

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

January 2017

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils and associate members including special-purpose county councils and the NSW Aboriginal Land Council. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the State Environment Planning Policy (Coastal Management) 2016 (SEPP). LGNSW is supportive of the draft SEPP including stricter protections for coastal wetlands and littoral rainforests and a changed approval pathway for coastal protection works.

Please note that in order to meet the consultation deadline, this submission is provided in draft form in anticipation of the LGNSW Board approval in February 2017. LGNSW will advise the NSW Department of Planning and Environment (DPE) of any amendments to the submission at that time.

Overall Comments

Burden of proof

LGNSW supports the higher threshold of “the consent authority must be satisfied” used throughout the draft SEPP, rather than the usual phrasing of “the consent authority must consider”. This is considered a positive improvement to decision-making processes, allowing councils to request additional information to support development applications. However, it would be useful to have a practice note or guidance on how to prove ‘satisfaction’. For example, to what extent is a consent authority to be satisfied? Is it the civil standard of “balance of probabilities” or the criminal standard of “beyond reasonable doubt”, or somewhere in between?

Coastal Wetlands and Littoral Rainforest Areas

Individual councils have noted that the mapping of coastal wetlands and littoral rainforests provided in the maps accompanying the SEPP is somewhat inaccurate within their local government area. LGNSW appreciates that changes to the maps can be made as part of the first year Policy Review (clause 10(a)). However to ensure councils undertaking the necessary studies to identify these areas provide data at suitable resolution and accuracy for inclusion in the SEPP maps, it would be useful if the criteria used to identify littoral rainforests and coastal wetlands could be made available (including how the expansion and contraction of wetlands is taken into account). Feedback to those councils who have provided maps identifying additional areas of coastal wetlands and littoral rainforest that have not been included in the draft SEPP would further assist councils to understand the standard of mapping DPE requires.

Coastal Vulnerability Areas

LGNSW notes that the coastal vulnerability maps are not available for comment at this stage as they are still being compiled. LGNSW supports the inclusion of all available and trusted coastal hazard information, including information from previous local hazard studies (as inferred by Community Factsheet on the SEPP).

Councils are currently making planning decisions that affect private property and public assets in the coastal zone, considering both current and future hazards. Basing decisions on the best available information is one way local government reduces its legal risk. In the absence of a local hazard study, information held by the NSW Government on coastal hazards should be used as an interim measure. LGNSW strongly advocates for the coastal vulnerability area

map to be released in stages (as it becomes available) and be updated periodically rather than having no hazard areas identified as is currently the case.

It is also within the public interest for the best available information pertaining to coastal vulnerability to be made available. When the community is aware of the risks, they are better able to prepare and mitigate them, and adaptation pathways can be developed in a collaborative way.

Comments relating to specific clauses

Clause	LGNSW Comment
11 (2)	<p>This clause will declare development of coastal wetlands and littoral rainforest as designated development (a change from the current situation where it is considered integrated development).</p> <p>LGNSW welcomes the higher protections this change affords, as it provides for a longer public exhibition time and requires an Environmental Impact Statement for the proposed development.</p>
12 (2)(a)	<p>Clause 12 ensures that development in the proximity area of coastal wetlands and littoral rainforests (100m buffer) will not have significant impact on those ecological communities, but it does not apply to those lands zoned residential.</p> <p>There appears to be inconsistency between the conditions for residential development in the proximity area of coastal wetlands/ littoral rainforest and residential development within the coastal environment area. Under the <i>Coastal Management Act 2016</i>, the management objectives for coastal wetlands and littoral rainforest areas are set at a higher level than the management objectives for coastal environment areas. Yet the draft SEPP sets stricter controls for residential development in coastal environment areas than it does for the proximity area of coastal wetlands and littoral rainforest.</p> <p>LGNSW agrees that residential development within the proximity area should not be declared designated development. However, nearby residential development can have impacts detrimental to coastal wetlands and littoral rainforest and it would be appropriate that conditions similar to the coastal environment area apply. For example, matters for consideration include effluent and stormwater management, site coverage, bushfire protection zones etc.</p>
14 1	<p>Clause 14 1(b) states that development consent must not be granted if the proposed development “<i>is not likely to significantly impact on geological and geomorphological coastal processes</i>”. The term “significant impact” is open to interpretation. LGNSW recommends that it be replaced with “is not likely to adversely impact” consistent with the phrasing of 14 1(a) and (c).</p> <p>Clause 14 1(d) refers to undeveloped headlands and rock platforms. These features have not been defined. LGNSW recommends the inclusion of these undeveloped headlands and rock platforms in the coastal environment area map. Some councils may already have mapping they can provide.</p>

16 (1) and (2)	<p>Clause 16 (1) provides that development consent must not be granted to development in the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.</p> <p>Clause 16 (2) makes the above consideration null after 31 December 2021. LGNSW assumes that this sunset clause has been included as there is an assumption that all of the coastal zone will be covered by a local hazard study that assesses all seven coastal hazards as identified by the Coastal Management Act. This may be premature given the large volume of work in evaluating existing local hazard studies, updating or undertaking new studies that cover the seven coastal hazards and competing local government priorities especially in amalgamated councils. Nonetheless, even if there are local hazard studies in place, they do not in themselves prevent development from increasing coastal hazards. Therefore clause 16(1) should not cease to operate.</p> <p>Clause 16 (1) should also apply to development on the significant proportion of the NSW coast not managed by local government. This is of note as the Minister cannot require a state agency to prepare a coastal management program (as the Minister can with local government).</p>
21	<p>This clause provides an approval pathway for coastal protection works. LGNSW is generally supportive of the pathway, which allows works on private property with development consent from either council (if a coastal management program exists) or an expert joint regional planning panel. Similarly, LGNSW supports the pathway for public authorities to undertake coastal protection works identified in a coastal management program, beach nourishment and placing of sand bags without development consent.</p>
21 (3)	<p>This clause provides that if coastal protection works are identified in an Emergency Action Sub Plan, they are exempt from a Part 5 Assessment. However, these works should not proceed without considering the environmental impacts of the works. LGNSW recommends that an environmental assessment step be incorporated into the Emergency Action Sub Plan process through the Coastal Management Manual.</p>

Conclusion

LGNSW recognises that the coastal reform process provides a significant step forward in the effective management of the NSW coastal zone. While the issues raised in this submission are few in number, it is critical that they are addressed in the final SEPP to ensure decisions by consent authorities are defensible. Local government in NSW is a willing collaborator to ensure that these reforms provide a framework that delivers beneficial on-ground and lasting outcomes.