

DRAFT

20 January 2017

Department of Planning and Environment
320 Pitt Street
Sydney NSW 2000

Our Ref: Draft Coastal SEPP
Your ref: Coastal Reforms
Enquiries: Ms A Macvean

Dear Minister Stokes,

RE: Coastal Reforms - Draft Coastal Management SEPP, S117 Ministerial Direction and Standard Instrument Amendment

Council appreciates the opportunity to respond to the public exhibition of the Draft Coastal Management State Environmental Planning Policy and associated documents, produced by the Department of Planning & Environment in conjunction with the NSW Office of Environment & Heritage.

To provide context to the comments, they have been prepared in recognition that as a newly formed council, MidCoast Council is in the position of having to establish new corporate policy on hazard management and environmental planning instrument provisions as part of a larger and significant strategic planning work program.

Critically, with regards to coastal management, the new MidCoast Council incorporates numerous beaches of various formation and orientation, with exposure to a variety of coastal hazards. The planning, management and assessment framework is therefore significant and complex.

Council officers are therefore keen to continue to collaborate and consult closely with both the NSW Office of Environment & Heritage and the Department of Planning & Environment on these and other matters.

Summary of MidCoast Council Recommendations

Council gives in-principle support to the initiatives and intent of the Department of Planning & Environment Coastal Reforms.

Council endorse the provision of relevant mapping data to the Department of Planning & Environment and NSW Office of Environment & Heritage for verification and incorporation into

an environmental planning instrument that provides a consistent development assessment framework for coastal management areas for the state of New South Wales.

To ensure that local government have the ability to effectively and efficiently implement the development assessment framework, Council recommends that the definitions, clauses and associated mapping outlined within the Coastal Reform exhibition material, namely the:

- Draft Standard Principle Instrument Local Environmental Plan Amendments
- Draft State Environmental Planning Policy (SEPP) - Coastal Management

be incorporated into the Standard Principle Instrument Local Environmental Plan as compulsory matters for inclusion in local environmental plans that affect land within the coastal management areas, as defined by the Coastal Management Act.

MidCoast Council continue to work closely with representatives of the Department of Planning & Environment and NSW Office of Environment & Heritage to progress the coastal reforms to ensure a clear, transparent and consistent planning and management framework can be established for the benefit of land owners and the community..

Summary of Financial/Resource Implications for MidCoast Council

The NSW Coastal Reforms will have financial and resource implications for Council. These implications will be significant if the exhibited Draft Standard Principle Instrument Local Environmental Plan Amendments and Draft State Environmental Planning Policy (SEPP) - Coastal Management documents are made without amendment.

In this regard, significant staff time and resources will be required to reconcile inconsistencies that will be created between existing LEP provisions and those of the proposed new SEPP, but the extent of these financial/resource implications cannot be fully determined at this time.

It is reasonable to expect there will be impacts on the integrated planning, development assessment, building assessment, natural systems, strategic planning, design & investigation, GIS mapping and S149 planning certificate functions of Council. This is because any amendment or modification to an LEP or SEPP will be required to go through a Planning Proposal process with the endorsement of the Department of Planning & Environment and NSW Office of Environment & Heritage.

On this basis, Council officers recommend that the amendments be incorporated into the Standard Principle Instrument Local Environmental Plan as compulsory matters for inclusion in local environmental plans that affect land within the coastal management areas, as defined by the Coastal Management Act.

Summary of Legal Implications for MidCoast Council

The legal implications of the full suite of NSW Coastal Reforms cannot be fully determined at this time.

The report and draft submission documents outline several areas of concern where the development assessment controls and mapping contained within the Draft Standard Principle Instrument Local Environmental Plan (LEP) Amendments and Draft State Environmental

Planning Policy (SEPP) - Coastal Management create inconsistent requirements and/or two layers of development assessment, for applications on land where both a Local Plan and State Policy will apply.

In this regard, the Planning Reforms which preceded the Coastal Reforms recognised the need to reduce the number of SEPPs and establishment of the Standard Principle Instrument LEP as a single point of truth for practitioners and the community; and the opportunity to address the complexity of written instruments is not fully realised through the proposed Coastal Reforms.

On this basis, Council officers recommend that the amendments be incorporated into the Standard Principle Instrument Local Environmental Plan as compulsory matters for inclusion in local environmental plans that affect land within the coastal management areas, as defined by the Coastal Management Act.

Detailed Comments from MidCoast Council

The comments of Council officers contained within this report have been collated under the following broad headings which reflect the content of the NSW Coastal Reform exhibition material:

1. Draft Section 117 Ministerial Direction - Coastal Management
2. Draft Standard Principle Instrument Local Environmental Plan (LEP) Amendments
3. Draft State Environmental Planning Policy (SEPP) - Coastal Management
4. Other Planning Matters

Comments also reflect the fact the MidCoast Council has three local environmental plans (LEP) that are currently in force - Gloucester LEP 2010, Greater Taree LEP 2010 and Great Lakes LEP 2014.

Each LEP will be affected differently by the proposed amendments to the Standard LEP and the new CM SEPP and therefore the potential impact on all of the LEPs have been considered within this report and the associated submission material.

To provide an overview of the potential impacts, a Summary Table: Assessment of Potential Inconsistencies between Coastal Reform Package of LEP Amendments and Coastal Management SEPP with existing Local Environmental Plans of MidCoast Council, is provided as an attachment to this submission.

The relevant clauses from Gloucester LEP 2010, Greater Taree LEP 2010 and Great Lakes LEP 2014 referred to within this submission and the Summary Table, are also provided in full as part of the attachment to the submission.

1. Comments on Draft Section 117 Ministerial Direction - Coastal Management

The provisions and requirements of the draft S117 Direction are supported as they are consistent with the initiatives of the broader Integrated Planning and Reporting (IP&R) framework and principles of evidence-based planning.

In particular, the S117 Direction creates direct linkages between the completion of environmental studies to inform evidence-based planning and implementation of Coastal Zone Management Plans/Coastal Management Programs.

2. Draft Standard Principle Instrument Local Environmental Plan Amendments

Comments on Draft Amendment to Standard LEP: Clause 3.3 Environmentally sensitive areas excluded [compulsory]

The proposed amendment to Clause 3.3 is supported as it reflects the broad intentions of the Coastal Reforms: to repeal SEPP No. 14 - Coastal Wetlands and SEPP No. 26 - Littoral Rainforest; and implements of the Coastal Management Act 2016.

Comments on Draft Amendment to Standard LEP: Clause 5.5 Development within the coastal zone [compulsory if land to which Plan applies includes land in the coastal zone]

Council officers have no objection to the repeal of Clause 5.5 on the understanding that the scope of assessment is not diminished within the new Coastal Zone Management Area provisions of the Coastal Management SEPP.

Comments on Draft Amendment to Standard LEP: Dictionary

Council officers have no objection to the repeal or amendment of definitions within the Standard LEP Dictionary on the understanding that: the amended definitions are consistent with other Coastal Reform initiatives; and the repealed definitions are incorporated, clarified or expanded within the Coastal Management Act or Coastal Management SEPP.

3. Draft State Environmental Planning Policy - Coastal Management

Council officers generally support the initiatives and framework provided by the NSW Coastal Reforms (Stage 1 and 2), however, it is the view of officers that implementation would be best served as compulsory amendments to the Standard LEP in affected local government areas, rather than through the introduction of a new CM SEPP.

In this regard, the following sections of the report outline several areas of concern where the development assessment controls and mapping contained within the Draft State Environmental Planning Policy - Coastal Management (Coastal Management SEPP) create inconsistent requirements and/or two layers of development assessment, for applications on land where both a Local Plan and the State Policy will apply.

The Planning Reforms (which preceded the Coastal Reforms) recognised the need to reduce the number of SEPPs and establishment of the Standard LEP as a single point of truth for practitioners and the community. Council officers continue to advocate for this level of reform

with the Department of Planning & Environment and are of the view that the Coastal Reforms provide a significant opportunity to address the complexity of legislation within the coastal zone.

The NSW Coastal Reform documents that have been on public exhibition since November 2016 will have significant financial and resource implications for Council if the Draft Standard LEP Amendments and Draft Coastal Management SEPP documents are made without amendment.

In this regard, significant Council staff time and resources will be required to reconcile inconsistencies that will be created between existing LEP provisions and those of the proposed new SEPP, but the extent of these financial/resource implications cannot be fully determined at this time.

It is reasonable to expect there will be impacts on the integrated planning, development assessment, building assessment, natural systems, strategic planning, design & investigation, GIS mapping and S149 planning certificate functions of Council.

Primarily these impacts will be on the work programs and resources of these sections of Council that will be required to be diverted from existing and merger-related work to prioritise Planning Proposals to amend the existing LEPs in force within the MidCoast Council local government area.

Acknowledging the complexity of issues within the coastal zone and the extensive community consultation process that have occurred with previous Planning Proposals, development control plans and management plans that affect land within the coastal zone, this additional work is reasonably expected to be both challenging and time-consuming for Council.

On this basis, Council officers recommend that the provisions of the draft Coastal Management SEPP be incorporated into the Standard LEP as compulsory matters for inclusion in local environmental plans that affect land within the coastal management areas, as defined by the Coastal Management Act.

In this regard, the Minister has the legislative authorisation to give immediate affect to amendments to the Standard LEP and those documented within the exhibition material could be made compulsory for all LEPs which have land in the coastal zone, as defined by the Coastal Management Act.

a) General Comment on Draft Coastal Management SEPP

Council officers generally support the initiatives and framework provided by the NSW Coastal Reforms (Stage 1 and 2), however, it is the view of officers that implementation would be best served as compulsory amendments to the Standard LEP in affected local government areas, rather than through the introduction of a new CM SEPP.

In this regard, the following sections of the report outline several areas of concern where the development assessment controls and mapping contained within the Draft State Environmental Planning Policy - Coastal Management (Coastal Management SEPP) create inconsistent requirements and/or two layers of development assessment, for applications on land where both a Local Plan and the State Policy will apply.

The Planning Reforms (which preceded the Coastal Reforms) recognised the need to reduce the number of SEPPs and establishment of the Standard LEP as a single point of truth for practitioners and the community. Council officers continue to advocate for this level of reform with the Department of Planning & Environment and are of the view that the Coastal Reforms provide a significant opportunity to address the complexity of legislation within the coastal zone.

The NSW Coastal Reform documents that have been on public exhibition since November 2016 will have significant financial and resource implications for Council if the Draft Standard LEP Amendments and Draft Coastal Management SEPP documents are made without amendment.

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In this regard, the Minister has the legislative authorisation to give immediate affect to amendments to the Standard LEP and those documented within the exhibition material could be made compulsory for all LEPs which have land in the coastal zone, as defined by the Coastal Management Act.

b) Comments on Draft Coastal Management SEPP: Coastal Wetlands and Littoral Rainforests Area

Development Controls

Clause 11 Development of coastal wetlands or littoral rainforests

Council supports provisions which allow for environmental protection work and removal of noxious weeds without consent.

Clause 12 Development on land in proximity to coastal wetlands or littoral rainforest land

The intent of Clause 12 is supported by Council however there are two significant issues with the implementation of these provisions:

1. The amended mapping of coastal wetlands and littoral rainforests within the Coastal Management SEPP will result in inconsistencies with the E2 Environmental Conservation zoning of these lands within local environmental plans.

This issue was acknowledged within the NSW Government Report on Submissions to the November 2015 Coastal Reform exhibition, but has not been resolved in the current exhibition material which specifically outlines amendments to the environmental planning instruments that will enable implementation of the Coastal Reforms.

2. The exclusion of consideration of these matters on land within the R5 Large Lot Residential and RU5 Village zone.

Within the MidCoast LGA the land uses and activities within the R5 Large Lot Residential and RU5 Village are wide ranging and complex given their rural residential nature. These zones are therefore not implemented in the same manner as the generally closed urban residential zones of R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential or R4 High Density Residential also referred to in Clause 12.

Council would request that Clause 12 (2) be amended to remove the reference to the R5 Large Lot Residential and RU5 Village zones, to ensure the potential impacts of development can continue to be given appropriate consideration in these non-urban zones, when in proximity to coastal wetlands and littoral rainforests.

Mapping

The formal allocation of a 100m buffer to coastal wetlands is supported and brings this into alignment with RAMSAR Wetlands and other buffers to environmentally sensitive lands.

While the use of suitably updated and amended SEPP 14 and SEPP 26 mapping is supported, Council is concerned that in some areas significant changes to the extent of these areas have been made without further consultation. In particular, there is concern that some SEPP 14 Coastal Wetlands appear to have been reduced or removed in the transition to the Coastal Management SEPP map layer.

Council would therefore welcome the opportunity to provide the relevant map data to the Department and collaborate with the Department's GIS team to ensure the mapping is as accurate as possible before the environmental planning instrument is made.

In this regard, the Department acknowledged during the information sessions in December that the exhibited maps are a 'work in progress' and the State Government seeks to have these maps updated with the help of councils.

In this regard, if Council supports lodgement of mapping data and the collaborative review of mapping, it is suggested that the Minister provide transitional arrangements for these Councils that defer the need for a planning proposal for map amendments within the first 12 month

implementation/review period. Such a transitional arrangement would facilitate the timely implementation of any necessary amendments to mapping for coastal wetlands and littoral rainforests.

Relationship to Local Environmental Plan

Land Use Zones

The S117 Ministerial Direction and the draft Coastal Management SEPP are both silent on the potential impact of the amended coastal wetland and littoral rainforest areas on other map layers of local environmental plans.

In this regard it is noted that significant areas of current SEPP No.14 Coastal Wetlands and SEPP No. 26 Littoral Rainforests were rezoned to E2 Environmental Conservation when Councils transitioned to the Standard LEP content and format.

The rezoning was undertaken in accordance with recommendations from both the Department and NSW OEH at the time of preparing these new Standard Instrument LEPs.

As a result, land within both the former Greater Taree and Great Lakes local government areas are zoned E2 Environmental Conservation to reflect the current SEPP No. 14 and SEPP No.26 mapping.

Therefore, proposed map amendments will have the effect of requiring planning proposals to rezone:

- land within the E2 Environmental Conservation zone to another zone, where coastal wetland or littoral rainforests are no longer identified; or
- newly identified coastal wetlands and littoral rainforests to the E2 Environmental Conservation zone to ensure a consistent framework for assessment of these lands.

Either of these scenarios will require the allocation of considerable Council resources to prepare planning proposals to align Council's mapping with the mapping in the SEPP

Existing Clauses and Map Layers

There is no indication in the exhibition material as to how existing LEP and map layers may be amended, replaced or incorporated into the new coastal wetland or littoral rainforest provisions. For example, Great Lakes LEP 2014 incorporates *Clause 7.8 Wetlands* and associated Wetland Maps, based on the existing SEPP 14 Coastal Wetlands maps.

Given that the provisions relating development and works within, and in proximity to, wetlands and littoral rainforests are proposed to be elevated to the Coastal Management SEPP then the corresponding provisions should be removed from LEPs as they will be redundant.

Therefore, Council requests that in association with transitional arrangements to enable the refinement of coastal wetland mapping in the Coastal Management SEPP, the Minister repeal Clause 7.8 Wetlands of Great Lakes LEP 2014.

c) Comments on Draft Coastal Management SEPP: Coastal Vulnerability Area

Development Controls

Clause 13 Development on certain land within the coastal vulnerability area

While Council officers are in support of the majority of provisions within this clause, there are considered to be two areas of concern where amendments are requested:

1. Council officers are not supportive of the provision of part (2)(a) which requires the consent authority to consider whether a proposed development " provides for beach nourishment".

Incorporation of such a statement as a matter for consideration in development assessment is considered to pre-empt the preparation, consultation and certification of a Coastal Zone Management Plan or Coastal Management Program. The feasibility and viability of such a protective or restorative measure; and the ability and legality of private land owners undertaking this work in preference to a public authority, should only be considered within the context of these plans.

Instead it is requested that an additional provision be incorporated that requires consideration of the design of a structure within the coastal vulnerability area, for example:

that the proposed development: *is engineered to withstand projected coastal hazards in a manner which satisfies the 50 year design life requirements of the Building Code of Australia.*

Council also requests that the content of the Note be removed:

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered, given anticipated impacts of coastal processes and coastal hazards, whether:

- (a) any proposed buildings or works should be temporary buildings or works, and*
- (b) whether any use of land should be a temporary use of land.*

Note. *See section 80A (1) (d) and (e) of the Act which provides for the imposition of conditions on development consents that:*

- (a) limit the period during which development may be carried out in accordance with the consent so granted, and*
- (b) require the removal of buildings and works (or any part of them) at the expiration of that period.*

The ability for Councils to impose effective and meaningful time, trigger or event based conditions has been the subject of a recent court case (Newton vs Great Lakes Council) and extensive legal advice to the former Great Lakes Council. It is requested that these matters and the Note to Clause 13 in particular, be removed from the SEPP.

Additional information on these matters is summarised in the article on the Newton vs Great Lakes Council judgement by Megan Hawley, Partner, Lindsay Taylor Lawyers. This article is provided as an attachment to Council's submission to the Minister.

Mapping

The Coastal Management SEPP incorporates Local Government Coastal Hazard Area mapping, consistent with the mapping provided in published LEPs and in-force DCPs. However, information on what these areas represent is not provided within the Coastal Management SEPP or any of the exhibition material.

No state-based mapping of the Coastal Vulnerability Areas is provided.

Therefore the mapping of coastal vulnerability areas within the MidCoast Council local government area currently only incorporates the gazetted coastal risk planning areas for Jimmy's Beach, Bluey's Beach and Boomerang Beach, as identified in Great Lakes LEP 2014.

The former Great Lakes Council was in the process of finalising a Planning Proposal to amend and expand the coastal planning area mapping in Great Lakes LEP 2014, based on adopted Coastal Hazard Studies. MidCoast Council will continue to progress this planning proposal in accordance with the Coastal Reforms, as recommended by the Department of Planning & Environment.

The former Greater Taree Council did not have any coastal risk planning areas mapped within Greater Taree LEP 2010 although a Coastal Hazard Study was adopted identifying several beaches potentially impacted by coastal hazards. The findings of the Study subsequently informed the preparation of a coastal zone management plan. MidCoast Council is committed to completing this program in close consultation and collaboration with the NSW Office of Heritage & Environment.

The following is a list of the beaches (North to South) that have been identified in coastal hazard studies as being potentially vulnerable to coastal hazard within the MidCoast Council local government:

- Harrington Beach
- Manning Point Beach
- Old Bar Beach
- Saltwater Beach
- Diamond Beach
- Blackhead Beach
- Nine Mile Beach, Tuncurry
- Tuncurry Beach, Tuncurry
- Main Beach, Forster
- One Mile Beach, Forster
- Seven Mile Beach, Tiona
- Elizabeth Beach, Pacific Palms
- Bluey's Beach, Pacific Palms
- Boomerang Beach, Pacific Palms
- Sandbar Beach, Smiths Lake
- Number One Beach, Seal Rocks
- Boat Beach, Seal Rocks
- Lighthouse Beach, Seal Rocks
- Treachery Beach, Seal Rocks
- Bennett's Beach, Hawks Nest
- Jimmy's Beach, Winda Woppa

Council is therefore encouraged by the Department's commitment to "work with councils and communities over the next 12 months to include relevant coastal hazard mapping from adopted studies into the Coastal Vulnerability Area."

In this regard, MidCoast Council is in a position to provide mapping and data from Coastal Hazard Studies and Coastal Zone Management Plans for both of the former Greater Taree and Great Lakes local government areas. The NSW Government is invited to use this information to inform its Coastal Vulnerability Area mapping.

Furthermore, to establish a consistent approach to the identification of the coastal vulnerability areas in New South Wales, Council officers would support the consistent identification of these areas and for this information to be clearly documented within the SEPP, as is currently required in local environmental plans.

Council officers also continue to advocate the establishment of an additional 'coastal hotspot' management area within the Coastal Management SEPP.

Coastal Hotspots are areas of active erosion or recession currently identified by the NSW Office of Environmental & Heritage. These areas are subject to emergency sub-action plans and require the application of a precautionary approach to development assessment due to their immediate exposure to hazard.

The separate identification of these areas and provision of specific objectives and development controls would assist in the establishment of a consistent state-wide assessment framework within the context of coastal management programs.

Relationship to Local Environmental Plan

Existing Clauses and Map Layers

Council also requests that the clause provide more explicit guidance on subdivision and limitations on the intensification of development within the coastal vulnerability area and known coastal hotspots. In this regard, there is no indication in the exhibition material as to how existing LEP development restriction clauses may be addressed or superseded by the Coastal Management SEPP.

Within Great Lakes LEP 2014 this is a significant issue at Jimmy's Beach Winda Woppa, which has been the subject of a development restriction clause within an environmental planning instrument since the 1980s.

Clause 7.18 Residential accommodation at Winda Woppa and the Development Restriction Area Map have already been the subject of significant discussions between Great Lakes Council and the legal branch of the Department when Council was required to transition to the Standard LEP template.

The potential ramifications of this clause being amended or over-ridden by more flexible objectives and development controls for Coastal Vulnerability Areas in the SEPP, would be in direct contrast to existing policy and practice and could result in an intensification of development in this 'active erosion' area.

The Coastal Reform exhibition material is not explicit in its intent with regards to how existing LEP clauses, definitions and mapping will relate to or interact with the Coastal Management SEPP.

Therefore Council has interpreted the exhibition material as not only maintaining the coastal risk planning area maps of existing LEPs, but also the Coastal Risk Planning Area clause objectives and assessment criteria;

This will result in a second layer of assessment for the same mapped areas - referred to as Local Government Coastal Hazard Map - by introducing higher level and less explicit assessment criteria within the Coastal Vulnerability Area clause.

This scenario is not supported as it will create an unnecessary level of duplication and potential inconsistency in the application of controls for local government development assessment officers, but also for land owners.

Therefore Council officers recommend that the Department incorporate the proposed assessment requirements of the Coastal Management State Environmental Planning Policy into the state-wide Standard Principle Instrument Local Environmental Plan to provide one publicly available, consistent and transparent source of information.

The same legislative authorisation available to the Minister to create a SEPP enables the Minister to introduce compulsory clauses and map layers in the Standard LEP. The clauses and map layers proposed within the Coastal Management SEPP could therefore be made compulsory for LEPs affecting land within the coastal zone, the same way that the SEPP is applied.

By requiring the clause and mapping of "Coastal Vulnerable Areas" within the LEP, this will also provide a significant incentive to local councils to continually maintain and update these maps as new data and information becomes available.

In addition, Councils are likely to be faced with community and public authority challenges to the validity and justification of future Planning Proposals that will be required to amend not only the provisions of the relevant LEP Coastal Risk Planning Areas, but the NSW Government's Coastal Management SEPP Coastal Vulnerability Areas.

***d) Comment on Draft Coastal Management SEPP: Coastal environmental area
Development Controls***

Clause 14 Development on land within the coastal environmental area

Council is very supportive of the provisions of Clause 14, particularly provisions relating to water quality and water sensitive design which have been significant issues and initiatives for the former Great Lakes Council.

Clause 14 refers to Schedule 1 which identifies sensitive coastal lakes but does not refer to Schedule 2 which identifies coastal lakes. Council would request that Clause 14 refer to both Schedules to ensure the consistent consideration of development impacts on the water quality on coastal lakes.

In this regard, NSW has a significant number of coastal lakes that have significant environmental value and which also significantly contribute to the coastal economy. In the case of the Great Lakes, the estuaries underpin oyster, fishing and tourism industries and the relocation of people to the Great Lakes.

The Coastal Management SEPP, by identifying but not providing any mechanism to require appropriate assessment of development within or in proximity to these lakes within Clause 14, does not provide support or recognition for managing water quality within these coastal lakes and their catchments.

Furthermore, it is requested that the Coastal SEPP also require the use and consideration of decision support tools such as the small scale stormwater model and MUSIC model, to ensure the potential impact of development can be consistently assessed and considered.

In this regard it is requested that additional provisions be incorporated within the Coastal SEPP to provide a clear framework for the assessment of development impacts within coastal lake catchments, for example:

Development proposals for new green-field development or the intensification of existing land uses or activities in coastal lake catchments and sensitive waterways are to demonstrate a neutral or beneficial impact on water quality for.

Development proposals for infill development in coastal lake catchments and sensitive waterways are to demonstrate load reduction targets of: 45% total nitrogen, 60% total phosphorous and 80% total suspended solids.

Mapping

Council has no objection to the mapping of the Coastal Environmental Area however, the landward extent of this area is not adequately identified within the Coastal Management Act or Coastal SEPP.

Relationship to Local Environmental Plan

The Coastal Reform exhibition material is not explicit in its intent with regards to how existing LEP clauses, definitions and mapping will relate or interact with the Coastal Management SEPP.

Therefore Council have interpreted the exhibition material as:

- maintaining existing LEP clauses and maps that also identify water courses and lands affected by tidal waters;
- while creating a second layer of assessment for the same or similar mapped areas by introducing higher level and less explicit assessment criteria within the Coastal Environmental Area clause.

Within the MidCoast LGA for example:

- Greater Taree LEP 2010 and Great Lakes LEP 2014 include Clause 5.7 Development below mean high water mark; and

- Great Lakes LEP 2014 contains Clause 7.5 Stormwater management and Clause 7.7 Riparian land and watercourses and a Watercourse Map.

These clauses are potentially superseded or duplicated by provisions in the SEPP.

This scenario is not supported as it will create an unnecessary level of duplication and potential inconsistency in the application of controls for local government development assessment officers, but also for land owners.

Therefore Council officers to recommend that the Department incorporate the proposed assessment requirements of the Coastal Management State Environmental Planning Policy into the state-wide Standard Principle Instrument Local Environmental Plan to provide one publicly available, consistent and transparent source of information.

e) Comments on Draft Coastal Management SEPP: Coastal Use Area

Development Controls

Clause 15 Development on land within the coastal use area

Council is very supportive of the provisions of Clause 15.

It is requested that part (b) of the clause be supported with a reference to the NSW Coastal Design Guidelines 2003, to ensure consistency with the S117 Ministerial Direction requirements and provide for a consistent approach to assessment of these factors:

(b) has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.

Mapping

Council has no objection to the mapping of the Coastal Use Area however the landward extent of this area is not adequately identified within the Coastal Management Act or Coastal SEPP.

Relationship to Local Environmental Plan

The Coastal Reform exhibition material is not explicit in its intent with regards to how existing LEP clauses, definitions and mapping will relate or interact with the Coastal Management SEPP.

Therefore Council have interpreted the exhibition material as:

- maintaining existing LEP clauses and maps that also identify foreshore assessment requirements and provisions;
- creating a second layer of assessment for a newly defined 'foreshore' (Coastal Management Act) and introducing higher level and less explicit assessment criteria within the Coastal Environmental Area clause.

Within the Great Lakes LEP 2014 for example:

- Clause 7.10 Limited development on foreshore area and the associated Foreshore Building Line Map; and
 - Clause 7.11 Development on the foreshore must ensure access
- are potentially superseded or duplicated by provisions in the Coastal SEPP.

This scenario is not supported as it will create an unnecessary level of duplication and potential inconsistency in the application of controls for local government development assessment officers, but also for land owners.

Therefore Council officers continue to recommend that the Department incorporate the proposed assessment requirements of the Coastal Management State Environmental Planning Policy into the state-wide Standard Principle Instrument Local Environmental Plan to provide one publicly available, consistent and transparent source of information.

f) Draft Coastal Management SEPP: General Provisions

Comments on Draft Coastal Management SEPP: Flexible Zone Boundary Provisions

Within the MidCoast LGA this would affect the application of the Standard LEP *Clause 5.3 Development near zone boundaries* which is contained in the Gloucester and Greater Taree LEP documents.

The flexible use boundary clause in the LEP already contains exclusions to ensure that the boundaries of environmental zones cannot be affected. In applying the provisions of the clause to development zones therefore primarily affects urban areas and potentially allows for the effective implementation of subdivision and development following the rezoning of land for urban and development purposes.

Given the existing protections within the Standard LEP clause for flexible zone boundaries, Council would support the exclusion of flexible zone boundary provisions within the Coastal Wetland and Littoral Rainforest; Coastal Vulnerability and Coastal Development Areas, rather than to the full extent of the Coastal Use Area as currently proposed.

g) Draft Coastal Management SEPP: Amendments to other SEPPs

Comments on Draft Coastal Management SEPP: Amendments to other SEPPs

Council has no objection to the majority of amendments to related SEPPs, with the exception of those relating to the State Environmental Planning Policy (Exempt and Complying Development) 2008.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Code SEPP)

Clause 1.5 Interpretation—general

Council is supportive of the amendments to the Code SEPP definition of environmentally sensitive land to incorporate references to coastal lakes from Schedule 1 and 2 of the Coastal SEPP.

The amendment proposes the replacement of the reference to *(b) a coastal lake* with:

(b) a coastal lake specified in Schedule 1 or 2 to State Environmental Planning Policy (Coastal Management) 2016,

However, to ensure consistency between environmental planning instruments and therefore development assessment processes and provisions, it is recommended that this amendment also be included in the proposed amendments to *Clause 3.3 Environmentally sensitive areas excluded* of the Standard LEP. Noting that this clause is already identified for amendment in the draft Amendments to the Standard LEP that form part of the public exhibition material.

Furthermore it is noted that Great Lakes LEP 2014 also identifies a buffer to coastal waters and coastal lakes:

(ja) land within 100 metres of the coastal waters of the State or a coastal lake

The former Great Lakes Council incorporated this provision to ensure consistency with the identification and assessment of development in close proximity to all environmentally sensitive areas identified in *Clause 3.3 Environmentally sensitive areas excluded* of the Standard LEP.

The Coastal Management SEPP reinforces similar buffers to other environmentally sensitive lands and introduces a new buffer to coastal wetlands, consistent with those provided to identified RAMSAR Wetlands.

To ensure consistency in matters for consideration in the assessment of development in close proximity to all identified environmentally sensitive lands, as defined in the Code SEPP and Standard LEP, it is therefore requested that a 100m buffer also be provided to:

- coastal waters of the State; and
- coastal lakes as specified in Schedule 1 or 2 to State Environmental Planning Policy (Coastal Management) 2016

Land Based Exclusions for Complying Development

Clause 1.19 Land on which complying development may not be carried out of the Code SEPP specifies that complying development for General Housing, Rural Housing and Commercial & Industrial (New Buildings and Additions) cannot be undertaken on:

- land identified by an environmental planning instrument as being:
 - within a buffer area, or
 - within a river front area, or
 - within an ecologically sensitive area, or
 - environmentally sensitive land, or
 - within a protected area, or
- land that is identified by an environmental planning instrument, a development control plan or a policy adopted by the council as being or affected by:
 - a coastline hazard, or
 - a coastal hazard, or
 - a coastal erosion hazard, or
- land in a foreshore area.

The Coastal Management Act 2016 includes a new definition for a:

foreshore area meaning the area of land between the highest astronomical tide and the lowest astronomical tide,

replacing the existing Standard LEP definition of:

coastal foreshore meaning land with frontage to a beach, estuary, coastal lake, headland, cliff or rock platform.

This new definition not only affects coastal areas, but all waterways (lakes, rivers, estuaries) that are subject to tidal influences and Council support the broad definition. However, the identification of this discreet area for land-based exclusion purposes will continue to be difficult without clearly defined, consistent mapping.

Therefore, the explicit identification of the landward extent of the newly identified Coastal Environment and Coastal Use Areas within the Coastal SEPP and creating a clear link between these and the relevant land-based exclusions identified in the Code SEPP must be resolved.

Furthermore, the ambiguity and inconsistent interpretation of such areas in the gazetted documents are a matter of increasing and on-going risk to NSW Government within the increased use of online application and assessment tools such as the Electronic Housing Code, where land-based exclusions determine whether or not a land owner can:

- undertake a complying development certification process using a private certifying authority; or
- must lodge a development application with Council that is assessed in accordance with the provisions of the relevant LEP and Coastal SEPP.

Schedule 5 Land excluded from the General Housing Code

Council requests that the coastal hazard land-based exclusion maps contained within *Schedule 5 Land excluded from the General Housing Code* of the Code SEPP be repealed by the Minister.

Within the MidCoast local government area this would result in the removal of Great Lakes Complying Development Land Map (SEPP_ECD_3400_LCD_001_20101022) which contains outdated and inaccurate land-based exclusions for coastal hazards.

h) Comments regarding Additional Local Environmental Plan Matters

Local Environmental Plan Clause and Map provisions

As identified in the *Summary Table: Assessment of Potential Inconsistencies between Coastal Reform Package of LEP Amendments and Coastal Management SEPP with existing Local Environmental Plans of MidCoast Council*, provided as an attachment to this submission, the relationship between the draft Coastal Management SEPP and local environmental plans, are complex and not fully resolved by the documents on exhibition.

In this regard, MidCoast Council has identified that within the relevant LEPs currently in force within the LGA, the Draft Standard LEP Amendments and the Coastal SEPP potentially creates inconsistencies or dual assessment requirements, for the following clauses from the Standard LEP:

- 5.3 Development near zone boundaries (Gloucester and Greater Taree LEPs)
- 5.7 Development below mean high water mark [compulsory if land to which Plan applies contains tidal waters] (Greater Taree and Great Lakes LEPs)

- 7.4 Coastal risk planning and Coastal Risk Planning Area maps (Great Lakes LEP)
- Clause 7.5 Stormwater management
- 7.7 Riparian land and watercourses and Watercourse maps (Great Lakes LEP)
- 7.8 Wetlands and Wetlands maps (Great Lakes LEP)
- 7.10 Limited development on foreshore area and Foreshore Building Line maps (Great Lakes LEP)
- 7.11 Development on the foreshore must ensure access (Great Lakes LEP)
- 7.18 Residential accommodation at Winda Woppa and Development Restriction Area map (Great Lakes LEP)

The Draft Standard LEP Amendments and Draft Coastal SEPP also potentially create significant inconsistencies with the objectives, controls and land use permissibility associated with mapping layers of MidCoast LEPs including but not limited to: Land Use Zoning, Minimum Building Height, Floor Space Ratio and Minimum Lot Size.

Council officers therefore, while in general support of the Coastal Reforms, to advocate for all proposed planning controls and maps in the exhibition material, to be created as amendments to the Standard LEP in preference to a SEPP for the purposes of effective Coastal Management.

In this regard, the Minister has the legislative authorisation to give immediate affect to amendments to the Standard LEP and those documented within the exhibition material could be made compulsory for all LEPs affecting land within the coastal zone, as defined by the Coastal Management Act.

S149 Planning Certificate Notations

With the elevation of coastal hazard information from local environmental plans and development control plans into a State Environmental Planning Policy it is unclear how the current coastal hazards and Council policy notations on a S149 Planning Certificate will appear on certificates after the SEPP comes into effect.

Schedule 4 of the EP&A Regulation 2000 prescribes the information to be contained in s149 certificates. Currently, the schedule only requires the identification of relevant planning instruments by name, so no additional information as to the management areas of the Coastal Management SEPP will be required.

MidCoast Council supports the provision of planning, environmental and hazard information in publicly available documents and through the provision of clear and appropriate S149 Notations.

Therefore it is requested that the Department, in consultation with the NSW OEH ensure consistency between SEPP, LEP, S149 Planning Certificate Notation and coastal management program requirements, particularly with regards to the identification of the current/immediate hazard, zone of reduced foundation capacity and future hazard.

In this regard, while Part 7 of Schedule 4 does require reporting of any Council and other public authority hazard policy document that may restrict development, clarification is required from the Department as to how coastal risks will be reported on s149 certificates when the SEPP comes into effect.

Therefore, Council would support both the identification of the Coastal Management SEPP as a State policy under Part 7 and each of the relevant management areas (in whole or part) of the SEPP, on s149(2) certificates. This would be consistent with the notation requirements for bushfire and flooding hazards.

In conclusion, the Coastal Reforms represent a significant shift in the State's approach to coastal planning and management.

Council has already undertaken significant work in this area and as a result, the concepts presented are generally supported by Council officers. However, the effect on local environmental plans and questions regarding consistency and effective implementation remain and are therefore the focus of the submission

MidCoast Council are however keen to continue to work closely with representatives of the Department of Planning & Environment and NSW Office of Environment & Heritage to progress the coastal reforms to ensure a clear, transparent and consistent planning and management framework can be established for the benefit of land owners and the community.

Should you have any enquiries in relation to any matters raised within this submission, please contact Alexandra Macvean on 6591 7348.

Yours faithfully

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Attachments

Summary Table: Assessment of Potential Inconsistencies between Coastal Reform Package of LEP Amendments and Coastal Management SEPP with existing Local Environmental Plans of MidCoast Council
Lindsay Taylor Lawyer article on Newton vs Great Lakes Council

DRAFT