



Coastal Management State Environmental Planning Policy

Explanation of Intended Effect



How this document is structured

This Explanation of Intended Effect (EIE) is presented in three parts:

Part A – The coastal context

This section provides an overview of the Stage 2 Coastal Reforms and outlines the key components of the land use planning system relevant to coastal management in NSW.

Part B – Proposed Coastal Management State Environmental Planning Policy

This section explains the context and policy objectives for the proposed Coastal Management State Environmental Planning Policy (SEPP). It also provides a description of how the various parts of the proposed SEPP will work and what they are seeking to achieve.

The public are invited to comment on all matters covered in this document, however Part B includes specific consultation questions in order to encourage feedback from the community on particular issues where there may be several options for implementing the broader policy intent.

Part C – Background and analysis

This section provides helpful information on current planning policies applying to coastal management. In particular, it identifies which parts of those policies are proposed to continue to apply in the proposed Coastal Management SEPP, which parts might be simplified or moved to other instruments, and which parts are no longer considered necessary.

Part A

The coastal context

The Stage 2 Coastal Reforms

The Government has embarked on a series of reforms to provide a strategic framework for coastal management in NSW.

Stage 1 Coastal Reforms were completed in November 2014. Stage 1 focused on providing some regulatory relief to landowners and councils dealing with current erosion impacts. This included giving councils the flexibility to consider coastal hazards in the context of their local circumstances, regulatory changes to allow landowners to carry out temporary coastal protection works and providing guidance to councils relating to section 149 planning certificate notations relating to coastal hazards.

Stage 2 Coastal Reforms will introduce a number of important legislative and policy reforms. Specifically, the package includes a proposed Coastal Management Act and a proposed Coastal Management State Environmental Planning Policy. A Coastal Management Manual will also be developed to support councils, practitioners and communities in implementing the new framework.

This document will explain the proposed Coastal Management State Environmental Planning Policy (SEPP) which will operationalise the objectives of the Coastal Management Act within the land use planning system.

The importance of the coast

The NSW coast is an important part of life, recreation and business in NSW. Millions of people enjoy the coast each year, including both NSW residents and visitors.

The coast comprises a variety of environment types and a diverse saltwater economy. Many people in the community have a connection with the coast as a place to live, holiday or make a living. Aboriginal people have a unique spiritual, social, customary and economic relationship with places close to the ocean.

Effective coastal management must protect the natural processes that shape the environment, and maintain public access, amenity and use of coastal areas. A new Coastal Management Act is being prepared that will provide the framework for coastal management.

The role of land use planning

Land use planning has a crucial role in managing the continuing and growing demand for coastal space and resources.

Some of the more complex challenges arise from the inherently dynamic character of our coastline. In the past, this variability was not always acknowledged, resulting in a range of legacy coastal management issues where patterns of settlement have not anticipated the trends and cycles in coastal processes.

Communities, governments and the private sector need to consider the likely future challenges that may arise on the NSW coast. Where pressures and trends may amplify risk in coming decades, then land use planning is essential to ensure resilience.

There is long-standing international recognition that every coastal jurisdiction should work toward integrated management and sustainable development of coastal and marine areas. This document explains the components of the land use planning system that operationalise the new coastal management framework.

The components of the land use planning system

The proposed Coastal Management SEPP will form part of the broader land use planning framework in NSW. The components of the land use planning system related to coastal management under Stage 2 of the coastal reforms are summarised in the table below:

Land Use Planning Instrument	Description
Environmental Planning and Assessment Act 1979	<p><i>The Environmental Planning and Assessment Act 1979 is the legislative umbrella for land use planning in NSW.</i></p> <p>It provides for environmental planning instruments which establish planning controls for the coast.</p> <p>The Act also provides for the determination of development applications and ensures that the assessment of proposed development considers the appropriate matters. For coastal NSW, this includes consideration of coastal processes and hazards such as beach erosion and the ecosystem integrity of marine environments.</p> <p>The Act will also provide updated enforcement and compliance powers in respect of unauthorised development on the coast.</p> <p>These mechanisms are essential elements in planning for and implementing strategies concerning the use of land and environmental assets on the coast.</p>



Land Use Planning Instrument	Description
Coastal Management SEPP	<p>A new Coastal Management SEPP will be the primary environmental planning instrument that will set the land use planning framework for coastal management and ensure implementation of the planning objectives of the proposed Coastal Management Act in NSW.</p> <p>Four coastal management areas comprising the coastal zone will be mapped under the SEPP. The maps will be published in a digital format and will be accessible via the Department of Planning and Environment's website. The area covered by these maps may be refined over time.</p> <p>The SEPP will specify the development controls which will apply to particular forms of development or within particular coastal management areas.</p> <p>The SEPP will also specify the consent requirements for public authorities and private individuals who propose to construct coastal protection works.</p>
Regional Plans	<p>Regional Plans are developed so that the community can set the course for its future needs at a regional scale. Given the level of growth and investment in coastal areas, they will have a particularly important role in setting out the strategic, broad scale direction for land use planning.</p> <p>Coastal regions for which Regional Plans will apply are:</p> <ul style="list-style-type: none"> • the Hunter; • Central Coast; • Illawarra; • the South East; and • the North Coast. <p>Regional Plans will focus on strategic planning for housing, economic development, jobs growth, a natural rural environment, and lively centres for shopping, entertainment and dining. They will include consideration of coastal matters, and will inform and be informed by, coastal management programs developed under the proposed Coastal Management Act.</p>

Land Use Planning Instrument	Description
Local Planning Directions	<p>Under the <i>Environmental Planning and Assessment Act 1979</i>, the Minister is able to issue a local planning direction (often called a 'Section 117 Direction') to direct a public authority in the making of a Local Environmental Plan (LEP).</p> <p>LEPs prepared by councils will need to align with the objectives of the proposed Coastal Management Act, and a local planning direction is the appropriate mechanism to achieve this.</p> <p>The Department of Planning and Environment uses a gateway process to ensure that the strategic merit of a specific change to zoning or development controls is considered. This includes a need for councils to demonstrate how they have prepared their planning proposal consistent with any relevant local planning directions.</p> <p>A new Local Planning Direction on Coastal Management will replace Local Planning Direction 2.2 to require a planning proposal to give effect to, and be consistent with, the objectives of the Coastal Management Act, the coastal management manual and any coastal management program, and relevant guidelines and strategies including the Coastal Planning Guidelines: Adapting to Sea Level Rise and the Coastal Design Guidelines.</p>
Coastal Planning Guideline: Adapting to Sea Level Rise	<p>The current NSW Coastal Planning Guideline: Adapting to Sea Level Rise is an important support document for councils, public authorities, consultants and the people in broader community who are interested in coastal planning in the context of climate change and climate system variability.</p> <p>The guideline includes coastal planning principles to address coastal processes and hazards (including those related sea level rise), and explains how these principles should be applied in land use planning and development assessment in coastal areas.</p> <p>Work is being undertaken to update the material contained in the guideline, and incorporate relevant components into the coastal management manual. When relevant information is published in the manual, the guideline will be revoked.</p>

Land Use Planning Instrument	Description
Coastal Design Guidelines	<p>The current NSW Coastal Design Guidelines illustrate how an urban design approach can create a development outcome that is sensitive to the unique natural and urban characteristics of coastal places in NSW.</p> <p>The guidelines apply to coastal use areas, which include large urban areas, regional centres and coastal hamlets. The NSW coast is characterised by a range of settlement types, and it is this diversity which enhances our experience of the coast.</p> <p>These guidelines are currently referenced in Local Planning Direction 2.2, and will be retained as a consideration under any updated directions that may be issued as part of the coastal reforms.</p> <p>The guideline will be reviewed in the future to ensure its accuracy and currency.</p>
Local Environmental Plans and Development Control Plans	<p>Local Environmental Plans (LEPs) guide planning decisions for local government areas. They do this through zoning and development controls, which provide a framework for the way land can be used. LEPs are a key planning tool to shape the future of communities and also ensure local development is undertaken appropriately.</p> <p>LEPs are necessary for all local government areas, including coastal areas. Since the introduction of the Standard Instrument LEP, councils are now able to zone submerged land in estuaries, lakes and lagoons within their local government area.</p> <p>LEPs, and amendments to LEPs, begin with a planning proposal, prepared in most cases by the local council. Proposals are then assessed by the Department of Planning and Environment. This is called the 'Gateway' process.</p> <p>Community consultation is an essential part of the process and the relevant planning authority, usually the local council, will review all submissions before making a draft LEP.</p> <p>The final LEP is published on the NSW legislation website and becomes law once approved by the Minister for Planning or their delegate.</p> <p>Development control plans often provide additional detail relating to the management of coastal areas and issues with respect to development control and assessment.</p>

Part B

Proposed Coastal Management State Environmental Planning Policy

A new Coastal Management State Environmental Planning Policy (the proposed SEPP) is being developed as part of the Government's Stage 2 Coastal Reform program. The SEPP is intended to further integrate coastal management by bringing all coastal matters together under the one document.

The existing coastal State Environmental Planning Policies

When the proposed Coastal Management SEPP is made, it will repeal three State Environmental Planning Policies which relate specifically to coastal matters:

- State Environmental Planning Policy No 14 – Coastal Wetlands (SEPP 14);
- State Environmental Planning Policy No 26 – Littoral Rainforests (SEPP 26); and
- State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71).

SEPP 14 was first published in 1985, SEPP 26 in 1988, and SEPP 71 in 2002. Most of the arrangements provided by these policies continue to be vital to a healthy and sustainable coastal environment. Appropriate development of the coast continues to be a matter requiring a State and regional response and an integrated approach. For this reason, it is proposed that the relevant provisions within these SEPPs be updated and incorporated into the proposed new Coastal Management SEPP.

The provisions of SEPP 50 - Canal Estate Development are not being addressed in the Coastal Management SEPP as the provisions in SEPP 50 which prohibit canal estate development apply state-wide.

The existing *State Environmental Planning Policy (Infrastructure) 2007*

It is also proposed that provisions in State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) which relate to coastal protection works be incorporated into the proposed SEPP. The relevant coastal provisions within the Infrastructure SEPP are found in Division 25. This division provides for waterway and coastal management activities. It is not proposed to amend the provisions relating to waterways (i.e. riverine situations).

The clauses to be replaced by provisions in the proposed new Coastal Management SEPP are:

- Clauses 128 (c) and 128 (d) – these relate to definitions and the intention is to move definitions for coastal management activities into the proposed SEPP.
- Clauses 129(2A) and 129 (2B) – these relate to the carrying out of coastal protection works and the definition of 'new coastal protection works'. New provisions will be introduced in the proposed SEPP.
- Clause 129A – this relates to consent requirements for coastal protection works. New provisions will be introduced in the proposed SEPP.

Clause 129(2) will require consequential amendment to remove a reference to coastal or foreshore locations.

Policy objectives

The objectives of the proposed Coastal Management SEPP are to:

- promote an integrated and co-ordinated approach to coastal planning and management, consistent with the objects of the proposed Coastal Management Act
- map the four coastal management areas which comprise the NSW coastal zone, consistent with the definitions and requirements of the proposed Coastal Management Act
- establish a framework for land use planning to guide decision-making for the coast
- manage development in coastal areas and protect the environmental assets of the coast.

The policy objectives of the proposed Coastal Management SEPP are consistent with the proposed Coastal Management Act. In combination, the Act, SEPP and Manual will carry forward the relevant goals of the NSW Coastal Policy 1997 and SEPP 71.

Coastal management areas

The NSW coast is comprised of a number of different but often inter-related landforms and environments, and there are also different cultural, economic and social values associated with sections of the coast.

In order to create a coastal management structure that accommodates all of those constituent parts and yet allows for the specific needs of those different areas to be met in an efficient manner, the proposed Coastal Management Act will define four different coastal management areas. The proposed SEPP will map these areas.

The four coastal management areas are:

- Coastal Management Area 1: Coastal Wetlands and Littoral Rainforests Area
This is an area where coastal wetlands and littoral rainforests have been identified.
- Coastal Management Area 2: Coastal Vulnerability Area
This area covers land exposed to coastal hazards such as beach erosion, tidal inundation and cliff instability.
- Coastal Management Area 3: Coastal Environment Area
This area includes key features of the coast such as estuaries, lagoons and coastal lakes and critical areas of land adjacent to these features.
- Coastal Management Area 4: Coastal Use Area
This area contains land with important coastal values.

The coastal management areas will be identified for all local government areas in coastal NSW. Taken together, the mapped coastal management areas will comprise the coastal zone.

Mapping coastal management areas

Maps of the four coastal management areas will be made as part of the proposed SEPP. Exposure draft maps for the coastal zone will be released for public exhibition and comment before the proposed SEPP is made.

The mapping will be sourced from existing and new data. Mapping of:

- littoral rainforests will be largely based on existing maps under SEPP 26
- coastal wetlands will be updated from the current SEPP 14 maps by the Department, to account for natural changes in their boundaries and distribution

- coastal environment areas for lakes and rivers, estuaries, lagoons, coastal waters and submerged lands, and headlands and rock platforms will be based on the current coastal zone as defined under the **Coastal Protection Act 1979**, with some modification to include land around coastal lakes
- coastal use areas will also be based on the current coastal zone as defined under the *Coastal Protection Act 1979*, with some modification to exclude submerged lands. Three options are being considered for mapping this area, which are discussed further below
- coastal vulnerability areas is being undertaken by the Office of Environmental and Heritage, based on the latest scientific data and available technologies.

It is proposed that councils will be able to undertake further detailed research and analysis to develop proposals to update maps for particular areas. Following analysis of the characteristics of a coastal management area and through a process of public consultation, the relevant council could prepare a planning proposal to refine the boundary of a map by amending the maps in the SEPP. Changes would require the approval of both the Minister for Planning and the Minister responsible for administering the proposed Coastal Management Act (currently, the Minister for Planning), to ensure that appropriate processes and data have been applied.

Technical information, guidance and standards to develop proposals to update maps will be included in the coastal management manual. This approach will draw on local knowledge, data and expertise to ensure that maps are as precise and relevant as possible, and will enable councils to propose updates to maps that account for any changes that may arise from the ambulatory (changing position, not fixed) and dynamic character of the coast.

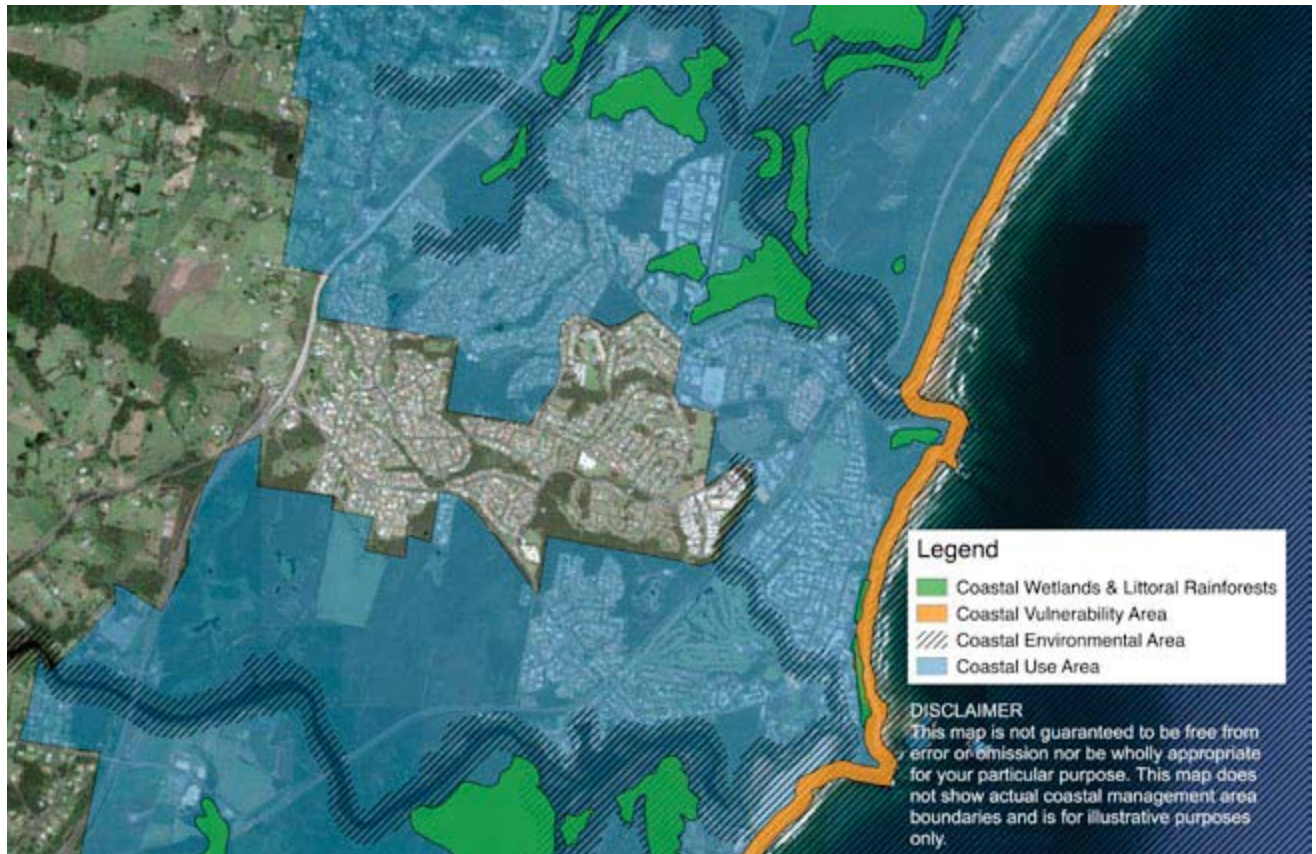
Requirements for preparing a planning proposal are set out in section 55 of the *Environmental Planning and Assessment Act 1979*, and include a requirement to prepare a document in support of the proposal that provide a supporting rationale and evidence.

Question 1: Should councils be able to propose changes to the maps for all or some of the coastal management areas?

The proposed SEPP will also include a provision that the Office of Environment and Heritage will review maps for the Coastal Vulnerability Area at least every ten years to ensure that the mapping accommodates new and emerging scientific information on the dynamics of the coast.

All maps will be available digitally via the Department's e-planning system. An example of how the different coastal management areas will be mapped is included on the following page – this is not a proposed map for the purposes of the SEPP, but is provided to illustrate how the various coastal management areas will appear.

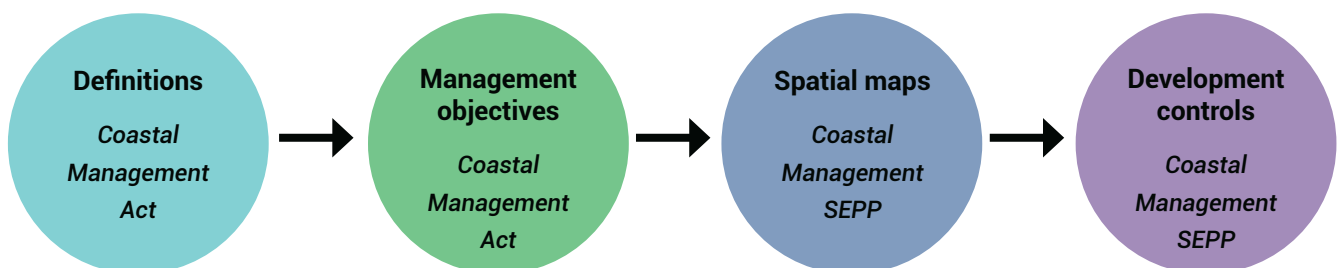
An example of how the maps might look:



Explanation of the provisions

Management objectives for each of the four coastal management areas will be included in the proposed Coastal Management Act. The proposed SEPP will provide development controls for each coastal management area, which will give effect to management objectives under the proposed Coastal Management Act.

The relationship between key provisions is shown below:



Proposed development on land within a relevant coastal management area must not be inconsistent with the management objectives set out for the area. If consent is required for the proposed development then the development controls for that coastal management area will apply.

Generally, the matters for consideration contained within the development controls are drawn from those listed in the key coastal SEPPs and Clause 5.5 of the Standard Instrument - Principal Local Environmental Plan (the Standard Instrument LEP), which applies to development on land within the current coastal zone, as well as any local clause relating to coastal hazard risk. As a consequence, it is proposed that Clause 5.5 of the Standard Instrument and any local coastal hazard risk clause be repealed once the proposed SEPP is made.

If a parcel of land is within more than one coastal management area, the objectives and development controls of each management area will apply. That is, the proposed development will need to take into account both sets of objectives and development controls. A set of management objectives and relevant development controls are not 'switched off' by reason of the land being located within two or more coastal management areas.

Should there be any inconsistency between the objectives or development controls for overlapping coastal management areas, the following priority will apply (highest priority first):

- Coastal Wetlands and Littoral Rainforest Area
- Coastal Vulnerability Area
- Coastal Environment Area
- Coastal Use Area.

Question 2: Should the development controls be included in the proposed Coastal Management SEPP or as a mandatory clause in council LEPs?

Development controls for Coastal Management Areas

Coastal Management Area 1: Coastal Wetlands and Littoral Rainforests Area

The proposed Coastal Management Act will prescribe a set of shared management objectives for the area that applies to coastal wetlands and littoral rainforests, however more specific development controls are required for coastal wetlands and littoral rainforests as their ecological characteristics vary, including their level of resilience.

Accordingly, it is intended to retain the development controls that apply to littoral rainforests under SEPP 26, and coastal wetlands under SEPP 14. This will ensure that appropriate development controls apply, tailored to the requirements of these different ecological communities. It will avoid the risk of over or under-regulating development by applying a single set of controls across the coastal management area. It is not intended to alter the permissibility arrangements for activities within land identified as coastal wetland or littoral rainforest.

The current provisions for littoral rainforests include a 100 metre perimeter area ('buffer') around the rainforests, however this does not apply to coastal wetlands. A 100 metre perimeter area will be added to coastal wetlands to allow for natural fluctuations in these areas and to afford protections from the effects of any close-proximity development. However the heads of consideration within this proposed new buffer area will be less substantial than those applicable to the wetland itself and there is no change proposed to the permissibility of activities in the proposed new buffer area for coastal wetlands. There is also no change to permissibility proposed in respect of land in the buffer area for littoral rainforests. Matters which are currently permissible without consent under an environmental planning instrument, and which can be determined under Part 5 of the *Environmental Planning and Assessment Act 1979*, will continue to be determined under Part 5.

With the exception of the perimeter area to coastal wetlands, the proposed development controls for coastal wetlands, littoral rainforests and land within 100 metres of these areas, are similar to existing development controls applying to these lands.

It is also proposed to include appropriate savings provisions to protect activities which, at the time the proposed SEPP is made, may have already been determined under Part 5 of the *Environmental Planning and Assessment Act 1979*, but not yet commenced or completed.

Development controls in relation to exempt development and complying development in coastal wetlands, littoral rainforests and land within 100 metres of these areas, are dealt with at the end of this section.

Land to which the development controls will apply (as mapped)

- Coastal wetlands and littoral rainforests.
- 100 metre perimeter area around each coastal wetland or littoral rainforest.

Proposed consent arrangements and development controls

The proposed consent arrangement and development controls are separately described for the areas comprising littoral rainforests and coastal wetlands, and the 100 metre perimeter areas which adjoin littoral rainforests and coastal wetlands.

On land that is identified as a littoral rainforest:

- The proposed SEPP will require development consent to be obtained in relation to any development for a purpose that is permissible by way of an environmental planning instrument (EPI) that applies to the land, and involves any of the following:
 - erection of a building
 - carrying out of a work
 - use of land
 - subdivision of land
 - earthworks (including filling or the depositing of material)
 - destruction or removal of native vegetation.
- Such development that requires consent under the proposed SEPP is designated development for the purposes of section 77A of the *Environmental Planning and Assessment Act 1979* (which imposes additional requirements such as the preparation of an Environmental Impact Statement, additional public consultation and third party rights to merit appeal).
- Apart from requiring development consent in relation to particular matters as set out above, the proposed SEPP will not affect any other EPI that applies to the land. This means that:
 - if the proposed development is prohibited under another EPI that applies to the land, the development remains prohibited
 - if the proposed development requires consent under another EPI that applies to the land, and the proposed SEPP is silent on the matter, development consent is still required
 - relevant development standards and matters for consideration contained in other EPIs that apply to the land continue to apply.
- The proposed SEPP will include one additional matter for consideration (based on the Standard Instrument LEP, clause 5.5, subclause (2)(e)), in relation to any development on land identified as a littoral rainforest as follows:
 - Development consent must not be granted to development on land that is identified as a littoral rainforest unless the consent authority is satisfied that there are sufficient measures proposed to protect the biophysical, hydrological and ecological integrity of the littoral rainforest.

On land that is within a 100 metre perimeter area of a littoral rainforest:

- The proposed SEPP will require development consent to be obtained in relation to any development for a purpose that is permissible by way of some other EPI that applies to the land, and involves any of the following:
 - erecting a building
 - earthworks (including filling or the depositing of material)
 - destroying or removing native vegetation.

This provision will not apply to land that is zoned for residential use, or land that is also identified as a coastal wetland within the perimeter area.

- Apart from requiring development consent in relation to particular matters as set out above, the proposed SEPP will have no other effect on any other EPI that applies to the land. This means that:
 - if the proposed development is prohibited under another EPI that applies to the land, the development remains prohibited
 - if the proposed development requires consent under another EPI that applies to the land, and the proposed SEPP is silent on the matter, development consent is still required
 - relevant development standards and matters for consideration contained in other EPIs that apply to the land continue to apply.

The proposed SEPP will include one additional matter for consideration (based on the Standard Instrument LEP, clause 5.5, subclause (2)(e)), in relation to any development on land within the 100 metre perimeter area around a littoral rainforest as follows: Development consent must not be granted to development on land within the 100 metre perimeter area of a littoral rainforest unless the consent authority has considered the extent to which that the development will impact on:

- the biophysical, hydrological or ecological integrity of the adjacent littoral rainforest, or
- the quantity and quality of surface and ground water flows to the littoral rainforest if the development is on land within the catchment of a littoral rainforest.

On land that is identified as a coastal wetland:

- The proposed SEPP will require development consent to be obtained in relation to any development for a purpose that is permissible by way of an EPI that applies to the land, and involves any of the following:
 - destroying or removing native vegetation
 - constructing a levee
 - drainage works
 - filling.
- Any development for the purposes of environmental protection works (defined in the Standard Instrument LEP as including works associated with the rehabilitation of land towards its natural state) will also require development consent.
- Development that requires consent under the proposed SEPP, other than environmental protection works, is designated development for the purposes of section 77A of the *Environmental Planning and Assessment Act 1979*.

- Apart from expressly requiring development consent in relation to matters as set out above, the proposed SEPP will not affect any other EPI that applies to the land. This means that:
 - if the proposed development is prohibited under another EPI that applies to the land, the development remains prohibited
 - if the proposed development requires consent under another EPI that applies to the land, and the proposed SEPP is silent on the matter, development consent is still required
 - relevant development standards and matters for consideration contained in other EPIs that apply to the land continue to apply.
- The proposed SEPP will include one additional matter for consideration (based on the Standard Instrument LEP, clause 5.5, subclause (2)(e)), in relation to any development on land that is identified as a coastal wetland, as follows:
Development consent must not be granted to development on land that is identified as a coastal wetland unless the consent authority is satisfied that there are sufficient measures proposed to protect the biophysical, hydrological and ecological integrity of the wetland.

On land that is within a 100 metre perimeter area of a coastal wetland:

- The 100 metre perimeter area of coastal wetlands has not previously been mapped. It is not proposed to change any of the provisions which currently set out whether development can occur (permissibility arrangements) on land within 100 metre of a coastal wetland. It is however proposed to introduce a new matter that must be considered by consent authorities for development in the perimeter area. This new matter for consideration will enable consent authorities to better achieve the policy intent of SEPP 14 - to ensure that the coastal wetlands are preserved and protected.
- This provision will not apply to land that is zoned for residential use, or land that is also identified as a littoral rainforest within the perimeter area.
- Whether or not development is permissible or prohibited is to be determined by reference to other EPIs that apply.
- The proposed new matter for consideration in the proposed SEPP in relation to development on land within the 100 metre perimeter area around a coastal wetland is as follows:
Development consent must not be granted to development on land within the 100 metre perimeter area of a coastal wetland unless the consent authority is satisfied that the development will not significantly impact on:
 - the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or
 - the quantity and quality of surface and ground water flows to the coastal wetland if the development is on land within the catchment of the coastal wetland.

Question 3: Do the proposed development controls for mapped coastal wetlands and littoral rainforests remain appropriate for that land?

Question 4: Do you support the inclusion of a new 100m perimeter area around the mapped wetlands, including the application of additional development controls?

Coastal Management Area 2: Coastal Vulnerability Area

Land to which the development controls will apply (as mapped)

- Land identified as being exposed to current or future coastal hazards.
- Coastal hazards are those identified in the proposed Coastal Management Act.

Proposed development controls

The majority of the proposed development controls reflect the development controls which currently apply under clause 5.5 of the Standard Instrument LEP and under local coastal risk planning clauses within LEPs.

The proposed development controls will provide that development consent must not be granted to development on land within this coastal management area unless the consent authority is satisfied that, for the life of the works, the development:

- allows for the ambulatory and dynamic nature of the beach and foreshore, or otherwise includes arrangements to maintain the presence of a beach, if there is an existing beach adjacent to the proposed development
- is not likely to cause increased coastal vulnerability in respect of the land itself or any other land in the coastal vulnerability area
- is not likely to alter coastal processes to the detriment of the environment, or other properties or public land
- is not likely to reduce the public amenity, access to and use of the beach, foreshores and headlands
- incorporates appropriate measures to manage risk to life and public safety from coastal hazards
- provides for the relocation, modification or removal of the development in the event that the above outcomes cannot be satisfactorily achieved.

The coastal management manual will provide guidance in respect of these matters.

Development controls in relation to exempt and complying development in coastal vulnerability areas are dealt with at the end of this section.

Question 5: Are the proposed development controls for mapped coastal vulnerability areas appropriate for that land?

Coastal Management Area 3: Coastal Environment Area

Land to which the development controls will apply (as mapped)

This area includes land and waterbodies identified as being ecologically sensitive to impacts from coastal development activity, including:

- State waters and submerged lands plus a 100 metre landward perimeter area
- estuaries plus a 100 metre landward perimeter area
- coastal lakes and lagoons, and the land comprising the catchment of those lakes and lagoons, if the lake or lagoon is identified as requiring comprehensive protection (refer to Schedule 1)

- other coastal lakes and lagoons plus a 500 metre landward perimeter area
- headlands and rock platforms.

Proposed development controls

All of the proposed development controls reflect the development controls which currently apply under clause 5.5 of the Standard Instrument LEP.

The proposed development controls will provide that development consent must not be granted to development on land within this coastal management area unless the consent authority has considered the extent to which the development:

- is not likely to cause adverse impacts on the biophysical, hydrological (surface and groundwater) and ecological environment
- is not likely to impact on geological and geomorphological coastal processes, or be significantly impacted by the same
- protects and preserves native coastal vegetation
- preserves undeveloped headlands in a natural and undeveloped state
- protects Aboriginal cultural heritage and places
- incorporates water sensitive design to achieve the management objectives for the coastal environment area.

Development controls in relation to exempt development and complying development in coastal environment areas are dealt with at the end of this section.

Question 6: Are the proposed development controls for coastal environment areas appropriate for that land?

Question 7: Is the inclusion of the catchments of the 15 sensitive lakes (listed in Schedule 1) within the coastal environment area appropriate?

Coastal Management Area 4: Coastal Use Area

Land to which the development controls will apply (as mapped)

The Coastal Use Area will include lands to which controls concerning urban design, location and scale will apply. The area will vary in extent depending on topography, local scenic qualities and the patterns of existing development.

The Coastal Use Area is similar to the existing “coastal zone” as defined under the *Coastal Protection Act 1979*, however three different options are being considered for initially mapping the area, with an ability for councils to refine the maps in future to pick up local characteristics:

- Option 1 – generally one kilometre landward of mean high water mark. Councils may propose to increase or decrease the area.
- Option 2 – generally 500 metre landward of mean high water mark. Councils may propose to increase, but not decrease, the area.
- Option 3 – generally one kilometre landward of mean high water mark. Councils may propose to increase the area, or decrease it to no less than 500 metres.

Whichever option is adopted, the following principles for mapping the Coastal Use Area will apply.

The distance will be mapped to the applicable distance inland from:

- the coastal waters of the State
- any bay, estuary, coastal lake or lagoon
- upstream in any coastal river or estuary to one kilometre beyond the limit of any recognised mangroves on or associated with the river or estuary
- if there are no such recognisable mangroves, then to one kilometre beyond the tidal limit of the river or estuary
- the boundary will be shown to the nearest cadastral boundary or easily recognisable physical boundary
- within the Sydney metropolitan area the boundary will represent the land affected by or affecting coastal processes (generally between 50 metres and 200 metres).

These mapping principles are consistent with the principles articulated in the *Coastal Protection Act 1979*.

Note: the Coastal Use Area will not include State waters on the open coast – these and other submerged lands within State waters will be included in the maps for Coastal Management Area 3: Coastal Environment Area.

Each option is explained in detail in Schedule 2 together with a summary of the advantages and disadvantages of each.

Question 8: Which is the best option for mapping the coastal use area? Is the proposed approach to mapping of the coastal use area for the Sydney metropolitan area appropriate?

Question 9: Should councils be able to propose variations to the Coastal Use Area maps over time to take into account local characteristics and circumstances?

Proposed development controls

All of the proposed development controls reflect the development controls and considerations which currently apply under the Standard Instrument LEP clause 5.5, SEPP 71, the NSW Coastal Policy and the Coastal Design Guidelines.

The proposed development controls will provide that development consent must not be granted to development on land within this coastal management area unless the consent authority considers the extent to which the development:

- maintains or enhances public access to beaches, headlands, and ocean, estuarine, lake and lagoon foreshores
- does not exceed the scale and size of the existing buildings and the visual impact on the surrounding area
- incorporates measures to maintain or improve the amenity of the coastal foreshore, including minimising overshadowing and minimising the loss of views from a public place to the coastal foreshore
- protects the visual amenity and scenic qualities of the coast
- protects Aboriginal cultural heritage and places

- minimises overshadowing and wind funnelling
- conserves biodiversity and ecosystems, including:
 - i. native coastal vegetation and existing wildlife corridors, and
 - ii. rock platforms, and
 - iii. water quality of coastal waterbodies, and
 - iv. native fauna and native flora, and their habitats; and
- affects the cumulative impacts of the proposed development and other development on the coastal catchment.

Development controls in relation to exempt development and complying development in coastal use areas are dealt with at the end of this section.

Question 10: Are the proposed development controls for mapped coastal use areas appropriate for that land?

Other matters relating to development

Exempt and complying development

The proposed development controls for the four coastal management areas will only apply to development that requires development consent.

In relation to exempt and complying development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP), no change is proposed to current arrangements under that SEPP allowing exempt and complying development to be undertaken on land that is identified as being within a coastal management area.

What this means in each coastal management area:

Coastal Management Area 1: Coastal Wetlands and Littoral Rainforests Area

- Exempt development under the Codes SEPP that is currently permitted on land that is a coastal wetland or littoral rainforest area and on land within the 100 metre perimeter area around such areas will continue to be permitted as exempt development.
- Exempt development under the Codes SEPP that is currently excluded from being undertaken on land that is a coastal wetland or littoral rainforest area and on land within the 100 metre perimeter area around such areas will continue to be excluded.
- Complying development under the Codes SEPP cannot currently be carried out on land that is coastal wetland or littoral rainforest area and on land within the 100 metre perimeter area around such areas, and this arrangement is to continue.

Coastal Management Area 2: Coastal Vulnerability Area

- Exempt development under the Codes SEPP can be carried out on land that is identified as a Coastal Vulnerability Area if the development meets the standards specified, and complies with the requirements set out, in the Codes SEPP. This arrangement is to continue.

- Complying development set out in the General Housing Code, Rural Housing Code, and Commercial and Industrial (New Buildings and Additions) Code cannot currently be carried out on land that is affected by coastal hazards, and this arrangement is to continue in relation to Coastal Vulnerability Areas which covers such areas.
- However, other complying development such as that set out in the Advertising and Signage Exempt Development Code and the Housing Alterations Code can be carried out on that is affected by coastal hazards, and this arrangement is also to continue in relation to Coastal Vulnerability Areas.

Coastal Management Area 3: Coastal Environment Area

- Exempt development under the Codes SEPP can be carried out on land that is identified as a Coastal Environment Area if the development meets the standards specified, and complies with the requirements set out, in the Codes SEPP. This arrangement is to continue.
- Complying development set out in the General Housing Code, Rural Housing Code, and Commercial and Industrial (New Buildings and Additions) Code cannot currently be carried out on land that is identified in an environmental planning instrument as being environmentally sensitive land (or similar). This arrangement is to continue.
- If a Coastal Environment Area (under this SEPP) is identified as environmentally sensitive land in the council's LEP, complying development under these Codes cannot be undertaken on the land. This arrangement is to continue.
- However, other complying development such as that set out in the Advertising and Signage Exempt Development Code and the Housing Alterations Code can be carried out on land identified as being environmentally sensitive, and this arrangement is to continue.

Coastal Management Area 4: Coastal Use Area

- Exempt development under the Codes SEPP can be carried out on land that is identified as a Coastal Use Area if the development meets the standards specified, and complies with the requirements set out, in the Codes SEPP. This arrangement is to continue.
- Complying development set out in the General Housing Code, Rural Housing Code, and Commercial and Industrial (New Buildings and Additions) Code cannot currently be carried out on land that is identified in an environmental planning instrument as being environmentally sensitive land (or similar) and this arrangement is to continue. However, it is unlikely that land within a Coastal Use Area will be identified as environmentally sensitive land given the features of the land.

Question 11: Should the current exempt development and complying development provisions be retained for coastal management areas?

Question 12: Should consideration be given to applying other controls for these areas? For example, what types of exempt and complying development might be appropriate in coastal wetlands and littoral rainforests or in the catchments of sensitive coastal lakes and lagoons?

Coastal protection works

The *State Environmental Planning Policy (Infrastructure)* (Infrastructure SEPP) contains provisions permitting development such as coastal protection works. Coastal protection works include sea walls, revetments, beach nourishment (i.e. the placement or replacement of sand on beaches) and other works designed to protect land adjacent to or assets near a beach.

The Infrastructure SEPP provisions relating to coastal protection works (in Division 25, and specifically clauses 129(2A), 129(2B) and 129A) are most appropriately accommodated in the proposed SEPP as they are a specific form of development which only occurs in coastal locations. It is proposed to modify the current provisions as outlined below.

It is noted that the Infrastructure SEPP refers to 'Coastal Zone Management Plans'. The proposed SEPP will refer to these as 'Coastal Management Programs', consistent with the proposed Coastal Management Act.

Division 25 of the Infrastructure SEPP currently provides that where:

- a person (other than a public authority) proposes to build a sea wall or undertake beach nourishment and the local council does not have an adopted Coastal Zone Management Plan – development consent is required and the NSW Coastal Panel is the consent authority
- a person (other than a public authority) proposes to carry out such works and the local council has adopted a Coastal Zone Management Plan – development consent is required and the council is the consent authority
- public authorities propose to undertake new coastal protection works generally – the works are permitted without development consent but the proposal must be referred to the Coastal Panel for consideration and the public authority must consider the comments made by the Coastal Panel before they can carry out the activity under Part 5 of the EP&A Act.

Coastal protection works may give rise to significant long term environmental impacts in some cases. The possible impacts of sea walls, for example, include the narrowing and eventual loss of the beach and the amplification of erosion effects on adjoining unprotected land (known as 'end effects'). Such matters are complex and it can be many years before the problem becomes evident.

Furthermore, even if these issues are identified, they are not easily addressed. This is because the primary solution to loss of a beach is to replace the lost sand through activities such as beach nourishment. The sourcing of a suitable long-term source of sand supply for beach nourishment, and the cost of maintaining beach nourishment for as long as a seawall or other protection works are in place can represent both a technical and logistical barrier as well as a significant on-going cost.

The exposure draft Coastal Management Bill provides for the adoption of coastal management programs by councils. The development of such programs will improve the capacity of communities and councils to consider the costs and benefits of coastal protection works, and to identify the most appropriate management strategy.

Until such time as councils have adopted a coastal management program (CMP), it is considered prudent to ensure that councils and communities are guided by expert advice and receive technical support, by referring such applications to the applicable Joint Regional Planning Panel (JRPP) for consent.

Therefore, under the proposed SEPP, the following is included:

Approval pathways for new coastal protection works (CPWs)

	Proponent	
	Private	Public authority
New CPW identified in the CMP (1)	Permitted with council consent	Permitted without consent
New CPW where no CMP currently applies or where CPW not identified in the CMP	Permitted with JRPP consent	Beach nourishment permitted without consent (2)
		Sand bags permitted without consent (3)
		Other works permitted with JRPP consent
Emergency protection works consistent with CEEASP (4)	N/A	Exempt development (3)

(1) Works included in a coastal management program (CMP) applying to the land where the works are proposed.

(2) Beach nourishment refers to the placement or spreading of sand on a beach only. It does not include sourcing or extracting of sand for beach nourishment purposes. The extraction of material may be subject to other development controls.

(3) Sand bags are to be removed within 30 days of the date of placement whether undertaken as exempt development or development permitted without consent.

(4) Coastal Erosion Emergency Action Sub-Plan will cover emergency works such as sand bags and beach nourishment by public authorities.

There will also be an ongoing role for the relevant JRPP as a consent authority for any new coastal protection works, proposed by public authorities, which were not provided for in a CMP which was adopted by a council. This provision recognises that unforeseen events can occur and circumstances may change such that certain actions relating to coastal protection works (for example, installation, modification or removal) become necessary. It is preferable to provide for such works to be permissible with consent by the relevant JRPP rather than prohibited.

The relevant JRPP will comprise suitably qualified and experienced experts to enable the proper assessment of proposals for coastal protection works. The exposure draft Coastal Management Bill includes proposed amendments to the EP&A Act relating to this function.

Emergency and temporary coastal protection works

The Stage 2 Coastal Reforms seek to promote a strategic and integrated approach to coastal management. An important part of such an approach is that the interests of local communities are best served by thinking ahead and planning for likely hazard events, such as extreme storm events.

For this reason, councils and communities should move as quickly as possible towards developing and adopting a CMP. Where temporary or emergency protection works are installed without appropriate planning, there is a greater risk of exacerbating erosion problems elsewhere, especially when the works are not built to appropriate engineering standards.

If the relevant council has an adopted CMP, including a Coastal Erosion Emergency Action Sub Plan (CEEASP), the proposed SEPP will provide for emergency coastal protection works as exempt development, if undertaken by a public authority, and the proposed works:

- are provided for in the relevant CEEASP
- involve only the placement of sand, or fabric bags filled with sand, on a beach
- are removed (other than loose sand placed for protection) within 30 days of the placement of the material on the beach.

For the above scenario, a public authority would have considered the environmental effects of the emergency works as part of the development of the CEEASP and for this reason the emergency protection works can be treated as exempt development under the *Environmental Planning and Assessment Act 1979*.

In the event that the land subject to the beach erosion threat is not within a CMP or not included in a CEEASP, emergency works can be undertaken by a public authority as development which is permissible without consent. This would require the proponent to undertake an assessment of the environmental impact of the proposed works before commencing the activity.

Whether emergency works are undertaken under the CEEASP or not, in either case a proponent will be required to remove any sand bags which were placed as emergency protection works within 30 days of the date of placement.

Public authorities may use these provisions to install emergency protection works for the purpose of protecting any land or asset.

This arrangement allows sufficient time for the emergency event to subside and for the proponent to demolish and remove the structure safely. Emergency protection works not removed within the specified period become unauthorised works and subject to compliance and enforcement under the EP&A Act.

The proposed SEPP will not include any provision for other temporary coastal protection works.

Question 13: Should any provisions be retained to allow the use of emergency coastal protection works in emergency situations? What limitations should be put on such works being undertaken by private individuals or public authorities?

Other infrastructure works in coastal vulnerability areas

The proposed SEPP will amend the Infrastructure SEPP to require public authorities to consult with councils before undertaking an activity that does not otherwise require consent, if that proposed activity:

- a) is in a coastal vulnerability area
- b) will be inconsistent with the coastal management arrangements set out in an adopted CMP.

Such works include stormwater works, roads and sewerage works.

This provision will encourage public authorities to undertake activities in a manner which supports the strategic direction articulated by the community through the relevant CMP.

This consultation requirement is similar to an existing provision in the Infrastructure SEPP (clause 15) requiring public authorities to consult with councils before undertaking works on flood liable land that will change flood patterns.

Review of the proposed SEPP

A provision will be included for a review of the SEPP:

- as soon as practicable after the first anniversary after commencement; and
- at least every five years after commencement.



Photography: Sandy Creek Loop Track Bournda National Park (John Spencer/OEH)



Photography: Iluka Nature Reserve (Nick Cubbin/OEH)

Part C

Background and analysis

Coastal Management Area 1

State Environmental Planning Policy No 14 – Coastal Wetlands

SEPP 14 was introduced in 1985, and the protections provided by the SEPP continue to be vital to a healthy and sustainable coastal environment. Appropriate development of the coast continues to be a matter requiring a State and regional response. For this reason, it is proposed that the relevant provisions within this SEPP will be retained and improved as required.

SEPP 14 specifies that development (as defined in the Policy) within mapped coastal wetlands cannot occur except with the consent of the relevant council and the concurrence of the Secretary of the Department of Planning and Environment. It also specifies heads of consideration that are to be taken into account by the Secretary when considering whether to grant concurrence.

SEPP 14 identifies development within these areas as designated development.

SEPP 14 specifies that restoration works (as defined in that Policy) within mapped coastal wetlands cannot occur except with the consent of the council and the concurrence of the Secretary. The application for consent is to be lodged with a restoration plan prepared in accordance with the guideline issued by Department of Planning and Environment.

A copy of a development application is to be sent to the Director of National Parks and Wildlife.

SEPP 14 is supported by:

- Circular No. B10, SEPP 14 – Coastal Wetlands (1997); and
- Guidelines – Wetland Restoration Plans (1999).

What will be retained or added under the proposed SEPP?

Under the proposed Coastal Management SEPP, coastal wetlands will continue to be protected. SEPP 14 currently identifies coastal wetlands by way of maps. However, it is generally recognised that, with the passage of time, coastal wetlands have migrated in some locations and have expanded or contracted in response to normal coastal environmental dynamics. It is also recognised that digital forms of analysis and mapping is now able to deliver spatial information more accurately.

It is therefore proposed to retain the policy intent but in order to ensure accurate mapping of coastal wetlands, the paper maps of the original SEPP 14 will be replaced with digital maps based on more recent research and analysis, which will form part of the proposed SEPP.

At present, the development controls in SEPP 14 only apply to land within the black line on the SEPP 14 maps, which indicates the edge of the wetland. Conversely, SEPP 26 applies controls to both the land within the mapped area of littoral rainforest, and a second set of controls (not applying to residential land) for land within a 100 metre perimeter area outside the littoral rainforest. It is proposed to introduce a similar arrangement for coastal wetlands by prescribing a set of controls for land within a 100 metre perimeter area around a coastal wetland. This is considered necessary because wetlands can migrate in response to climatic and environmental variations, and also because development within the immediate drainage area for wetlands can impact the resilience of the wetland.

The current designated development assessment pathway for development within mapped coastal wetlands will be retained, as it provides for the high level of assessment required to ensure protection of these areas of State significance.

What is no longer needed?

It is not proposed to retain the concurrence and referral provisions for SEPP 14.

Development within coastal wetlands is classed as 'designated development' and requires a higher order of assessment regarding potential environmental impacts. Designated development includes development that has a high potential to have adverse impacts because of their scale or nature or because of their location in sensitive environmental areas, such as wetlands.

For designated development, applicants need to prepare an environmental impact statement (EIS) with the development application. Prior to preparing an EIS, applicants must consult with the Secretary of the Department of Planning and Environment and, in completing the EIS, must have regard to the Secretary's requirements in relation to the form, content and public availability of the EIS. Any person who makes a submission on an EIS also has the right to challenge the merits of the development in the Land and Environment Court, otherwise known as 'Third Party Appeal Rights'.

Given the high level of assessment specified for development proposed within coastal wetlands, including the third party appeal rights, the concurrence and referral provisions within the current Policy are no longer considered necessary.

Additionally, more than 70 per cent of coastal wetlands currently identified under SEPP 14 are already provided with higher levels of protection via their zoning under relevant LEPs.

State Environmental Planning Policy No 26 – Littoral Rainforests

SEPP 26 was introduced in 1988 to provide a mechanism for the consideration of development applications that are likely to damage or destroy littoral rainforest areas with a view to the preservation of those areas in their natural state. Appropriate development of the coast continues to be a matter requiring a State and regional response. For this reason, it is proposed that the relevant provisions within this SEPP will be retained and improved as required.

SEPP 26 applies to mapped areas of littoral rainforest and to a perimeter area surrounding the rainforest of 100 metres.

SEPP 26 specifies that development (as defined in the Policy) within mapped littoral rainforests or 100 metre perimeter areas cannot occur except with the consent of the council. The concurrence of the Secretary for the Department of Planning and Environment is required in the case of private development proposals, and of the Minister for Planning in the case of proposals by public authorities. It also specifies heads of consideration that are to be taken into account by the Secretary or the Minister when considering whether to grant concurrence.

SEPP 26 identifies such development within rainforest areas as designated development.

SEPP 26 specifies that a copy of a development application is to be sent to the Director of National Parks and Wildlife.

SEPP 26 is supported by Circular No. B18, SEPP 26 – Littoral Rainforests (1997).

What will be retained or added under the proposed SEPP?

Under the proposed SEPP, littoral rainforests will continue to be protected.

The current designated development trigger for development within mapped littoral rainforests will

be retained, as it provides for the high level of assessment required to ensure protection of these areas of state and federal significance.

What is no longer needed?

It is not proposed to retain the existing concurrence and referral provisions for SEPP 26.

Development within littoral rainforests is classed as 'designated development' and requires a higher order of assessment regarding potential environmental impacts. Designated development includes development that has a high potential to have adverse impacts because of their scale or characteristics relative to their location near littoral rainforests.

For designated development, applicants need to submit an environmental impact statement (EIS) with the development application. Prior to preparing an EIS, applicants must consult with the Secretary of the Department of Planning and Environment and, in completing the EIS, must have regard to the Secretary's requirements in relation to the form, content and public availability of the EIS. Any person who makes a submission on an EIS also has the right to challenge the merits of the development in the Land and Environment Court, otherwise known as 'Third Party Appeal Rights'.

Given the high level of assessment specified for development proposed within littoral rainforests, including the third party appeal rights, the concurrence and referral provisions within the current Policy are no longer considered necessary.

Additionally, more than 80 per cent of littoral rainforests are already afforded appropriate levels of protection via their zoning under relevant LEPs. The zoning of littoral rainforests under LEPs has resulted in very few applications for development being proposed within littoral rainforests.

Coastal Management Areas 2, 3 and 4

State Environmental Planning Policy No 71 – Coastal Protection

SEPP 71 was introduced in 2002 to complement the 1997 NSW Coastal Policy. It aimed to protect and manage the natural, cultural, recreational and economic attributes of the NSW coast – including vegetation, visual character, public access, beaches, rock platforms and the marine environment – by ensuring there was a clear and consistent approach to plan making and development assessment in the coastal zone.

SEPP 71 applies to land within the coastal zone, as defined in the *Coastal Protection Act 1979*, with some exclusions relating to Lord Howe Island and land to which *State Environmental Planning Policy No 62 - Sustainable Aquaculture* applies.

The Coastal Zone is defined by the *Coastal Protection Act 1979* as:

- a) the area within the coastal waters of the State as defined in Part 10 of the *Interpretation Act 1987* (including any land within those waters), and
- b) the area of land and the waters that lie between the western boundary of the coastal zone (as shown on the maps outlining the coastal zone) and the landward boundary of the coastal waters of the State, and
- c) the seabed (if any) and the subsoil beneath, and the airspace above, the areas referred to in paragraphs (a) and (b).

The coastal zone consists of the area between the western boundary of the coastal zone shown on the maps outlining the coastal zone and the outermost boundary of the coastal waters of the State. The coastal waters of the State extend, generally, to three nautical miles from the coastline

of the State. Special provision was made in the Act and SEPP 71 for defining the coastal zone in metropolitan areas.

SEPP 71 specifies matters for consideration in plan making and development assessment, and includes development control provisions relating to matters such as effluent disposal and stormwater.

The Policy requires the concurrence of the Secretary for development identified as significant coastal development. It also includes master plan (development control plan) requirements for specified subdivisions.

The proposed Coastal Management SEPP will carry forward the goals of the Coastal Policy, including:

- protect conservation values and biodiversity
- improve water quality
- manage the environment in the public interest
- involve the community in restoration projects
- protect areas of high aesthetic quality
- development to complement surrounding environment
- adoption of best practice approaches
- minimising urban and rural residential impact on environment
- ensuring compact urban development
- public access to be provided when environmentally sustainable
- cultural heritage items and landscapes to be managed and conserved
- rights and needs of indigenous people recognised.

What will be retained or added under the proposed SEPP?

Clause 8 of SEPP 71 contains matters for consideration for plan making and development assessment. These matters were transferred into clause 5.5 of the Standard Instrument LEP. Relevant elements of the matters for consideration will be retained as development considerations relating to specific coastal management areas under the proposed SEPP. Those considerations will not apply to the consideration of planning proposals (to amend LEPs) as that is beyond the legal purpose of a SEPP. A section 117 direction will be issued relating to plan making and coastal management.

It is proposed to protect the important ecological status of coastal lakes and lagoons through the inclusion of a 500 metre perimeter area around coastal lakes within the coastal environment area, and by the inclusion of the whole catchment of highly sensitive coastal lakes (set out in Schedule 1).

Goals within the 1997 Coastal Policy have been considered in developing the new framework. Key elements have been retained and incorporated into the proposed Coastal Management Bill.

The NSW Coastal Policy 1997 (Table 3 of Appendix C) sets out a number of design and locational principles for consideration in LEPs, DCPs and development controls. They include:

- undeveloped headlands will be preserved (p 83)
- developments on headlands already developed should be strictly limited in height and scale including assessment of visual impact from adjoin beaches (p 83)
- beaches and waterfront open space will be protected from overshadowing in accordance to certain standards as defined in the Table (p 83-84)
- taking into account public access, scenic factors, coastal hazards and building design criteria (p 84-85).

These development controls will be tailored to the relevant coastal management area, as follows:

- Coastal Vulnerability Area (coastal hazards)
- Coastal Environment Area (undeveloped headlands)
- Coastal Use Area (public access, scenic factors, building design, size and height of buildings on headlands and overshadowing beaches).

What is no longer needed?

The concurrence provisions for development within 100 metres below mean high water mark are considered now to be unnecessary. Development in this area typically includes pontoons and jetties. Since the time that SEPP 71 was first published, councils are more aware of issues in assessing development applications in such locations.

The coastal specific development control provisions relating to effluent disposal and stormwater are also considered redundant as councils consider these matters for all areas within their LGA under existing assessment regimes.

It is considered unnecessary for master plans to be prepared prior to granting consent for the subdivision of land in the coastal zone due to the controls which are now provided by through LEPs and Development Control Plans (DCPs) to guide subdivision in all areas, including the coast.

Furthermore, data shows that the master plan requirements have been waived in the majority of circumstances. The current provisions require master planning for subdivisions as small as subdivision into two lots. Considering the often small scale subdivisions which are proposed and that there is an adequate level of environmental direction and control provided by other planning and policy instruments, this requirement is considered unnecessary. Additionally, the consideration of subdivisions as part of a development application process effectively requires an applicant to demonstrate that their proposal has considered the types of issues that would be addressed by a master plan.

Additionally, Schedule 4A of the EP&A Act lists development for which regional panels may be authorised to be the consent authority. The list includes specified scales of coastal subdivision within the coastal zone and as a sub-set within a sensitive coastal location. The definition of sensitive coastal location is contained within the EP&A Act.



Schedule 1

Coastal lakes and lagoons requiring comprehensive protection

Name	Description of location
Arragan	Approximately 8 km north of Brooms Head; within Yuragir National Park
Bondi	Approximately 7 km north of Tura Beach; within Bournda Nature Reserve
Bournda	Approximately 6 km north of Tura Beach; within Bournda Nature Reserve
Brou	Approximately 5 km south of Potato Point; partly within Eurobodalla National Park
Brunderee	Approximately 2 km west of Potato Point
Durras	Approximately 2 km west of North Durras
Hiawatha	Approximately 4 km south-west of Minnie Water; within Yuragir National Park
Meroo	Approximately 2 km north of Bawley Point
Minnie Water	Approximately 3 km west of Minnie Water; within Yuragir National Park
Nadgee	Approximately 45 km south of Eden; within Nadgee Nature Reserve
Nargal	Approximately 6 km south of Narooma
Saltwater	Approximately 4 km west of Point Plomer; within Limeburners Creek Nature Reserve
Tarouga	Approximately 2 km south of Potato Point; within Eurobodalla National Park
Termeil	Approximately 2 km south of Tabourie Lake
Wollumboola	Approximately 1 km south of Culburra

This list reflects the lakes and lagoons classified by the Healthy Rivers Commission as requiring 'comprehensive protection' (Independent Public Inquiry into Coastal Lakes: Final Report 2002).

Schedule 2

Options for mapping the coastal use area

There are three options for mapping the Coastal Use Area, set out below.

Currently the boundary of the coastal zone is generally mapped as one kilometre inland from coastal waters, bays, estuaries or lagoons.

For the Sydney metropolitan area, the landward boundary represents the land affected by or affecting coastal processes (generally between 50 metres and 200 metres). These options for mapping the coastal use area concern those areas not within the Sydney metropolitan area.

In proposing these options, it is noted that historically more development activity occurs within the area up to 500 metres inland, than between 500 metres and one kilometre. This results in a greater concentration of development closer to the shore, and lower concentration of development beyond 500 metres.

In addition, within the current coastal zone, about 50 per cent of development applications are for residential alterations and additions, which are subject to a level of development control that may not be uniformly necessary across the full width of the coastal zone.

Option 1 – Boundary generally one kilometre inland which can be increased or decreased

Under Option 1 the Coastal Use Area would be land bounded at the seaward extent by the mean high water mark and extending to the landward extent of the current coastal zone, being a line generally one kilometre landward from estuaries, coastal waters and tidal waters except for the Sydney metropolitan area.

The landward boundary may be increased or decreased, without limit.

Advantages

The initial boundary would be the same as currently in place for the coastal zone, and is familiar to both councils and the community. This option would involve no initial changes to the area where coastal related development controls apply.

An ability to adjust a map boundary allows the council to propose extending the relevant management objectives and development controls to those areas where they are warranted, and remove them from areas where those controls are not required. This is the only option which allows a council to decrease the upstream extent to which the Coastal Use Area and the related controls apply in relation to estuaries.

The removal of unnecessary development controls will provide incentives for increased development activity, where previously those controls were a barrier to investment, or created additional development costs.

Disadvantages

Allowing the boundary to be reduced without limitation creates some regulatory risk. The Coastal Use Area may be reduced to such an extent that coastal amenity and urban planning is adversely impacted close to the foreshore, resulting in environmental consequences that are difficult to retrospectively address.

There would be a lag in realising the benefits of this option, while councils undertake the analysis and community consultation required to propose variations to the boundary.

When considered with increased regulatory requirements in areas of greater environmental sensitivity or more substantial risk profiles (including coastal hazards that comprise the proposed Coastal Vulnerability Area), retaining a 1km boundary would result in an overall increase in regulation prior to any future adjustments to the boundary.

Option 2 - Boundary generally 500 metres inland which can be increased but not decreased

Under Option 2 the Coastal Use Area would be land bounded at the seaward extent by the Mean High Water Mark and extending generally 500 metres landward from estuaries, coastal waters and tidal waters except for the Sydney metropolitan area.

The landward boundary may be increased, without limit, but not decreased.

Advantages

An immediate reduction of the boundary to 500 metres would remove coastal related development restrictions beyond 500 metres and in doing so, may provide an incentive for increased development further back from coastal waters and foreshore areas. This may help to preserve and improve the form and character of coastal settlements.

An ability to adjust a map boundary allows the council to propose extending the relevant management objectives and development controls to those areas where they are warranted.

Providing a minimum 500 metre boundary would mitigate against any potential risk of unforeseen environmental or other circumstances arising in the future, which could render less regulated development closer to the shore inappropriate.

Disadvantages

There may be land within the 500m to 1km area that has not yet been adequately considered with respect to the need for controls. This may result in planning controls being initially removed, only to be reintroduced later.

Option 3 - Boundary generally one kilometre inland which can be increased without limit but only decreased to 500 metres

Under Option 3 the Coastal Use Area would be land bounded at the seaward extent by the Mean High Water Mark and extending to the landward extent of the current coastal zone, being a line generally 1km landward from estuaries, coastal waters and tidal waters.

The landward boundary may be increased without limit but may not be decreased to less than 500 metres landward from estuaries, coastal waters and tidal waters.

Advantages

The initial boundary would be the same as currently in place for the coastal zone, and is familiar to both councils and the community. This option would involve no initial changes to the area where coastal related development controls apply.

Providing a minimum 500 metre boundary would mitigate against any potential risk of unforeseen environmental issues arising in the future, which could render development closer to the shore inappropriate.

The potential to reduce the initial boundary will remove regulatory controls in certain areas between all, or part, of the 500 metres to one kilometre area and increase incentives for increased developments in areas not immediately adjoining the coastal foreshore.

Disadvantages

There would be a lag in realising the benefits of this option, while councils undertake the analysis and community consultation required to propose variations to the boundary.

A council could not propose re-mapping the boundary to remove the application of management objectives and development controls in areas where such removal might be warranted, between the coastal foreshore and 500 metres.

Have Your Say

This EIE is available on the Department of Planning and Environment's website:
www.planning.nsw.gov.au/onexhibition

You can make a submission online at the website or you can write to:

Executive Director
Resources and Industry Policy,
NSW Department of Planning and Environment
GPO Box 39,
Sydney,
NSW 2001.

Submissions are invited up to **29 February 2016**.

All submissions received will be made public in line with the Department of Planning and Environment's objective to promote an open and transparent planning system. If you would like the Department of Planning and Environment to delete your personal information before publication, please make this clear at the top of your letter.

Before making a submission, please read our privacy statement at
www.planning.nsw.gov.au/privacy.



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Coastal Management State Environmental Planning Policy: Explanation of Intended Effect – November 2015

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