

State Environmental Planning Policy No 71—Coastal Protection (2002 EPI 816)

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New South Wales

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State Environmental Planning Policy No 71—Coastal Protection (2002 EPI 816)



New South Wales

Part 1 Preliminary

1 Name of Policy

This Policy is *State Environmental Planning Policy No 71—Coastal Protection*.

2 Aims of Policy

(1) This Policy aims:

- (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and
- (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and
- (e) to ensure that the visual amenity of the coast is protected, and
- (f) to protect and preserve beach environments and beach amenity, and
- (g) to protect and preserve native coastal vegetation, and
- (h) to protect and preserve the marine environment of New South Wales, and
- (i) to protect and preserve rock platforms, and
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the *Protection of*

the Environment Administration Act 1991), and

(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and

(l) to encourage a strategic approach to coastal management.

(2) This Policy:

(a) identifies State significant development in the coastal zone, and

(b) requires certain development applications to carry out development in sensitive coastal locations to be referred to the Director-General for comment, and

(c) identifies master plan requirements for certain development in the coastal zone.

(3) This Policy aims to further the implementation of the Government's coastal policy.

3 Definitions

(1) In this Policy:

bed and breakfast establishment means an establishment that provides accommodation and meals for commercial purposes within a dwelling house:

(a) by the permanent residents of the dwelling house, and

(b) on a short term basis, where not more than 6 paying guests or lodgers (exclusive of the proprietor and the proprietor's family) occupy the dwelling house.

coastal foreshore means land with frontage to a beach, estuary, coastal lake, headland, cliff or rock platform.

coastal lake means a body of water specified in Schedule 1.

coastal zone has the same meaning as in the *Coastal Protection Act 1979*.

Director-General means the Director-General of the Department of Infrastructure, Planning and Natural Resources.

farm stay means the provision of accommodation and meals for commercial purposes on a farm:

(a) where the provision of the accommodation is secondary to primary production, and

(b) on a short term basis for not more than 6 paying guests or lodgers (exclusive of the proprietor and the proprietor's family and people employed for the purposes of primary production).

headland includes a promontory extending from the general line of the coastline into a large body of water, such as a sea, coastal lake or bay.

Minister means the Minister for Infrastructure and Planning.

sensitive coastal location means any of the following:

- (a) land within 100m above mean high water mark of the sea, a bay or an estuary,
- (b) a coastal lake,
- (c) a declared Ramsar wetland within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,
- (d) a declared World Heritage property within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,
- (e) land declared as an aquatic reserve under the *Fisheries Management Act 1994*,
- (f) land declared as a marine park under the *Marine Parks Act 1997*,
- (g) land within 100m of any of the following:
 - (i) the water's edge of a coastal lake,
 - (ii) land to which paragraph (c), (d), (e) or (f) applies,
 - (iii) land reserved or dedicated under the *National Parks and Wildlife Act 1974*,
 - (iv) land to which *State Environmental Planning Policy No 14—Coastal Wetlands* applies,
- (h) residential land (within the meaning of *State Environmental Planning Policy No 26—Littoral Rainforests*) that is within a distance of 100m from the outer edge of the heavy black line on the series of maps held in the Department of Planning and marked "*State Environmental Planning Policy No 26—Littoral Rainforests (Amendment No 2)*".

the Act means the *Environmental Planning and Assessment Act 1979*.

- (2) Notes in this Policy do not form part of it.

4 Land and development to which Policy applies

- (1) This Policy applies to land the whole or any part of which is within the coastal zone, except as provided by this clause.
- (2) This Policy does not apply to:
 - (a) Lord Howe Island, or

(b) in relation to *State Environmental Planning Policy No 62—Sustainable Aquaculture*:

- (i) a development application for consent to carry out development to which that Policy applies, or
- (ii) development that is carried out in accordance with a development consent granted under that Policy.

5 Relationship with other environmental planning instruments

In the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.

6 Amendment of SEPP 4

State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Complying Development is amended by inserting after clause 10 (3) (f):

- (f1) to land that is a sensitive coastal location within the meaning of *State Environmental Planning Policy No 71—Coastal Protection*, or

Part 2 Matters for consideration

7 Application of clause 8 matters

The matters for consideration set out in clause 8:

- (a) should be taken into account by a council, when it prepares a draft local environmental plan that applies to land to which this Policy applies, and
- (b) are to be taken into account by a consent authority when it determines a development application to carry out development on land to which this Policy applies.

8 Matters for consideration

The matters for consideration are the following:

- (a) the aims of this Policy set out in clause 2,
- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,
- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,
- (d) the suitability of development given its type, location and design and its relationship

with the surrounding area,

- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,
- (g) measures to conserve animals (within the meaning of the *Threatened Species Conservation Act 1995*) and plants (within the meaning of that Act), and their habitats,
- (h) measures to conserve fish (within the meaning of Part 7A of the *Fisheries Management Act 1994*) and marine vegetation (within the meaning of that Part), and their habitats
- (i) existing wildlife corridors and the impact of development on these corridors,
- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,
- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,
- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,
- (m) likely impacts of development on the water quality of coastal waterbodies,
- (n) the conservation and preservation of items of heritage, archaeological or historic significance,
- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,
- (p) only in cases in which a development application in relation to proposed development is determined:
 - (i) the cumulative impacts of the proposed development on the environment, and
 - (ii) measures to ensure that water and energy usage by the proposed development is efficient.

Note—

Clause 92 of the *Environmental Planning and Assessment Regulation 2000* requires the *Government Coastal Policy* (as defined in that clause) to be taken into consideration by a consent authority when determining development applications in the local government areas identified in that clause or on land to which the *Government Coastal Policy* applies.

Part 3 Significant coastal development

9 Application of Part

(1) This Part applies to:

- (a) (Repealed)
- (b) development comprising the erection of a building that is 2 or more storeys in height, the number of storeys being determined in accordance with clause 6 of *State Environmental Planning Policy No 6—Number of Storeys in a Building*, on, or partly on, land within a sensitive coastal location, and
- (c) development within 100m below mean high water mark of the sea, a bay or an estuary, and
- (d) development on land described in Schedule 3,
subject to subclause (2).

(2) This Part does not apply to:

- (a) development in relation to which, under another environmental planning instrument, development consent cannot be granted without the concurrence of the Minister or the Director-General, or
- (b) development in relation to which, under another environmental planning instrument, the Minister or the Director-General is the consent authority.

(3) Despite subclause (2), this Part does apply to development in relation to which, under:

- (a) *State Environmental Planning Policy No 1—Development Standards*, or
- (b) *State Environmental Planning Policy No 14—Coastal Wetlands*, or
- (c) *State Environmental Planning Policy No 26—Littoral Rainforests*,

development consent cannot be granted without the concurrence of the Director-General, whether or not the concurrence may be lawfully assumed.

10 (Repealed)

11 Determination by councils of applications for significant coastal development

(1) This clause applies to development that is included in clause 9 (1) (b), (c) or (d).

(2) A council must send a copy of a development application for consent to carry out development to which this clause applies to the Director-General within 2 days after the application is received by the council.

- (3) A council must not determine a development application for consent to carry out development to which this clause applies:
 - (a) within 28 days after a copy of the application is received by the Director-General pursuant to subclause (2), or
 - (b) if the Minister gives the council a direction under section 88A of the Act in respect of the development application.
- (4) During the 28-day period referred to in subclause (3) (a), the Director-General may specify matters, in addition to the matters set out in clause 8, that the council must take into consideration in determining the development application.
- (5) In addition to the matters set out in clause 8, a council must take into consideration any matters specified under subclause (4) in respect of a development application when it determines the application.

Part 4 Development control

12 Application of Part

This Part applies to all development on land to which this Policy applies.

13 Flexible zone provisions

A provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, has no effect.

14 Public access

A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.

15 Effluent disposal

The consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.

16 Stormwater

The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion

that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.

Part 5 Master plans

17 Definition of “master plan”

In this Part:

master plan means a document consisting of written information, maps and diagrams that outlines proposals for development of the land to which the master plan applies.

18 Master plan required before certain consents may be granted

- (1) A consent authority must not grant consent for:
 - (a) subdivision of land within a residential zone, or a rural residential zone, if part or all of the land is in a sensitive coastal location, or
 - (b) subdivision of land within a residential zone that is not identified as a sensitive coastal location into:
 - (i) more than 25 lots, or
 - (ii) 25 lots or less, if the land proposed to be subdivided and any adjoining or neighbouring land in the same ownership could be subdivided into more than 25 lots, or
 - (c) subdivision of land within a rural residential zone that is not identified as a sensitive coastal location into more than 5 lots,unless:
 - (d) the Minister has adopted a master plan for the land, including any adjoining or neighbouring land in the same ownership, as referred to in paragraph (b) (ii), or
 - (e) the Minister, after consulting the Natural Resources Commission, has, under subclause (2), waived the need for a master plan for the whole or a specified part of the land referred to in paragraph (d).
- (2) The Minister may waive the need for a master plan to be adopted because of the nature of the development concerned, the adequacy of other planning controls that apply to the proposed development or for other such reasons as the Minister considers sufficient.
- (3) For the purposes of this clause, areas of land that are adjoining or neighbouring are in the same ownership if:
 - (a) the registered proprietor of all the areas of land is the same person, or

(b) the registered proprietor of part of the areas of land is a body corporate and the registered proprietor of the other part is, or the registered proprietors of the other parts are, a director or shareholder of the body corporate, or a related body corporate of the body corporate.

(4) In subclause (3):

body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

registered proprietor means a registered proprietor under the *Real Property Act 1900*.

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

19 Consent authority to consider master plan

A consent authority must not determine a development application for development on land to which this Policy applies unless the consent authority has taken into consideration the provisions of a master plan adopted under this Part.

20 Preparation of master plans

- (1) A draft master plan may be prepared by or on behalf of the owner or lessee of the land concerned.
- (2) A draft master plan is to illustrate and demonstrate, where relevant, proposals for the following:
 - (a) design principles drawn from an analysis of the site and its context,
 - (b) desired future locality character,
 - (c) the location of any development, considering the natural features of the site, including coastal processes and coastal hazards,
 - (d) the scale of any development and its integration with the existing landscape,
 - (e) phasing of development,
 - (f) public access to and along the coastal foreshore,
 - (g) pedestrian, cycle and road access and circulation networks,
 - (h) subdivision pattern,
 - (i) infrastructure provision,
 - (j) building envelopes and built form controls,

- (k) heritage conservation,
- (l) remediation of the site,
- (m) provision of public facilities and services,
- (n) provision of open space, its function and landscaping,
- (o) conservation of water quality and use,
- (p) conservation of animals (within the meaning of the *Threatened Species Conservation Act 1995*) and plants (within the meaning of that Act), and their habitats,
- (q) conservation of fish (within the meaning of Part 7A of the *Fisheries Management Act 1994*) and marine vegetation (within the meaning of that Part), and their habitats.

21 Consultation

- (1) After receiving a draft master plan, the Minister must cause it to be:
 - (a) advertised in a newspaper circulating in the locality, and
 - (b) exhibited for not less than 28 days for public comment.
- (2) After receiving a draft master plan, the Minister must also submit it to the Natural Resources Commission, the relevant council and such other public authorities as the Minister determines, for their comment. In doing so, the Minister must specify a date by which any comments are to be made.

22 Consideration of draft master plans

- (1) In considering a draft master plan, the Minister must take into account:
 - (a) any written submissions made about the content of the draft master plan during the exhibition period under clause 21,
 - (b) any written comments of the Natural Resources Commission, the relevant council or any of the public authorities to whom the draft plan has been submitted, that are made by the date specified under clause 21, and
 - (c) the matters for consideration set out in Part 2.
- (2) After considering a draft master plan, the Minister:
 - (a) may adopt the master plan without variation, or
 - (b) may adopt the master plan with such variations as the Minister considers appropriate, or

(c) may reject the draft master plan.

- (3) A draft master plan becomes a master plan if it is adopted by the Minister.
- (4) When a master plan is adopted, the Minister must cause the adoption of the master plan to be advertised in a newspaper circulating in the locality to which the master plan applies.

23 Amendment of master plans

- (1) A master plan may be amended or replaced by a subsequent master plan.
- (2) An amendment to a master plan may be dealt with concurrently with a development application.

24 Availability of master plans

A copy of each master plan adopted under this Part must be available for inspection at the relevant council, and at the principal office and relevant regional offices of the Department of Planning, during normal office hours.

Part 6 Miscellaneous

25 Transitional provisions

- (1) This Policy does not apply to a development application made, but not finally determined, before the commencement of this Policy.
- (2) Subject to subclause (1), this Policy, as amended by *State Environmental Planning Policy No 71—Coastal Protection (Amendment No 1)*, extends to a development application made, but not finally determined, before the commencement of *State Environmental Planning Policy No 71—Coastal Protection (Amendment No 1)*.
- (3) The amendments made to this Policy by *State Environmental Planning Policy No 71—Coastal Protection (Amendment No 2)* do not apply to a development application made, but not finally determined, before the commencement of *State Environmental Planning Policy No 71—Coastal Protection (Amendment No 2)*.
- (4) The amendment made to clause 9 of this Policy by *State Environmental Planning Policy No 71—Coastal Protection (Amendment No 3)* extends to a development application made on or after 17 January 2003 but not finally determined before the commencement of *State Environmental Planning Policy No 71—Coastal Protection (Amendment No 3)*.
- (5) Except as provided by subclause (4), the amendments made to this Policy by *State Environmental Planning Policy No 71—Coastal Protection (Amendment No 3)* do not extend to a development application made but not finally determined before the commencement of *State Environmental Planning Policy No 71—Coastal Protection*

(Amendment No 3).

Schedule 1 Coastal lakes

(Clause 3 (1), definition of “coastal lake”)

Avoca Lake	Killalea Lagoon	Narrabeen Lagoon
Back Lake/Lagoon	Kioloa Lagoon	Narrawallee Inlet
Baragoot Lake	Lake Ainsworth	Nelson Lagoon
Bellambi Lagoon	Lake Arragan	Oyster Creek and Lagoon
Bingie (Kellys) Lake	Lake Brou	Pambula Inlet/Lake
Bondi Lagoon	Lake Brunderee	Queens Lake
Bournda Lagoon	Lake Cakora	Saltwater Lagoon
Broadwater	Lake Cathie	Saltwater Lake
Brush (Swan) Lagoon	Lake Conjola (includes Berringer)	Smiths Lake
Bullengella Lake	Lake Hiawatha	St Georges Basin
Bunga Lagoon	Lake Illawarra	Swan Lake
Burrill Lake	Lake Innes	Tabourie Lake
Candlagan Creek and Lagoon	Lake Macquarie	Termeil Lake
Cobaki-Terranora	Lake Minnie Water	Terrigal Lagoon
Cockrone Lake	Lake Mummuga (Dalmeny)	The Broadwater (Clarence River)
Coila Lake	Lake Tarourga	Tilba Tilba Lake
Congo Creek and Lagoon	Lake Wollumboola	Tuggerah Lake (includes Lakes Budgewoi and Munmorah)
Corindi (Pipeclay) Lake	Little Lake (Narooma)	Tuross Lake
Corunna Lake	Little Lake (near Wallaga)	Wagonga Inlet
Cudgen Lake	Long Swamp	Wallaga Lake
Curalo Lagoon	Manly Lagoon	Wallagoot Lake
Curl Curl Lagoon	Merimbula Lake	Wallis Lake
Cuttagee Lake	Meringo Creek and Lagoon	Wamberal Lagoon
Dalhousie Creek and Lagoon	Meroo Lake	Wapengo Lagoon
Dee Why Lagoon	Middle (Tanja) Lagoon	Watsons Taylor Lake
Deep Creek and Lagoon	Mullimburra Lagoon	Werri Lagoon
Durras Lake	Murrah Lagoon	Willinga Lake
Goolawah Lagoon	Myall Lakes	Wonboyn Lake
Hearns Lake	Nangudga Lake	Woolgoolga Lake
Kianga Lake	Nargal Lake	Wooloweyah Lagoon

Schedule 2 (Repealed)

Schedule 3 Significant coastal development—specified land

(Clauses 9 (1) (d) and 11)