

Coastal Management State Environmental Planning Policy PORTS AUSTRALIA SUBMISSION

Ports Australia welcomes this opportunity to provide comment on the draft Coastal Management State Environmental Planning Policy (SEPP). We have reviewed the draft policy in conjunction with the legislation and aimed to provide the NSW Department of Planning & Environment (DPE) with an understanding of the impacts on the ports in NSW.

Ports Australia – Representation

Ports Australia is the peak industry body representing all port authorities and corporations, both publicly and privately owned, at the national level. Ports Australia is a constituted company limited by guarantee with a Board of Directors, comprising the CEOs of 10 member ports. Our website is at www.portsaustralia.com.au.

Summary Position

Ports Australia and its Members work to a convention of leading practice environmental stewardship which goes hand-in-hand with sustainable port operations and development. This includes ports undertaking activities consistent with government legislation and policies, and ensuring that satisfactory mitigation and offset strategies are in place for any environmental impact. This approach is ingrained in the planning and operations of ports with most if not all Australian ports having an environmental management plan or policy which forms part of their comprehensive sustainability and business plans. NSW Ports, the Port of Newcastle and the Port Authority of NSW are no exception to this approach.

The NSW Government similarly expects ports to conduct their operations and development in such a manner and ensures appropriate governance is in place for ports. In addition to Commonwealth and international regulations and policies, NSW governance applying to ports include the *Marine Pollution Act 2012*, *Protection of the Environment Operations Act 1997*, the *Environmental Planning and Assessment Act 1979* and the *State Environmental Planning Policy (Three Ports) 2013* (the Three Ports SEPP). This latter policy, in particular, has a strong focus on balancing port development, planning and operations with the need for satisfactory environmental management.

Given the suite of existing regulations and policies it is unclear why the need for more red tape is necessary through the application of the Coastal Management SEPP on ports. This draft policy also does not recognise the unique character of the ports sector, shipping channels and freight corridors, and puts in place planning and development assessment considerations that are impractical. Simply put, the application of the Coastal Management SEPP, as it currently stands, would restrict the effectiveness of ports in NSW and impact on their sustainability, leading to significant economic impacts to the broader NSW economy.

Accordingly, Ports Australia's position is that the DPE provide regulatory certainty by clearly expressing that the Coastal Management SEPP will not apply to the port precincts in NSW given their significance to the NSW economy.

Detailed Comments

Existing international, national and state governance arrangements are wide reaching on port activities and consider a balanced approach to assessing port development, planning and operations with the need for environmental management. The application of the Coastal Management SEPP to ports, as it currently stands, will result in duplication of red tape without adequate consideration of port operations and its contribution to the economy. This approach can be considered a step

backwards given that other NSW environmental planning instruments already exist and recognise the contribution of the ports sector when assessing environmental impacts.

For example, clause 7(2) of the State Environment Planning Policy No 14 – Coastal Wetlands made provisions for port development and outlined that in considering such activities the Director shall take into account the pros and cons of the proposed development including the relevant mitigating strategies before making a decision.

Similarly, the Three Ports SEPP also makes provisions that enable development at ports while ensuring the protection of the environment. The Planning Circular corresponding to Three Ports SEPP states that the policy provides for “more efficient planning controls for development at the ports”. It also provides a focus on identifying “the environmental assessment category into which different types of development and infrastructure fall (including exempt and complying development)”.

As stated in the Circular, this comprehensive approach “provides regulatory certainty and efficiency for the [NSW] port operators and port tenants through a consistent planning regime for the delivery of infrastructure and development on land in and around the three ports”.

The draft Coastal Management SEPP appears to run counter to such balanced considerations creating regulatory uncertainty for the port operators and port tenants in NSW. The proposed policy seeks to manage development and related decision making in coastal zone areas with a focus on protecting coastal environmental assets only. In doing so it fails to recognise the ports precinct in NSW which is deemed by the DPE as “state significant precincts due to their importance to the NSW economy”.

The draft Coastal Management SEPP also fails to recognise the existing due process put in place by instruments such as the Three Ports SEPP in regards to developments in the ports precinct. For example, the Three Ports SEPP outlines that developments of greater significance at the ports have been expressly declared as either State Significant Development or State Significant Infrastructure, and that other developments will be subject to the development assessment process under Part 4 of the *Environmental Planning and Assessment Act 1979*.

By failing to recognise these existing effective arrangements balanced consideration is not brought to developments such as dredging, land reclamation or land excavation, which will effectively cease under this proposed policy because these activities have environmental impacts. Without these activities ports are limited in their operational effectiveness and their overall sustainability.

Put simply, the draft Coastal Management SEPP is inconsistent with existing regulations and policies in NSW, especially with respect to the Three Ports SEPP. Furthermore, the application of the Coastal Management SEPP on ports, as it currently stands, would effectively put a stop to any developments and progress in the ports sector in NSW. Needless to say there are significant flow-on impacts of such policies, including the loss of jobs or the lack of job growth, limited business investment in ports, reduced economic growth, limited productivity improvements and the inability to improve operational efficiencies.

I noted that Clause 7 of the draft Coastal Management SEPP indicates that in the event of an inconsistency between the Coastal Management SEPP and the Three Ports SEPP, the Three Ports SEPP prevails to the extent of the inconsistency. However, I consider that this clause does not go far enough in providing regulatory certainty and is not comprehensive in its coverage of ports in NSW.

Given the lack of recognition of ports in NSW in the draft Coastal Management SEPP and its overall inconsistencies with existing regulations and policies in NSW, it is our strong view that the proposed policy be excluded in its application to the port precincts and facilities in NSW, including shipping channels.

In summary, any action taken forward on the Coastal Management SEPP should not neglect the importance of ports, e.g. \$1.2 billion worth of cargo moves through Australian ports, Australia undertakes the fifth largest shipping task of any nation in the world, close to 34,000 people are employed by ports, and ports and their operational capabilities are a key strategic asset of Australia's defence. Ports are a vital part of the economy and are also a key member of their local communities. They undertake planning and operations with due consideration to their commercial interests and to the environment they operate in. Ports recognise that by protecting and preserving their local environment it will continue to service them.

Given ports contribution to the NSW economy it is essential that any future NSW government regulation and policy be measured and balanced in its consideration of proposed port developments that have an environmental, economic and social impacts. This balanced approach is what is being sought by governments, including in comments outlined by the DPE in the consultation process. Given our aligned thinking, Ports Australia is of the firm view that the sensible approach would be to exempt the port precinct from the application of the Coastal Management SEPP. We are happy to work with the relevant authorities to advise and assist in improving policies and regulations that involve ports and the broader maritime industry.

David Anderson
CEO

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