

Proposed SEPP (Environment) and related planning reforms

Frequently Asked Questions

October 2017

Why is the NSW Government proposing a SEPP (Environment)?

The Department of Planning and Environment is undertaking a review of the State's planning policies to modernise and simplify the planning system.

Planning provisions for waterways, catchments, world heritage and urban bushland are currently contained in seven State Environmental Planning Policies (SEPPs), the Standard Instrument – Principal Local Environmental Plan (Standard Instrument), and in Ministerial Directions for plan making issued under the *Environmental Planning and Assessment Act 1979* (the act). Most of the SEPPs have been in place for more than a decade.

Our review has identified a need to modernise provisions to remove duplication, respond to new evidence, changed circumstances, and to better meet community expectations.

We have also identified opportunities to ensure that provisions are located in the planning instrument where they will be most effective.

What is the SEPP (Environment)?

We are proposing that the following seven existing SEPPs will be merged into one SEPP:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
- State Environmental Planning Policy No. 50 – Canal Estate Development
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property

A review of the provisions and stakeholder consultation found that most of the policy objectives in each of the existing seven SEPPs continue to be relevant. The SEPP (Environment) will provide a single location to meet these policy objectives, in a simple, modern and accessible document.

Key operational provisions from the seven existing SEPPs will be incorporated into the proposed SEPP. Other provisions will be relocated to more appropriate levels of the planning system like council local environmental plans or Ministerial Directions where provisions instruct what a planning proposal to make a local environmental plan needs to consider.

What are the benefits of the proposed reforms?

The proposed SEPP and related planning reforms have been prepared in line with the key policy aims of the NSW Government to reduce unnecessary regulation and transform the planning system into one that is efficient, easy to understand and simple to use.

The proposed SEPP will:

- Encourage the proper management, development and conservation of natural resources and the protection of the environment, in line with the objectives of the Act
- Enable growth that maintains and enhances the health and integrity of our natural and cultural heritage for the benefit and enjoyment of the present community and for future generations
- Streamline development assessment by identifying and considering environmental values and constraints at the earliest possible stage in the development decision making process, using evidenced based planning methods
- Promote ecologically sustainable development that supports a balanced approach to the use of land and natural resources, and provides for long term environmental, economic and social well-being
- Adopt a risk based approach to minimise cumulative negative impacts of development on both the immediate site and on a surrounding area or region
- The proposed SEPP fits within a range of plans and strategies including *A Plan for Growing Sydney*, draft District Plans, Regional Plans, local environmental plans, Ministerial Directions, and development control plans.

Why are SEPP 44 – Koala Habitat Protection and Murray Regional Environmental Plan No.2 – Riverine Land not proposed to be included in SEPP (Environment)?

SEPP 44 – Koala Habitat Protection is being reviewed separately as part of the whole of Government koala strategy being led by the Office of Environment and Heritage. The Murray Regional Environmental Plan No.2 – Riverine Land will be reviewed once the Murray River Waterfront Management Strategy has been finalised.

The Government is proposing both SEPP 44 and the Murray Regional Environmental Plan be incorporated into the proposed new SEPP (Environment) at a later stage.

What are Ministerial Planning Directions and why are some provisions being moved to Ministerial Planning Directions?

Under the Environmental Planning and Assessment Act 1979, the Minister for Planning has issued directions to local planning authorities preparing planning proposals to amend or create a new local environmental plan or create a new one. These directions are to ensure land use planning is consistent with NSW Government policy and all planning proposals must be consistent with relevant Ministerial Directions.

Current Ministerial Directions can be viewed on the [Department's website](#).

Some of the existing SEPPs proposed to be transferred to SEPP (Environment) contain directions for planning authorities preparing environmental planning instruments. These provisions have no effect in the SEPP and need to be updated and moved to new Ministerial Directions.

The Explanation of Intended Effect for SEPP (Environment) outlines the existing provisions proposed to move to Ministerial directions and details matters they will address. The community is encouraged to comment on the proposed outline of the new Ministerial Directions.

What are the main changes to the policies that have been reviewed?

The new SEPP will be simplified and streamlined. It will implement the following changes:

State Environmental Planning Policy No 19 – Bushland in Urban Areas (SEPP 19)

- The majority of the provisions of SEPP 19 will be transferred to SEPP (Environment). These provisions will be updated and some will be transferred to a Ministerial Direction.
- Update council names to reflect recent council amalgamations and boundary changes.
- Extend the provisions' application to cover the former Wyong local government area, now part of the Central Coast local government area.
- Transfer plan making provisions in SEPP 19 to a Ministerial Direction.
- A new circular on Urban Bushland is being finalised for consultation. It has been developed to provide further information and detail regarding the application of SEPP 19. This circular will replace planning Circulars No. B13 and No. 114.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

- Transfer the provisions of SEPP (Sydney Drinking Water Catchment) to ensure the continued protection of Sydney's drinking water.
- Clarify the use of Water NSW's tools (including the Neutral or Beneficial Effect assessment tool) and guidelines for helping development maintain a neutral or beneficial effect on water quality.
- The existing Ministerial Direction 5.2 Sydney Drinking Water Catchments will be retained as a consideration for local plan making for the councils listed in the SEPP.
- Allow development proposals for seniors' housing and housing for people with a disability to be assessed under SEPP (Housing for Seniors or People with a Disability) 2004 on urban land in water catchments including drinking water catchments.

State Environmental Planning Policy No. 50 – Canal Estate Development

- Retain provisions prohibiting the development of canal estates across NSW, except for certain land excluded from the operation of the SEPP such as land where State Environmental Planning Policy (Penrith Lakes Scheme) 1989 applies.
- Update the definition of canal estate development to include all waterways so that this type of development is prohibited in all waterways.

Willandra Lakes Regional Environmental Plan No 1—World Heritage Property

- Transfer the provisions relating to council's plan making and development determination roles to new Ministerial Directions and to the local environmental plans for Balranald and Wentworth.
- Replace the provisions relating to the old World Heritage Area management process with provisions that give effect to the new management structure.
- Update heritage listings to ensure the Willandra World Heritage Area is consistently referred to in both Balranald and Wentworth local environmental plans.

Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment

- Simplify the proposed SEPP by removing duplication with other legislation.
- Transfer local plan making provisions to a Ministerial Direction.
- Update remaining provisions and transfer them to the SEPP (Environment), including provisions regarding aims and objectives, heads of consideration and prohibitions for certain types of development including waste management facilities or chemical/fuel storage plants on flood liable land.

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

- Simplify the proposed SEPP by removing duplication with other legislation.
- Transfer local plan making provisions to a Ministerial Direction.
- Update remaining provisions and transfer them to the SEPP (Environment), including provisions regarding aims and objectives, heads of consideration and prohibitions for certain development types including potentially hazardous or offensive industries, and intensive animal industries if carried out within a floodway.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

- Update aims of the plan to better reflect recent development in the harbour.

Proposed SEPP (Environment) and related planning reforms

Frequently Asked Questions

October 2017

- Replace the planning principles with two Ministerial Directions to provide clear direction to councils when preparing local environmental plans.
- Identify provisions that are unique to the Sydney Harbour catchment and those that can be more broadly applied to other catchments.
- Align a number of definitions with Standard Instrument definitions where possible for consistency.
- Amend the naming and numbering of the water zones to align with the Standard Instrument.
- Update provisions related to land reserved under the *National Parks and Wildlife Act 1974* to be consistent with SEPP (Infrastructure).
- Remove requirement for Foreshores and Waterways Planning and Development Advisory Committee.
- Update matters for consideration when assessing development applications by grouping them into clear themes.
- Update the heritage provisions and align to the Standard Instrument LEP heritage provisions.
- Transfer Opera House provisions and related maps to the SEPP (State Significant Precincts).
- Move wetland provisions to State Environmental Planning Policy (Coastal Management).
- Update critical habitat provisions to be consistent with the *Biodiversity Conservation Act 2016*.
- Transition the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 into one or more updated design guidelines.
- Update and modernise provisions for strategic foreshore sites by requiring a development control plan for these sites rather than a 'master plan' and removing provisions that are duplicate general requirements for development control plans set out in the Act.
- Amend the objectives of Zone W8 Scenic Waters Passive Use to align with the land use table.
- Make amendments to allow Roads and Maritime Services to undertake its existing policy of subdivision on the Sydney Harbour foreshore for the purposes of managing lawfully reclaimed Harbour land.
- Allow mooring pens as an additional use in the Zone W7 Scenic Waters: Casual Use subject to consideration of potential visual, navigational and environmental impacts.

Why is the Government permitting subdivision on foreshore land?

The Government is proposing to amend the provisions of the Harbour REP to allow Roads and Maritime Services to undertake subdivision on the Sydney Harbour foreshore for the purposes of managing lawfully reclaimed Harbour land, according to their operating policies.

Proposed SEPP (Environment) and related planning reforms

Frequently Asked Questions

October 2017

This change will remove unintended restrictions on the permissibility of subdivision of Sydney Harbour foreshore land. The anomaly has arisen due to multiple changes to the planning system and the *Conveyancing Act 1919* over time. The change will permit Roads and Maritime Services to carry out its adopted policy of providing long term leases or divesting of surplus foreshore land.

The proposed amendment will retain the requirement for the consent authority to consider whether, and to what extent, a subdivision is likely to result in any reduction in public access to the foreshore or waterways, including planned public access and potential future public access.

Why haven't all of the water zones under Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 been revised?

Through the review process some stakeholders questioned how well the current permitted uses align with the stated objectives of the waterways zones, and the consistency or suitability of current water zones for certain bays or locations.

The Department, with the assistance of Roads and Maritime Services and a specialist consultant, has reviewed the application of the W6 Scenic Waters: Active Use, W7 Scenic Waters: Casual Use, and W8 Scenic Waters: Passive Use zones. The review found that the level of development within most zones was generally consistent with the stated objective.

Why is the Foreshores and Waterways Planning and Development Advisory Committee being removed?

The Foreshore and Waterways Planning and Development Advisory Committee (the Committee) was established under the Harbour Regional Environmental Plan to provide advice to consent authorities on development proposals on and around the Sydney Harbour catchment. The Committee is comprised of one officer from the Maritime Authority of NSW (now RMS), one officer from the Department, and either a person from council or a person nominated by the Minister, dependent on which is the consent authority for the development.

The Committee provides non-binding advice as its central function and it is at the discretion of the consent authority as to how, if at all, the recommendations are applied.

The introduction of integrated development provisions under the Act has significantly reduced the need for the Committee.

The removal of the committee will not result in reduced protection to the Harbour because integrated development provisions under Division 5 of the *Environmental Planning and Assessment Act 1979* require significant developments to be referred to the agencies represented on the committee, as well as to other relevant agencies such as the Office of Environment and Heritage and the Department of Primary Industries.

Proposed SEPP (Environment) and related planning reforms

Frequently Asked Questions

October 2017

Why are some of the definitions changing?

The review has identified ambiguities and uncertainties in how some of the key terms in the existing SEPPs are applied. Some definitions also contain criteria that are no longer relevant. Definitions will be updated to align with other legislation where possible, and deleted where no longer necessary.

Will the maps be updated?

The maps within the proposed SEPP (Environment) will be updated where necessary. New maps will also be created to show where certain provisions apply which will enable the provisions to be better integrated into the NSW Planning Portal system. The proposed SEPP will include, but not be limited to the following maps:

- Bushland in Urban Areas 'Land Application Map'
- Sydney Drinking Water Catchment 'Land Application Map'
- Georges River Catchment 'Land Application Map'
- Hawkesbury-Nepean River 'Land Application Map'
- Sydney Harbour Catchment 'Land Application Map'
- Sydney Harbour Foreshores and Waterways Area map
- Sydney Harbour wetlands maps
- Sydney Harbour Critical Habitats map
- Sydney Harbour strategic foreshore sites maps

How will the SEPP (Environment) and related planning reforms affect me?

The SEPP (Environment) will generally only affect you if you are already affected by the existing policies. The policies will now be much clearer as they will be up to date and consolidated into one new SEPP. Known issues with the existing policies have also been fixed to make the new SEPP more effective and easier to use. Some provisions will apply to new areas such as the urban bushland provisions which will now apply to entire Central Coast local government area.

Who has been consulted so far as part of the review?

As part of the review of the seven policies a wide range of key stakeholders have already been consulted to help us understand the main issues with the policies and identify potential solutions. These stakeholders have included councils, state government agencies, and peak bodies representing environmental groups and the development industry.

How do I comment on the proposed changes?

- Submissions on the exhibition of draft SEPP (Environment) will close on 31/01/18
- You can make a submission by responding online at: planning.nsw.gov.au/proposals or by mail to the Director, Planning Frameworks

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GPO Box 39, Sydney, NSW 2001

- Online submissions are preferred to mail or email submissions. You can choose whether the submission is from an individual or an organisation.
- All submissions will be made public in line with the Department's objective to promote an open and transparent planning system. If you do not want your name published, please state this clearly at the top of your submission. Before making a submission, please read our privacy statement at: planning.nsw.gov.au/privacy

Where can I find out more?

- Visit our website at <http://www.planning.nsw.gov.au/>
- Call on 1300 305 695
- If English isn't your first language, please call 131 450. Ask for an interpreter in your language and then request to be connected to our Information Centre on 1300 305 695
- Email information@planning.nsw.gov.au

What happens next?

At the end of the exhibition period we will review all submissions, take into consideration all feedback on the proposed changes, and prepare a report for the Minister for Planning to make recommendations to the Governor to make a new SEPP, if approved.

When the new SEPP and additional changes are made, the NSW Legislation website will be updated.