

Ministerial Directions

Some existing State Environmental Planning Policies being consolidated to make draft State Environmental Planning Policy (Environment) contain provisions that relate to preparing local environmental plans. These provisions can no longer be included in a SEPP and will be made more effective by either:

- being transferred to an existing relevant Ministerial Direction, or
- forming part of a new Ministerial Direction.

What are Ministerial Directions?

Under Section 117 of the Environmental Planning and Assessment Act 1979, the Minister for Planning has issued directions to local planning authorities preparing planning proposals to amend or create a new local environmental plan. These directions require local land use planning to align with NSW Government policy and all planning proposals must be consistent with relevant Ministerial Directions.

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

Proposed New Ministerial Planning Directions

The level of environmental protection provided under the seven existing SEPPs being translated into the proposed new SEPP (Environment) is intended to continue.

Provisions within the existing SEPPs that relate to the making of local environmental plans can no longer be included in a SEPP. All provisions in the seven existing SEPPs that relate to the preparation of local environmental plans will be transferred into a new or updated Ministerial Direction.

As part of the proposed new SEPP (Environment), new ministerial planning directions are proposed to:

- guide councils when preparing local environmental plans in the Hawkesbury Nepean, Georges River and Sydney Harbour catchments

- guide councils when preparing local environmental plans affecting Sydney Harbour Foreshores and Waterways
- guide councils when preparing local environmental plans affecting urban bushland

An amendment to Ministerial Direction 2.3 Heritage Conservation to include additional considerations for planning authorities when preparing local environmental plans which might impact the Willandra Lakes World Heritage Area is also proposed. This is necessary to ensure that the intent of the existing clauses 3(a) and 10 of Willandra Lakes Regional Environmental Plan No.1 – World Heritage Property are retained in the most appropriate part of the planning system when they can no longer be included in the SEPP.

Examples of the types of provisions which may be included in these new and updated Ministerial Directions are included in the Explanation of Intended Effect and some examples are below. These provisions are indicative only and not final or exhaustive.

Proposed Ministerial Direction - Catchment Protection

The following are examples of the principles to be included in this Ministerial Direction. When there is a planning proposal to make a new local environmental plan, or amend an existing one, the proposal must:

- be consistent with any applicable catchment management strategy published by a NSW Government agency or authority
- consider the cumulative impact of development on water quality and river flows
- aim to identify, protect and where possible improve environmental values, having regard to maintaining biodiversity, the protection of native vegetation and cultural heritage and the importance of water resources
- consider the natural and physical constraints of the land
- consider the social, economic and environmental interests of the community.

Proposed Ministerial Direction – Sydney Harbour Foreshores and Waterways

The following are examples of the principles to be included in this Ministerial Direction. Similar to the above, a planning proposal must consider the following principles:

Proposed SEPP (Environment) and related planning reforms

Fact Sheets

November 2017

- protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores
- public access to and along the foreshore should be increased, maintained and improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation
- public access to and from the waterways should be increased, maintained and improved for public recreational purposes (such as swimming, fishing and boating), while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation
- development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores
- adequate provision should be made for the retention of foreshore land to meet existing and future demand for working harbour uses appropriate to Sydney Harbour's unique character
- public access along foreshore land should be provided on land used for industrial or commercial maritime purposes where such access does not interfere with the use of the land for those purposes
- the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes
- water-based public transport (such as ferries) should be encouraged to link with land-based public transport (such as buses and trains) at appropriate public spaces along the waterfront
- the provision and use of public boating facilities along the waterfront should be encouraged.

In giving planning effect to the above principles:

- Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good
- the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores
- protection of the natural assets of Sydney Harbour has precedence over all other interests.

Proposed Ministerial Direction – Urban Bushland

The new Ministerial Direction is intended to function largely the same way as clause 10 of SEPP 19. When preparing draft local environmental plans for any land to which this Policy applies, other than rural land, the council shall:



- have regard to the general and specific aims of the Policy, and
- give priority to retaining bushland, unless it is satisfied that significant environmental, economic or social benefits will arise which outweigh the value of the bushland.

Amending Ministerial Direction 2.3 Heritage Conservation

Ministerial Direction 2.3 Heritage Conservation will be amended to include a requirement for relevant planning authorities preparing planning proposals which might impact the Willandra Lakes World Heritage Area to consider the Willandra World Heritage Area Strategic Plan of Management, Operational Plan, and any relevant individual property plans.

The Ministerial Direction will also be amended to require relevant planning authorities to consult with the World Heritage Advisory Committee and the Office of Environment and Heritage when preparing planning proposals.

The final Ministerial Directions will be developed after considering all submissions made in response to the exhibition of the Explanation of Intended Effect for SEPP (Environment) and in consultation with relevant NSW Government agencies.

What will the proposed new SEPP (Environment) do?

The proposed new State Environmental Planning Policy (Environment) is underpinned by the Government's commitment to simplify the NSW planning system and reduce complexity without reducing the rigour of considering matters of State and regional significance.

The aim of the proposed new SEPP (Environment) is to modernise, simplify and improve the effectiveness and usability of policies in the seven existing SEPPs it intends to replace including:

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

The review of the seven existing SEPPs has considered:

- whether they are still relevant; and
- the need to update and integrate into a new SEPP or elsewhere in the planning framework, and
- whether they contain policy and controls that are duplicated in strategies, regional plans, local environmental plans or other legislation.

The proposed SEPP will provide a consistent level of environmental protection to that which is currently delivered under the existing SEPPs. Where existing provisions are outdated, no longer relevant or duplicated by other parts of the planning system they will be repealed. This will help to reduce complexity and streamline the planning system.

The intention is the proposed new SEPP (Environment) will have the capacity to be extended in the future for matters currently not covered by one of the existing seven SEPPs, such as the State's other drinking water catchments and urban bushland areas.

Continuing to protect water quality

Four of the existing SEPPs being translated into the proposed new State Environmental Planning Policy (Environment) (SEPP (Environment)) relate to water catchments and contain provisions aimed at protecting water quality. The proposed new SEPP Environment will maintain the current level of protection provided under existing SEPPs for water quality.

State Environmental Planning Policy (Sydney Drinking Water Catchment) contains provisions specific to the Sydney Drinking Water Catchment and these will be transferred relatively unchanged to the proposed new SEPP. Only a minor change to clarify the application of the Neutral or Beneficial Effect (NorBE) tool and the NorBE tool guidelines is proposed.

SEPP (Environment) also proposes a change to State Environmental Planning Policy (Housing for Seniors and People with a Disability) (SEPP (Seniors)) to allow seniors housing and housing for people with a disability development proposals on urban land in water catchments including drinking water catchments to be assessed under SEPP (Seniors).

Sydney Regional Environmental Plan (Sydney Harbour Catchment), Sydney Regional Environmental Plan No.20 (Hawkesbury Nepean River) and Greater Metropolitan Regional Environmental Plan No. 2 (Georges River Catchment) contain many similar water quality provisions and where possible these will be updated and combined in a catchments section of the proposed new SEPP (Environment). Where provisions in the existing SEPPs are captured by other legislation they will be repealed to remove duplication. Where provisions are more appropriate in another level of the planning system they are proposed to be moved. This could include a different SEPP, Ministerial Directions or a relevant local environmental plan.

Relationship with other State Environmental Planning Policies

Draft SEPP Coastal Management

Draft SEPP (Coastal Management) has recently been exhibited and includes wetlands located within the application area of several current SEPPs that are proposed to be transferred to the proposed SEPP (Environment), including:

- Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment,
- Sydney Regional Environmental Planning Policy No. 20 Hawkesbury Nepean River (No. 2) and
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

It is important that a clear hierarchy of controls for these areas is achieved and that the draft SEPP (Environment) and the draft SEPP (Coastal Management) do not result in duplicating and conflicting provisions.

Whilst the draft SEPP (Coastal Management) comprehensively addresses coastal wetlands for the State and is the appropriate place for provisions relating to wetlands, there are some non-coastal wetlands that are not covered by the proposed SEPP (Coastal Management).

It is proposed that the SEPP (Environment) will retain specific heads of consideration that relate to the protection of wetlands that are not included in the SEPP (Coastal Management) and are currently covered by provisions in the existing Catchment SEPPs.

The Harbour Regional Environmental Plan wetlands map will be amended before it is transferred into the proposed SEPP Environment to remove the wetlands now mapped in the draft SEPP (Coastal Management). This will be done because the Coastal Management SEPP contains more recent maps for wetlands that cover these areas. The remaining areas currently mapped as wetlands within the Harbour Regional Environmental Plan that are not captured by the draft SEPP (Coastal Management) are mainly seagrass and natural rocky foreshore areas within the eastern half of the Harbour and in the Middle Harbour tributary. These will continue to be protected and are proposed to be transferred in to the proposed new SEPP (Environment). They will be mapped as significant seagrasses and areas of rocky foreshores.

Bushland provisions under the draft SEPP (Environment) and recent changes to biodiversity legislation in NSW

The protection of important vegetation in NSW is managed under a range of legislation including the *Biodiversity Conservation Act 2016*, *Local Land Services Act 2016*, the *Environmental Planning and Assessment Act 1979*, State Environmental Planning Policies (SEPPs), including SEPP (Vegetation in Non-Rural Areas), and council's local environmental plans.

The aims and provisions of SEPP 19 are complementary to this legislation, including preserving bushland for its aesthetic, recreational, and educational value, which is important in dense urban areas. The SEPP also contains more specific provisions relating to the protection of bushland on public open space and the impacts adjoining developments can have on such land.

SEPP (Vegetation in Non-Rural Areas) commenced in August 2017 and provides a pathway for the assessment and approval of clearing of vegetation that does not require development consent, where clearing exceeds the biodiversity offsets scheme thresholds. In determining such approvals, the SEPP makes provision for the Native Vegetation Panel to assess the social, economic and environmental risks of the clearing. The urban bushland provisions under SEPP 19 provide that the disturbance of public bushland requires consent, and includes additional matters for consideration for development that requires consent on land adjoining public bushland. As the urban bushland provisions deal with development that requires consent, there will be no conflict with the SEPP (Vegetation in Non-Rural Areas).

The *Biodiversity Conservation Act 2016*, including the Biodiversity Offsets Scheme, applies to development applications that include the clearing of native vegetation which exceeds the offset thresholds set out in part 7 of that Act.

Under the Biodiversity Offsets Scheme, applications for development or clearing approvals must set out how impacts on biodiversity will be avoided and minimised. The Biodiversity Assessment Method (BAM) will be used to calculate an offset obligation (in biodiversity credits) for the remaining residual impacts, which the approval authority will consider if they approve the development or clearing proposal. Accredited assessors will carry out all BAM assessments. The report prepared by the assessor must be considered by the decision-making authority in granting approval to impact biodiversity.