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Dear Madam/Sir

NEWCASTLE CITY COUNCIL SUBMISSION ON DRAFT COASTAL MANAGEMENT SEPP

Thank you for the opportunity to comment on the draft State Environmental Planning Policy (Coastal Management) 2016, and accompanying Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016 and Draft Local Planning Direction - Coastal Management.

Please find below Council's comments on the draft instruments, for your consideration.

State Environmental Planning Policy (Coastal Management) 2016

Council supports the integration of a number of State Environmental Planning Policies (SEPPs) into one overarching Coastal Management SEPP, and generally supports the intent of the draft SEPP. Comments on individual clauses of the draft SEPP are provided below for your consideration.

It should be noted that the naming of the draft SEPP may be a little confusing, given that a number of coastal wetlands, and the upper reaches of some estuaries, are found quite some distance from the coastline. Council recommends that the department reviews the title of the draft SEPP.

Clause 7(2) provides that the Three Ports SEPP prevails over the Coastal Management SEPP in the event of any inconsistency. The Three Ports SEPP applies to the Port of Newcastle, which adjoins the Hunter Estuary wetlands Ramsar site (now part of the Hunter Wetlands National Park). The land covered by the Three Ports SEPP overlaps with the Coastal Wetlands, Coastal Environment and Coastal Use Areas mapped in the draft Coastal Management SEPP. It is considered essential that the Coastal Management SEPP applies to the management of the Port, particularly as the complying development schedule permits large scale port facilities and other development.

While the *Coastal Management Act 2016* requires local councils to prepare Coastal Management Programs, there is no similar provision for State agencies, or in the case of the three ports, the lessees of the Port. It is noted that section 23 of the *Coastal Management Act 2016* requires public authorities to "have regard to" Coastal Management Programs, however it is not clear how this applies to leased areas of the Port. This should be clarified in the Coastal Management SEPP.

Clause 11 outlines that environmental protection works on land identified as coastal wetlands or littoral rainforest can be undertaken by (or on behalf) of a public authority as development without consent only once the works are identified in a Coastal Management Program. If the works haven't been identified in a Coastal Management Program, they will require development consent. It is noted that the definition of environmental protection works means 'works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation....'. As environmental protection works are limited to only those works that improve the environment, Council believes that the works should be able to be undertaken as development without consent, regardless of whether they have been identified in a Coastal Management Program or not. It may take councils a number of years to prepare Coastal Management Programs (if they are prepared at all), and requiring development consent to undertake environmental protection works in the meantime may discourage councils from undertaking such works. It should also be clarified that environmental protection works could include drainage works, where such works are undertaken to return to the wetland to a more natural hydroperiod.

Council supports the inclusion of **clause 12** to provide a buffer area to coastal wetlands and littoral rainforest. However, Clause 12(2) outlines that clause 12 does not apply to residential zoned land. Residential subdivision can often occur within close proximity to coastal wetlands, and the design of these subdivisions should consider the impacts on the nearby wetlands. Council therefore recommends that the clause should apply to residential zoned land. In addition, the exclusion of the application of this clause to residential land could potentially undermine the stormwater provisions in councils development controls plans (which guide the quantity and quality of water flows into adjacent wetlands), as the clause in the Coastal Management SEPP would prevail over the development control plan. Council requests that as a minimum the clause should apply to residential subdivisions (if not to all residential land), and a review of the clause should be undertaken to ensure that any exclusion of residential land from the provisions of the clause would not jeopardise the application of councils development control plans.

Clause 13(2)(b) outlines that development consent must not be granted....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. However, there may be circumstances where a strategic decision is made to protect land from coastal hazards (e.g. construct a seawall to protect a developed area) which will increase the risk of coastal hazards on adjacent land that has the capacity to absorb the increased risk (e.g. an undeveloped area). Such a strategic decision would be documented in a Coastal Management Program, and once certified by the Minister, should allow for the approval of development which may cause an increased risk of coastal hazards on other land. Council therefore requests a review of the wording of clause 13(2)(b), and similarly clause 16(1), to allow for strategic decisions to be made in coastal planning.

Clause 14(1) uses the term 'adverse' impact as the standard in a number of the subclauses that the consent authority must be satisfied is met, for example clause 14(1)(a) outlines that development consent must not be granted....unless the consent authority is satisfied that the proposed development is not likely to cause adverse impacts on the biophysical, hydrological (surface and groundwater) and ecological environment. This clause appears to apply to all land zoning, and Council believes that it would be very difficult for most proposed development to demonstrate that it is 'not likely to cause adverse impacts'. Council considers the use of the word 'adverse' to be too high a standard to be met by developments (particularly when applied to all land zones).

Clauses 14(1)(e) and 15(a)(iv) of the draft SEPP outline that development consent must not be grantedunless the consent authority is satisfied that the proposed development will not adversely impact Aboriginal cultural heritage and places. This clause contradicts with Part 6 of the *National Parks and Wildlife Act 1974*, which allows for the harm or desecration of Aboriginal objects or places (which would be considered an 'adverse impact' under the draft SEPP) where a permit has been issued under that Act.

Clause 15 of the draft SEPP does not address two of the management objectives defined in the *Coastal Management Act 2016* for the Coastal Use Area, namely:

9(2)(a)(iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and

9(2)(a)(iv) adequate public open space is provided, including for recreational activities and associated infrastructure.

Council recommends that clause 15 be reviewed to require the incorporation of water sensitive urban design in proposed developments, and ensure that adequate public space is provided during development.

The definition of coastal protection works outlined in **clause 21** of the draft SEPP includes 'activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters, including (but not limited to) seawalls, revetments and groynes'. Most coastal protection works are only able to be undertaken as development without consent once they are identified in a Coastal Management Program, otherwise the works will require consent from the Joint Regional Planning Panel (JRPP). It is noted that the definition of coastal protection works would capture a range of bank stabilisation works that are undertaken in estuaries. Stabilisation works in estuaries can be quite small scale and are frequently undertaken, which could result in a significant increase in work load for the JRPP. Council recommends that a review of the need for estuarine works to obtain consent from the JRPP be undertaken.

The development consent requirements outlined in clause 21 are unlikely to facilitate a responsive planning framework to address coastal protection issues in a timely manner. Council requests that a review of the proposed coastal protection works that will require consent from the JRPP be undertaken, as this approval process could prove quite lengthy and may not be necessary for all scales of longer term protection works. While emergency measures can be installed for up to 90 days this would not typically provide sufficient time in which to obtain relevant development consent for more long term works through the JRPP process. Council recommends that the period for placing sandbags be extended to at least a 12 month period.

The wording in clause **15A(2)** of the proposed changes to the SEPP (Infrastructure) is confusing and requires review.

Wetlands Mapping at 40 Creek Road, Maryland, NSW

For over ten years, Council has been negotiating with the company Glencore to dedicate a parcel of land at 40 Creek Road, Maryland, NSW to Council for the purposes of establishing a district level sportsground. The sportsground would service the expanding western corridor of Newcastle, which is expected to see significant population growth over the next 20 to 50 years. Previously this parcel of land was not mapped as a SEPP 14 wetland, however the mapping released with the

draft SEPP suggests that a substantial portion of the land parcel is now proposed to be mapped as a coastal wetland. Council requests a review of the proposed mapping at this location (please see **Attachment A** for further information).

Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016

Council notes the proposed omission of clause 5.5 and has no further comments on this order as it is understood that the matters dealt with by this clause will now be contained in the new Coastal Management SEPP.

Draft Local Planning Direction - Coastal Management.

Council recommends that **clause 1(b)** be revised so that the direction applies to land affected by a current or future coastal hazard in study or assessment that has been adopted by Council.

Clause 4 outlines that a planning proposal must not rezone land which would enable increased development or more intensive land-use on land within a coastal vulnerability area, or land identified as being affected by a coastal hazard. Whilst Council supports the application of this clause for most coastal hazards, it may not be appropriate for areas of coastal cliff and slope instability. Council's adopted Coastal Zone Management Plan currently includes mapping of landslide risk areas. These risk areas are based solely on slope geometry, and cover large areas of the coastal suburbs in Newcastle. Council does not consider the proposed restriction on increased development relevant for these areas, as the landslide risk can generally be appropriately managed. It is recommended that Clause 4 be reviewed to determine its applicability to areas of coastal cliff and slope instability.

Clauses 4 and 5 use the terms "A planning proposal must not rezone land which would enable increased development or more intensive land-use.....". The term 'development' by definition encompasses a broad range of activities some of which may be appropriate within the relevant areas. It is suggested that the term 'increased development' could be deleted, but retain 'more intensive land -use' which is considered the more relevant consideration.

Should you require any further information about Council's submission, please don't hesitate to contact Kristy Munro, Senior Strategist - Environment, on 4974 2852.

Yours faithfully



Ken Liddell
MANAGER INFRASTRUCTURE PLANNING

Attach