



Port Stephens Local Environmental Plan 2000 (Amendment No 10)

under the

Environmental Planning and Assessment Act 1979

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (N03/00219/S69)

DIANE BEAMER, M.P.,

Minister Assisting the Minister for Infrastructure
and Planning (Planning Administration)

2004 No 139

Clause 1 Port Stephens Local Environmental Plan 2000 (Amendment No 10)

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1 Name of plan

This plan is *Port Stephens Local Environmental Plan 2000 (Amendment No 10)*.

2 Aims of plan

The aims of this plan are:

- (a) to provide environmental planning controls that will result in the management of any disturbance to acid sulfate soils in the Port Stephens local government area, and
- (b) to require development consent for works that would disturb soils or groundwater levels in areas identified as having acid sulfate soils, and
- (c) to incorporate appropriate provisions for environmental assessment and management of certain development on land identified as being subject to risks associated with the disturbance of acid sulfate soils.

3 Land to which plan applies

This plan applies to lands within the local government area of Port Stephens classified as either 1, 2, 3, 4 or 5 land on the map marked “Acid Sulfate Soils Planning Map” deposited in the office of Port Stephens Council.

4 Amendment of other environmental planning instruments

- (1) *Port Stephens Local Environmental Plan 2000* is amended as set out in Schedule 1.
- (2) *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Complying Development* is amended by inserting at the end of Schedule 1 to that Policy:

Clause 51A of *Port Stephens Local Environmental Plan 2000*.

Schedule 1 Amendments

(Clause 4)

[1] Clause 49 What is exempt and complying development?

Insert “except for clause 51A (Acid sulfate soils)” after “despite any other provision of this plan” in clause 49 (1).

[2] Clause 51A

Insert after clause 51:

51A Development on land identified on Acid Sulfate Soils Planning Maps

- (1) This clause applies to all land identified on the Acid Sulfate Soils Planning Map and classified as either 1, 2, 3, 4 or 5 land.
- (2) A person must not, without development consent, carry out works of the kind listed in Column 2 of Table 1 on land of the class specified for those works in Column 1 of that Table, except as otherwise provided by this clause:

Table 1

Column 1	Column 2
Class of land as shown on Acid Sulfate Soils Planning Maps	Works
1	Any works
2	Works below the natural ground surface Works likely to lower the watertable
3	Works more than 1 metre below the natural ground surface Works likely to lower the watertable to a depth of more than 1 metre below the natural ground surface

2004 No 139

Port Stephens Local Environmental Plan 2000 (Amendment No 10)

Schedule 1 Amendments

Column 1	Column 2
Class of land as shown on Acid Sulfate Soils Planning Maps	Works
4	Works more than 2 metre below the natural ground surface Works likely to lower the watertable to a depth of more than 2 metres below the natural ground surface
5	Works within 500 metres of Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD on the adjacent Class 1, 2, 3 or 4 land

- (3) The Council must not grant consent required by this clause unless it has considered:
- (a) the adequacy of an Acid Sulfate Soils Management Plan prepared for the proposed development in accordance with the *Acid Sulfate Soils Manual*, and
 - (b) the likelihood of the proposed development resulting in the discharge of acid water, and
 - (c) any comments received from the Department of Infrastructure, Planning and Natural Resources within 21 days of the Council having sent that Department a copy of the development application and the related Acid Sulfate Soils Management Plan, and
 - (d) where consent is sought for drainage works or maintenance of open drains—any comments from NSW Fisheries received within 21 days of the Council having sent that Department a copy of the development application and the related Acid Sulfate Soils Management Plan.

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- (4) This clause does not require consent for the carrying out of works as described in subclause (2) if:
- (a) a copy of a preliminary assessment of the proposed works undertaken in accordance with the *Acid Sulfate Soils Manual* has been given to the Council, and
 - (b) the Council has provided written advice to the person proposing to carry out the works confirming that results of the preliminary assessment indicate the proposed works need not be carried out pursuant to an Acid Sulfate Soils Management Plan prepared in accordance with the *Acid Sulfate Soils Manual*.
- (5) Despite subclause (4), an Acid Sulfate Soils Preliminary Assessment or an Acid Sulfate Management Plan will not be required:
- (a) where the proposed works already require development consent under another clause in this plan, and
 - (b) total soil disturbance at or below the depth specified in Table 1 is less than one tonne.
- (6) In approving any consent for works described in subclause (5), the Council must apply one or more consent conditions requiring appropriate management of potential or actual acid sulfate soils.
- (7) Despite subclause (2), routine maintenance works may be carried out by the Council, a public authority or private drainage board without consent where an Acid Sulfate Soils Plan of Management relating to such works has been:
- (a) prepared in accordance with the *Acid Sulfate Soils Manual*, and
 - (b) approved by the Council after considering any comments received from the Department of Infrastructure, Planning and Natural Resources and NSW Fisheries within 21 days of the Council having sent those Departments a copy of the draft Acid Sulfate Soils Plan of Management.
- (8) An Acid Sulfate Soils Plan of Management, as referred to in subclause (7), must be reviewed at least every 5 years and only has effect for 5 years from the date on which it is made.

2004 No 139

Port Stephens Local Environmental Plan 2000 (Amendment No 10)

Schedule 1 Amendments

- (9) Despite subclause (2), the Council or a public authority may carry out emergency works without consent if the Council or public authority properly deals with those soils in accordance with the Acid Sulfate Soils Manual so as to minimise the actual or potential impact to the environment arising from the disturbance of the soils.
- (10) In this clause:
- acid sulfate soils*** means actual acid sulfate soils or potential acid sulfate soils.
- Acid Sulfate Soils Management Plan*** means a plan, prepared in accordance with the *Acid Sulfate Soils Manual*, which identifies the extent and nature of acid sulfate soils on a particular site, assesses the likely impacts of any proposed activity upon those acid sulfate soils (including the consequence of no action), and detail the prescriptive measures to be taken to minimise environmental impacts resulting from interaction between the acid sulfate soils and the proposed activity or inaction.
- Acid Sulfate Soils Manual*** means the *Acid Sulfate Soils Manual* as published from time to time by the NSW Acid Sulfate Soils Management Advisory Committee.
- Acid Sulfate Soils Plan of Management*** means a plan prepared by the Council, a private drainage board, or public authority in accordance with the *Acid Sulfate Soils Manual*.
- Acid Sulfate Soils Planning Map*** means the series of sheets (1–9) of the map marked “Acid Sulfate Soils Planning Map” kept in the office of the Council.
- actual acid sulfate soils*** are soils containing highly acidic soil horizons or layers resulting from the oxidation of soil materials that are rich in sulfides, primarily pyrite. This oxidation produces acidity in excess of the sediment’s capacity to neutralise the acidity resulting in soils of pH 4 or less.
- emergency works*** means the repair or replacement of any part of a utility installation or associated infrastructure:
- (a) to address or prevent malfunction or damage resulting from natural disaster, accident, vandalism or similar events, and

- (b) includes work reasonably necessary to prevent or limit any further damage or malfunction.

potential acid sulfate soils are soils which contain iron sulfides or sulphuric material which have not been exposed to air and oxidised. The field pH of these soils in their unoxidised state is $\text{pH} > 4$ and may be neutral or slightly alkaline.

routine maintenance works means works occurring on a regular or recurrent basis which maintain public utility installations and associated infrastructure in good working order, but does not include works intended to increase the design capacity of an installation, extension of reticulation systems or works which involve the deepening of any drain. Such works include periodic inspection, replacement of existing pipes or cable, cleaning, clearing of drains to a depth or profile specified in an Acid Sulfate Soils Plan of Management.

works includes:

- (a) any disturbance of more than one tonne of soil at or below the depth specified in the table to subclause (2) (including, but not limited to, the construction or maintenance of drains, extractive industries, agriculture, dredging, the construction of artificial waterbodies (including canals, dams and detention basins) or foundations, or flood mitigation works), or
- (b) any other works that are likely to lower the watertable.