
  - considers the need for public access to the foreshores and waterways
  - meets the development standards such as minimum lot size in the relevant local environmental plan – in the case of private land.

### Why has it taken so long to make the changes?

The Department has delivered the policy outcomes in the EIE and responded to the submissions received during exhibition over a series of stages. Some elements of the EIE were progressed in December 2018 and June 2022, including:

- permitting mooring pens in Zone 7 'Scenic Waters: Casual Use' in Sydney Harbour
- allowing maintenance of certain lawful and non-commercial structures as complying development in Sydney Harbour
- removing the need for development consent for oyster aquaculture in the Georges River catchment, where no other planning instrument requires it.

The final changes to consolidate the 7 SEPPs were complex and required focused and ongoing consultation and engagement with affected stakeholders through various iterations over time.

### Where do the catchment provisions apply?

The catchment provisions apply in the:

- Sydney drinking water catchment (as defined in the *Water NSW Act 2014*) (<https://www.watarnsw.com.au/water-quality/catchment/catchment-map>)
- Sydney Harbour catchment (the maps are available on the [planning portal](#))
- Georges River catchment (the maps are available on the [planning portal](#))
- Hawkesbury–Nepean catchment (the maps are available on the [planning portal](#)).

## How can I find the development controls that apply to my development?

Table 1. Where to find development controls

Development control	Where to find it
<b>Development in:</b> <ul style="list-style-type: none"> <li>• Sydney Drinking Water Catchment</li> <li>• Sydney Harbour Catchment</li> <li>• Georges River Catchment</li> <li>• Hawkesbury–Nepean Catchment</li> </ul>	Chapter 6 of the <a href="#">BC SEPP</a>
<b>Public bushland</b>	In the relevant LEPs (see <a href="#">Public bushland fact sheet</a> )
<b>Willandra Lakes World Heritage Property</b>	Balranald and Wentworth LEPs
<b>Canal estate development</b>	In the relevant LEPs

The [NSW Planning Portal](#) will display all relevant planning controls that apply to a piece of land.

### Have changes been made to the permissibility of mining in Sydney’s drinking water catchment?

The scope of the BC SEPP review was to modernise, update and consolidate existing policy without changing the policy intent by locating the planning rules in the most appropriate location of the NSW planning system. As such, no changes have been made to the permissibility of mining in the Sydney drinking water catchment. Matters related to mining have been transferred to the State Environmental Planning Policy (Resources and Energy) 2021 (Resources and Energy SEPP).

Notwithstanding, the Sydney drinking water catchment is protected by a comprehensive suite of legislation that covers various matters such as water quality, quantity, and ecological health. The provisions for the Sydney drinking water catchment ensure consent authorities can only approve development if it is demonstrated to have a neutral or beneficial effect on water quality. We have retained this level of protection in the amended BC SEPP and will continue to allow the careful, case-by-case assessment of the impacts of development applications including mining proposals on water quality.

### Did the waterway in front of my property get rezoned?

The rezoning of waterways in Sydney Harbour is beyond the scope of the BC SEPP Amendment, as such no waterways have been rezoned as part of this policy.

A review undertaken for the Department in 2016 found that most waterway zones in Sydney Harbour were consistent with the zone objectives and appropriate for the location. However, given the concern raised in submissions on the suitability of certain waterway zones, the Department will undertake a targeted review of Sydney Harbour sites that were identified for further consideration in the 2016 study.

### **Why don't the controls apply to other water catchments in NSW?**

We reviewed the SEPPs to help simplify the planning system. This SEPP review program aimed to maintain current protections for water catchments in the Greater Sydney region. Expanding the controls to other water catchments in NSW was beyond scope. However, we have structured the amended SEPP so we can add other water catchments in the future.

### **Can the policies be expanded to apply in other local government areas?**

The SEPP review program aimed to maintain and update the current protections provided by the 7 former chapters of the BC SEPP. We have changed the BC SEPP structure to allow us to add other water catchments in the future. We may consider opportunities to extend the application of public bushland protections in the future also.

The provisions for Willandra Lakes Region World Heritage Property are appropriately located in the Balranald and Wentworth LEPs.

We have included the prohibition of canal estate development in Local Environmental Plans, except where current exclusions applied such as at Beach Road, Batemans Bay.

### **Why have there been changes to the consent authority powers for the Sydney Harbour Foreshores and Waterways Area?**

Council's role in managing land-water interface development in the Sydney Harbour Foreshores and Waterways Area will be maintained, consistent with the intent of the policy package.

However, section 4.5 of the EP&A Act means that the BC SEPP is no longer able to designate Council as a consent authority for this development. Therefore, the BC SEPP instead identifies Minister for Planning in this role.

As part of the implementation of the amendments, the Department is working to have the consent authority role for this development delegated back to Council ahead of the commencement date of 21 November to maintain Council's ongoing role in managing this development which will be consistent with the previous policy framework.

### **More information**

To read more about the changes to the BC SEPP, visit the [department's website](#).

Read the [submissions report](#).