20 January 2017

ATT Premier, Rob Stokes et al

Dear Sirs,

RE: State Environmental Planning Policy Coastal Management 2016 (CM SEPP 2016)

Firstly, I would like to disclose that I am the owner of property in Marks Point Rd, Marks Point. Further to this, I sit on the Lake Macquarie Coastal Residents committee (LMCR) whom represent thousands of ratepayers within the Lake Macquarie City Council LGA. However, the following comments are not representative of LMCR in anyway, they have made a separate submission. I should also make note that I voted for a Liberal government and am a supporter of the NSW Liberal Party. I should also mention that I understand the benefits of streamlining legislation and that this SEPP will replace four pieces of onerous legislation.

I fear for the NSW Liberal government and the way this SEPP is being pushed through an exhibition period in the most undemocratic of ways. After 3 years of formulating this planning policy how can the government expect stakeholders and rate payers to offer opinion and submissions within originally 30 days with a "token extension" until 20 January 2017. Information sessions totalled 7 with nothing in Newcastle (2nd largest city in NSW) or Lake Macquarie LGA. There was a geographical gap from Erina to Port Macquarie, can you please enlighten me as to why? And 7 information sessions are just not enough, why? This has been poorly advertised with limited consultation yet detrimentally affects so many home owners.

I travelled 1 hr to Erina and heard government employees deliver information that was incomplete and inaccurate, of course this is not their fault rather the way the process has been managed. The detail of mapping for the four Coastal Management areas was nothing short of embarrassing. The preliminary vulnerability maps understate the problem and the draft SEPP puts hurdles in the way of protective works (satisfy the consent authority or coastal committee). Surely you cannot ask ratepayers to make decisions on such legislation with incomplete, understated and inaccurate information? Particularly when the retired Premier promised that complete mapping would be available?

How can a government try to adopt, gazette and legislate the most asset restrictive legislation in the history of politics without any economic or social impact assessments? This planning policy effects your constituent's biggest assets, their homes and will drastically reduce the valuation of these assets in the areas that are allegedly affected. Historically wars have started for less than this and yet you have not undertaken the necessary analysis of both social and economic outcomes? The government has absolutely no idea of the ramifications of its actions? Very poor planning and make no mistake, this will backfire enormously, probably akin to the greyhound racing saga and the upcoming ramifications of the lock out laws in Sydney. Understand you are dealing with hundreds of thousands of ratepayers and probably the biggest asset they will own in their lives. VERY sensitive indeed. The CM SEPP 2016's main objective was to deliver a balance between social, economic and environmental. How is this achieved when the only thing that has been analysed is environment

albeit poorly. You have failed to consider the social value of “this is where we live” and the economic value of “this is where we work” amongst a myriad of other social economic issues, the issues of environment and public amenity dominate at the expense of social and economic values. This is a major oversight.

My issue is simple, voters cannot be aware of the issues attached to this planning policy because the information sessions and educational processes were notably absent and the information at the meetings was inaccurate.

The entire legislative framework wreaks of retreat not defend, this causes great concern to local communities as Rob Stokes action at Batemans Bay clearly signals “no compensation” when you retreat. My crystal ball shows a legal landmine and a costly road ahead for the Liberal government if a retreat methodology is applied. The only option is to defend and any legislation that is not reflective of this will incur huge backlash. We fight for our houses in bushfire season and our community/Australian spirit is unrivalled, yet the government of the day expects homeowners to sit quietly whilst climate change occurs with no defence strategies, quite ridiculous when put in context.

Some highlighted concerns:

Mapping

Mapping is generally incomplete and missing hazards which is misleading current owners from the truth. Some lots are identified as in a proximity area to coastal wetlands (blue hash) and coastal wetland migration (dark blue hash) when they are not even adjacent to any body of water. There is no time definition of “future hazards”. Grossly understates hazards in general. There is no requirement to consider adaptation before sterilising an area with time consent development or planned retreat. No accuracy in vulnerable area mapping. Complete mapping layers are missing.

117 Direction

This is an aggressive intrusion into rights of property owners whom are mostly unaware that development may not be increased on their titled land. Private coastal use is the last pass on the list of areas to take into consideration, or reasons to reject a DA, or only approve time limited consent.

The Objectives of the SEPP CM 2016

"The objects of this SEPP are to manage the coastal environment of New South Wales consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State."

The Coastal Zone is defined by four Coastal Management Areas:

CM Area 1: Coastal Wetlands

CM Area 2: Coastal Vulnerability (mostly beaches but overlays all areas)

CM Area 3: Coastal Environmental (mostly lake)

CM Area 4: Coastal Use (public amenity, NOT residential or commercial use)

The "concerns" of each area are in a hierarchy with CMA4 being addressed last. This order does not address the issue that if the wetlands or beach or lake want to "undulate" then everything else needs to get out of the way.

The CM SEPP Act's main objective was to deliver a balance between social, economic and environmental objectives in a sustainable manner, but it and the SEPP then propose a hierarchy of controls which focus on the environmental values and only consider public safety, access to and amenity of these areas as the social values. They fail to consider the social value of "this is where we live" and the economic value of "this is where we work." The environment and public amenity objectives dominate at the expense of these latter values by development controls.

The preliminary vulnerability maps understate the problem and draft SEPP puts hurdles in the way of protective works (you need to "satisfy" the consent authority or coastal committee). When the onus in the SEPP CM is so strongly on the opinion of the Consent authority, it is possible that nothing would induce the Consent Authority to be satisfied *no matter how reasonable* the arguments were to a more objective person, if they were constrained by fear of acting. As it stands the act could be used to enforce a policy of retreat from vulnerable coastal areas, at great cost to infrastructure in the next line and possibly the loss of a whole town which would have follow on economic consequences statewide and put greater pressure on housing and affordability. It also would lead to having to open sooner in new more fragile interior environments or losing farmland faster.

The emphasis is very clearly on retreat. This causes great concern to local communities as Rob Stoke's action at Batemans Bay clearly signals "no compensation when you retreat." This action provides an example of Councils interpreting and administering this legislation and advice from State Government. We recall, similarly, the Sea Level Rise issues until the State Government released four years later their 4-page planning circular PS-16-003, July 2016.

Some detailed comment on specific clauses

Part 1 Preliminary.
3 Aim of Policy
(a) managing development in the coastal zone
and protecting the environmental assets of the coast,

There is some difference if it was changed to:
"guiding development in the coastal zone"

The SEPP cannot *manage* development - the SEPP can neither decide what and how it is done nor control it's outworking. The policy can only guide and give policy direction to decision makers.

"and protecting ***and enhancing*** the environmental assets of the coast,"
The word addition of 'enhancing' acknowledges that we can destroy a coastal feature by not doing things and by failure to act as well as by doing things, and that we can do things also to improve a coastal feature.

5 Land to which Policy applies
This Policy applies to land within the coastal zone.

This clause 5 is redundant. What does 'coastal Zone' mean? Clause 5 should be combined with

Clause 6 which lists the mapping areas.

(1) This clause identifies land for the purposes of the Coastal Management Act 2016 and this Policy. This says the same thing as point 5 but may communicate something, however it is a sub point in 6.

Part 2

Clause 11 fails to identify where vegetation can be used to enhance and protect.
11 Development of coastal wetlands or littoral rainforest land

(1) The following may be carried out on land wholly or partly identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
(a) the damage or removal of native vegetation within the meaning of the Native Vegetation Act 2003
(b) the damage or removal of marine vegetation

There is also an issue with the wording chosen. To understand the problem with this above clause we rewrite it: "Only with development consent: can you damage native / marine vegetation"! Imagine writing a DA "I will damage the vegetation"! We remove it or we may crop and prune it - only vandals *damage* things! We suggest it may be written as,

11 Development of coastal wetlands or littoral rainforest land
(1) The following may be carried out on land wholly or partly identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

(a) the ***lopping, pruning*** or removal of native vegetation within the meaning of the Native Vegetation Act 2003
(b) the ***reduction*** or removal of marine vegetation."

This clause fails to address the issue of hazard reduction. Vegetation should be able to be removed if it is a hazard. Marine vegetation may prove a hazard in a local swimming area if it conceals sharp objects and people are cut or injured by it. It is possible that a tree, or a cluster of trees, may become a hazard in the event of a fire or in the event of a storm, or in the event trees die for one reason or another and might fall (many Australian native trees have short lives, less than 100 years, as opposed to the long lived North American trees which can be a thousand years old). I might suggest an additional clause...

"(e) ***excepting the removal of native or marine vegetation where a hazard has been identified by emergency services or local government."***

I'm concerned that all but environmental protection works are to be Designated Development. It appears that the presence of a native tree or bush (vegetation even includes small flowers), may require a rigorous environmental assessment process in land defined as coast wetlands or littoral rainforest land.

Clause12 lets an environmental planning instrument take precedence. However, if there is not a

local Plan for land even in R1 and R2 residential, then owners must produce a report to "satisfy" the Consent Authority. We can see that being an added cost. As it is written, the SEPP would require site water flow control and prevention of rainwater/ run-off leaving a site. This may be in some cases difficult to achieve on small sites from a single dwelling and may make re-development of a site difficult. In the event of a flood of course rainwater is in such quantities that it flows over.

Division 2 Coastal Vulnerably
13
(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the proposed development:

The whole of Part 2 of the SEPP is aggressive by nature in that it speaks negatively and quotes on numerous occasions throughout the divisions (1-4) that " Development consent must not be granted to development on land to which this clause applies". This is quite reactive and sets a tone throughout Coastal wetlands and littoral rainforest areas, Coastal vulnerability areas, Coastal environment area, Coastal use area and General areas. It then mentions "unless the consent authority is satisfied with…" and it goes on to list some ill-defined, possibly contentious and broad meaning statements.

The SEPP would benefit by being proactive and more positive in sentiment.

It seems in the present form to be anti-development and therefore not dealing well with the SEPP CM objective to aid the "economic well-being of the people of the State". It has wide ranking implications for land particularly in the Coastal vulnerability areas which are the "2nd Fronts" and are where most ratepayers reside. Many local councils have already tried to all but stop development in these areas and this has a major impact for medium density infill development.

I think that it would be more neutral if instead it was written as:
"(2) Development consent **may *be*** granted to development on land to which this clause applies **if** the consent authority is satisfied that the proposed development:"

Point (3) forces the Council to consider *first* of all options, placing a time limit on development. This encourages timed consent and forced demolitions. The legal opinion we have read explains that this will lead to the possibly of enforced retreat.
http://www.lindsaytaylorlawyers.com.au/in_focus/index.php/2016/11/draft-coastal-management-sepp-released/#.WHl_QrmLW7M

In practice Point (3) could be draconian. How can a developer invest in real property to have it demolished? Why would a purchaser acquire property that has a limited shelf life before it's demolished. There is no commercial rationale to support this. One could imagine that it could render land worthless, as who wishes for a short-term development? The clause may result in people proposing cheap mobile homes, or portable structures, all which would look like they are portable, and not be in keeping with the aesthetic aims of the area. Such development may also not allow for more the kind of profits that would allow for world class eco - engineering defensive works. The SEPP does not address who is going to bear the costs of removal at the end or enforce it? This also will affect low cost housing and infill development supply which in turn effects the low socioeconomic sector as well as first homebuyers and retiree's.

I strongly object to this clause based on the minefield of issues it may open up.

Division 4
15 (a) (i) Public access it would be great if developers give access through - but that could be a security issue these days.

(iii) will not adversely impact on the visual amenity and scenic qualities of the coast, including coastal headlands,

This clause could be misinterpreted as it's context is not clarified. This could result in disputes over aesthetics as any consensus would be pure opinion - beauty is in the eye of the beholder. Architects who tend to be avant-garde could find that this is used against their work.

Division 5
Clause 16 could give rise to overlong delays due to disputes in the development approval process caused by the Consent Authority, if they call the proposed work a "Hazard". The SEPP CM does not explain who has the authority to identify a Hazard, so it could be misused by a Consent Authority based on opinion. It may also further support a restrictive direction on zoning that prevents new development e.g. Wharf Rd Eurobodalla was rezoned E2 - highest zoning non-development classification.

Part 3
21
(1) allows private works to shore up land but you need consent - the issue we suspect will be many legal cases due to unreasonably withheld consents!

We suspect this clause will be used to hinder works required to ensure people's safety.

(4) In this clause, emergency coastal protection works means works comprising the placement of sand, or the placing of sandbags for a period of not more than 90 days, on a beach, or a sand dune adjacent to a beach, to mitigate the effects of wave erosion on land

The time limit if 90 days is only reasonable if that is that is the maximum time to gain consent for permanent works in 21 part (1). It should be double that at least 6 months or better - until a more permanent solution may be found, or consent is granted for a safe solution.

As it stands this Draft favours those who would surrender all human habitation, to the great loss for Australia's natural future growth in already developed areas. It is one thing to identify hazards but they need to be dealt with in a risk management approach for the built environment. This is not clear in this Draft SEPP.

Therefore, I cannot support CMSEPP 2016 in its current format. The SEPP needs to be reconsidered and implemented with a more measured and transparent approach.

Paul Seisums