



File Ref: 2015/87240

16 January 2017



Director Environment and Building Policy
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam,

Draft Coastal Reforms

[In response, please quote File Ref: 2015/87240]

Comments on the Draft State Environmental Planning Policy (Coastal Management) 2016

Sutherland Shire Council welcomes the opportunity to comment on the NSW Planning and Environment's Coastal Reforms. Sutherland Shire Council strongly supports the move by the State Government to provide improved and coordinated management of the coastal environment. Sutherland Shire Council has previously called for a more prescriptive approach to be taken to addressing issues within the coastal zone. Council has identified the need for State Government level guidance to assist decision makers undertaking strategic planning and assessing proposed development within the coastal environment.

In summary, Sutherland Shire Council supports the introduction of the new planning framework but is concerned that it will result in significant additional responsibilities, liabilities and costs being transferred to local government without any commensurate income to support this work. The framework could also be further improved and ultimately made more effective through clearer and more practical drafting and supporting information.

The attachment to this letter summarises Sutherland Shire Council's position on the exhibited draft State Environmental Planning Policy - Coastal Management 2016 and draft Local Planning Direction - Coastal Management 2016. Please note that this submission is Council officer's views and has not been reviewed by the elected Council. Council will consider this matter at its meeting of 20 February 2017. If any changes are required a revised submission will be made.

If you require any further explanation of the issues raised, please contact Jordan Widenstrom on 9710 0639.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Mark Carlon', with a long horizontal line extending to the right.

Mark Carlon
Manager Environmental Planning

Sutherland Shire Council:

Attachment to Submission: Draft Coastal Reforms

This document provides more detail in relation to the issues raised in Sutherland Shire Council's submission to the draft Coastal Reforms. Please note that these are officers' views and are yet to be endorsed by Council. This will occur at the first available meeting of Council and modification to the submission may be required.

General Comments

As mentioned in Sutherland Shire Council's submissions to earlier stages of the coastal reforms, it is considered that for coastal management reform to be effective, a more equitable and stronger partnership with State Government is required. Given that the NSW Government is a substantial owner of the coastal zone, Council would expect the NSW Government to more actively participate in the development and implementation of Coastal Management Programs (CMP). The draft Bill and SEPP places enforceable obligations to implement CMPs on local government while only requesting that NSW agencies consider CMPs when exercising their functions in the coastal zone. There is no reason given to justify the lesser standards being placed on NSW agencies.

These reforms, if adopted, affect significant structural, procedural, and management changes to the planning and coastal management framework which local government will have increasing responsibility for administering. The changes will increase the burden on local government in terms of application of resources to develop and implement CMPs and, potentially, place additional liabilities onto councils. This is another example of cost shifting where the responsibility of coastal management is 'shifted' from higher level government on to local government without providing corresponding funding or the conferral of revenue raising capacity.

With regards to CMPs, Council sees the use of the word 'program' as very problematic. The process for preparing and implementing the former Coastal Zone Management Plan (CZMP) can be set up under a program but a program is not the same as a plan. The use of the word 'program' to replace the CZMPs is also inconsistent with other established natural resource management and risk management frameworks e.g. floodplain management, catchment management, etc. It can also be confused with the NSW Government's existing Coastal and Estuary Management Grants Program. It should be left to Councils to set up, name and implement their programs, rather than use confusing terminology imposed by State Government. No rationale has been given as to the benefit of changing the terminology from 'plans' to 'programs'.

Draft SEPP (Coastal Management) 2016

Sutherland Shire Council supports many of the provisions contained in the draft Coastal Management SEPP. However, there are some areas of concern relating to the draft SEPP which are outlined below:

1. Objectives

Sutherland Shire Council supports the proposed overall aim of the Policy:

“The aim of this Policy is to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016 by:

- (a) Managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) Establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) Mapping the 4 coastal management areas which comprise the NSW coastal zone, in accordance with the definitions in the Coastal Management Act 2016”*

Sutherland Shire Council however, recommends that the following objective be reinstated into the SEPP as was articulated in the Explanation of Intended Effects:

- *Promote an integrated and coordinated approach to coastal planning and management, consistent with the objects of the proposed draft Coastal Management Act.*

This would help ensure that all landowners and government bodies play a role in the management of the coastal area and share the burden of this responsibility.

The following principles are contained in the NSW Coastal Planning Guideline – Adapting to Sea Level Rise:

- *Principle 3 – Avoid intensifying land use in coastal risk areas through appropriate strategic and land use planning.*
- *Principle 4 – Consider options to reduce land use intensity in coastal risk areas where feasible.*

These principles are appropriate for managing development in the coastal zone. It appears that these principles have been integrated into the draft s.117 direction; however it is recommended that these principles also be included as objectives in the

Coastal Vulnerability Area section of the SEPP. This would give clear effect to the directions of s.117 in the SEPP. The inclusion of these principles would also give regulatory weight when councils adopt sea level rise policies.

2. Wording of Controls

The draft SEPP contains controls which, due to their wording, will create enforcement issues for councils. Each of the controls in the management areas are worded in a way that make assessing compliance difficult which also makes enforcement more difficult. This will lead to conflict in the assessment process between council officers and applicants.

An example of the wording of a control is provided below:

“Development consent must not be granted to development on land that is wholly or partly within the coastal environment area unless the consent authority is satisfied that the proposed development:

(a) Is not likely to cause adverse impacts on the biophysical, hydrological (surface and groundwater) and ecological environment, and”

While the intent of the controls to be met is supported, the lack of guidance as to how to assess and achieve satisfaction with these controls is an area of concern. If Council has no guidance as to how to test compliance with the control, and the applicant is not given any guidelines to prove compliance, there will unavoidably be inconsistent applications of the controls. This will inevitably lead to debate between officers and applicants.

Given the wording of the controls requires the consent authority to be satisfied before issuing a consent, it is requested that the draft SEPP provide explanations or tests as to how a council can be satisfied that each of the controls under the management areas has been met. Clarification is sought as to how impacts are assessed and what information should be required from an applicant to demonstrate that the control is satisfied.

This could be included as guidelines in the Coastal Management Manual. Providing some direction will effectively streamline application processing and provide councils with the tools to make sound environmental decisions.

3. Coastal Management Areas

Sutherland Shire Council supports the identification of four coastal management areas and the management objectives for each. The recognition of the coast as dynamic and

heterogeneous under the new definition of the 'coastal zone' will support community awareness and provide flexibility for local planning and management options. However, Sutherland Council notes that the breakdown of the coastal zone into four distinct areas complicates coastal management thereby increasing the administrative burden on local government. Where council mapping is in a gazetted plan, the local hazard information should prevail given it is likely to be finer scale data and it has general acceptance by the community.

Sutherland Shire Council also notes that while the Draft SEPP provides for the hierarchy of management objectives in relation to the coastal management areas, it does not give advice on balancing the competing objectives of the underlying land use zones in the LEP. For example, a residential zone will have certain objectives in relation to the provision of housing that may be inconsistent with the objectives of the coastal management area. The answer may be to amend the Standard Instrument LEP so that there are standard zones that can be applied to coastal management areas which have objectives that support the objectives of the SEPP.

4. Coastal Wetlands and Littoral Rainforest Land – Exempt and Complying Development

Sutherland Shire Council supports the inclusion of coastal wetland and littoral rainforest maps within the Sydney Metropolitan area. Under the provisions of the draft SEPP, complying development is permitted to be undertaken on land within the proximity to coastal wetlands and littoral rainforests. The controls in the SEPP requires the following (Division 1 (12)):

(1) Development consent must not be granted to development on land wholly or partly identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforest Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

- a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetlands or littoral rainforest, or*
- b) the quantity and quality of surface and ground water flows to the adjacent coastal wetland or littoral rainforest if the development is on land within the catchment of the coastal wetland or littoral rainforest”.*

Under the provisions of SEPP (Exempt and Complying Development Codes) 2008, while land within a coastal wetland or littoral rainforest is considered environmentally sensitive area, land within the proximity area to coastal wetlands or littoral rainforest is

not included within the definition of 'environmentally sensitive area'. Therefore complying development is permitted on this land. In this regard, any application for complying development on land within the proximity area would be subject to the controls within the SEPP (Exempt and Complying Development) 2008. As the SEPP is drafted there are no controls which require complying development to take into consideration the above listed controls (Division 1 (12)) within the draft Coastal SEPP.

While the above listed controls would require consideration during the assessment of a development application, under the complying development provisions they would not be given any consideration. It is recommended that the exempt and complying development SEPP be amended to ensure the consideration of these controls in the assessment of any form of exempt or complying development undertaken within the proximity area to coastal wetlands or littoral rainforests.

5. Coastal Wetland and Littoral Rainforest Land – Designated Development

Sutherland Shire Council supports the control declaring any works on coastal wetlands or littoral rainforest as designated development but raises concerns regarding the controls for development within the proximity area to coastal wetlands or littoral rainforest land.

Within the Sutherland Shire a large amount of residential land is zoned as E3 Environmental Management and E4 Environmental Living. There are 254 properties which contain areas of coastal wetlands or littoral rainforests that are zoned either E3 or E4 in Sutherland Shire. These areas are generally surrounding areas of high ecological significance. In order to prevent a large number of residential development applications being designated development it is requested that zones E3 and E4 be included Division 1 (12)(2)(a) so that it reads as follows:

(2) This clause does not apply to:

(a) and within Zone **E3, E4**, R1, R2, R3, R4, R5 or RU5 under an environmental planning instrument or in a land use zone that is equivalent to any of those zones, or

As the control stands, any development undertaken within areas of coastal wetland or littoral rainforest would be considered designated development and need to be accompanied by an environmental impact statement and require public notification for at least 30 days. Given that E3 and E4 are low density residential zones that are widely applied residential zones across the Sutherland Shire, including zones E3 and E4 into the above mentioned clause would remove the need for an EIS and extended

notification for development applications. This is considered appropriate as development permissible in this zone under SSLEP2015 is generally low impact given the objectives of the zone. Mandatory designated development for all development is excessive and unwarranted.

6. Coastal Vulnerability Areas

The controls for coastal vulnerability areas require the consent authority to consider anticipated impacts of coastal processes and hazards. While considering future impacts in the assessment process is strongly supported, some guidance is required as to the timeframe to consider anticipated impacts. The draft SEPP is deficient of any specifics relating to the period for future hazards to be taken into consideration. It is requested that a timeframe for future or anticipated impacts be included in the Coastal Management Manual.

7. Coastal Protection Works

Sutherland Shire Council raises concern regarding the 90 day time limit for emergency coastal protection works. While the ability for a public authority to undertake coastal protection works without consent is supported, there needs to be tests put in place for extending the period of time the placing of sandbags can remain after the 90 day timeframe has expired. Past experience has shown that a 90 day period is generally not enough time for an eroded area of beach line to naturally accrete nor is it enough time for Council to design, fund and implement a suitable long term solution to address the impact of a coastal process. While in some cases 90 days may be sufficient, it is recommended that a series of tests be implemented into the SEPP that gives a public authority discretion to increase the amount of time the sandbags can be retained to protect an asset or area from a coastal hazard.

Concerns are also raised regarding what actually is 'emergency coastal protection work'. The SEPP affords the ability to undertake emergency coastal protection work but does not define what it entails. Clarification is sought as to what work can be done as emergency coastal protection works.

8. Hierarchy of Development Controls

The draft SEPP provides a hierarchy for development controls in relation to coastal management areas. The development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:

- a) The coastal wetlands and littoral rainforests area,
- b) The coastal vulnerability area,

- c) The coastal environment area,
- d) The coastal use area.

In reviewing the development controls, clarification is required as to how a public authority is to consider the hierarchy of development controls in overlapping areas. While the clause requires the highest order coastal management area to take precedence over the lower areas, all controls remain valid and will still need to be addressed to satisfy the Act and the SEPP. It is recommended that all controls should apply to an area regardless if overlaid by more than one Coastal Management Area.

9. Joint Regional Planning Panel

The coastal expertise Joint Regional Planning Panel (JRPP) model is supported. Council appreciates that technical expertise is being brought into a regional body. However, further detail is needed on how this will be managed within the context of the Greater Sydney Commission.

10. Consideration of Access and Evaluation

One key element that the draft SEPP appears to lack any specific controls or objectives in relation to is the issue of access and evacuation. Many of the new developments are being designed so as to protect the development itself from coastal hazards, but give insufficient consideration to access and evacuation during extreme events, where road and infrastructure may be impacted. Similarly, impacts to other critical infrastructure servicing new developments, such as power, water and sewer must be considered.

11. Good Faith Requirements

Sutherland Shire Council supports the provisions in the reforms which give Councils the protection for their actions and management measures under the good faith requirements of Section 733 of the Local Government Act 1993. This is strongly supported.

12. Mapping

Given that Council's have the ability to amend the maps for each of the coastal management areas in the draft SEPP, it is requested that some criteria is provided as to how each of the map layers are prepared. Without any guidance there is some concern regarding the consistency of maps as they evolve over time between local government areas.

The provision of some criteria would also assist in the enforcement of the controls associated with the maps. If a property owner is negatively impacted by the controls in the SEPP and questions the inclusion of a property on a specific map layer, some guidance as to how the maps are prepared would assist in defending the inclusion of a property within a coastal management area. This could be included in the Coastal Management Manual or another practice note.

In ground truthing the mapping currently on exhibition, in particular the Coastal Wetlands and Littoral Rainforest map, discrepancies were found regarding the location of vegetation on the map in comparison to real life. One example of this was a property at 26-28 Yerramba Avenue, Caringbah South (DA16/1090) which was highlighted as containing Coastal Wetland or Littoral Rainforest on site. This property is the subject of a current development application and pursuant to the controls in the draft SEPP would be declared designated development. A site visit of the subject property found that the site was deficient of any species of trees on site that would be considered as coastal wetland or littoral rainforest raising concerns relating to the validity of the mapping.

During the assessment of a previous amendment to Sutherland Shire Council's SSLEP2015, mapping was received from the OEH for the Environmentally Sensitive Land Layer, primarily mapping areas of Sydney Turpentine Iron Bark Forest. Correspondence received at this time from OEH estimates the accuracy of their mapping to be at least 62.5% within 50 metres of a sample point on the ground. If this degree of accuracy is similar to that for the coastal wetlands and littoral rainforests under the draft SEPP, the application of this mapping is very difficult and is unworkable at an individual lot level.

If a property is within the coastal wetland or littoral rainforest area there are significant ramifications with regards to the assessment of a development application and the ability to undertake exempt or complying development. In this regard, Council raises concerns regarding the accuracy of the mapping and requests that the scale of this mapping be reviewed to make it more accurate. At this point in time, the map is suitable to act as a flag for Council when receiving a development application on the land but does require validating. If increasing the accuracy of the mapping is not feasible, Council requests that discretion is given to Council officers under the SEPP to prevent the need for any development to be declared designated development when it is found that a site identified does not contain coastal wetlands or littoral rainforest.

Section 117 Direction

Sutherland Shire Council strongly supports a number of the provisions in the draft s.117 direction. In particular Council supports directions 4 and 5 which restrict planning proposals that seek to increase development or intensify the use of land within the coastal vulnerability areas, coastal hazard areas or within a coastal wetland or littoral rainforests area. These directions appear to closely reflect the principles out of the NSW Coastal Planning Guideline and will greatly assist council in managing future development in those areas most sensitive to coastal hazards. Council welcomes the ability to prevent new development in existing hazard areas, not intensifying development in those areas and where possible reducing the intensity of development in current risk areas.

Council also strongly supports the planning proposal process which allows for an amendment to the SEPP by a Council. However, it is suggested that the Department of Planning periodically amend the maps in the form of a 'housekeeping' amendment as Councils submit their proposed map changes to save each individual council having to prepare and administer a planning proposal to amend the mapping in the SEPP. This would greatly reduce the number of planning proposals being made and allow the department to monitor consistency of proposed changes to the SEPP.

The fact sheets exhibited state that a Local Environmental Plan, confirmed by the Minister, may amend the maps in the SEPP to identify a coastal management area. It states where LEPs and DCPs contain coastal hazard maps and provisions, these mapped areas become part of the coastal vulnerability area; however, the development controls in the local plan continue to apply. Additional information is required on how this will occur procedurally as there are no current provisions that allow a LEP to amend a SEPP. The planning proposal process of Division 4 of Part 3 of the Environmental Planning and Assessment Act 1979 does not explicitly provide for the amendment of a SEPP by the mechanism of a LEP.

Local Government Responsibility

The responsibility for the implementation of the reforms appears to rest largely with Local Government with councils being responsible for the preparation of coastal management programs (CMPs). However, a large portion of the coastal zone is managed and controlled by agencies other than local government. CMPs are also to be developed to cover areas that are not necessarily aligned with local government boundaries (e.g. sediment compartments). Therefore overall success in the implementation of the coastal management reforms and the achievement of the state government's objectives for the coastal area go significantly beyond the responsibility of single Councils.

While Councils are required to prepare and comply with CMPs, State agencies are only required to take them into consideration, despite the relevant CMPs being signed off by the Minister. This appears a double standard, with a significantly greater burden being borne by local government.

There is a need for councils to ensure that the actions in adopted CMPs are implemented through local Council's IP&R framework under the Local Government Act 1993 and through the planning system established in the Environmental Planning and Assessment Act 1979. However, there is no similar obligation on any government agencies to ensure that their identified actions are implemented; again they are only to have regard to the CMP in the exercise of their functions. Similarly, it appears that the NSW Coastal Council will audit Council's performance in regards to the implementation of CMPs, but no audits of other land management authorities, such as Office of Environment & Heritage (managing National Parks & Recreation areas); NSW Department of Industry (managing Crown Lands) and NSW Roads & Maritime (managing significant waterways) are proposed. These agencies are responsible for the management of significant areas of the NSW coastline and should be subject to similar audits.

Sutherland Shire LGA is boarded by over 200km of coastline, 11km of which is made up of beaches. Of this 200km of coastline, large portions are under management and ownership of a number of different government agencies. 87.4km or 43% of the coastline of Sutherland Shire is under the management of the OEH/NPWS while only 17.8 or 9% of the coastline is owned by Sutherland Shire Council. The scale of State ownership of the coast reinforces the argument put forward that State Government agencies need to take significant responsibility when it comes to the preparation, implementation and management of CMPs.

A breakdown of the ownership of Council's coastline by different government organisations is provided below.

| Owners of Sutherland Shire Coastline | Distance of Coastline Owned | % of Sutherland Shire Coastline Owned |
|---|------------------------------------|--|
| NSW OEH - National Parks And Wildlife Service | 87.4km | 43.7% |
| Sutherland Shire Council | 17.8km | 8.9% |
| Sydney Water Corporation | 11.7km | 5.9% |
| The State Of New South Wales (generally Crown Land) | 9.6km | 4.8% |
| The Minister Administering The | 5.8km | |

| | | |
|--|-------|-------|
| Environmental Planning And Assessment Act 1979 | | 2.9% |
| Gandangara Local Aboriginal Land Council | 2.4km | 1.2% |
| Australian Nuclear Science And Technology Organisation | 1.6km | 0.8% |
| NSW Land And Housing Corporation | 705m | 0.35% |
| NSW Roads & Maritime (Maritime) | 493m | 0.25% |
| Ausgrid | 403m | 0.21% |
| State Rail - Illawarra Railway | 356m | 0.18% |
| NSW Roads & Maritime (Roads) | 125m | 0.06% |

As the current draft legislation stands Council has the responsibility to prepare, manage and fund a Coastal Management Program for the area. This raises significant concern. Council currently has a large number of flood plain manuals, coastal inundation plans and coastal hazard plans of differing degrees of detail. These are not included in Council's LEP and DCP and, as such, have not been included in the Coastal Vulnerability mapping for the Sutherland Shire. Council does not have the data available to prepare a CMP that would meet the requirements under the draft coastal management reforms. As such, Council will have the burden of preparing and funding the preparation of such a plan for the LGA. Based on past studies and plans, broad estimates by Council staff suggest that to prepare such a plan for the entire coastline of the Sutherland Shire would cost in excess of \$5 million, take a number of years to complete and require significant input from a number of agencies.

While the draft makes reference to \$83.6 million in funding available from the NSW Government for coastal management over the next five years, clarification is sought as to how the funding arrangements will work. Even if funding was available to Council on a dollar to dollar basis, estimates suggest Council would be required to provide over \$2.5 million to prepare a CMP which needs to be budgeted sometime in advance of the preparation of the program. Given the fragmented ownership of the coastline across a number of Government agencies, it appears that Council has the burden of funding and preparing the CMP for land out of Council's control and management. Amendments are requested which place some responsibility on the owners of the coastline that are not local government to assist in preparing, funding and managing CMPs.

Sea Level Rise Benchmarks

A number of Council's across NSW adopted the NSW Coastal Planning Guideline: Adapting to Sea Level Rise (2009) issued by the previous State Government as policy for their Local Government Areas. The current State Government discontinued the application of this guideline and does not specify predicted sea level rise associated

with climate change. This is a significant omission that impacts on Council's capacity to undertake soundly based planning and mitigating associated risk and liabilities. Since the removal of these benchmarks several court judgments have reinforced the exposure and liability of councils. Councils need to respond to planning proposals/re-zonings and development applications based upon explicit and well considered risks associated with sea level rise. This is an important management issue.

There are a range of issues which coastal Councils have to address in terms of the implications of coastal management – and notably hazards and sea level rise predictions for their areas to ensure that asset management planning, delivery and operational programs and long term financial plans are soundly based. Again, this is extremely difficult when there is no State Government formalised and predicted sea level rise policy or guideline. Councils also have to seek to co-ordinate with relevant state agencies and service providers in managing responses to coastal hazards.

Sea level rise levels not being provided at a state level and left up to individual Councils to determine has resulted in significant inconsistencies and cross-boundary issues. That, in turn, leads to greater risk and liability exposures.

Sydney Coastal Councils and CSIRO Mapping and Responding to Coastal Inundation

On the 3rd December 2016, Sydney Coastal Councils Group resolved the following:

“That the Sydney regional coastal inundation information prepared by the CSIRO on behalf of the SCCG be provided to the Department of Planning and Environment for inclusion in the Coastal Management SEPP, subject to the provision of more detailed inundation information provided to the Department by member councils.”

On 20 December 2016, Sutherland Shire Council received a letter from the Sydney Coastal Council's Group noting that Council's are required to provide the Department of Planning and Environment with information prior to it being considered for inclusion in the SEPP.

Sutherland Shire Council supports the inclusion of the Sydney regional coastal inundation information prepared by the CSIRO on behalf of the Sydney Coastal Councils Group and requests that it be included in the mapping for the draft Coastal SEPP for the Sutherland Shire local government area.