

APPENDIX A: RELEVANT PLAN, POLICIES AND LEGISLATIONS

SEPP 71 – Coastal Protection

This policy seeks to ensure that the development within the coastal zone is appropriate and suitably located and is consistent with the principles of ecologically sustainable development. Under this policy the Minister for Planning becomes the consent authority for state significant development, significant coastal development and development in sensitive coastal locations.

A Sensitive Coastal Location is described in the Policy as:

- a coastal Lake (as listed in Schedule 1),
- land within 100m above mean high water mark of the sea, a bay or an estuary,
- land within 100m of the water's edge of a coastal lake, a declared Ramsar Wetland, a World Heritage property, an aquatic reserve, a marine park, a national park, a nature reserve, or a wetland subject to SEPP14,
- residential land within 100m of land identified under SEPP26.

As the coastal zone (as defined in section 4A of the Coastal Protection Act 1979) now includes coastal areas between Wollongong and Port Stephens, SEPP-71 is applicable to the whole Lane Cove River Estuary up to Fullers Bridge Weir, including all tidal tributaries, and will need to be considered during development of management options and during implementation, as appropriate.

SEPP (Major Development) 2005

The SEPP provides for the Minister to be the approval authority for major development as identified within the SEPP and schedules, subject to Part 3A of the EP&A Act. Although Part 3A of the EP&A Act has been repealed, SEPP (Major Development) remain in place for the time being.

SEPP (Infrastructure) 2007

SEPP (Infrastructure) 2007 was gazetted on the 1 January 2008 and was prepared to consolidate and update planning provisions relating to infrastructure and government land. The SEPP provides a consistent planning regime for infrastructure and the provision of services across NSW, along with providing for consultation with relevant public authorities during the assessment process. The intent of the SEPP is to support greater flexibility in the location of infrastructure and service facilities along with improved regulatory certainty and efficiency for the State.

The SEPP outlines planning processes for considering classes of public infrastructure and particular infrastructure projects; exempts some minor public infrastructure from the need for an approval; clarifies where new infrastructure can be located and provides for additional permissible uses on government land and requires State agencies constructing infrastructure to consult local councils when a new infrastructure development is likely to affect existing local infrastructure or services.

Division 25 of the SEPP relates to waterway or foreshore management activities. Section 129 of the SEPP identifies development which is permitted without consent and includes development for the purposes of waterway or foreshore management activities, which may be carried out by or on behalf of a public authority without consent on any land. These activities include:

- construction works;
- routine maintenance works;
- emergency works, including works required as a result of flooding, storms or coastal erosion;
- environmental management works.

The clause also relates to development for the purpose of temporary works associated with drought relief which maybe be carried out by on behalf of a public authority without consent subject to certain criteria.

Some works proposed in this Coastal Zone Management Plan fall within the above categories, and as such, SEPP Infrastructure may be considered as a pathway for development consent for these works.

Environmental Planning and Assessment Act, 1979

The Environmental Planning and Assessment Act, 1979 (EPA Act) is the principle legislation that establishes the NSW planning framework, and was intended as a system of land use control. This is essentially the overarching document which determines land use and planning in the Lane Cove River catchment. Those Parts of the EPA Act of particular relevance to the Lane Cove River Estuary are outlined herein.

Part 3A of the EPA Act, was repealed in early 2011 and therefore no longer applies.

Part 4 of the EPA Act – Development Assessment

Part 4 applies to the standard lodgement and consideration process for development applications, where the local council is the consent authority. In this case, the Local Environment Plans (LEPs) determine the permissibility of the development, with controls for particular sites found in the LEP and any applicable development control plan (DCP). Part 4 applies to the majority of development on land within the Lane Cove River Estuary catchment. Note that different LEPs apply to each LGA within the catchment.

Part 4 also stipulates the need for a Controlled Activity Approval (CAA) for works on 'Waterfront Land', in accordance with Part 3 of Chapter 3 of the Water Management Act 2000 (WM Act). 'Waterfront Land' broadly refers to land within 40 m of the highest bank of a river, and equivalent location for lakes, estuaries and coastal waters. Activities for which a CAA is required include erection of buildings, removal of material or vegetation, deposition of material, and carrying out any other activity that affects the quantity or flow of water. A large amount of development along the Lane Cove River may lie within 'Waterfront Land' as defined by the WM Act and will require a CAA, unless it can be shown to meet an exemption to the WM Act, as defined in Clause 39A of the Water Management (General) Regulation 2004.

Part 5 of the EPA Act – Development by the Crown

Part 5 of the EPA Act applies to those "activities" which do not require development consent under Part 4, but do require approval from a Minister or Public Authority, or are proposed to be carried out by a Minister or Public Authority.

NSW Coastal Protection Act 1979

In 2002, amendments were made to the Coastal Protection Act 1979 that requires Coastal Zone Management Plans to be prepared for parts of the NSW coastal zone. Under provisions of the Act, Coastal Zone Management Plans are required to be approved by the Minister prior to being gazetted by Councils. In order to comply with the provisions of the Act, Coastal Zone Management Plans need to address the following matters before they would be approved by the Minister:

- protecting and preserving beach environments and beach amenity, and
- emergency actions of the kind that may be carried out under the State Emergency and Rescue Management Act 1989, or otherwise, during periods of beach erosion, including the carrying out of related works, such as works for the protection of property affected or likely to be affected by beach erosion, where beach erosion occurs through storm activity or an extreme or irregular event, and
- ensuring continuing and undiminished public access to beaches, headlands and waterways, particularly where public access is threatened or affected by accretion.

Once published in the Government Gazette, a Coastal Zone Management Plan becomes a statutory instrument under NSW legislation. In accordance with Section 55L of the Coastal Protection Act, 1979, a breach of (e.g. failure to comply with) the Plan may result in the Minister or a council bringing proceedings in the Land and Environment Court to remedy or restrain the breach.

As this CZMP does not relate to open coastal waters, there is no requirement for specifying emergency actions following storm erosion events.

NSW Local Government Act 1993

The Local Government Act 1993 provides the legal framework for an effective, efficient, environmentally responsible and open system of local government in NSW. Council's charter is outlined by the Act and includes 'to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development'.

Under the provisions of the Act, Councils have numerous functions. Chapter 6 of the Act requires that all land vested in Councils must be classified as either Community or Operational land. Community land is land which should be kept for use by the general public (e.g. a public park). Councils must prepare Plans of Management to guide the use and management of Community land. Core objectives are defined in the Act for the management of different types of Community land. Plans of Management prepared for Community land within the study area should be generally consistent with the principles of this plan.

Under Chapter 13 of the Act, Councils are required to prepare Management Plans each year. The Management Plan details the Council's activities and budget for the next financial year. Subject to the competing demands and priorities, the various Councils relevant to the Lane Cove River Estuary will identify funding for the implementation of various elements of the Coastal Zone Management Plan through the relevant program areas.

NSW Crown Lands Act 1989

The Crown Lands Act is administered by the Crown Lands Division (CLD) of the Department of Primary Industries to provide for the administration and management of Crown land in the Eastern and Central Division of the State. Crown land shall not be occupied, used, sold, leased, licensed, dedicated or reserved or otherwise dealt with unless the occupation, use, sale, lease, licence, reservation or dedication or other dealing is authorised by this Act.

The Division also manages vacant Crown land, land retained in public ownership for environmental protection purposes and the lands of the Crown public roads network. Crown land is allocated for public uses, including schools, hospitals, sports grounds, community recreation and housing development. Crown reserves are managed in partnership with both councils and local community groups. The goal of Crown land management is to optimise environmental, economic and social outcomes for the benefit of the people of NSW.

Within the Lane Cove River Estuary, the major part of the Crown estate includes the bed of the river. Any activity that will impact on Crown land must be referred to the NSW Crown Lands Division (CLD) as a part of the Department of Primary Industries (DPI) for assessment of impacts and the consideration of approval of the activity by way of appropriate authorisation subject also to any Environmental Planning requirements.

NSW National Parks and Wildlife Act 1974

The NP&W Act is administered by the Office of Environment and Heritage (OEH), and addresses the protection of Aboriginal items and certain native flora and fauna.

Under the NP&W Act it is an offence to harm threatened species; buy, sell or possess threatened species; damage critical habitat; or damage the habitat of a threatened species without the issuing of a Section 120 licence.

If any identified archaeological sites or remains need to be removed or destroyed, prior to commencement of works in the area, an approval is required from the OEH for a section 87 or 90 permit.

The Lane Cove River Estuary study area could potentially contain a number of significant Aboriginal heritage sites. Conservation of key estuary areas may be supported by the protection of flora, fauna or Aboriginal heritage under this Act.

NSW Fisheries Management Act 1994

The FM Act has as part of its objectives the protection of fish stocks, key fish habitats and threatened species and their habitats. This Act also covers the sustainable management of commercial and recreational fishing and promotion of viable aquaculture in NSW.

Harm of aquatic habitats through dredging and reclamation, blockage of fish passage, harm of marine vegetation (seagrasses, mangroves, saltmarsh and algae) and the use of explosives is regulated under the FM Act. Permits are required to be obtained prior to undertaking such activities.

Any proposed damage to marine vegetation (including mangroves) requires approval and a permit to be obtained from DPI (Fisheries).

NSW Threatened Species Conservation Act 1995

If a proposed development is likely to significantly affect critical habitat of a threatened species, population or ecological community, or is within critical habitat, as defined by the Act, a Species Impact Statement (SIS) must be prepared. The test of significance is defined by an eight point test that is required for potentially affected threatened species under Section 5A of the Environmental Planning and Assessment Act 1979.

A licence under the Act is generally required for the harming or picking of listed threatened plants or animals.

The TSC Act applies to the Lane Cove River Coastal Zone Management Plan as many threatened species listed under the TSC Act are present in the study area. This Act will assist in implementing strategies to ensure habitat protection and conservation within the Lane Cove River Estuary catchment.

NSW Heritage Act 1977

The Heritage Act 1977 protects heritage items, sites, and relics and is administered by the NSW Heritage Office. A relic is defined as any item relating to European settlement that is older than 50 years. Under Section 139 an excavation permit must be obtained from the NSW Heritage Office for the excavation or disturbance of a relic.

Estuary Management strategies must ensure they do not detrimentally impact on heritage items listed under this Act.

NSW Protection of the Environment Operations Act 1997

The POEO Act lists activities requiring environmental protection licences from the OEH, and details pollution offences and penalties.

The Lane Cove River Estuary and its tributaries are subject to scheduled activities and other forms of pollution (commercial and recreational boats, industrial development, urban development etc.) that are administered under the POEO Act. Improved compliance with licence requirements may be necessary for sites such as National Starch Pty Ltd, 170 Epping Road, Lane Cove.

NSW Noxious Weeds Act 1993

The Noxious Weeds Act 1993 identifies noxious weeds and specifies control measures and duties of public and private landholders. The Act provides a framework for the state-wide control of noxious weeds by the Minister and local control authorities.

NSW Water Management Act 2000

A controlled activity approval is required for certain types of developments and activities that are carried out in or near a river, lake or estuary. Under the Water Management Act 2000 (WMA) a controlled activity means:

- the erection of a building or the carrying out of a work (within the meaning of the Environmental Planning and Assessment Act 1979), or
- the removal of material (whether or not extractive material) or vegetation from land, whether by way of excavation or otherwise, or
- the deposition of material (whether or not extractive material) on land, whether by way of landfill operations or otherwise, or
- the carrying out of any other activity that affects the quantity or flow of water in a water source.

The WM Act also governs the issue of new water licences and the trade of water licences and allocations for those water sources (rivers, lakes and groundwater) in NSW where water sharing plans have commenced. The Water Act 1912 is being progressively phased out and replaced by the WMA but some provisions are still in force.

Note that Councils are offered some special exceptions under the WM Act, and that specific advice should be sought if provisions of the WM Act are to be triggered by any proposed works or activities.

NSW Coastal Policy 1997

The NSW Coastal Policy responds to the fundamental challenge to provide for population growth and economic development without placing the natural, cultural, spiritual and heritage values of the coastal environment at risk. To achieve this, the Policy has a strong integrating philosophy based on the principles of ecologically sustainable development (ESD).

The Policy addresses a number of key coastal themes including:

- Population growth in terms of physical locations and absolute limits;
- Coastal water quality issues, especially in estuaries;
- Disturbance of acid sulfate soils;
- Establishing an adequate, comprehensive and representative system of reserves;
- Better integration of the range of government agencies and community organisations involved in coastal planning and management;
- Indigenous and European cultural heritage; and integration of the principles of ESD into coastal zone management and decision making.

The management of the coastal zone is the responsibility of a range of government agencies, local councils and the community. The Policy provides a framework for the balanced and coordinated management of the coast's unique physical, ecological, cultural and economic attributes.

The Lane Cove River and its foreshores falls within the defined coastal zone, therefore the Coastal Policy needs to be considered in the preparation of the Lane Cove River Estuary Coastal Zone Management Plan. Councils are required to implement the policy when making local environment plans applying to land within the coastal zone and to take the provisions of the policy into consideration when determining development applications in the coastal zone.

The Policy specifically recommends that detailed management plans for estuaries be prepared and implemented in accordance with the NSW Government's Coastal Zone Management Plan Guidelines.

NSW Sea Level Rise Policy Statement 2009

The NSW Sea Level Rise Policy Statement (the Policy Statement) sets the planning standards for projected sea level rise to 2100 that must be adopted in all forms of coastal assessment, from development applications to coastal hazards definitions studies and coastal zone management plans. The adopted benchmarks are 0.4 m rise in sea level by 2050 and 0.9 m by 2100.

The Policy Statement outlines the recommended risk based management approach and the commitments of the NSW government to assist planning and managing sea level rise, including:

- promoting risk-based assessment approaches to sea level rise and coastal planning;
- providing guidance to councils to support adaptation planning initiatives;
- encouraging appropriate development on land at risk from sea level rise;
- providing continued emergency management support for damaging storms and floods; and
- providing ongoing updated information to the public about sea level rise and projected impacts.

The Sea Level Rise Policy Statement supersedes the 1988 Coastline Hazards Policy. Most of the objectives from that policy were included in the NSW Coastal Policy 1997, which remains current.

The Policy Statement also outlines the NSW Government's continued commitment to provide funding assistance to local councils for coastal hazard studies and management planning. Similarly, they shall continue to provide guidance and assistance to local councils on reducing the risk to private and public property from coastal hazards. However, when allocating funding assistance to local councils for coastal protection works, the Government will now give priority to public safety and protecting valuable publicly-owned assets, and then to private land. The criteria now to be applied to councils to voluntarily protect private property will include the: magnitude of current and future hazards

- cost-effectiveness of management actions;
- contribution to the project's costs from the local council and benefiting landowners; taking into consideration genuine hardship for affected coastal residents;
- effectiveness of the proposed arrangements for maintaining any proposed works; and
- ability of the project to accommodate sea level rise.

Where assistance is provided to reduce the impacts of coastal hazards, the Government does not assume any responsibility for these hazards.

A New Planning System for NSW – Green Paper, July 2012

The Green Paper outlines major changes in key areas of the planning system. These will result in reforms across a number of areas such as:

- Involving the community early in guiding planning decisions that will shape the
- Growth and future of our cities, towns, and neighbourhoods.
- Placing much more emphasis on preparing good policies upfront to guide growth and development.

- Reducing red tape and delay for the assessment of development applications for all types of proposals.
- Ensuring that infrastructure is planned and delivered to support new and existing communities.
- Promoting a 'can do' culture in the planning system and ensuring that councils and the government are accountable for delivering results.
- Providing greater access to information about planning policies, planning decisions and your rights in the planning process.

NSW Planning Policies will be introduced to provide the policy setting and framework for planning outcomes to be delivered in regional, subregional, and local plans. The policies will guide spatial and sectoral planning outcomes in key areas such as:

- Housing Supply and Affordability
- Employment
- Biodiversity Conservation
- Agricultural Resources
- Mining and Petroleum Extraction
- Coastal Management
- Retail Development
- Tourism
- Regional Development
- Infrastructure

Following consideration of community and industry feedback on the Green Paper, the Government will then prepare and release what is known as a White Paper – which will provide more detail on how the new planning system will operate.⁸

⁸ NSW Govt. *Planning and Infrastructure, Policy and Legislation, A New Planning System for NSW*
<http://www.planning.nsw.gov.au/a-new-planning-system-for-nsw>