

I object to the draft SEPP for the reasons set out below:-

- A The reforms are a threat to all coastal regional communities and the infrastructure of the State. Particular areas at risk include the Central Coast, Wollongong, Shoalhaven, Newcastle, North Coast and Rockdale.
- B The National Assessment prepared for the Australian Government assessed that:
- (i) between 44,000 and 68,000 residential buildings may be at risk from sea level rise in NSW with a replacement value of \$14-\$20 billion;
 - (ii) light industrial buildings with a replacement value of \$0.8 to \$1.16 billion were also at risk in NSW; and
 - (iii) there are a large number of infrastructure facilities including ports, road and rail potentially at risk under a changing climate in NSW.
- Coastal protection is a serious issue for the economic well-being of NSW.
- C The State Government has rejected Commonwealth Minister Hunt's call for a national approach and done the opposite - proposing to leave all key decisions to local councils and empowering them to change their approach whenever they feel like it. The NSW Government seems to have elected to "leapfrog" the Federal Government initiative, of which they must be aware, instead of consulting, liaising and working on a collaborative approach for the Nation.
- D The State Government has also rejected the recommendations from the Productivity Commission to ensure robust plans for an emergency are in place. Again, the reforms take the opposite approach – abolishing entirely the provisions from emergency actions which this State Government previously said were necessary. Other recommendations about building resilience have also been ignored.
- E The reforms make no attempt at all to build resilience into our coastal communities – again contrary to various recommendations and contrary to what many communities are doing around the world. Again the opposite approach is taken – the aim seems to be to increase the vulnerability of every area facing any sort of coastal erosion problem and whatever the cause, historical, man-made new or old. All must grass over the dune and see how that goes. Too bad if infrastructure or property is lost whilst the grassed over dune is the only protection. No responsible government at a Federal, State & Local level can afford the totally unnecessary hits to assets and infrastructure on their balance sheets that that these reforms will bring. Nor can the rank and file private property owners in very affected areas, which will effectively bankrupt entire communities. Totally lacking is a modern, flexible approach aimed at building resilience in our existing built communities.
- F As such the legislation creates a new threat to the economic well-being of all NSW coastal communities and the infrastructure of NSW. It also applies in Sydney to coastal Sydney suburbs and Sydney Harbour up to 200 metres from the high tide mark. Councils all over the State will have the power to order the removal of protection and the demolition of houses.
- G It is an attack on all property owners – with investors and those with weekend properties particularly targeted. Their properties are not even taken into account under the proposed reforms – except to note that they will save land tax if their properties fall into the sea. The loss of the properties themselves is ignored under these reforms! The NSW Government also proposes replacing coastal fixed property boundaries with ambulatory boundaries, with property owners unable to protect their properties by these burdensome reforms and then losing title to some or all of their property without compensation under this new ambulatory title. The consultation workshops were told that the legislative form of these property title changes would not be released until after the closing date for submissions in March, 2016.
- H Fines are increased up to \$5million – way above what the NSW Coalition previously said was too much.

- I There has been no real consultation with any coastal community – having the consultation period yet again in Christmas and January is not effective consultation. No mapping was released so property owners cannot even ascertain what coastal management zone their properties were in prior to the Coastal Management Act being passed through Parliament. What was the point of the first consultation period – property owners couldn't obtain advice on the proposed reforms in those circumstances. Community pleas for a sensible deferment or extension to various Ministers have been ignored.
- J This reform package poses a threat to the property of this State, the economic prosperity of its communities and small business, infrastructure and further investment in NSW. They should be withdrawn immediately and await a national response co-ordinated by Commonwealth Environment Minister Hunt.

1 Threat of Existing Erosion and Sea Level Rise – Totally Inadequate Response

- 1.1 The threat posed to Australia's coastal zone, including its built communities and coastal environments, by climate change and sea level rise has been well recorded and documented.
- 1.2 No one doubts that if there is rising sea levels this will bring significant change to Australia's coastal zone in coming decades. An increased level of extreme or more intense weather events associated with climate change will also have implications for the built and natural environment.
- 1.3 Neither does anyone doubt that much of Australia's existing infrastructure and population is concentrated in the coastal zones and the risk of climate change poses a number of risk to those existing communities and our built assets and infrastructure. Damage to our built communities and infrastructure would have consequences for the economic prosperity of those communities and for the delivery of community and essential services, regional economies and the national economy.
- 1.4 The need for a considered response to these issues has been recognised by many including the Productivity Commission Enquiry Report on "Barriers to Effective Climate Change Adaption" issued in September 2012. More recently Minister Hunt at the Climate Change Conference in Paris in November, 2015 made certain announcements about his intention to be involved in these issues as a matter for national consideration, beginning with a detailed mapping exercise around the whole of the Australian coastline.
- 1.5 In addition, there are many legacy issues up and down the coast which arise from past planning decisions about coastal protection and the siting of communities. These issues represent particular problems in particular communities and the appropriate steps now to be taken need to be considered against the back drop of what decisions were made in the past and all the existing circumstances.
- 1.6 In the face of these various threats to the built communities of NSW, the NSW Proposed Coastal Management Reforms are a regressive reform package and the opposite of what is required.
- 1.7 The NSW Proposed Coastal Reforms are a leap backwards and fail to do anything at all to deliver a modern, simple, resilient coastal framework facilitating the use of a modern coastal engineering techniques.
- 1.8 **In particular:**
- (a) The proposed reforms do not facilitate the use of modern coastal engineering techniques;

- (b) Hand decision making about these important issues to the local councils and the unelected Coastal Council- with the NSW Government stepping back and not assuming any decision making role in relation to this critical area;
 - (c) abolish rather than strengthen emergency protection measures;
 - (d) place owners of commercial and residential property at risk of the total destruction of their properties on the decision of local councils alone or the unelected Coastal Council.
- 1.9 In summary, this is an abrogation of responsibility by this State Government in relation to the whole of the coastal zone of NSW where a large percentage of the population of the State is located.
- 1.10 We elaborate on each of these issues elsewhere in this paper. However, if it is the position of the State Government that it does not want to assume decision making role in relation to the coastal zone then it is our submission that rather than handing this down to the lowest level of Government, it should abandon these reforms and tell Commonwealth Minister Hunt that it will await his work and fall into line with national policy.
- 1.11 In 2012 the current Minister Stokes told the Parliament:
- "The problem is not insurmountable and it should not be the cause of alarmist concern. The problem with the response of Labor to this issue is that it has, unwittingly or not, incubated uncertainty and fear with rhetorical, unreferenced and alarmist claims that, reflected in planning regulations, have undermined community and market confidence, sterilised land resources, and depreciated land values."
- 1.12 The proposed reforms appear to be taking the same course as described above by creating a much greater web of planning regulations which will have the effects described above.
- 1.13 Minister Stokes also said in 2010:
- "And then there is the issue of leadership. The New South Wales Government should assume the lead in planning for coastal recession and the reality of rising sea levels. That means more than policy statements and press releases: it means in the first place, taking responsibility for integrated coastal management along the New South Wales coast. New South Wales has a growing population and, despite the best efforts of the Labor Government, a growing economy. ... Our most valuable land assets are those that are most endangered. This is a reality that **requires strong leadership to counter.**"
- 1.14 The draft reforms do not satisfy the test of strong leadership. They abrogate all decisions to the local councils rather than the State Government and for this reason alone the proposed reform should be rejected.

2 Coastal Planning should not be left to Councils

- 2.1 At the UN climate conference in December 2015 Minister Hunt announced that he proposed to involve himself and his Department in respect of the issue of the threat of sea level rise in respect of the entire Australian coastline.
- 2.2 Mr Hunt announced that he had ordered the mapping of the entire Australian coastline to prepare for projected flooding from rising seas that could lead to national standards. This data is due to be completed and made public in 2017.
- 2.3 Minister Hunt is hopeful that it will be possible to adopt national standards with the co-operation of all the States.

- 2.4 In launching this strategy in Paris at the United Nations climate conference Minister Hunt sought to send a signal to countries all around the world facing similar issues that Australia was placing strong emphasis on the significance of this issue and seeking a national approach.
- 2.5 It is submitted that, in these circumstances, the New South Wales Government should not go ahead with its proposed reforms.
- 2.6 Rather, the State Government should await the data that Minister Hunt has commissioned and then seek to be part of a process whereby the States adopt national standards.
- 2.7 There is no need for the State Government to pre-empt that position now. It should await the process which has been initiated by Minister Hunt.
- 2.8 Furthermore, if the New South Wales government is determined to make reforms these reforms should be on the basis that the decision maker for the New South Wales coastline is not various local councils but the State Government. This State Government should not hand responsibility to the lowest tier of government in New South Wales.
- 2.9 There are number of particular reasons why this is undesirable:
- (a) handing decision making responsibility to local councils ensure that there will be a variety of responses up and down the coastline according in part to the political allegiances of the majority of each council.
 - (b) having a variety of approaches up and down the coastline is obviously undesirable on this important issue.
 - (c) there have already been instances of this in the past. For example, in the major storm of 2009 Byron Shire Council sought an injunction to stop its residents from protecting themselves during a storm. At the same time, Ballina Shire Council in Ballina had diggers on the beaches placing temporary works to protect its community. There should not be any room in legislative reform that would permit such contrary responses in neighbouring councils up and down the coastline.
- 2.10 It is also important to understand how it comes to be that under the current provisions of the Coastal Protection Act decisions rest with the councils and the role of the Minister is just to certify the plan.
- 2.11 This was a change to the Coastal Protection Act which was introduced by the Labor Government in December 2010 – in one of its last legislative acts before it was defeated in the March 2011 elections.
- 2.12 At the time, this action by Minister Sartor and the Labour Government was perceived as a cynical attempt to take power away from the incoming Minister in circumstances where Labor was, correctly, proceeding on the basis that it would not be returned in March 2011. Thus, the change in the section to remove power of the Minister was a “power strip” to remove power from the incoming new government.
- 2.13 These reforms were opposed by the then Coalition opposition. They were labelled as change amounting to “coastal destruction”.
- 2.14 These reforms should avoid the Sartor/Labor amendments previously opposed by the Coalition. The previous position where the State Minister is in charge should be restored.
- 2.15 The State Government should not shy away from its important responsibilities. These issues concern the economic prosperity and well-being of NSW and the NSW Government should be in charge and not a passenger.

3 No use of modern coastal engineering practices

- 3.1 These reforms turn their back on developments in the modern science of coastal engineering. Climate change and sea level rise are not natural phenomenon – but a man-made problem. The challenges are not challenges occurring naturally. This raises wider issues as to how we should respond as a nation.
- 3.2 In this so-called modern reform package there is, by statutory compulsion, an obligation to first adopt as coastal management strategies **"in the first instance and wherever possible"** – natural defences such as sand dunes, vegetation and wetlands. Only if these prove insufficient can other action be taken.
- 3.3 This provision commits every coastal erosion problem existing or in the future in this State to first be approached by using sand dunes, vegetation and wetlands.
- 3.4 This refusal to engage with modern coastal engineering practices is objectionable.
- 3.5 No explanation is given in the Act as to what would happen to infrastructure at risk in an emergency or currently and which is lost by following this statutory insistence on first restoring or enhancing natural defences.
- 3.6 To have a one-step mandatory solution for every single problem on the coastline at the moment based on natural defences shows a blinkered approach amongst those preparing these reforms. A blanket insistence that every single coastal erosion issue in NSW no matter how severe, whatever its cause or wherever it be first be approached in this way shows a disregard to the safety and welfare of the NSW coastal communities including Sydney Harbour in favour of experimenting first just with natural dunes and vegetation. This is an irresponsible approach to coastal management.
- 3.7 It should also be remembered that the need for protection arises up and down the coastline in a variety of contexts:
 - (a) In some places what may be at risk is important arterial roads or other vital infrastructure such as water, electricity or gas pipelines. A live example of that situation is in Sydney at Narrabeen Beach in Sydney where there is a front line of houses which have long been identified at risk of erosion during stormy periods. Immediately behind that front line of houses is a 6 lane arterial road. Would anyone really suggest that in such an important key hotspot with vital traffic infrastructure that every resident and owner of property in that area must first be committed to grassing over the dune?
 - (b) Another instance where the practicality and desirability of such a rule should be considered in relation to legacy issues. It may be that at a particular site there has been ongoing erosion and the causes of that may have been identified as arising from other significant and necessary protective structures. In that instance, it would seem more sensible to allow a modern engineering approach to be installed without first insisting on natural dunes and vegetation.
 - (c) More generally, the particular location may make the suggestion of dunes very impractical and unsuitable.
- 3.8 In addition, the test prescribed for permanent protection is too rigid (see Section 7). In order to build resilience in our coastal communities, a test should be developed which allows solutions to be imposed for the overall benefit of the community and its environment using modern engineering techniques. There are numerous examples in other parts of Australia and around the world. NSW should not turn its back on these techniques.
- 3.9 In short, there should not be a blanket legislative assistance on only one particular form of protection as mandated to be tried in every instance.

- 3.10 Rather than this very narrow, restrictive approach, the reforms should be directed to enabling a much more flexible response allowing communities to avail themselves of the latest in coastal engineering techniques to build resilience into coastal communities saving the existing environment, infrastructure, commercial property and private property and allowing coastal communities to continue.
- 3.11 There are many other examples in other states, particularly Queensland, where such techniques have been deployed to protect the existing building community. If New South Wales wants to take a restrictive approach which puts properties at risk, it can be certain that this will have an impact on investment in property in New South Wales. Property investors are astute. They can readily detect where bureaucratic regulation impacts on the enjoyment of commercial or residential property and they can choose to go elsewhere. New South Wales already has [a reputation] for creating many bureaucratic difficulties in the planning area, particularly compared to Queensland or Victoria. These reforms, if implemented, would further deter investment in New South Wales. It is very disadvantageous to have New South Wales out of step with modern thinking in coastal engineering.
- 3.12 The Minister once said that the challenge is “how to achieve sustainable coastal planning while an increasing number of Australians want to live on the coast. These reform proposals have failed to rise to this challenge. Sustainable coastal planning requires legislation which provides flexible solutions and be devised for whole communities which provides resilience. These reforms fail to provide solutions for current and possible challenges.

4 Temporary Emergency Protection Abolished

- 4.1 The insistence on the use first of dunes, vegetation and wetlands is coupled with the removal of the existing emergency measures which allowed landowners to take temporary protection steps in an emergency to protect their property. Although this was first introduced in 2010 with the support to the Coalition, and supposedly amended by them in 2012, they are now to be abolished. The proffered reason is that it has not been used. That hardly seems a good reason to abandon an important linchpin in any coastal protection framework – the ability to have emergency temporary protection work. All the more so if the only permanent protection is the natural dune.
- 4.2 The Minister previously declared that there should be temporary protection measures in place until permanent protection had been established satisfactorily. Since the coalition came to power there has virtually been no permanent protection installed anywhere in the State. The need for effective temporary emergency provisions remains.
- 4.3 At the time when the current provisions were first introduced in 2010 and again when they were amended in 2012, residents up and down the coast including this Association made submissions pointing out that the proposed measures contained too many requirements and restrictions and did not provide an effective means of temporary protection. These concerns were not heeded. No doubt they explain why there has been no take-up in relation to the temporary provisions.
- 4.4 The solution is not to abandon temporary emergency protection provisions. The solution is to make them effective. We call on the Government to provide a regime for temporary emergency protection which is effective.

5 Adverse Economic Consequences for the State

- 5.1 Members of OEH have candidly told residents on the Central Coast that in future under these reforms there will be no State funds for the building of any coastal protection works. The only initiative that will be funded is “planned retreat” – that is the rolling back of coastal communities and the destruction of existing coastal communities and infrastructure under the sobriquet of “planned retreat”.

- 5.2 Nowhere in the enormous amount of explanatory material that has been issued by the Government is there any explanation at all as to how the costs of planned retreat could be borne by this State and its coastal communities.
- 5.3 For example, in cases where roads and other vital infrastructure and trunk links are lost – who is to pay for their replacement? There is nothing in the papers issued by this Government to indicate any answers to any of these problems. There are no plans for building increased resilience and flexibility for our existing coastal communities and no plans as to how fund the redeployment of communities and infrastructure lost as a result of this legislation.
- 5.4 We submit that any reforms should allow solutions to be looked at for entire communities in a balanced, flexible way.
- 5.5 The Government's only answer is to let's have a first crack at relying on sand dunes, vegetation and wetlands – and we can then move to "planned retreat" if the vegetated sand dunes fail in a severe storm and erosion occurs..

6 The bias against landowners

- 6.1 A bias against landowners living on the coast can be seen running through all the documents issued as a public consultation draft.
- 6.2 A good example is the cost benefit analysis paper which purports to provide guidelines to Councils as to how to evaluate the cost benefit of coastal management options.
- 6.3 The guidance provided in these reforms is that Councils should ignore the value of properties of owners who do not live permanently in the particular area. "Absentee owners (investor or otherwise)" as the consultation paper likes to call them are not to be taken into account in considering the costs or benefits of a particular option. So if there are 20 houses along a coastline coastal escarpment and 15 of them belong to owners who, for example live in Brisbane or Sydney during the week and come to their properties on the weekend, then those houses are completely ignored for the purpose of any cost benefit analysis. To quote from the consultation papers:

"Any benefits accruing to them are not included in the [cost-benefit analysis]".

- 6.4 Of course, it assists greatly in weighing the analysis against property owners if they are ignored for the purpose of determining the appropriate coastal management options.
- 6.5 There can be no justification for failing to take account the value of all properties lost. Someone has paid for those properties and the loss of the property represents a real loss – whether the owner lives in the house full-time or not.
- 6.6 Thus, one can see that the plan underlying the reforms seems to be to greatly restrict the type of coastal management options that can be deployed, to ensure that in any analysis of the correct management option little regard as possible is given to landowners and, if coastal management proves unsuccessful and there is an erosion event, then title should be grabbed from these property owners.
- 6.7 If any coastal management options can make their way through the plethora of requirements in this legislation the burden will flow on landowners under this legislation to be responsible for the restoration of the beach and all land adjacent to the beach of any increased impact caused by the actions taken to reduce exposure to coastal hazards.
- 6.8 Placing this sort of burden on individuals on a lot by lot analysis is not the approach that is needed for the scenarios which the coastal communities face in the 21st Century.
- 6.9 It has long been recognised that the first line of properties in coastal communities are protecting all of the community behind them including roads, trunk lines and infrastructure. These proposed reforms lack any vision to establish an appropriate response for town and

regional communities to manage risks to their communities— not just the front row of coastal dwellers.

- 6.10 These reforms are a narrow regressive and burdensome reforms which lack any vision of how to increase the resilience of our coastal communities viewed as a whole. Such ideas are totally absent from this reform which place more burdensome restrictions on coastal communities and a great restriction on the ability of communities to protect themselves from the threats they face. The result appears to be an attempt to preside over a realignment of the NSW Coast at the price of the destruction of significant parts of the current built communities along the NSW coastline, its infrastructure and its economic prosperity. Sydney is also affected by the reforms.
- 6.11 There are dramatically increased fines for those who don't comply and new provisions for "auditing" compliance up and down the coast. The Minister previously criticised the level of fines but now proposes to increase them radically. Fines have increased from \$250,000 to \$5 million.

7 Other reforms to property law

- 7.1 The Government has also promised more legislation to ensure that if its inadequate coastal reforms lead to recession into private property then title can be taken away from those property owners.
- 7.2 "Planned Retreat" has been threatened in our community for decades in circumstances where:
- (a) it is widely accepted that the structures built to protect the town have caused the erosion issues affecting our community;
 - (b) "planned retreat" would be an environmental disaster for the freshwater wetlands area behind the dune at Belongil Beach;
 - (c) a very large amount of infrastructure would be lost if the dune at Belongil Beach were allowed to fail at a great cost to the community which has no means of replacing them.
- 7.3 Notwithstanding these concerns some councillors have continued to pursue "planned retreat" as a political objective to this day.
- 7.4 We submit that this example illustrates why councils cannot be given powers to prevent property owners protecting their properties and to decide the properties should be lost to the sea or demolished.

8. Draft SEPP

- 8.1 The draft SEPP might be subject to legal challenge in many respects, namely:-
- It over-reaches the authority delegated by Parliament with respect to the drafting of the draft SEPP
 - It is inconsistent with the Act in a number of respect and therefore invalid
 - Many aspects would leave even a well advised applicant wondering what be done to comply with the draft SEPP and therefore void for uncertainty; other aspects are legally unreasonable.
 - The constraints are such that development is prohibited rather than regulated