

LAKE MACQUARIE COASTAL RESIDENTS INC.

INC1401716

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Draft State Environmental Planning Policy (Coastal Management) 2016

From the beginning of human settlement on this continent the coastal region, along the banks of rivers and waterways has been a place of human habitation and development. The past saw significant engineering works that shaped our coasts, rivers and harbours. It is then against history to give up the coast to erode. With staggering levels of growth in the NSW population and pressure to develop in the moderate climate of the coasts there is greater chance to put *private* resources into stabilising and enhancing coastal areas.

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 actually 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

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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 up 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 its 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 subpoint in 6.

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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 conceal 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). We 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."

We as residents are 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.

Clause 12 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 will have to produce a report to "satisfy" the Consent Authority. We can see that being an added

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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

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(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 we feel 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 the majority of 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.

We feel 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/#.WHI_QrmLW7M

In practice Point (3) could be draconian. How can a developer put money into something to have it demolished? 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

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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?

We 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

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(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.

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Conclusion

We welcome any engagement, as a local community group we have a wide range of experience of living and developing the coastal zone and favour a balance. 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.

About the Submission Authors

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In December 2014 the Marks Point Residents Action Group formed an association, Lake Macquarie Coastal Residents Incorporated (LMCR), the office bearers and committee drawn principally from the LMCC sponsored Local Adaption Planning workshop members. The committee has met regularly since then, using their diverse expertise, to address issues affecting local coastal residents and communicate with members and with the extensive email database of local coastal residents in LMCC from the circa 2013 Residents Action Group.

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