



Reference:

Submission - Draft SEPP (Coastal Management) 2016

Telephone Enquiries to:

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6 January 2017

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Dear Alison

Submission – Draft State Environmental Planning Policy (Coastal Management) 2016

Council appreciates the opportunity to comment on the Draft Coastal Management SEPP. While in the main Council supports the coastal management reforms, it has several concerns with how several clauses have been structured within the Draft SEPP, and how the coastal wetlands and coastal use areas have been mapped.

These concerns, along with several other minor matters, were raised by Council at the Local Government Workshop held at Ballina on 28 November 2016 where it was encouraged to formalise this feedback in a written submission.

Council's concerns with the Draft SEPP are summarised below, with more detail being provided later in this submission:

1. (cl.11)—development controls and designated development provisions from SEPP14 (and SEPP26) have been poorly retrofitted into clause 11. The clause is written so it applies to the entire property, even when only part is mapped as wetland (or littoral rainforest). As such all development on such a property would be designated development.
2. (cl.11(1)(a))—there is confusion over how to interpret the “damage or removal of native vegetation” provision, as Council has 3 different opinions.
3. (cl.11(4), cl.14(1) & cl.16(1)) - how can a consent authority be “satisfied” that sufficient measures exist to “protect” a wetland (or littoral rainforest), or will not have an “adverse impact” on native vegetation, if an application involves destroying the habitat?

4. (cl.11(5))—noxious weeds can be damaged or removed without consent in coastal wetlands and littoral rainforest areas but environmental weeds may require designated development consent to be removed.
5. (cl.12) - The Act refers to land “Adjoining” coastal wetlands and littoral rainforest areas, while the Draft SEPP refers to land in “proximity”. Language used in the Draft SEPP should be consistent with the Act.
6. (cl.13(2) & cl. 16(1)) - There is no definition of what “other land” means, so how can a consent authority be satisfied a proposal is not likely to increase risk or detriment on “other land”?
7. (cl.21(2)&(3)) - there appears to be a duplication of provisions between subclauses cl.21(2) & cl.21(3). For example the placement of sandbags can be done without consent, or as exempt development.
8. (cl.21(4)) - the definition of “emergency coastal protection works” contains very specific measures with no scope for merit consideration of the circumstances of the case. The definition should be loosened to enable the emergency action sub plan to nominate alternative measures that can be employed at a location.
9. (cl.21) - public authorities authorising coastal protection works, or emergency coastal protection works, could be liable for any resultant damage to other land.
10. (cl.23) - eliminating the use of a flexible zone provision from the entire “coastal zone” is too onerous, especially given the extensive distribution of coastal use areas.
11. Coastal wetlands and littoral rainforest areas map - revised coastal wetland mapping is equally as inaccurate as the original SEPP14 mapping it replaces.
12. Coastal Use Area map - this area has been applied to the entire tidal waters of the Richmond River, Bungawalbin Creek and Wilsons River. The EIE for the Draft SEPP indicates that the Coastal Use Area would only apply to 1 kilometre beyond the limit of any recognised mangroves, and apply to the extent of tidal waters if there are no such recognised mangroves (p.19 EIE). Recognised mangroves on the Richmond River cease about 5 kilometres below Woodburn Village.
13. Mapping in general - the spatial mapping supplied as part of the exhibition has a number of quality issues in the form of bow-ties, stray nodes, slithers and holes. There are also areas of coast line that have no coastal management areas apply.



Detailed commentary on each of the above points is provided here:

1. Clause 11 – Part of Land

The development control provisions from SEPP14 require development consent to clear; construct a levee on; drain; or fill land. “Land” being defined as the area *“outlined by the outer edge of the heavy black line on the map”*. This definition specifically identifies its application to the mapped wetland area only.

Unfortunately, the translation of the SEPP14 (and SEPP26) provisions into the Draft SEPP is poor. Clause 11 applies to any development on land wholly or partially identified as coastal wetland. As such, the designated development provisions will apply to an entire allotment of land where any part of it is intersected by a coastal wetland. Council doesn’t believe this was the intent of Clause 11, especially given how it is described within the EIE, FAQ, and factsheets.

Clause 11 needs to be amended to ensure its application only applies to the mapped coastal wetland (or Littoral Rainforest) area.

2. Clause 11 – Native Vegetation

There is confusion surrounding how to interpret the “clearing of native vegetation” provision (cl.11(1)(a))-

- one interpretation is that it only applies to native vegetation, as defined under the *Native Vegetation Act*;
- another interpretation is that it applies to any native vegetation, but the definition of how the vegetation is damaged or removed would be as per the *Native Vegetation Act*; and
- another interpretation is that the clearing provision will not apply if the *Native Vegetation Act* is excluded from applying, for example where there is a Section 138 approval under the *Roads Act*.

Clarification of the intent is needed.

3. Consent Authority to be Satisfied

Clauses 11, 14 & 16 contain development assessment criteria requiring consent authorities to be satisfied that development will, respectively,-

- protect;
- not have an adverse impact on; or
- will not likely cause increased risk.

It may prove difficult to be satisfied that native vegetation will be “protected” once it is cleared for development.

The provisions should be amended to require the consent authority to be satisfied that the biophysical, hydrological and ecological integrity of the

remaining area will be protected, and/or to be satisfied that mitigation measures will be engaged to offset impacts, risks or losses.

4. Environmental Weeds

Noxious weeds are declared under the *Noxious Weeds Act 1993* and generally relate to weeds that impact upon agricultural productivity. More often than not the noxious weeds inventory excludes important environmental weeds that predicate within coastal wetlands and littoral rainforest areas.

The Draft SEPP will require development consent to remove environmental weeds under “environmental protection works”, or with authority under a relevant Coastal Management Program.

Subclause 11(5) should be extended to streamline environmental weed controls without consent.

5. Consistent Language between Act and SEPP

Section 6 of the *Coastal Management Act 2016* requires coastal wetlands and littoral rainforest areas to be identified by a SEPP along with “... *land adjoining those features*”. Clause 12 of the Draft SEPP provides that any development within “proximity” to coastal wetlands and littoral rainforest areas must satisfy certain assessment criteria before consent can be granted.

Consistent language should be used between the Act, which refers to “adjoining”, and the Draft SEPP, which refers to “proximity”.

6. Increased risk on other land

Several of the development assessment criteria used in the Draft SEPP require satisfaction that proposed development is not likely to cause increased risk of coastal hazards, or alter coastal processes to the detriment of the natural environment “*on that land or other land.*” The question is how extensive must the development assessment be before a consent authority can be satisfied that “other land” will not be detrimentally impacted?

Council would like to see some guidance on undertaking this assessment, including how to define “other land”.

7. Duplication of Provisions

Clause 21 permits emergency coastal protection works (ECPW) to be carried by or on behalf of a public authority as exempt development in accordance with a Coastal Zone Emergency Action Subplan. But the same work can be undertaken without consent (in the form of sandbags for a period <90 days) if identified in a Coastal Management Program.

This seems to be a duplication of provisions considering that the Subplan forms part of the CMP.

8. Limited scope for emergency works

Emergency coastal protection works (ECPW) are defined as comprising the placement of sand, or sandbags for a period of <90 days to protect a beach or sand dune from wave erosion. The types of material that can be used is quite specific and rules out the use of any other materials, barriers or other temporary measures. The emergency action subplan might be a better instrument to establish the nature of materials or structures that might be suitable, and this could be guided by the Coastal Management Manual. A subplan must be certified by the Minister giving a level of protection that on merit the proposed actions have been assessed as appropriate at that location.

9. Potential liability for Public Authorities

Emergency coastal protection works must be carried out by or on behalf of a public authority. This potentially leaves councils and State agencies liable for damages that might result from these emergency works.

Public authorities should be afforded some level of indemnity, or remove the need for such work to be authorised.

10. Flexible zone boundaries

The flexible zone boundary clause (cl.5.3 of the Standard Instrument LEP) is restricted from use-

- in zones RE1 Public Recreation, Zone E1 National Parks and Nature Reserves, Zone E2 Environmental Conservation, Zone E3 Environmental Management and Zone W1 Natural Waterways, or
- on land within the coastal zone.

Clause 23 of the Draft SEPP further restricts the use of the flexible zone provision on land to which it applies.

Because the outreach of the Coastal Zone has been substantially extended by the SEPP it is Council's belief that the flexible zone provisions should be permitted within the coastal use area, which will also involve amending clause 5.3 of the Standard Instrument LEP.

11. Poorly mapped coastal wetlands

The revised coastal wetland mapping provided in the Draft SEPP is equally as poor as its SEPP14 predecessor. Figure 1 shows a screen shot of the Draft SEPP wetland mapping compared to the SEPP14 mapping. It is evident from this figure that changes have been made to the mapping but it still fails to accurately define the external boundaries of most wetlands in this Council's LGA.

Council's lack of confidence in this mapping was raised with the Department at the Local Government Workshop at Ballina. Council was told that further revision of the mapping will not be done and it would only accept data improvements from Council if supported by an appropriate study.

Unfortunately, Council does not have a study, or resources to undertake such a study. However, Council is prepared to undertake a desktop review of the mapping using available aerial photography and provide corrections where obvious mapping errors are found.



Figure 1 - Draft coastal wetland mapping (green) compared to SEPP14 Coastal Wetland mapping (blue) for a site near Evans Head (Aerial photo by NSW LPI 2012)

12. Excessive coverage given to the Coastal Use Area

The *Draft Coastal Management SEPP* Explanation of Intended Effects (EIE) for the Coastal Use area mapping (p.19) provides that it would comprise of a landward area (of 500 metres or 1 kilometre), measured from high water mark, and this would be applied to:

- the coastal waters of the State
- any bay, estuary, coastal lake or lagoon
- upstream in any coastal river or estuary to one kilometre beyond the limit of any recognised mangroves on or associated with the river or estuary [*underline added for emphasis*]
- if there are no such recognised mangroves, then to one kilometre beyond the tidal limit of the river or estuary [*underline added for emphasis*]

- the boundary will be shown to the nearest cadastral boundary or easily recognisable physical boundary
- within the Sydney metropolitan area the boundary will represent the land affected by or affecting coastal processes (generally between 50 metres and 200 metres)

The recognised upper extent of mangroves on the Richmond River is about 5 kilometres short of Woodburn Village (and 3.5km up stream of Rileys Hill), (Richmond River Estuary Processes Study (section 7.3.4.1), 2005). Despite the EIE, the Draft Coastal Use Area has been mapped as a 1 kilometre buffer to the entire tidal waters of the Richmond River, Bungawalbin Creek and Wilsons River. As such the Coastal Use Area extends to just below Casino on the Richmond River; to just beyond Neilleys Lagoon Road bridge crossing (Yellow Crossing) on Bungawalbin Creek; and beyond Lismore City on the Wilsons River.

Council considers the extent of the Coastal Use area to be excessive especially given the heads of consideration, under clause 15 of the Draft SEPP, provide for maintenance of public access to foreshores; minimising overshadowing, wind funnelling and the loss of views from public places to foreshores; and not adversely impacting on Aboriginal cultural heritage.

The definition of “foreshore”, in the *Coastal Management Act 2016*, only refers to land falling between the highest and lowest astronomical tides, with this land generally not being visible beyond the top of bank for large parts of the upper Richmond River. It seems more logical to assess these impacts as a Coastal Environment Area. This is because the Coastal Environment Area map applies to the entire estuary, up to the full extent of the tidal waters, and includes a 100 metre buffer that extends beyond the edge of the riparian zone and the top of bank. This way the impact of overshadowing and foreshore access could be assessed under clause 14 and negates the excessive application of the coastal use area mapping while providing for equivalent assessment of foreshore impacts.

Council requests that the Coastal Use area mapping be revised to recognise the upper extent of mangroves on the Richmond River, and limit its coverage to this point. Consideration should also be given to copying foreshore assessment criteria from clause 15 to clause 14.



Figure 2 – Coastal Environment Area (pink) and Coastal Use Area (cream) at the tidal limits of the Richmond River at Casino

13. Spatial Data errors

The Draft SEPP mapping was supplied to Council in a digital form during the exhibition period. From the outset it was evident that much of the data has spatial mapping issues such as missing or stray nodes, bow-ties, overlapping nodes, slithers and holes. These errors should have minor impact on viewing the data but may influence the interrogation of this data by GIS & SQL management systems. While these data issues aren't unusual, especially for large datasets, the sheer volume of errors, particularly in the Coastal Environment area and Coastal Use area maps, shows how rushed the data was prepared.

In addition to the above, at least 2 areas of Airforce Beach and Main Beach at Evans Head were found to have no Coastal Management Areas applying, see figure 3.

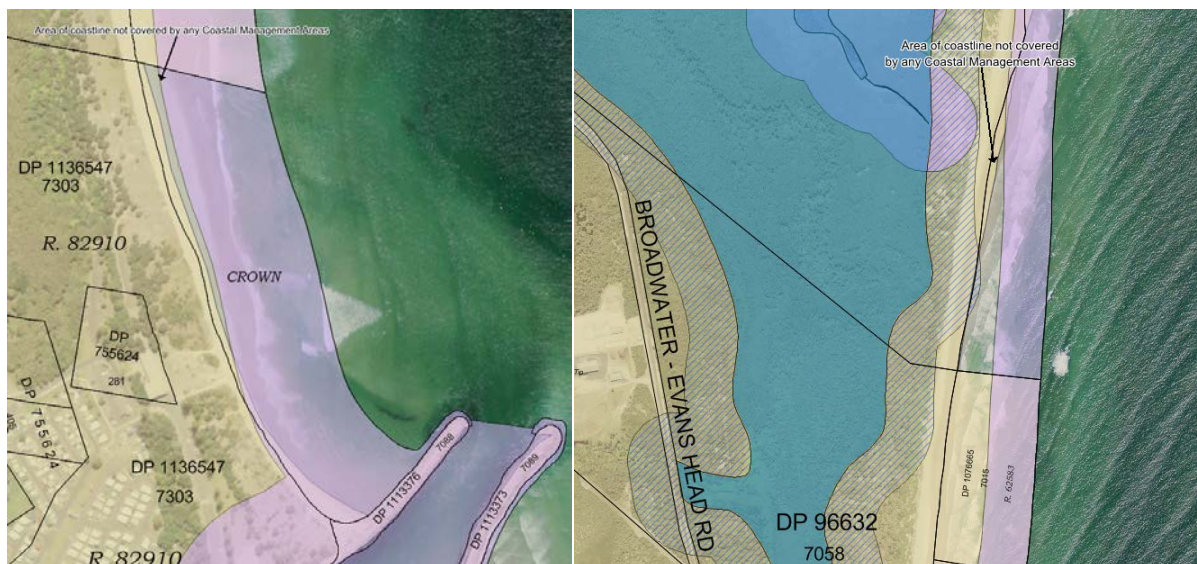


Figure 3 – Two examples of where the coastal zone has not been mapped with a Coastal Management Area

If you wish to discuss the contents of this submission please do not hesitate to contact Council's Coordinator Strategic Planning and Environment, Tony McAteer on 6660 0276 or email tony.mcateer@richmondvalley.nsw.gov.au

Yours sincerely

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