

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

20 January 2017

SUBMISSION ON DRAFT COASTAL MANAGEMENT SEPP AND DRAFT MAPS OF THE COASTAL MANAGEMENT AREAS

Dear Sir/Madam,

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing over 150 member societies across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

The National Parks Association of NSW (**NPA**) is a community-based organisation with over 20,000 supporters from rural, remote and urban areas across the state. The NPA promotes nature conservation and evidence-based natural resource management. We have a particular interest in the protection of the State's biodiversity and supporting ecological processes, both within and outside of the formal conservation reserve system.

We welcome the opportunity to comment on the Draft State Environmental Planning Policy (Coastal Management) 2016 and Draft Maps of the Coastal Management Areas. While our organisations were engaged early in the Coastal Reforms – Stage 2 process, and had hoped for improvements to coastal protection as a result of our input, we were disappointed that most of the recommendations we made on the Draft Coastal Management Bill were not incorporated into the final *Coastal Management Act* 2016.

Most of our concerns remain, including:

- the division of the Coastal Zone into four coastal management areas,
- the hierarchy of management objectives for coastal managements areas that arbitrarily places the coastal vulnerability area above the coastal environment area,
- weaker management objectives and development controls for the coastal area, particularly the coastal use area, and
- the failure of the new laws to explicitly recognise sea level rise.

The stunning coastline and beaches of NSW are integral to our State's cultural identity. However substantial evidence is available to show that many of our spectacular, yet sensitive beaches, headlands, rocky shores, coastal wetlands, estuaries, bays and lakes are significantly degraded, and at risk of becoming further degraded if not effectively protected and managed into the future. Ecosystems in the coastal management zone are also continuing to decline in biodiversity.

There have been substantial efforts to better understand and manage the coastal environment in the last two decades, including the 2002 Coastal lakes: independent inquiry into coastal lakes by the Healthy Rivers Commission, the introduction of State Environmental Planning Policy 71 - Coastal Protection, and coastal hazard management plans developed by many coastal councils. We do not consider that the new coastal management regime has sufficiently built on these earlier initiatives in order to face the ongoing challenges facing the coastal area of NSW.

We recognise that the framework established by the *Coastal Management Act 2016* determines the development of the Draft SEPP and Draft Maps, however there is scope to address a number of our ongoing concerns by strengthening the SEPP and Maps.

Now that we have seen the Draft SEPP and Draft Maps a number of new issues arise, including the failure of the coastal environment area to adequately cover the complete beach and dune systems consistent with the management objectives for that area, and the failure to have completed robust mapping for coastal vulnerability areas consistent with the *Coastal Management Act 2016*. In our view, significant improvement must be made to the Maps before the Coastal Management Act 2016 can commence.

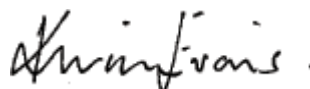
Whilst in principle we support the Government's stated aim to develop new coastal protection laws for strategic planning and management of the coast in accordance with the principles of ecologically sustainable development, we do not consider that the Government has achieved this outcome. The Draft SEPP will not provide proper protection for the entire coastal zone, including some of our State's most threatened environmentally sensitive areas.

Feedback on the Draft SEPP and Draft Maps is outlined in more detail in our **enclosed** submission.

Yours sincerely,



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Chief Executive Officer
Nature Conservation Council of NSW



Kevin Evans
Chief Executive Officer
National Parks Association of NSW

NCC AND NPA SUBMISSION - DRAFT COASTAL MANAGEMENT SEPP AND DRAFT MAPS OF THE COASTAL MANAGEMENT AREAS

We welcome the opportunity to comment on the Draft State Environmental Planning Policy (Coastal Management) 2016 (**Draft SEPP**) and Draft Maps of the Coastal Management Areas (**Draft Maps**). Our submission provides some overarching comments on the Draft SEPP and more detailed feedback on the development controls for each of the four coastal management areas. We also provide feedback on the Draft Maps of the coastal management areas.

DRAFT COASTAL MANAGEMENT SEPP

DEFINITIONS

- The Draft SEPP should define ‘coastal zone’ in clause 4 of the SEPP with reference back to section 5 of the *Coastal Management Act* 2016. A note is not appropriate.
- Each of the four coastal management areas is defined in clause 6 of the Draft SEPP with reference to the relevant map. However as further outlined below, there are no provisions in the Act or the Draft SEPP that clearly specify the methodology underpinning the mapping of these areas, making the definitions uncertain and arbitrary.

GENERAL COMMENTS ON DEVELOPMENT CONTROLS FOR COASTAL MANAGEMENT AREAS

In our earlier submissions to the Stage 2 Coastal Reform Package we raised concerns that separation of the coastal zone into four distinct areas would result in inconsistent, and particularly in the case of coastal use areas, weaker provisions. The contents of the Draft SEPP do not alleviate our concerns. The Draft SEPP establishes new development controls for each of the coastal management areas. The development controls, particularly for the coastal use area, are less stringent than the provisions currently set out in State Environmental Planning Policy No 14—Coastal Wetlands (**SEPP 14**), State Environmental Planning Policy No 26—Littoral Rainforests (**SEPP 26**) and State Environmental Planning Policy No 71—Coastal Protection (**SEPP 71**), or in Clause 5.5 of the Standard Instrument—Principal Local Environmental Plan (**Standard Instrument**).

We make the following general observations:

Lack of overarching development controls

The provisions in SEPP 71 and clause 5.5 of the Standard Instrument generally apply to the entire Coastal Zone providing consistent development controls across the entire area. By separating the Coastal Zone into four distinct Coastal Management Areas, there are no overarching development controls that give effect to the objects of the *Coastal Management Act* 2016 consistently across the Coastal Zone. This approach fails to recognise the interconnection of ecosystem services, ecosystems and habitats between the four coastal management areas.

Changes to development controls

Despite the Government’s reassurances that the consolidation of existing SEPP 14, SEPP 26 and SEPP 71 will not result in weaker protections, the Draft SEPP does significantly weaken environmental protections particularly in the coastal use area and the coastal vulnerability areas.

Existing development controls that have not been directly carried across into the new Coastal Management SEPP include:

- The broad range of considerations in clause 5.5(2) of the Standard Instrument, and the provisions in clause 5.5(3) of the Standard Instrument that relate to **public access** and **water quality**.
- Existing provisions of SEPP 71 that specifically require consideration of **wildlife corridors**, and **threatened species, populations and endangered ecological communities** (c.f. clauses 15, 16 and 18 of SEPP 71).
- Provisions dealing specifically with **subdivision**, and **sewage effluent** and **stormwater disposal** (c.f. clause 8, subsections (g), (h) and (i) of SEPP 71).

We are particularly concerned that these matters are not addressed in the Draft SEPP in the provisions for coastal use area, and with the exception of public access are also not addressed in the Coastal Vulnerability Area .

In respect of the coastal wetlands and littoral rainforest area and coastal environment area we acknowledge that these issues are potentially addressed in less specific provisions which refer to:

- ecological integrity (clause 11(4)) and ecological environment (clause 14(1)(a)) in the Draft SEPP, and
- hydrological integrity ((clause 11(4)), hydrological (surface and groundwater) environment (clause 14(1)(a)) and water quality of the marine estate (clause 14(1)(c)) in the Draft SEPP

however, we are concerned that without specific references to the matters in bold above, decision- makers may fail to address them adequately.

Removal of concurrence provisions

Concurrence provisions which are currently in SEPP 14 and SEPP 26 have been removed. This is unjustified and will remove important oversight and lead to poorer outcomes for the environment. The concurrence of the Secretary of Planning and Environment, or even better the Minister for the Environment, should be required for all development proposals within the coastal wetland and littoral rainforest area as currently required, including proximity areas. Consideration should be given to extending concurrence requirements to the coastal environment area as well, or at least carrying over the requirement to refer the matter to Secretary of Planning and Environment, similar to current provisions for significant coastal development in SEPP 71.

Ongoing concerns with hierarchy for coastal management areas

We still have serious concerns that the coastal vulnerability area is given higher priority than the coastal environment area under the *Coastal Management Act 2016*.

We outline more specific concerns with the development controls for each of the four coastal management areas below.

DEVELOPMENT CONTROLS FOR COASTAL WETLANDS AND LITTORAL RAINFORESTS AREA

Failure to increase protections for coastal wetlands and littoral rainforests

We are concerned that development remains permissible in areas of coastal wetland and littoral rainforest. The review of SEPP 14 and SEPP 26 is an opportunity to strengthen protections for these sensitive areas. Since the SEPPs were first introduced there has been increased pressure on these areas and biodiversity loss from continued urban expansion and climate change. Consideration should be given to providing additional protection by now restricting development in these areas.

Designated development

If development is to continue in these areas then we support clause 11(2) of the Draft SEPP that declares the development as designated development. We would also suggest that development in proximity areas should also be designated development.

Interaction with Biodiversity Conservation Act 2016

The consultation note under clause 11(1)(a) of the Draft SEPP states: “the conservation of terrestrial native vegetation (including the coastal wetlands and littoral rainforest areas) may be dealt with under the proposed *Biodiversity Conservation Act 2016* and associated legislation”. The *Biodiversity Conservation Act 2016* provides inadequate protection for native vegetation and environmentally sensitive areas, including coastal wetlands and littoral rainforests¹. Currently, there is nothing in the *Biodiversity Conservation Act 2016* that specifically protects coastal wetlands and littoral rainforests. However, there is scope for the Regulations and Codes made under that Act to include more detailed provisions that would extend protections to these areas (e.g. coastal wetlands and littoral rainforests should be off limits to code based land clearing, and impacts on coastal wetlands and littoral rainforests should be recognised as “serious and irreversible” for the purpose of the Act). Indeed such protections under the *Biodiversity Conservation Act 2016* should apply to all native vegetation in the Coastal Zone and not just the coastal wetlands and littoral rainforest areas.

Clause 12(2) - exclusion for residential zones

We support the inclusion of proximity areas for both coastal wetlands and littoral rainforests, but do not support clause 12(2) of the SEPP which provides that the requirements set out in clause 12(1) do not apply in land Zoned R1, R2, R3 R4, R5 or RU5.

One of the greatest threats to the coastal environment is urban expansion and urban development, and there is no reason why residential development within proximity areas for coastal wetlands and proximity areas for coastal rainforests should be exempt from the requirement in clause 12(1) of the Draft SEPP to not significantly impact on:

- (a) the biophysical, hydrological, or ecological integrity of the adjacent coastal wetland 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.

¹ See *The Future for Biodiversity in NSW, Environment groups' joint response to the consultation package of reforms to land management and biodiversity conservation in NSW*, June 2016, www.nature.org.au/media/213826/environment-groups-joint-submission_final-270616.pdf

DEVELOPMENT CONTROLS FOR COASTAL VULNERABILITY AREA

Opportunity to strengthen development controls

The proposed development controls for coastal vulnerability areas should be strengthened to ensure that new development is discouraged in areas of high risk from coastal hazards and provision is made for planned retreat along coast as well as including provisions relating to environmental protection (see above).

Definition of coastal hazard

We also repeat our earlier concerns that the definition of 'coastal hazard' does not adequately capture anticipated impacts of climate change, including sea level rise and increased and more intense storm activity.

DEVELOPMENT CONTROL FOR COASTAL ENVIRONMENT AREA

Distinction between Coastal Wetland and Coastal Rainforest Area and the Coastal Environment Area

We are concerned with the inconsistencies of development controls between the Coastal Wetland and Coastal Rainforest Area and the coastal environment area. As outlined in our earlier submissions, separation of coastal wetlands and littoral rainforests (essentially SEPP 14 and SEPP 26 areas) from other environmentally sensitive areas suggests that these ecosystems are more environmentally significant and sensitive than other significant ecosystems occurring in the coastal environment area (as well as those in the coastal vulnerability and coastal use areas). We understand that this may reflect the historical legacy of the various SEPPs, however suggest that this reform process, and in particular the proposal to consolidate existing SEPPs into a single SEPP, provides an opportunity to establish strong and consistent management objectives for all environmentally sensitive coastal areas.

Opportunity to strengthen development controls

We suggest that the development controls for the coastal environment areas could be strengthened, for example by:

- better alignment with the development controls for the Coastal Wetland and Coastal Rainforest Area;
- declaring development in the coastal environment area to be designated development;
- establishing a proximity area for the coastal environment area; and
- Inclusion in the coastal environment area of other environmentally significant ecosystems and habitats.

We also have significant concerns with the way the coastal environment area has been mapped, and this is discussed in more detail below.

DEVELOPMENT CONTROLS FOR COASTAL USE AREA

Failure to include development controls specific to the environment

The coastal use area includes many areas of environmental significance including habitat of threatened species and endangered ecological communities. Despite this, there is nothing in the development controls for the coastal use area that requires specific consideration to be given to impacts of development on the environment. This is a significant backward step from the current application of SEPP 71 and clause 5.5 of the Standard Instrument that require a broad range of considerations to be applied to the entire Coastal Zone. We strongly oppose the narrowing and weakening of environmental considerations for the coastal

use area. This is inconsistent with objects of the draft Bill and the principles of ecologically sustainable development.

With over 80% of the NSW population living within 3 kilometres of the coast and the proportion rising, increased urban development and other uses are placing intolerable demands on sensitive coastal environments. The social and economic wellbeing of coastal communities including industries such as tourism, fishing and oyster farming are also potentially under pressure, being dependent on healthy coastal environments.

As these pressures increase there is no justification for reducing the range of considerations that must be taken into account when considering proposed development in the coastal use area. As outlined in our previous submission while environmental impacts may still need to be considered under the *Environmental Planning and Assessment Act 1979* (EP&A Act) (e.g. s 79C), the exclusion of environment values from the management objectives of 'coastal use' areas is a retrograde step, and is inconsistent with the objectives of the Bill, and the overall stated intent of the reforms.

We strongly urge the Government to include provisions in Part 2, Division 4 of the Draft SEPP that would require consideration to be given to the impacts of development in the coastal use area on the coastal environment. This could be done by adding an additional requirement to clause 15 that the consent authority be satisfied that development in the coastal use area does not significantly impact on the important environmental values of the coast, or alternatively that development must not be granted unless the consent authority is satisfied that the proposed development will not adversely impact on the biophysical, hydrological (including ground and surface water) and ecological environment and will not adversely impact on native vegetation and the fauna and their habitats.

DRAFT COASTAL SEPP MAPS

OVERARCHING COMMENTS

- As outlined above, nowhere in the Act or the SEPP is there a map methodology that clearly specifies how the coastal management areas be mapped – that is, the legislation and SEPP provide little guidance (other than management objectives) as to how each of these areas will be mapped. The Fact Sheets provide a brief explanation of how the maps have been developed, but these are not legal requirements. The Act does allow for regulations to be made for or with respect to the mapping of coastal management areas, but this has not occurred. As outlined below, we consider the process used to develop the maps inadequate. It would be preferable to have an objective evidence-based methodology. Such an approach would address many of the deficiencies that currently exist in the mapping that are discussed below.
- It is not obvious that the transparency of the mapping layers in the online tool can be adjusted using the sliding bar next to the Coastal Viewer Legend. The default position is for the layers to be a solid colour which makes it difficult to accurately see the land underneath and the exact properties captured by each coastal management area. The more transparent layers used in the Fact Sheets are more user friendly, however some users may have trouble adjusting the transparency of the layers in the online tool (as we did initially).
- While we recognise the benefit of using an online tool to create interactive maps, we have received feedback from members using the tool that it is difficult to use, particularly with slow internet speeds. It is also unclear how people who do not have access to reliable internet can access the maps.

- While we have included some case studies in our submission to highlight discrepancies in the mapping, a number of our members and member groups will be preparing their own submissions highlighting discrepancies in respect to their local areas, and we strongly encourage the Department to consider the issues and examples raised by these groups before it finalises the mapping.

MAPPING OF COASTAL WETLAND AND LITTORAL RAINFOREST AREA

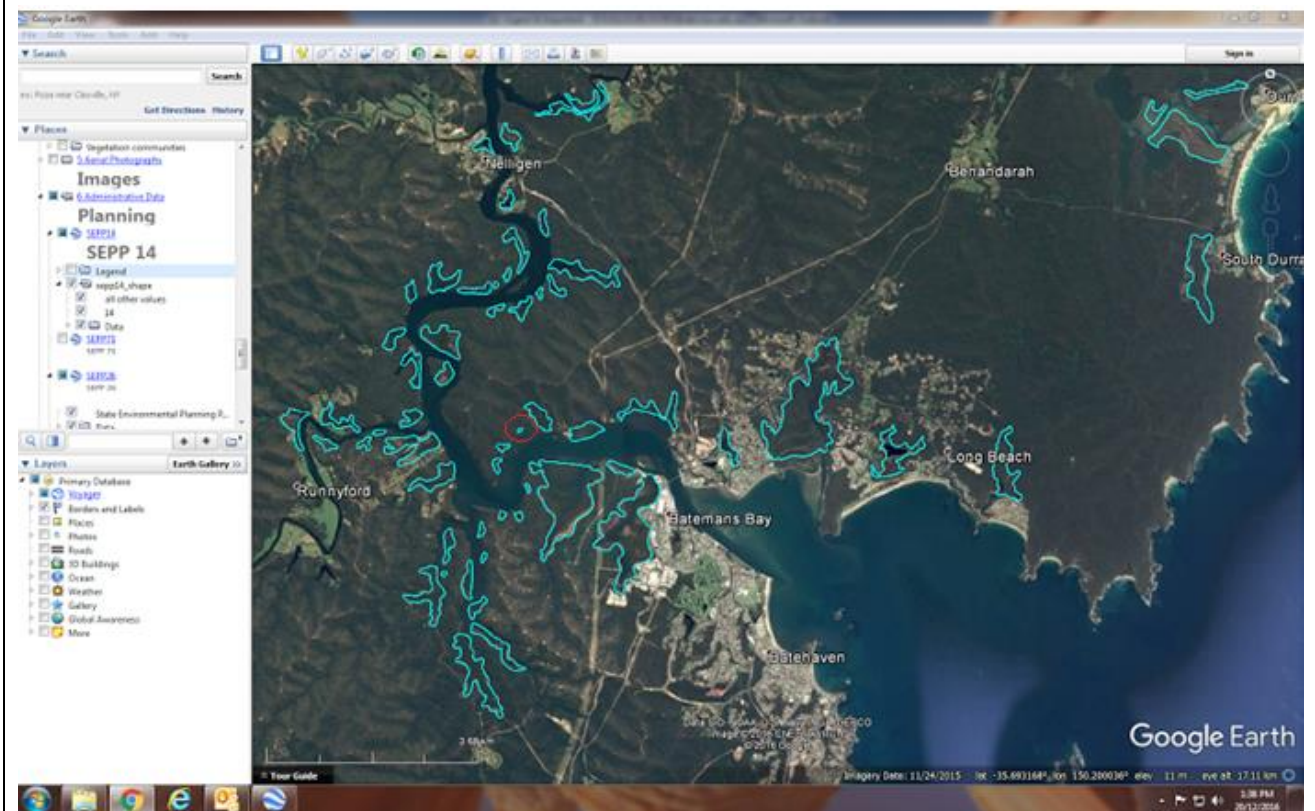
It is unclear exactly how coastal wetlands have been mapped. We understand that the original definition of coastal wetlands has been applied however we note previous criticism of the limitations of that definition. The Fact Sheet indicates that the maps reflect improved knowledge of coastal wetlands and include information from recent studies by the Department of Planning and Environment, University of NSW, Office of Environment and Heritage and NSW Department of Primary Industries (Fisheries) however no detailed information has been provided. Existing SEPP 14 mapping is difficult to access and no assistance has been provided to assist communities to compare previous mapping of SEPP 14 wetlands with the new mapping, or explain key differences.

We are aware that some discrepancies in the mapping of coastal wetlands do exist. For example, feedback from members on the Far South Coast of NSW shows where wetlands included in SEPP 14 mapping have been excluded from the new SEPP (See **Case Study 1**). We are concerned that errors such as this may have occurred across the coast and urge the government to thoroughly cross-reference the old maps with the new to eliminate mistakes like this.

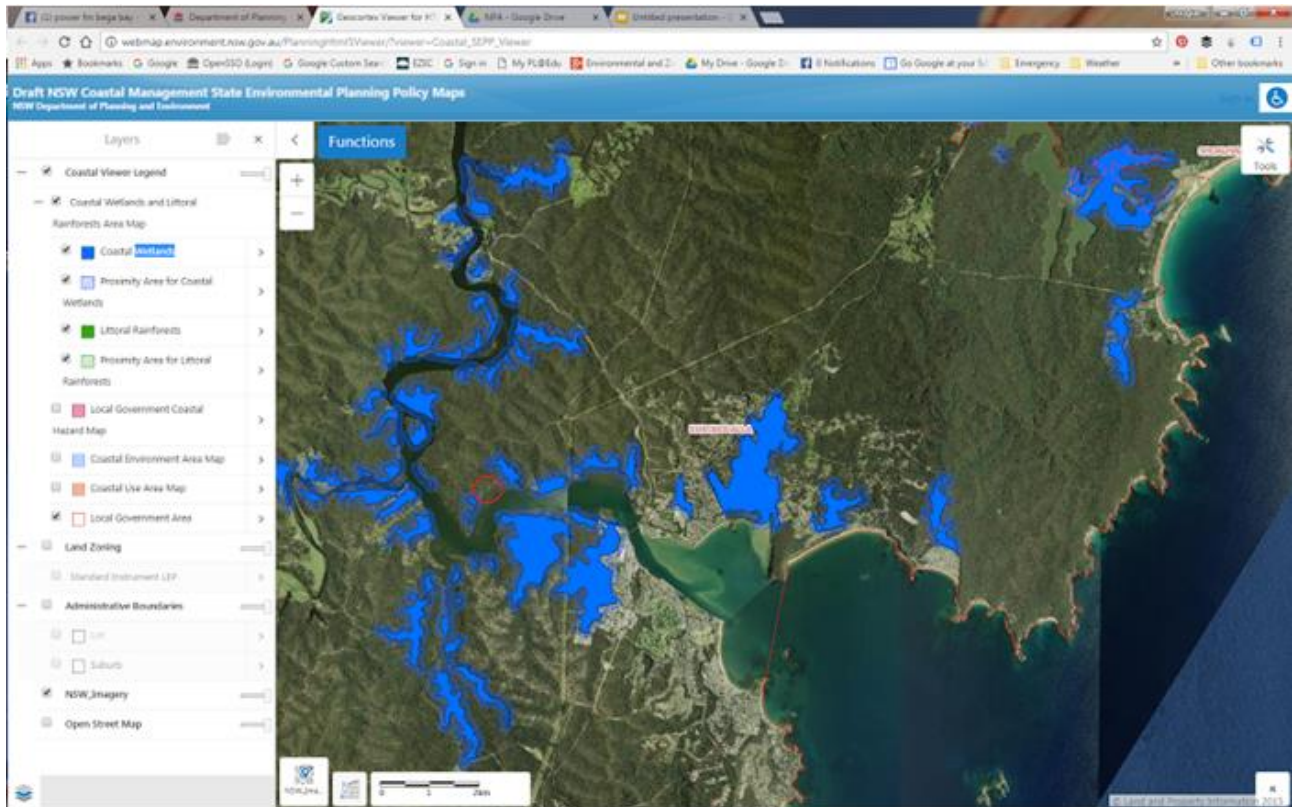
CASE STUDY 1 – DISCREPANCIES IN MAPPING OF SEPP 14 WETLANDS

Example 1. Bateman's Bay region – small SEPP 14 wetland missing from new mapping (circled in red)

SEPP 14 Mapping

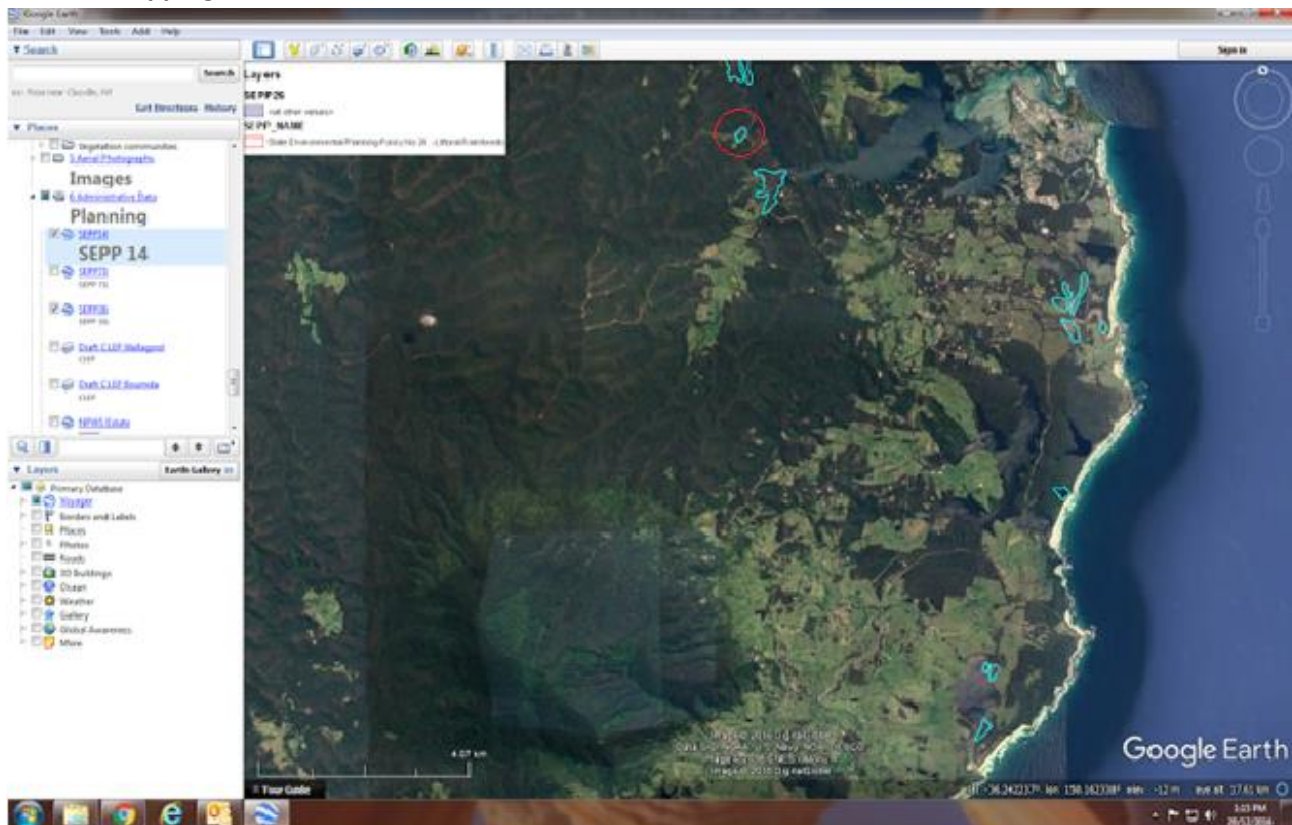


New draft coastal mapping

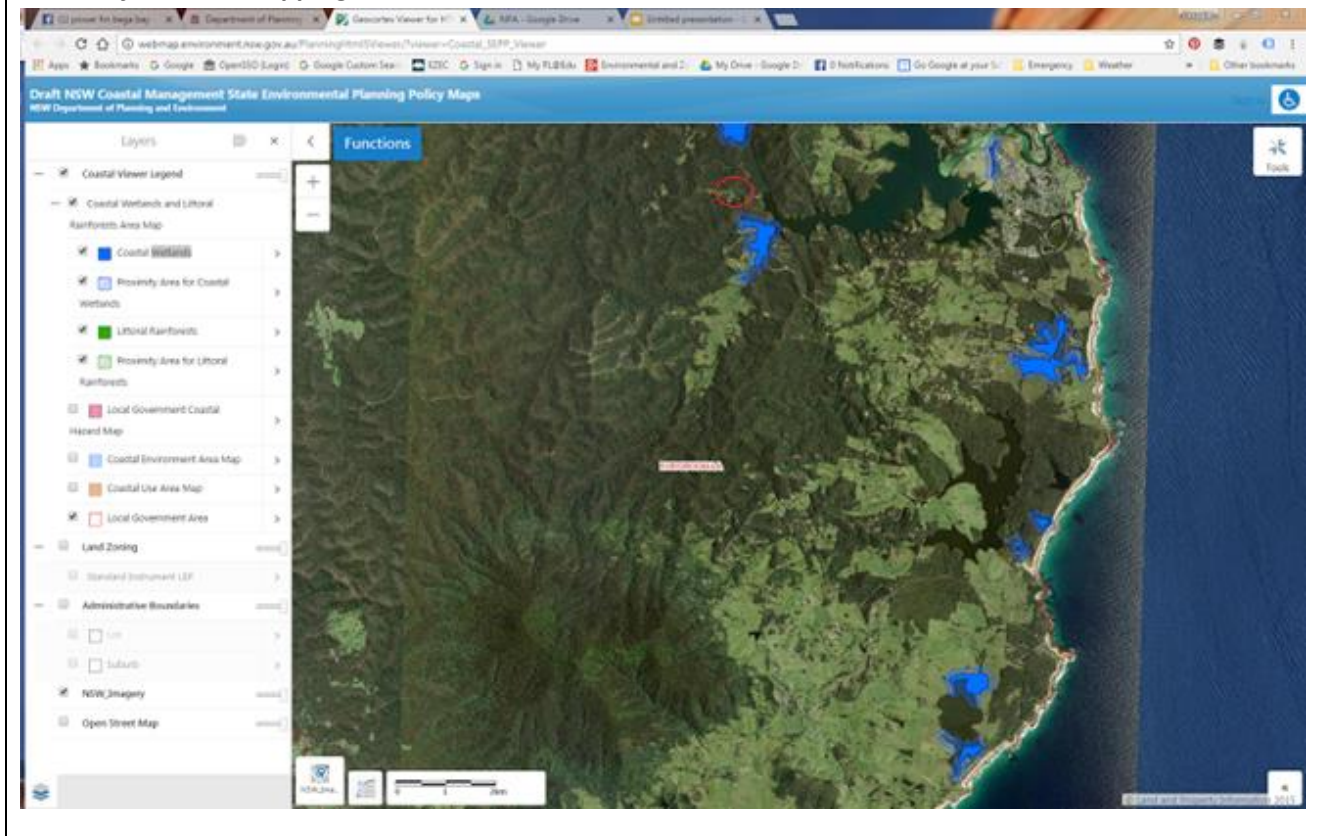


Example 2 – Narooma - small SEPP 14 wetland missing from new mapping (circled in red)

SEPP 14 Mapping



New draft coastal mapping



MAPPING OF COASTAL ENVIRONMENT AREA

The Fact Sheet for the coastal environment area provides that the coastal area is made up of:

- State waters and estuaries and a 100m landward area
- Coastal lakes and coastal lagoons and a 500m landward area
- Sensitive coastal lakes and coastal lagoons, and a 500m landward area, plus additional catchment area.

There is no clear explanation as to how these settings have been derived.

We have a number of concerns with the practical application of this criteria and its failure to adequately capture areas that should fall within the coastal environment area.

Specifically:

- It is unclear where the 100m landward area is measured from. It appears to be the Local Government Boundary.
- In various areas along the coast, the 100m section does not adequately cover the full beach and dune system. For example, at Bendalong and Culburra on the South Coast, the Stockton Sand Dunes near Port Stephens, and stretches of land at Myall Lakes and Kempsey on the mid-North coast, the coastal environment area does not extend sufficiently landward to protect the full beach front and dune systems, leaving these areas as falling within the coastal use area.

Applying an arbitrary 100m fails to take into account the natural variations along the coast. It appears that the Government has not ground-truthed the mapping to ensure that the coastal environment area actually covers the area it is meant to protect. This must be rectified as it is inconsistent with the management objectives of the coastal environment area in the *Coastal Management Act 2016* which include maintaining the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place. This could be done by increasing the distance that the coastal environment area extends landward as well as ground truthing and refinement of the maps.

- Whilst the entire catchment of 17 sensitive coastal lakes and lagoons are included in the coastal environment area which we support, there are approximately 70 coastal lakes and lagoons whose entire catchments are not included in the coastal environment area. Instead an arbitrary distance, in this case 500m landward of coastal lakes and lagoons, has been used to map the areas around these coastal lakes and lagoons. In some cases this may be insufficient to cover the environmentally sensitive areas associated with these lakes (e.g. Werri Lagoon, St Georges Basin (See **Case Study 2**)). Rather than using an arbitrary figure of 500m the mapping of the coastal environment area should be ground-truthed or increased to 1km, as per the current extent of the Coastal Zone.

CASE STUDY 2 – St George’s Basin

St Georges Basin on the NSW South Coast provides an example of a coastal lake that warrants additional protection by extending the extent of the coastal environment area around that lake. In the case of the Basin, although the 500m environment area is sufficient on the northern shore, the western and southern shores are bounded by high quality native vegetation, not all of which is formal protected areas.

St Georges Basin is a recreation fishing haven, as are some other areas of the NSW coast. This means that the Basin is an important element of the coastal economy of the Shoalhaven which warrants high protection. Consideration should be given to making sure that all recreation fishing havens are adequately mapped as part of the coastal environment area.

- Other types of sensitive environments that happen to occur on the coast, such as National Parks and endangered ecological communities (EECs), are not included in the coastal environment area, and consequently fall into the coastal use area (for example Seven Mile Beach National Park, Myall Lake National Park or EECs such as Bangalay Sand Forest Bangalay Sand Forest of the Sydney Basin and South East Corner EEC). While these areas may receive protection through other legislative mechanisms (e.g. National Parks and Wildlife Act, or EP&A Act), it is counterintuitive to have these areas fall within the coastal use layer. Our members fear that the Draft SEPP may lead to inappropriate development in these areas.

We suggest that the criteria for mapping the coastal environment area be expanded to cover other environmentally sensitive areas, such as National Parks and EECs.

- As noted above, we also suggest that a perimeter area be established for the coastal environment area.

MAPPING OF COASTAL VULNERABILITY AREA

We are concerned that mapping of the coastal vulnerability area is incomplete. At this stage, the Draft Maps have simply adopted existing coastal hazard mapping already developed. Consequently, there are many gaps in the mapping as many councils do not currently have coastal hazard maps. The community is therefore unable to determine where the coastal vulnerability area will overlap with other coastal management areas. Further, existing coastal hazard mapping does not necessarily cover the full extent of coastal hazards as defined in the new *Coastal Management Act 2016*. Therefore the coastal vulnerability area will not operate as intended when the Act is first commenced.

The draft SEPP does include an interim requirement for consent authorities to consider coastal hazards throughout the coastal zone that is a broader requirement than the development controls for coastal vulnerability areas.

CONCLUSION

As indicated previously, we strongly oppose separating the coastal zone into four hierarchical coastal management areas and are concerned that new development controls, particularly for the coastal use area and coastal vulnerability area do not include any requirement to consider environmental impacts on these sensitive coastal environments. To address these concerns our submission has outlined a number of ways in which the development controls for coastal management areas can be strengthened.

We consider that the coastal mapping is flawed, with no clear map methodology and arbitrary boundaries that have not been ground-truthed, leading to inadequate mapping of each of the four coastal management areas. In particular, the mapping for the coastal environment area must be ground-truthed as the arbitrary distances used to map the coastal environment area have not adequately captured all sensitive environmental areas.

We strongly urge the Government to delay finalising the Draft SEPP and Maps and commencing the new coastal management regime until these issues are resolved. It is important to ensure a robust framework that will provide proper protection for the entire coastal management zone, including some of our State's most threatened environmentally sensitive areas, is put in place.