

20 January 2017

## **OBJECTION**

### **NSW Coastal Alliance Submission – Objection to:**

- Draft State Environmental Planning Policy (Coastal Management) 2016 (Draft CM SEPP)
- Draft Local Planning Direction - Coastal Management
- Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016

### **Overview**

The overriding stand out issue that has emerged since the NSW State Coalition Government embarked on its so called Coastal Reforms journey is the complete disregard for the importance of public participation in planning processes and its deceptive and misleading behaviour during any interaction with community representatives. This applies to the broad cross section of our communities from conservationists and environmentalists through to owners of properties, all of whom together with residents of the NSW Coastal Zone are adversely affected by the proposed coastal management legislative framework.

Around 75% of the submissions presented during the exhibition of the Coastal Management Bill, were opposed to the Bill being progressed without the critical mapping of coastal management areas that would inform both the Bill and the proposed SEPP that would follow. Today we are still waiting for accurate and complete mapping of wetlands, littoral forests and coastal vulnerability areas to be made available. This is despite the fact that over a year has passed since they were promised and we have now reached the end date for the exhibition of the Draft CM SEPP 2016.

An important object in the ***NSW Environmental Planning and Assessment Act – Section 5 Objects (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment***, has been forgotten by those thoughtless and foolish Members of the NSW Parliament who voted in favour of the Coastal Management Bill 2015. They have agreed to the bypassing of Parliament to allow new law to be created and to the destruction of

long held property rights including the right of an individual to protect their property. Their negligence and sheer stupidity has opened the door to a period of community division and ongoing litigation as people adversely affected by this so called “*innovative framework of legislation*” are forced to protect their wellbeing and livelihoods.

Minister Stokes has held sole carriage of this reform process since the removal of Premier O’Farrell in 2014. This is his legislative framework in its entirety, having overturned the promises made by the O’Farrell State Coalition Government, particularly those related to supporting existing communities living in existing developed coastal areas. The communities labelled by Minister Stokes’ as “*legacy issues*”.

Nothing has been done to ensure the long term viability of those communities now exposed to current and future coastal hazards except to continue to bleed them through taxes, council rates and levies based on property values that are continuing to be diminished by a process of deceptive change!

Public participation is supported by an object of the current NSW Environmental Planning and Assessment Act and is a process that has been strongly upheld in the past by Minister Stokes: 2

*Public participation in planning and environmental decision-making is recognised by the international community through Agenda 21, which asserts that the "process of consultation would increase peoples' awareness of sustainable development issues".<sup>85</sup> As Ch 23 of Agenda 21 asserts:*

***Individuals. .. need to know about and participate in environment and development decisions, particularly those which affect their communities. For people to make informed decisions ... governments should give them access to all relevant information on environment and development issues.<sup>86</sup>***

*The importance of public participation in planning law has been emphasised in parliamentary debates since the introduction of the EPAA*

***The technocrat is back: Environmental land-use planning reform in New South Wales Zada Lipman and Robert Stokes p.317 (2008) 25 EPLJ 305***

***The proposed framework of Coastal Management Legislation and Guidelines will fail as a consequence of the failure of the NSW Parliament to uphold the interests of its Citizens.***

## Summary of Issues

### ***The extended consultation period for the CM SEPP to 20 January 2017 is inadequate***

- As previously stated, the NSW Environmental Planning and Assessment Act – Section 5 Objects (c), requires the government to ***provide increased opportunity for public involvement and participation in environmental planning and assessment***

Section 38 EP&A Act NSW requires the Minister to consider as appropriate or necessary the publication of an explanation of the intended effect of the proposed instrument, and to seek and consider submissions from the public on the matter.

The NCA does not believe that these responsibilities have been fulfilled (***Attachment 1***)

- The period of extension is during a peak holiday period of social and cultural significance for families and is not a time for having to deal with such complex legislation and how this will affect them. This is immoral and deceptive and a complete sham! (***Attachments 2,3,4,5 & 6***)
- It has been presented by the NSW Government that there has already been an extensive period of consultation related to the Draft CM SEPP through the Explanation of Intended Effect (EIE). This is nonsense! The EIE and the Draft CM SEPP are very different documents requiring a different analysis of all related documents and the Draft CM SEPP itself and in fact the process is complicated by the EIE
- Cross referencing to other existing legislation requires large amounts of time to properly understand the consequences of this SEPP and for any arising issues to be promulgated amongst communities (***Attachment 7***)
- Significant affected communities have been locked out - no opportunity to participate, be informed and educated – Western Sydney, Coffs Harbour, Lake Macquarie, and Bega Valley.
- No additional information sessions were provided during the extended consultation period
- The mapping remains a mystery containing omissions, flaws and inconsistencies. These have not been ***properly explained*** to communities that will be directly affected by the Coastal Management SEPP. At the Erina Information session, participants were told the Local Government Hazard Mapping had no formal status.

**No solution for outstanding protection issues under the State Coalition Government.**

- **Eurobodalla, Shoalhaven, Wollongong, Sydney, Central Coast, Lake Macquarie, Mid Coast, Coffs Harbour** and to a lesser extent other coastal LGAs have coastal communities that total around 50,000 homes that are affected by threats of tidal inundation, storm surge flooding and flooding that is a combination of these threats affecting the foreshores of estuarine waterways. Only two suburbs at Marks Point and Belmont South have an adaptation plan. **The Draft CM SEPP does not support the development of adaptation plans** for the remaining tens of thousands of NSW family homes and commercial, industrial and rural properties that are affected by these coastal hazards. These same areas on the other hand have beachfront properties that are identified as being threatened by coastal erosion in the Draft CM SEPP Local Government Hazard Map. How are Councils and Government to properly address these ongoing protection issues when there is such a discrepancy between the two classifications of coastal hazards?
- **Wamberal Beach and Old Bar Beach** are intolerable situations that must be addressed now! The disparity between what is happening at these locations and what has happened on the Northern Beaches is incomprehensible and stands out as a misuse of power by the NSW State Government' Despite some positive comments during the exhibition period there is still no significant concession. The implementation of the Draft CM SEPP 2016 will exacerbate these issues with the potential introduction by Council of time limited development consent, temporary use of land and temporary buildings and ambulatory boundaries.
- **Collaroy Beach** coastal protection and coastal management appears as a reasonable model of co-operation and planning between residents and Local Councils. However the implications of the proposed CM SEPP 2016 will force division between these two parties once the Coastal Management Act and SEPP are implemented. Such a reasonable approach to Coastal Management will be shattered by draconian legislation and the auditing of Councils by a new "**Coastal Police**" as the Coastal Council audits Local Councils to ensure compliance with Coastal Management Programs designed by the Coastal Council. This conflicting aspect of the overall framework including the Draft CM SEPP 2016 ensures a "jackbooted disciplinarian" approach to the compliance regime. Again largely due to the failure in the Draft CM SEPP and the CM Act to properly address the "legacy issue".
- **Boomerang Beach, Blueys Beach and Collingwood Beach** are still subject to an intolerable situation whereby accreting beaches have been labelled as coastal vulnerability according to the Draft CM SEPP Local Government Hazard Mapping. In similar locations such as Umina [enquiries@nswcoastalalliance.org](mailto:enquiries@nswcoastalalliance.org) PO Box 88 Pacific Palms NSW 2428 [www.nswcoastalalliance.org](http://www.nswcoastalalliance.org)

Beach where the same circumstances and conclusions apply in terms of accretion the beach is not indicated in the Local Government Hazard Map as being a vulnerable area.

- ***Belongil Beach*** includes a small community of beachfront owners whose rights have been attacked by the NSW State Government, Byron Shire Council and The Greens for over 20 years. Despite court decisions that have upheld their rights, the proposed Draft CM SEPP will ensure that this attack continues due to the failure to consider existing developed communities as different to greenfield development sites. They will also be subject to the continuing attack on their wellbeing and livelihood by a Council and local Green groups encouraged by the ambiguity and also outright bias against existing developed areas that is found in the Draft CM SEPP 2016.
- ***Wharf Road Eurobodalla*** is a NSW hotspot under present legislation. Owners of lands in this area may only use emergency protection works to prevent further erosion. However a long term solution would be the construction of an engineered revetment. Council has rezoned this private residential land as E2 Environmental Protection. Under the Draft CM SEPP 2016 there seems no way forward to allow owners to protect their property and in fact the Coastal Panel has recommended that if inundated land is acquired there is no reason for compensation to be paid as title has automatically reverted to the Crown. The Draft CM SEPP offers no solution to this issue other than expropriation of land supported by the advice a statutory body, the Coastal Council. In fact the Draft CM SEPP supports the expropriation of land despite land having a fixed boundary and Torrens Title. Why is it now possible for a proposed statutory body, the Coastal Council, to determine the compliance of Coastal Management Plans, to offer advice to the Minister, to have members who have a clear conflict of interest? (***Attachment 8***)
- ***Wonboyn Lake*** has a small isolated community on its foreshore that is subject to coastal erosion. The Draft CM SEPP 2016 offers no permanent solution, does not address this “legacy issue” at all and offers no way forward. This is typical of the limited scope of these reforms to deal with individual issues in quite isolated areas of NSW.
- There is ***no facilitation of defensive adaptation*** for existing developed areas.
- ***The use of offshore sand resources*** to renourish beaches at risk remains as a disgraceful ***failure by government to act***. The new framework of legislation does not address this issue but instead exacerbates it by extending the overall scope of the CM Act to include additional constraints on the use of offshore sand resources. The definition of a beach now extends the

width of beaches from around 100m from the low tide mark to approximately 2 kilometres seaward from low water.

- The proposed funding of \$83 million dollars over 5 years to implement the Draft CM SEPP 2016 is totally inadequate

### **The NSW State Coalition Government has introduced an unstated policy of “*planned retreat*”.**

- Councils ***must*** consider imposing ***time limited development consent, temporary buildings and temporary use of land*** when approving development – a first for NSW – but no compensation to property owners adversely affected by such development constraints!
- ***Individuals are no longer allowed to protect their land.*** Not just beachfront property owners but all of those whose homes are adjacent to areas redefined as beach in estuaries and waterways.
- A new legal concept, ***ambulatory boundaries*** is being introduced for land with fixed line boundaries. As privately owned land is lost to the “ambulatory” beach, it will become public land such as beaches, wetlands and intertidal zones but with ***no just terms compensation and no right to protect!***
- Owners of single lot private residential land, with homes, are ***losing their land*** as mapping of NSW Wetlands is extended by stealth.
- This legislation supports the ***expropriation of private land!***
- ***Defensive adaptation for existing developed communities is not supported***

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### ***Other Issues***

#### ***General***

- unlawful and contrary to law – the new proposed provisions are so excessive they are beyond power;
- mapping – errors and omissions in mapping;
- economic factors not taken into account;
- social factors not taken into account;
- wider environmental impacts not taken into account or able to be taken into account;
- no differentiation in type and degree of coastal risk;

- impact on regional townships in areas such as Byron Bay, Coffs Harbour, Old Bar, Swansea, Marks Point, Belmont South and Lake Macquarie Foreshore, Wyong, Gosford, Avoca Beach, Wamberal Beach, Brisbane Water & Tuggerah Lake Foreshore, Collaroy Beach and other Sydney Beach and Sydney Harbour Foreshore, Western Sydney Georges River & Parramatta River, Wollongong, Shoalhaven, Eurobodalla and Bega Valley would be adverse in social and economic and environmental terms;
- these reforms do not permit a wider range of coastal solutions to be considered at each particular site;
- these reforms are too heavily in favour of permitting retreat and loss of property without compensation and without regard to the economic or social consequences;
- these reforms do not provide access to a sophisticated and flexible range of responses to the problems social communities are facing or may face in the future. The reforms restrict possible responses to sand nourishment or sand dunes. As such, they are too narrow and restrictive as a reform to assist our valuable coastal communities.

### **Unlawful/Contrary to Law**

The Draft SEPP would be unlawful and invalid if made.

It is unreasonable, too restrictive and too uncertain in the language used. It is disproportion and contrary to legislation. Parliament could not possibly have authorised a SEPP with such significant potential deprivation of property rights and narrowing or restrictions in coastal protection beyond those contemplated by the Parliament.

The Draft SEPP and Local Planning Direction would be unlawful and void if made. Those instruments therefore should be revised.

The proposed delegated legislation and direction would have significant adverse impacts on most regional townships including small businesses and tourism facilities with a potentially devastating impact on youth employment. There has been little or no consultation with regional communities including those of the Western Sydney Region. These communities would have a strong interest in challenging the legal validity of these instruments if they were to be made in their current form and impact to any extent as described above.



## **Admissions as to the true effect of these reforms: Mr Luke Walton, Department of Planning**

Mr Luke Walton from the Department of Planning has sent emails to Mr and Mrs Pullinger that make it clear as to the true nature and effect of the reforms that are proposed. It is clear from these emails that the proposed reforms will allow a council to decide on planned retreat with no compensation. If the council decides not to acquire the property – but merely allow the sea to destroy a property by enforcing a policy of planned retreat, then according to Mr Walton, no compensation is payable. He says that this is a matter for the Council to decide. This will lead to different approaches up and down the coast with property owners at the whim of individual councils.

It is also clear from Mr Walton's email that the State Government would not have a say about this. As Mr Walton points out, under the proposed reforms the Minister's role as set out in the draft reforms is limited to certifying whether there has been procedural compliance in preparing the plan. This would not allow the Minister to have a say about whether planned retreat was the best option – if the Council has decided upon planned retreat having followed the nominated procedures.

Mr Walton's suggestion that landowners could still lodge a development application and protect their properties is patently incorrect.

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We say this because:

1 A planning authority has to have regard to the terms of a coastal management programme. If that programme provides for protection to be taken down and planned retreat to be imposed, then planning permission is not going to be granted which is contrary to the management programme that Council is pursuing.

2 In any event, the proposed reforms deprive the owners of the right to protect their property. See in particular clause 13 of the draft SEPP which requires property owners to allow for the ambulatory movement of their properties or launch into sand nourishment which is way beyond the means and practical capabilities of individual property owners.

Thus, Mr Walton from the Department of Planning has revealed the true vice of these reforms in his responses which are that the reforms :

1 Give decision making power to individual Councils with no control by the Minister;



2 Allow the Councils to impose planned retreat without compensation on property owners who have been stripped of any meaningful means of protecting their properties;

3 Allow the Councils therefore to create a situation where property owners lose their property with no compensation and no real way of protecting themselves.

This is the substance of the vice in these reforms. **(Attachment 9)**

### **Economic and Social Factors Not considered**

At the public consultation meeting held at Erina, the representatives of the Office of Environment and Heritage indicated that in the preparation of these reforms there had been no consideration of the economic and social implications of these reforms on coastal communities. A reform that has had no regard at all to social or economic issues is obviously grossly inadequate and should be sent back for further consideration.

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### **No Regard to Nature/Degree of Coastal Risk**

The proposed reforms do nothing at all to recognise legacy issues or to facilitate solutions being provided. There are existing legacy issues on the NSW Coast for which solutions need to be found urgently.

There is no differentiation between the degree of erosion threat i.e. in whether it is immediate or predicted in the future, slight or large, extreme or manageable. All coastal risks are lumped together indiscriminately and treated in the same way. A more sophisticated refined approach is needed which allows for responses to be tailored to the particular situation rather than the “one size fits all” approach in the current Draft CM SEPP 2016.

### **Other Environmental Factors need to be Considered**

The draft reforms make no allowance at all and do not facilitate protection being put in place in the wider interests of the community and the environment. In many coastal communities, the front line of properties and their protection provide protection not only for the dunes, waterfronts or

riverfronts on which they sit but also the communities behind them and other natural wetlands and littoral forests.

This is very much the case for communities at Wamberal, Avoca, Belongil, and Old Bar and in waterside suburbs on the Central Coast, at Lake Macquarie and the many waterside communities of Batemans Bay and Jervis Bay.

There should be a wider focus on the environment than just the beach and beach nourishment. Our coastal systems also include lakes, estuaries, creeks, lagoons and dunes. The whole of the coastal eco-system needs to be assessed – not just the beach.

The proposed reforms are too narrow and restrictive. They do not contain a realistic, holistic approach to dealing with the many environmental issues up and down the New South Wales coastline. The reforms could lead to greater environmental damage than they seek to avoid.

### **Too Narrow An Approach to Coastal Protection Solutions**

These so called “innovative” legislative reforms are in fact the opposite. The proposed reforms including Draft CM SEPP 2016 preclude the use of modern sophisticated options in favour only of sand dunes or sand nourishment. What solutions are offered for the majority of the coastal that is affected by coastal hazards besides Coastal Erosion? For Coastal Flooding there are none!

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There can be no justification for a blanket rejection of every other option that may be a potential application as a solution at a particular site. The narrowing of options and the exclusion of many modern coastal protection mechanisms as blanket exclusion cannot be justified in the modern era. This is particularly so when so much of Australia’s existing built communities are on the coastline.

The livelihood and well-being of NSW coastal communities depend on being able to have effective coastal protection in the future. Limiting these communities to sand dunes and sand protection is an irrelevant approach which turns its back on potential for the renewal of existing developed coastal areas including those that located in low lying flood liable areas..

For this reason alone these reforms should be rejected.

## Conclusions

The proposed reforms including the Draft CM SEPP should not proceed. The Coastal Management Act should not be proclaimed until these reforms have been considered more carefully and with proper consultation with affected coastal communities.

None of these reforms should be progressed at this time until a full assessment of all the economic, social and environmental implications has been undertaken and accurate mapping made available.

Assessment should be made of the economic, social and environmental factors and the need to provide coastal communities with a variety of means to protect their communities. Only when this has been done will it be possible to assess the true impact of these reforms on coastal communities and the people of New South Wales.

## List of Attachments

- 1, Letter to Minister Stokes - SEPP Issues 18 January 2017
2. Letter to Premier Baird
3. Letter to Premier Baird
4. Letter to Premier Baird
5. Letter to Premier Baird
6. Letter to Premier Baird
7. Related Amended Legislation to be reviewed
8. Wharf Rd CZMP Hannah Dunn 16 January 2017
9. Admissions Department of Planning



Pat Aiken NCA Regional Co-ordinator

***Submitted on behalf of the NSW Associations and Coastal Community Groups that make up the membership of the NSW Coastal Alliance.***

Hon Rob Stokes MP  
Minister for Planning  
52 Martin Place,  
Sydney NSW

148 Steyne Road  
Saratoga 2251  
Mobile 0419 475 335  
[patrick.aiken001@gmail.com](mailto:patrick.aiken001@gmail.com)

Dear Minister,

### **Errors in the Consultation Process for Draft SEPP – Central Coast and elsewhere**

I am writing to confirm certain critical errors in the consultation mapping documents for the Central Coast and other areas. This has led to residents and property owners in large numbers on the Central Coast and elsewhere being misled as to whether the proposed reforms affect them.

#### **What type of errors?**

By the consultation mapping, it has been represented to tens of thousands of property owners at the Central Coast, Lake Macquarie, Shoalhaven, Mid Coast, Eurobodalla and to a lesser extent in other Local Government Areas (LGA) such as Byron Shire, that their properties are not affected by the proposed reforms.

The consultation mapping which you have published confirms this. However, the mapping of the relevant councils, which applies according to the terms of the draft Coastal Management State Environmental Planning Policy (CM SEPP) 2016, shows clearly that properties are affected.

As a result, residents have been misled and don't understand they are affected by a draconian framework of legislation that enforces planned retreat and will result in the expropriation by government of land affected by current and future coastal hazards.

Those residents have therefore lost an opportunity to be involved in the consultation and public participation process related to the development of a planning instrument – Draft CM SEPP 2016.

#### **Why is this important?**

I know, Minister, that you have written in the past in academic journals about the importance of consultation and public participation. The need for public participation is also reflected in the objects of the Environmental Planning and Assessment Act and its substantive provisions. The importance of these types of provisions was recently made clear by the Land & Environment Court in the decision of *Mosman Municipal Council v Minister for Local Government* [2016] NSWLEC 124. In that case, the Land & Environment Court found errors in the consultation process and report which invalidated the process.

#### **What are the exact errors and who exactly is affected?**

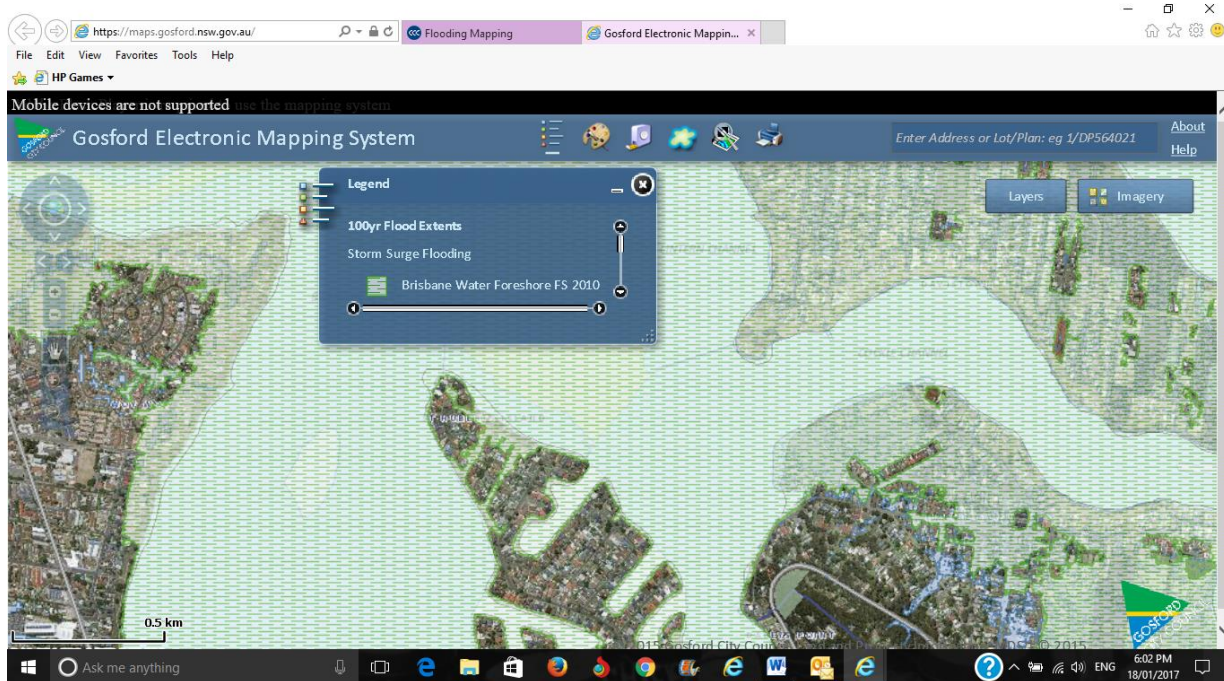
Our main area of concern as discussed at our meeting with you on 10 January 2017, is that the predominant coastal hazards of inundation and flooding in low lying coastal suburbs (coastal flooding) has not been indicated in the Draft CM SEPP 2016 mapping. Potentially, 50,000 or more family dwellings in the NSW coastal zone, together with commercial, industrial and open space properties owned by corporations and local government are affected by these coastal hazards according to various reports (e.g. Climate Change Risks to Australia's Coasts. A First Pass National Assessment. Commonwealth Department of Climate Change 2009).



Attached are Local Government Authority maps for Lake Macquarie, Brisbane Water and Tuggerah Lakes that indicate the extent of such flooding which is generally a combination of flooding by tidal waters and catchment flooding or tidal inundation, thus falling under the criteria of the current coastal management framework of legislation and guidelines as being a coastal hazard.

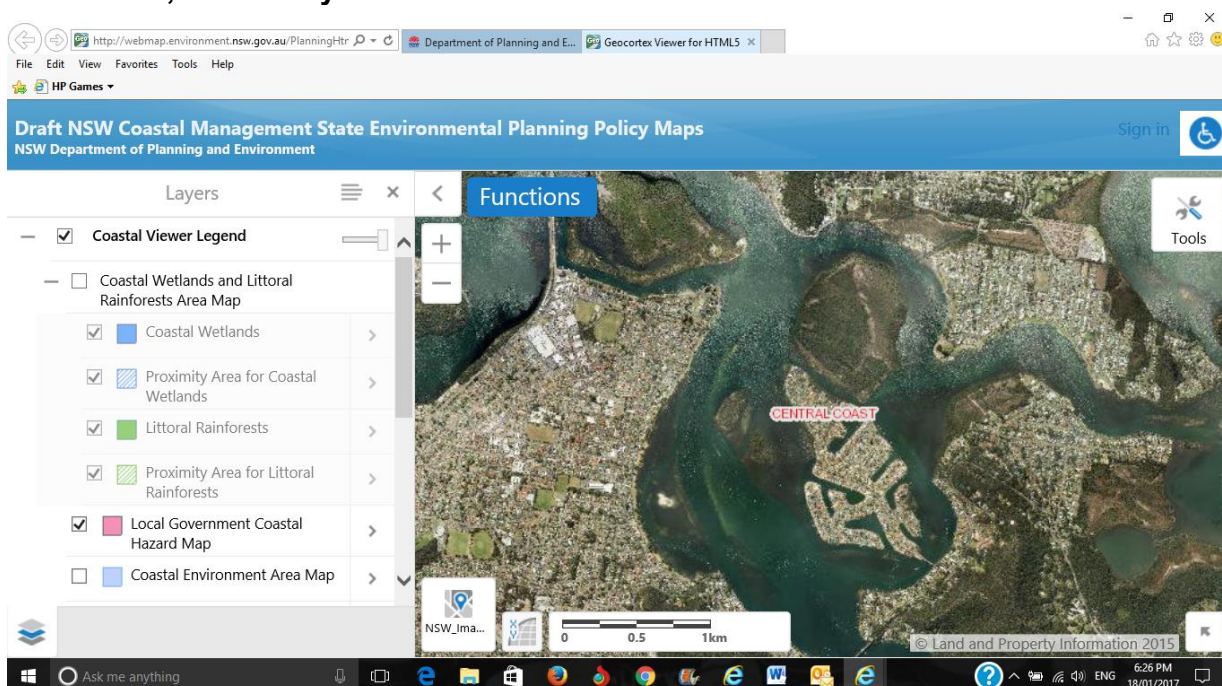
***Wrongly, this local government mapping has not been included in the consultation papers you have released. These are obviously highly material omissions!***

**Screen Shot Indicating Storm Surge Flooding. 1%AEP Woy Woy, Davistown, Empire Bay, St Huberts Island 18 January 2017 Central Coast Council.**



***This map indicates the current coastal hazard for storm surge.***

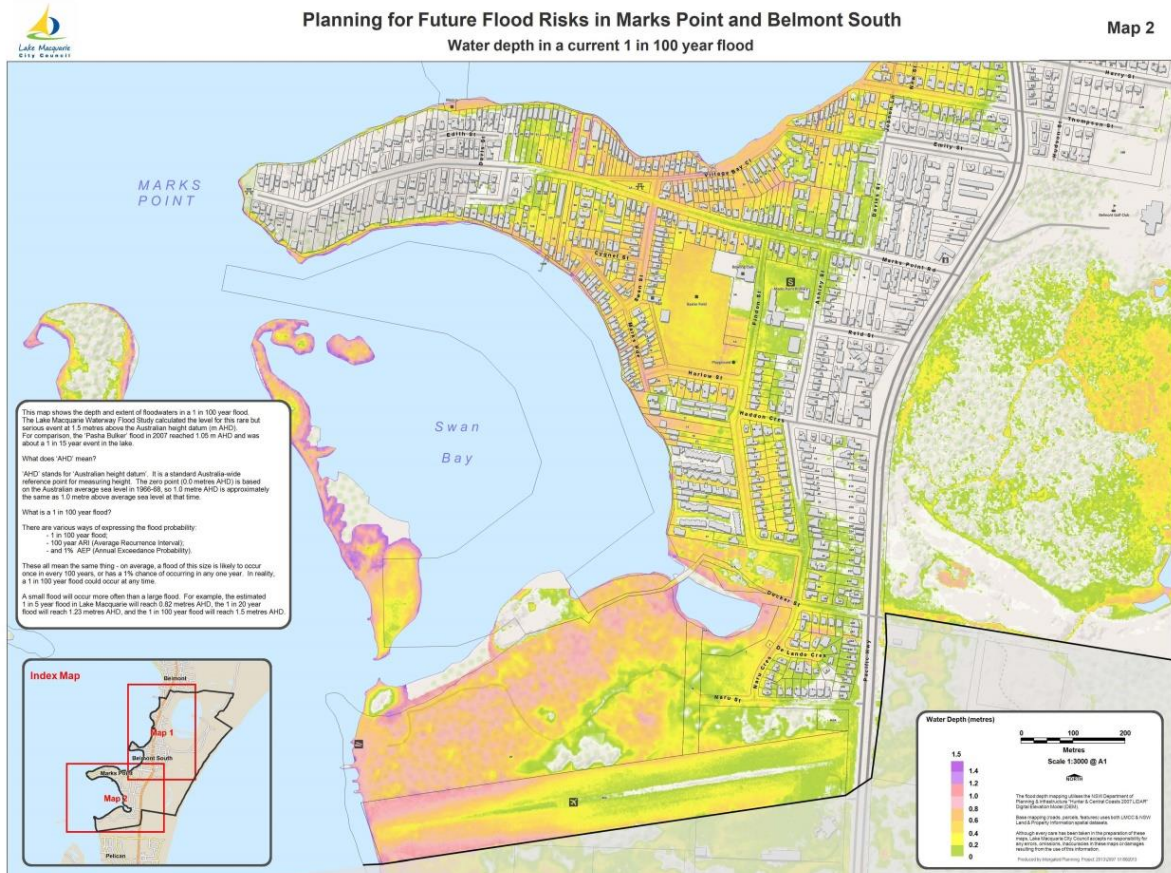
**Draft SEPP Local Government Hazard Map for Woy Woy, Davistown, Empire Bay and St Huberts Island, 18 January 2017**



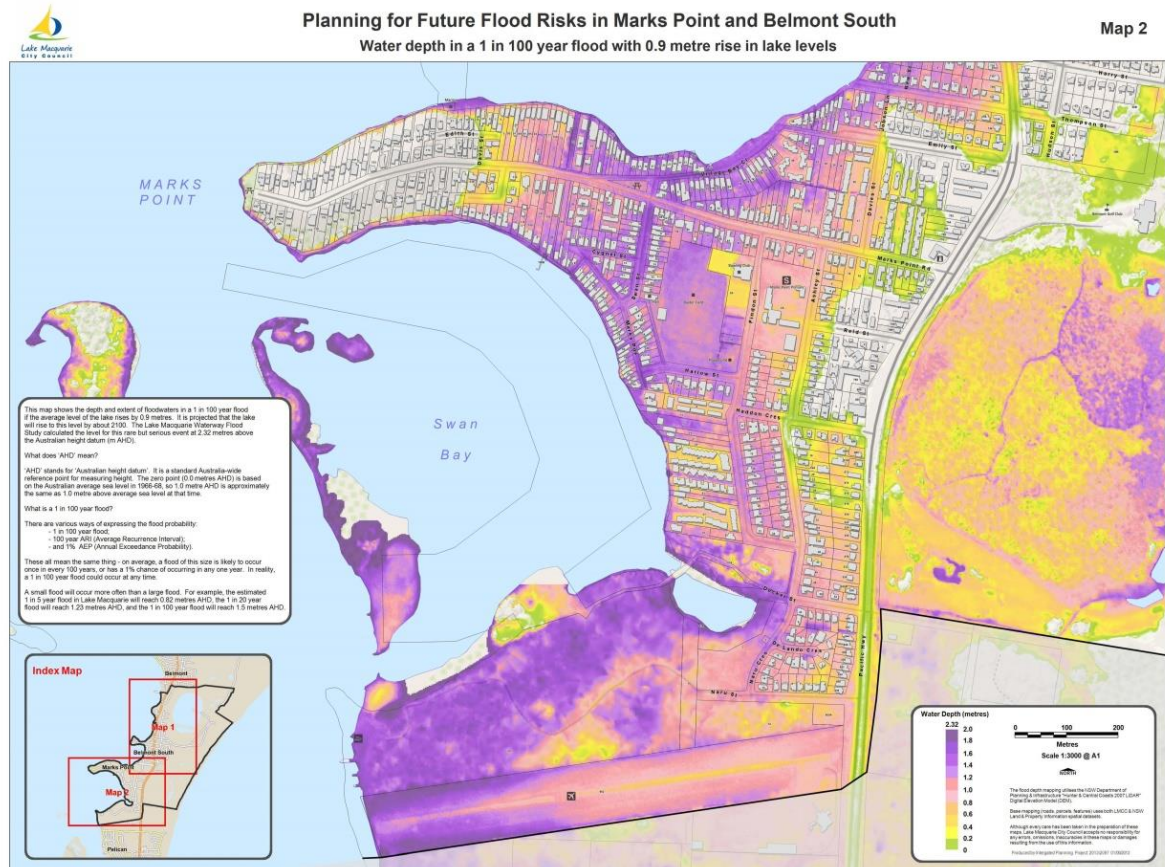
***The Draft CM SEPP 2016 Map does not indicate the current coastal hazard of storm surge flooding with Local Government Coastal Hazard Map viewer switched on.***



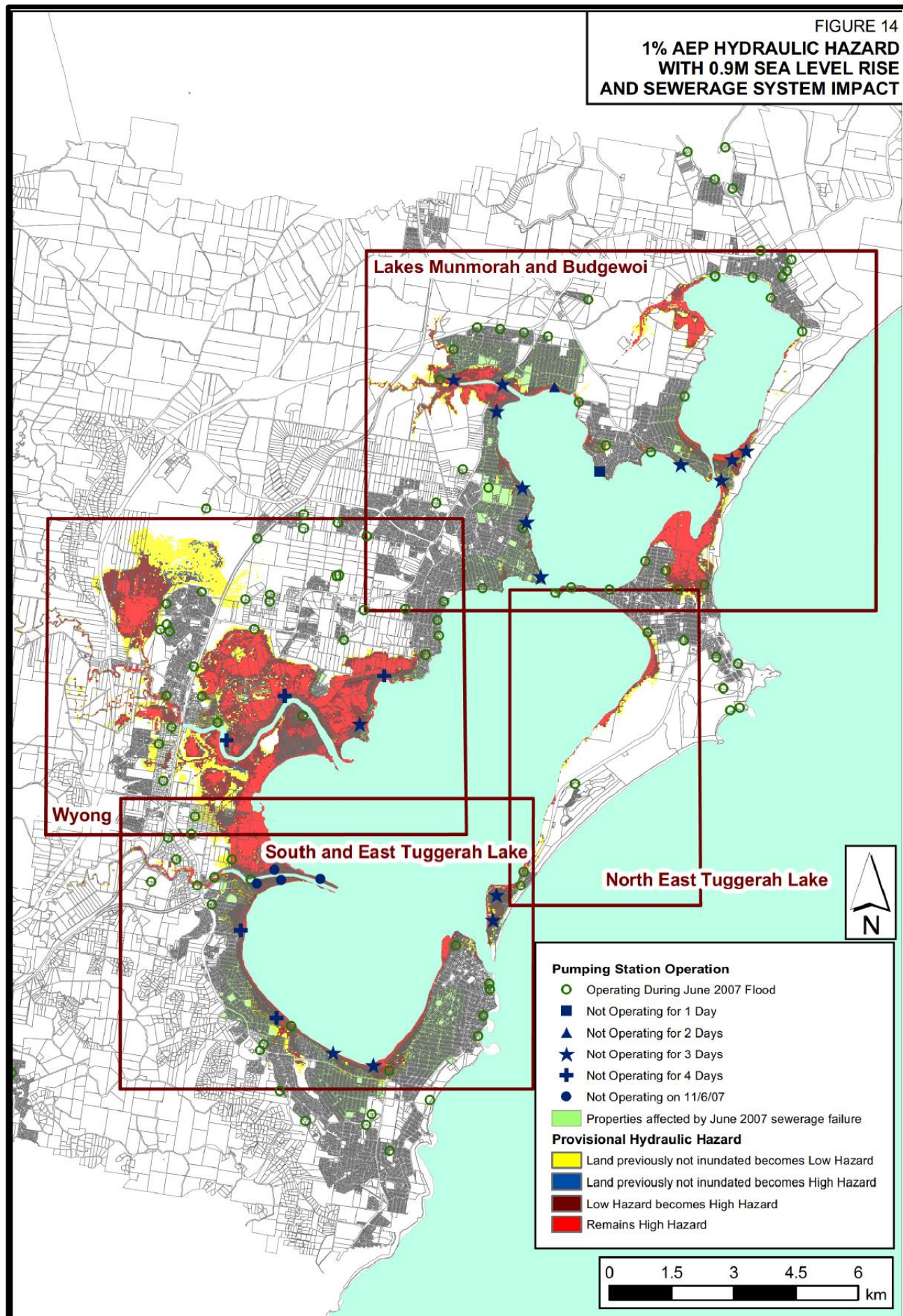
# Lake Macquarie City Council coastal hazard mapping for future coastal hazards 18 January 2017



# Lake Macquarie City Council coastal hazard mapping for future coastal hazards 18 January 2017

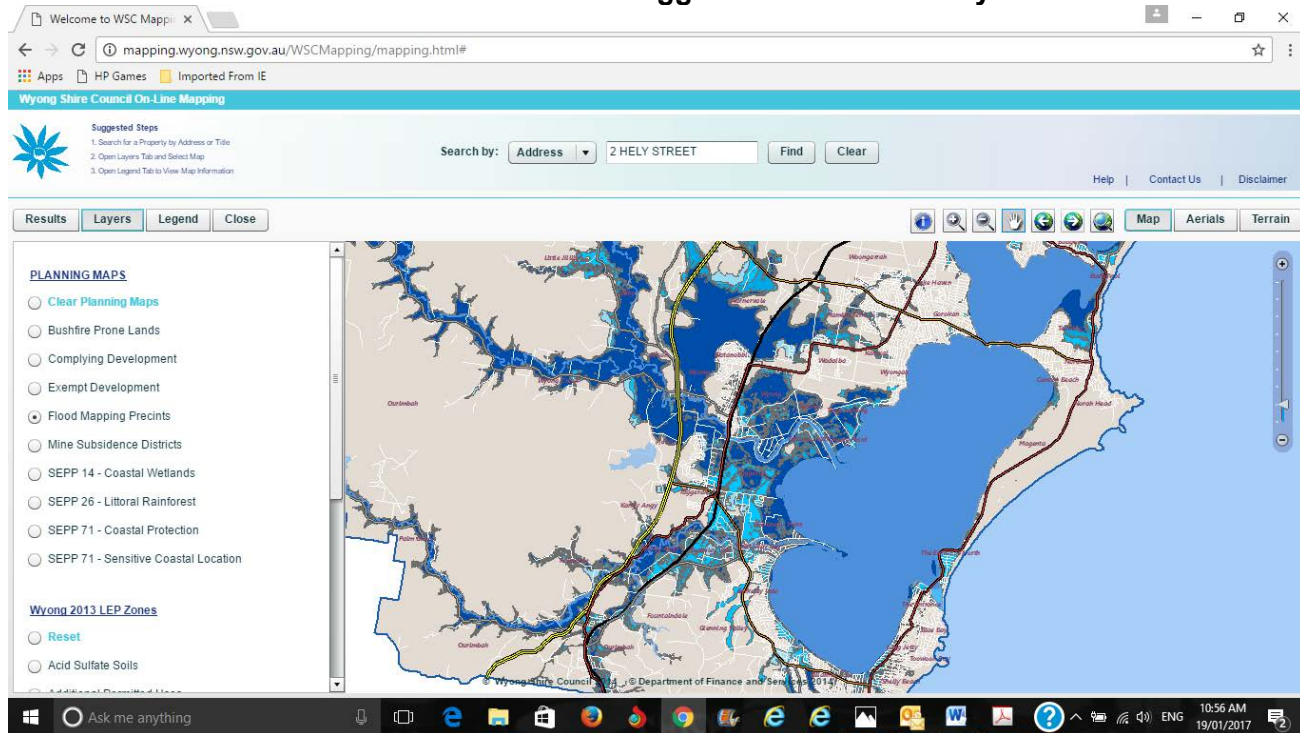








## Combined 1% catchment and tidal flood for Tuggerah Lake 18 January 2017 Central Coast Council.



Of the 59,000 Central Coast properties affected by the Draft CM SEPPP 2016, it is estimated that at least 14,000 of those properties on the Central Coast together with another 9,000 properties in the Lake Macquarie LGA, a total of 23,000 properties, are affected by the current and future coastal hazards of tidal inundation and combined catchment and storm surge flooding. It is a case of negligence or incompetence that the NSW State Government has failed to include this readily available information with the Draft CM SEPP 2016 mapping of coastal hazards.

### Is State Government aware of the existence of missing local government hazard mapping – missing from the Draft CM SEPP 2016?

The NSW Office of Environment and Heritage (OEH) has been a key stakeholder in the development of local government CZMPs and Floodplain Risk Management Plans by having representatives on council committees that developed those plans and the associated comprehensive mapping of coastal hazards.

The NSW OEH has been virtually the sole provider of the funding used to develop these coastal management plans with council contributions generally being in kind by providing resources that are sunk costs within the council. These sunk costs have included council staff and facilities for committee meetings. Without the substantial grants of funds for such projects there would be no mapping and no plans.

In a letter from OEH to Gosford Council in 2012, it was stated:

***Since the 2000-2007 financial year, Gosford City Council has received over \$6.5 million in financial assistance under the Coastal Estuary and Floodplain Management Programs. These funds are spread over 38 separate grants and range between \$5,000 and \$700,000. According to our records, only 14 of these grants have been finalised and acquitted.***

***MONICA COLLINS Director North Branch Regional Operations, 6/10/14 to Paul Anderson CEO Gosford City Council, OEH Reference MD 14/6435 Contact Peter Evans 4904 2594***

It is either disingenuous or due to a lack of capability that the NSW State Government now suggests that the flawed content and omissions of the Local Government Hazard Mapping is entirely the responsibility of local government.

Our association does not accept this repeated claim by the NSW State Government.

## What should happen now?

Evidently, the consultation process is flawed in material and misleading ways. Residents have been misled. I am also conscious that you and other MPs in Parliament and your department have all promised that the Act would not come into force until there has been full consultation and public participation with all the mapping available for all residents to view.

We are also very concerned that a large part of the exhibition period has occurred during a traditional period of holidays for most Australians.

I call upon you to honour those promises.

I ask that:

- 1 implementation of the coastal zone management Act and associated reforms be delayed until all mapping associated with the Draft CM SEPP is completed to a standard acceptable for consultation and public participation in this important planning process;
- 2 that accurate mapping be prepared and put on exhibition for comment particularly for all coastal hazards well documented with maps and council adopted Planning Instruments
- 3 all other mapping should be carefully checked with a particular emphasis on littoral forest and wetland mapping.

To me, this is obviously the fair way forward and in accordance with the requirements of Act and previous promises made by you and the Coalition.

If these commitments are not honoured, it will force the community associations to alert residents themselves and consider legal action. It is obviously in everyone's interest if this can be avoided.

I am happy to meet with you if it would help you for me to expand upon these mapping errors in more detail.

Yours sincerely,



Patrick Aiken  
Secretary Coastal Residents  
Regional Coordinator, NSW Coastal Alliance



5 February 2016

The Hon. Mike Baird MP  
Premier of NSW  
52 Martin Place  
SYDNEY NSW 2000

The Hon. Rob Stokes MP  
Minister for Planning  
52 Martin Place  
SYDNEY NSW 2000

Dear Premier Baird & Minister Stokes,

**NSW Coastal Management Reforms**

Gentlemen we refer to our letter of 18 December 2015 and the letter received from Minister Stokes in reply dated 21 January 2016.

The proposed Coastal Management Reforms, as we said in our letter of 18 December 2015 are a significant package of reforms.

It remains the assessment of our Alliance, and our member groups up and down the coastline, that there are a number of aspects of these proposed reforms which pose a threat both to the physical survival and economic prosperity of the coastal communities of New South Wales, as well as the infrastructure that supports them.

Consultation meetings were held in late November 2015 on very short notice. At those consultation meetings members were assured that the full draft of the proposed Manual would be made available before Christmas 2015 and that the proposed mapping would be made available in late January or early February.

At the moment, it is not clear to us whether all parts of the Manual in their proposed form have been placed on the website. Is this the actual final form of the Manual? Please clarify this question as we know the Manual is subject to change at any time by the Minister.

No draft mapping at all has appeared.

We understand from the letter from Minister Stokes that there is now a new proposal that the exposure draft maps will be released separately for public exhibition and comment. This draft

mapping will be made available at the same time as a proposed SEPP which is also not available yet in its final form!

This development about the delay in providing mapping underscores our concerns about the inadequate nature of this consultation period. Having a consultation period largely over December and January has obvious deficiencies. It is only this week that many people have come back to work with the start of the school year.

The plain fact is that it is not possible to understand the full impact of the proposed reforms without the exposure draft maps and the proposed SEPP in its final form. Those who attended the consultation meetings were assured that those maps would become available during the consultation period.

Given the evident delay in producing those draft maps, for this reason alone, the Government should extend the public consultation period.

It is not possible for a reasonable person to interpret a highly complex framework of legislation without the maps. **You are asking people to provide informed comment in a vacuum!**

Coastal communities are the people most directly affected by the proposed reforms. Our Alliance is asking you as the Premier and relevant Minister to allow these communities a proper and adequate time to consider the whole package, rather than parts of it with key elements missing.

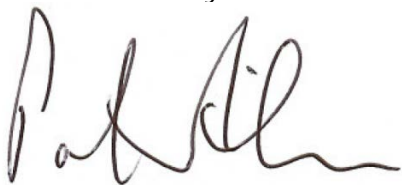
For these reasons, we repeat our request that your Government extend the consultation period to allow all the proposed reforms to be considered together – not in an ad hoc, drip feed manner.

As we said in our previous letter, the draft legislation is very complex and complicated in its long list of objectives, goals and controls, mandatory requirements in the Act and manual, and cascading priorities and objects.

We ask you to have consideration for the communities you say that you support and allow a proper time for consideration of these important reforms.

We ask for your urgent response.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Pat Aiken', with a stylized, flowing script.

Pat Aiken  
Coordinator

## Attachment 3



16 February 2016

The Hon. Mike Baird MP  
Premier of NSW  
52 Martin Place  
SYDNEY NSW 2000

The Hon. Rob Stokes MP  
Minister for Planning  
52 Martin Place  
SYDNEY NSW 2000

Dear Premier Baird & Minister Stokes,

### **NSW Coastal Management Reforms – Engagement & Consultation**

I am very concerned that I have not received any response to my letter of the 5 February which requested an extension of the consultation period.

As I said in my last letter, the promised maps and other documents, such as the draft SEPP are not yet available. We also asked if the documents that purport to be the Manual are the final form of the proposed Manual which we understand may be subject to change without notice.

It is trivialising such an important process to ask the communities along the NSW Coastline to consider this complicated raft of proposals which divide the coastal zone into various sub-zones with different statutory objects for each sub-zone and 70 individual development controls in the proposed SEPP – and with no maps at all to identify which areas will be in which zones.

These are important issues for coastal communities and we believed that the NSW State Government appreciated that any proposals that have the potential to cause damage to the livelihood and wellbeing of any NSW community would be treated much less casually than is the case now.

This breakdown in engagement and consultation and failure to make the promised maps available must also be impeding consultation with local councils! Is the consultation with councils also behind schedule?

I ask again with respect, that you immediately extend the consultation period until the maps and the other promised documents are available and give everyone the time to understand this highly complex proposal.

This would be well received by our communities who are trying grapple with a submission deadline and response that requires informed comment for the proposed reforms, which on their face appear to be very regressive and damaging.

Yours sincerely,

Pat Aiken  
NCA Coordinator



19 April 2016

Mr Mike Baird MP  
Premier of New South Wales  
52 Martin Place,  
Sydney NSW 2000

Dear Premier Baird,

### **New South Wales Coastal Reforms**

We write to you with some growing and ongoing sense of real anxiety about the NSW Coastal Reform Package.

Members of our group campaigned extensively for Lucy Wicks in the last Federal Election for the seat of Robertson and for Adam Crouch in the recent State election for the seat of Gosford. Our members supported your Government because they believed that the Coalition understood and would protect the property rights and values of ordinary people in our community.

The draft reform package is totally contrary to those expectations and we have been unable to make any headway in effectively communicating our concerns with the Minister and having them addressed.

### **Lack of Consultation**

A consultation period in relation to these reforms was held in November and December last year.

There was **no consultation** anywhere on the Central Coast which includes the electorates of Wyong, Terrigal and Gosford and the Federal Electorates of Dobell and Robertson. A consultation meeting was held in Manly (which has an effective rock wall, sandy beach and no coastal erosion issues) and then Newcastle.

The meetings were poorly announced and poorly promoted. Additionally, maps that would define the proposed management areas were promised for February but are not available.

Are these maps ready now? It is impossible to determine the full impact of the proposed Coastal Reforms without the ability to consider the maps together with the proposed Bill, SEPP and Manual as they are referenced by these documents.

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## **OEH/Planning Meeting 7<sup>th</sup> April 2016**

On 7th April 2016 community representatives of 15 NSW coastal communities, who are NCA members, travelled to Sydney for the opportunity to have an initial consultation with representatives of the Office of Environment and Heritage and the Department of Planning, together with Professor Thom and Angus Gordon from the Coastal Panel. Others from the far South Coast also attended by teleconference.

This two-and-a-half-hour session was the first opportunity for all regional communities to be heard in relation to the proposed NSW Coastal Reforms.

These are very complex issues that require time and effort for the details to be explained and debated with those who are directly affected. Nothing was resolved at the meeting. Further consultation about the Bill and the associated reforms remains essential.

## **Meeting with the Minister on 14 April 2016**

Last Thursday we met with Minister Stokes, Parliamentary Secretary Scott MacDonald and representatives from OEH and the Department of Planning. We very much thank Minister Stokes for giving us the opportunity to attend such a meeting and set out our concerns directly to him, which were not satisfactorily answered in the meeting.

### **Why we are concerned?**

We gave Minister Stokes an example (detailed in Attachment) of a young family investing in one of many flood liable areas of coastal NSW. This is real life based on our experiences of how the current coastal management framework works!

This example, if repeated across the Central Coast, Eurobodalla, Great Lakes and other LGAs with low lying flood liable suburbs, would have a devastating effect on our regional coastal communities. It would devastate their social and economic environments, not to mention severely adversely impacting the State economy.

At the meeting, we asked Minister Stokes to assure us that:

- 1       there would be compensation;
- 2       his legislation did not permit or facilitate people to lose the right to protect their homes and businesses and be subject to demolition orders or loss of title without compensation.

No one in Government whom we have asked has provided assurances that compensation would be payable. Minister Stokes said he would look into these issues, but we have not heard from him.

We trust that you can see by this single example why we are so concerned about the proposed reforms.

An added concern that we have and which we raised is that control over these decisions is left entirely with local council. There is no power, as in other areas of planning law, such as LEPs, for the Minister to have the last say with a discretionary power to approve or not approve.

At the meeting with Minister Stokes we assured him that community groups up and down the coast were looking to the State Government to have the final say and to provide a measure of protection where local councils are acting capriciously, unfairly or in a manner which is prejudicial to particular parts of their community.



## Our Position

At the meeting we were told that there were over 450 submissions made in relation to the Stage II Coastal Reform Package. Yet as far as we know, no changes are proposed at all by the Government.

At the two meetings we have attended we have not obtained any comfort or assurances at all that our worst fears about the legislation are incorrect or that anything will be done about them.

This puts us in a position of conflict in relation to the forthcoming Federal election.

We do not believe these reforms get the balance right for the future of NSW and its coastal cities, towns and communities.

However, we see the proposed legislation as a reversal of what has been promised for the past six years by the Coalition and as now causing a conflict between what our local Members tell us and what is proposed by Minister Stokes.

We are not sure if you are aware of the detail of the Coastal Reform Package or how it would operate in situations such as the one we have set out.

We want to assure you that we put this example to Minister Stokes and he was not able to give us any comfort at our meeting on 14 April 2016 to allay our fears.

In summary, our concerns include lack of adequate community consultations, inconsistencies in the draft legislation, no workable test for protection, no clarification about compensation, no recognition of the significant social and economic impact of these proposed reforms, and key decisions left with councils rather than power to the State to approve or not approve.

We seek an urgent solution to our ongoing concerns about the operation and practice of the proposed reform package.

***We are copying this letter to Minister for Planning and Environment, Rob Stokes, Parliamentary Secretary for the Hunter and Central Coast, MLC Scott MacDonald, Adam Crouch, State MP for Terrigal and Lucy Wicks, Federal MP for Robertson.***

Yours sincerely,



Michael Fox AM  
NCA Regional Coordinator



Pat Aiken  
NCA Regional Coordinator

## ATTACHMENT

### Example of the NSW Coastal Reforms in Action

The example we gave at the meeting was along the lines of the following scenario:

- 1 a young couple with three children purchased a property in Davistown on the Central Coast for \$600,000 with a mortgage of \$300,000;
- 2 they paid the State Government stamp duty costs of \$22,000 and \$54,500 in GST which also contributes to State income. The project also generated direct income tax and company taxes of around \$60,000. In total around \$136,000 in government taxes;
- 3 subsequently, in order to finance the business of the couple, business loans are also secured on that property;
- 4 the property adjoins a waterway but is low lying land and subject to flooding which is likely to increase if sea levels rise in the long term;
- 5 the newly amalgamated Gosford and Wyong Councils have a meeting and decide that they do not wish to deploy resources in protecting this area. They pass resolutions prohibiting any form of protection and declare "planned retreat" to be their preferred solution;
- 6 the State Government then claims title to some of their land under the new "ambulatory title" laws which Minister Stokes is proposing to bring in *but no compensation is paid*.
- 7 the Council decides to order that the family vacate the property and order its demolition; the family are forced to leave their property, losing its entire value and with the loans and mortgages secured on it remaining unpaid.

At the meeting, Minister Stokes could give no assurance that his legislation does not enable and facilitate this scenario to be played out along the NSW coastline without compensation to anyone who lost their property through the exercise of council powers or ambulatory title introduced in his reforms.



**NCA**

NSW Coastal Alliances  
[www.nswcoastalalliance.org](http://www.nswcoastalalliance.org)

9 December 2016

The Hon. Mike Baird MP  
Premier of NSW  
52 Martin Place  
SYDNEY NSW 2000

Dear Premier

### **NSW draft Coastal Management SEPP & Mapping**

The NSW Coastal Alliance (NCA) represents a coalition of NSW coastal communities. Our objectives include working with government at all levels to achieve fair and reasonable coastal outcomes.

The NSW government released the draft Coastal Management State Environmental Planning Policy and Maps on 11 November 2016 but has neglected to include Coastal Vulnerability Mapping. In accordance with the Coastal Management SEPP: *Explanation of Intended Effect*, this mapping was to be undertaken by the Office of Environment and Heritage.

1

This critical mapping has not been provided and according to NSW State Government representatives at the Erina Information Session 9 December 2016, does not exist.

According to NSW Government representatives at the Erina Information Session on 9 December 2016, the *Explanation of Intended Effect* is a legal document presented to Parliament during debate on the Coastal Management Bill. Full consultation together with provision of all mapping of the 4 management areas described in the Bill was promised to Parliament for the many thousands of people of NSW who are now affected by the proposed SEPP.

Full mapping has not occurred. The NCA has serious concerns about the draft SEPP, the inconsistent, inaccurate, and incomplete, mapping. For example (i) the 'coastal vulnerability area' has not been mapped at all and the layer/legend for this area has not been provided, and (ii) the layer/legend 'Local Government Coastal Hazard Map' appears not to be a legally defined area and as such may be unenforceable.



**NCA**

**NSW Coastal Alliances**  
**www.nswcoastalliances.org**

Instead we have been provided reference to a 'Local Government Coastal Hazard Map' with no reference within the *Explanation of Intended Effect* and no legal definition in the Coastal Management Act 2016. When questioned about this and the responsibility for mapping in general, representatives of the NSW Government agreed at Erina on Friday 9 December 2016, that the mapping was the responsibility of the NSW State Government.

In our opinion, informed comment on the Wetland Mapping is also severely constrained by the fact that existing State Government Mapping of wetlands has not been provided for consultation.

How can any reasonable person or Authority make an informed comment or submission when the information for discussion and consultation does not appear to meet legal requirements and does not appear to accurately describe, and/or omits the hazard claimed to affect land?

Is it your intention that the NSW State Government will now ignore its apparent legal obligations and undertakings to Parliament and the people of NSW?

2

NCA also has serious concerns about the lack of public awareness and paucity of information sessions. We are particularly concerned at the impact of these proposals on many thousands of unsuspecting NSW Coastal Residents and many thousands of residents of inland areas of Western Sydney who are now classified as being within the coastal zone and officially affected by the draft SEPP.

Accordingly we respectfully request an extension of time for additional community consultation and lodgement of submissions, for a period of at least 8 weeks, **following** publication of the missing Coastal Vulnerability Mapping and sufficient corrections of information and mapping flaws as outlined above, so as to be suitable for fair and reasonable consultation.

Regards

Pat Aiken  
Regional Coordinator

Michael Fox  
Regional Coordinator



**NCA**

NSW Coastal Alliances  
[www.nswcoastalliances.org](http://www.nswcoastalliances.org)

30 December 2016

The Hon. Mike Baird MP  
Premier of NSW  
52 Martin Place  
SYDNEY NSW 2000

Dear Premier

**Public consultations on NSW draft Coastal Management SEPP & Mapping**

With respect we request your reply to our attached letter – by Monday 9 January – as draft Coastal Reforms submissions are currently due by 20 January 2017.

The NSW Coastal Alliance (NCA) represents NSW coastal communities from Byron to Bega – and our concern is for coastal and estuarine communities where well over 100,000 property owners will be directly disadvantaged if these Coastal Reforms proceed. These communities and property owners have relatives throughout NSW, all of whom will be disadvantaged once they understood the impact of these proposals. They expect your Government to provide security and confidence in the future, and to protect property rights. Unfortunately the current proposals run contrary to these basic rights – and with limited community consultations.

These Coastal Reforms have the potential to become a robust political issue – more damaging than the council amalgamations, greyhound decisions and the pending retiree issue.

While some of our members would prefer to take immediate direct action we would hope to avert this by securing your immediate agreement to a rational process which ensures owners of property along the NSW coastline, who purchased their properties in all good faith, are not subject to disastrous outcomes as a result of your Government yielding to extreme policies – particularly in respect of properties being resumed without fair and reasonable compensation. This can best be achieved by allowing more time for these proposals to be seriously considered and understood by those affected – and development of a politically sensitive and sensible approach to this issue taking into serious account the economic and social impact of the proposals.



**NCA**

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**www.nswcoastalalliance.org**

Accordingly we request

- ❖ An extension of time to 31 March 2017 for proper community consultations and submissions
- ❖ A minimum half day meeting between the Premier and NCA representatives
- ❖ A direction for all relevant local government councils and agencies to advise coastal and estuarine property owners of the proposed Coastal Reforms and the impact on their individual properties

NCA member groups include Byron Bay, Coffs Harbour, Hastings / Port Macquarie, Greater Taree, Great Lakes, Lake Macquarie, Wyong / Gosford, Sydney, Wollongong, Shoalhaven, Eurobodalla and Bega.

Coastal electorates include Tweed, Byron, Clarence, Oxley, Coffs Harbour, Port Macquarie, Myall Lakes, Port Stephens, Newcastle, Charleston, Lake Macquarie, Swansea, Wyong, The Entrance, Terrigal, Gosford, Keira, Kiama, Shellharbor, South Coast and Bega.

2

Regards

Pat Aiken

and

Michael Fox AM

On behalf of all

NCA Regional Coordinators

### Documents to be reviewed during the consultation period for the Draft CM SEPP



On 11 November 2016, the Department of Planning and Environment made public and invited comment on the Public Consultation Draft Coastal Management State Environmental Planning Policy accompanying maps and a draft section 117 Ministerial direction. Submissions may be lodged by 20 January 2017 (extended from 23 December 2016).

The Coastal Management Act 2016 was assented to on 7 June 2016 and when proclaimed will replace the current *Coastal Protection Act 1979*.

An extension of time for public submissions (beyond 20 January 2016) is required because of the number of documents that need to be reviewed including:

- 1) **The Public Consultation Draft Coastal Management SEPP itself and consequential amendments to 8 other SEPPs** (referred to under Schedule 3: Amendment of other instruments) including:
  - i. State Environmental Planning Policy No 19 – Bushland in Urban Areas
  - ii. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
  - iii. State Environmental Planning Policy (Housing for Seniors or People with Disability) 2004
  - iv. State Environmental Planning Policy (Infrastructure) 2007
  - v. State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
  - vi. State Environmental Planning Policy (State and Regional Development) 2011
  - vii. State Environmental Planning Policy (State Significant Precincts) 2005
  - viii. State Environmental Planning Policy (Sydney Region Growth Centres) 2006
- 2) Public Consultation Draft Coastal Management SEPP's **relationship with other environmental planning instruments including the *State Environmental Planning Policy (Three Ports) 2013*, *State Environmental Planning Policy (Three Ports) 2013***. (refer to s7).
- 3) Related "maps."
- 4) The **Draft Local Planning Direction - Coastal Management**; (per Section 117(2) of the Environmental Planning and Assessment Act 1979).
- 5) The **proposed Notations on s149 Planning Certificates** for land affected by the draft Coastal Management SEPP.
- 6) Amendments to the Standard Instrument (Local Environmental Plans) Order 2006 and Standard Instrument—Principal Local Environmental Plan.
- 7) Furthermore, in order to review the above, one must do so in the context of the
  - A) **Coastal Management Act 2016** itself and its numerous consequential amendments



**Documents to be reviewed during the consultation  
period for the Draft CM SEPP**



to 6 other Acts and Regulations (listed under Schedule 4 Amendment of Acts and instruments) amendments including :

- i. Environmental Planning and Assessment Act 1979
- ii. Environmental Planning and Assessment Regulation 2000
- iii. Land and Environment Court Act 1979 No 204
- iv. Local Government Act 1993 No 30
- v. Rural Fires Act 1997 No 65
- vi. Surveying and Spatial Information Regulation 2012

**B) Consultation Draft Coastal Management Manual** including

- i. Coastal Management Manual Part A: Mandatory requirements and essential elements for the preparation of a coastal management program
- ii. Coastal Management Manual Part B Stage 1 - Scoping a Coastal Management Program
- iii. Coastal Management Manual Part B Stage 2 – Detailed studies of vulnerabilities and opportunities”
- iv. Coastal Management Manual Part B Stage 3 – Response, identification and evaluation
- v. Coastal Management Manual Part B Stage 4 – Preparing, exhibiting, finalising, certifying and adopting the CMP
- vi. Coastal Management Manual Part B Stage 5 – Implementing, monitoring, evaluating and reporting.
- vii. Coastal Management Manual Part C Glossary

**C) Marine Estate Management Act 2014**

- 8) **There has not been sufficient public consultation** in areas affected per interactive map released on 11 November 2016.
- 9) In the **absence of a NSW State Coastal Management Policy** document the review of the above documentation is made substantially more difficult.

Hannah Dunn  
Head of Strategy  
Office of the Hon Rob Stokes MP  
Minister for Planning  
52 Martin Place, Sydney NSW

148 Steyne Road  
Saratoga 2251  
Mobile 0419 475 335  
[patrick.aiken001@gmail.com](mailto:patrick.aiken001@gmail.com)

Dear Hannah,

**Wharf Road Coastal Zone Management Plan (CZMP)**

At our meeting with Minister Stokes on 10 January 2017, an issue related to the CZMP for Wharf Road North Batemans Bay was raised. You have since explained that OEH was writing to Eurobodalla Shire Council (ESC) and asked could I provide exact wording of the concerns I have for inclusion in that letter.

Hannah, the conclusion of the Council report is in error and quite misleading for those who may have read this report (attached) because it incorrectly suggests the advice of the Minister as reflecting the advice of the Coastal Panel in its entirety. The contentious piece of advice from the Panel is that the properties in Wharf Rd need not be acquired as title will automatically revert to the Crown

The Minister states in his letter to ESC 20 October 2016:

***"Following the advice of the panel, I will be happy to certify the CZMP once it has been updated to incorporate advice from Department of Industries (Dol)-Lands and resubmitted. The required changes are minor edits to accurately reflect the roles and responsibilities of Dol-Lands in the CZMP".***

The Ministers letter to Council does not suggest at all that the view of the Coastal Panel regarding reversion of title is to be followed.

The Minister said at our meeting last week that Council had misunderstood his intention.

Eurobodalla Shire Council has misunderstood the meaning of the Ministers letter and should withdraw all reference in the CZMP and in its report PSR16 044 22 November 2016 to Council suggesting otherwise, in relation to reversion of title.

The Minister does not advise that the Title of the submerged and partially submerged lands at Wharf Road North Batemans Bay has automatically reverted to Crown and does not recommend in his advice that Council can acquire this land without compensation being paid to the owners of the land. This should be made clear to Council.

Yours sincerely,



Patrick Aiken  
Secretary Coastal Residents  
Regional Coordinator, NSW Coastal Alliance

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**PSR16/044 CERTIFICATION OF THE WHARF ROAD COASTAL ZONE  
MANAGEMENT PLAN**

**E12.6263**

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services

Attachments: 1. Response from Minister - Certification of Coastal Zone Management Plan  
2. Under Separate Cover - Revised Wharf Road Coastal Zone Management Plan

Focus Area: Sustainable Communities

Delivery Program Link: S5.5 Plan for the impact of climate change on settlement including coastal hazard, flood impacts, bushfire

Operational Plan Link: S5.5.1 Eurobodalla Coastal Hazard Management Plan

**EXECUTIVE SUMMARY**

Council adopted the Wharf Road Coastal Zone Management Plan (Plan) at the Ordinary meeting of Council held on 28 June 2016. The Plan was then forwarded to the Minister for Planning and Environment for certification. The Minister for Planning and Environment has now written to Council commending Council on preparing the Plan and advising that certification will be granted providing it is re-submitted with some minor amendments.

This report presents the amended Wharf Road Plan for adoption and seeks endorsement from Council to re-submit the plan to the Minister for final certification.

**RECOMMENDATION**

THAT Council

1. Adopts the revised Wharf Road Coastal Zone Management Plan.
2. Forwards the amended Wharf Road Coastal Zone Management Plan to the Minister for Planning and Environment for final certification.
3. Liaise with NSW Land and Property Information to take title of the submerged lands.
4. Following certification, forward an application to the New South Wales Coastal Management Program to purchase land remaining in private ownership.

**BACKGROUND**

In 2011, the NSW Government identified the Wharf Road area of Batemans Bay as a coastal erosion "hot spot" in accordance with the *Coastal Protection Act 1979* (the Act). A "hot spot" is a site considered to be at immediate risk from coastal erosion and therefore in need of an urgent management response.

The Minister for the Environment at the time of the declaration issued each local council with a "hot spot" a Directive issued under section 55B of the Act to commence preparation of a Coastal Zone Management Plan for those specific sites.

Council completed the Wharf Road Plan in response to this Directive. The Plan was adopted by Council on 28 June 2016 and forwarded to the Minister seeking certification on 30 June 2016.

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**PSR16/044 CERTIFICATION OF THE WHARF ROAD COASTAL ZONE  
MANAGEMENT PLAN**

**E12.6263**

The land at Wharf Road is highly constrained by natural hazards and is not suitable for the purpose of development. The land is zoned E2 under the Eurobodalla Local Environmental Plan (LEP) 2012 as a reflection of these constraints.

In considering the natural constraints and zoning of the land, the Wharf Road Plan forwarded to the Minister on 30 June 2016, recommended the following actions:

1. Make an application for the purchase of tidal and sub-tidal private properties and beaches at Wharf Road
2. Investigate options for the relocation or improved protection of water and sewer mains
3. Improve public access, weed and rubbish removal
4. Incorporate incomplete actions into the Eurobodalla Coastal Management Program and
5. Review Plan or incorporate into the Eurobodalla Coastal Management Program in accordance with legislation.

**CONSIDERATIONS**

Council received advice from the Minister on 25 October 2016 which stated the Plan can be certified, providing it is re-submitted with some minor revisions. A copy of the letter and the revisions sought is attached.

The Minister sought the advice of the Expert Coastal Panel in making his determination in relation to the certification of the Wharf Road Plan. The Panel recommended the Plan is suitable for certification providing minor revisions are made. These revisions are below:

- I. Action (1) of the implementation strategy (Table 5) seeks to “make application for the purchase of tidal and sub-tidal private properties and beaches at Wharf Road”. It is the view of the Coastal Panel that the judgment in *ENVIRONMENT PROTECTION AUTHORITY v. ERIC SAUNDERS [1994] NSWLEC 187(29 November 1994)*, offer the view that submerged lands automatically revert to the Crown and therefor are not required to be acquired. This should correctly be reflected in the Plan
- II. There are a number of minor edits required to accurately reflect the roles and responsibilities of Department of Primary Industries – Lands (DoI – Lands) in the Plan and Emergency Actin Sub Plan. DoI –Lands are happy to facilitate discussions with Council to attend to necessary amendments prior to re-submission.

The panel also made two additional suggestions that will improve the Plan and anticipated outcomes. These suggestions are not compulsory to gain certification:

- III. It is noted that the area the subject of the Plan has a long history involving several court proceedings that are prominent in the NSW coastal case law. There might be benefit in providing a small appendix that lists or captures this relevant information, and
- IV. It is recommended the Plan goes a step further in describing actions that could be undertaken once the relevant private landholdings have been acquired including removal of building stock and restoration of the land. Council should also consider

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**PSR16/044 CERTIFICATION OF THE WHARF ROAD COASTAL ZONE  
MANAGEMENT PLAN**

**E12.6263**

removal of the groyne structure that currently prevents unimpeded access along the foreshore. This will have the added benefit of providing rock armour that could be recycled to facilitate necessary protection of threatened infrastructure at the road corner.

The requested changes are considered minor in nature and have been included in a revised Wharf Road Plan.

**Legal**

In 2011, the Minister for the Environment, issued Council with a Directive under section 55B of the *Coastal Protection Act 1979* to commence preparation of a Coastal Zone Management Plan for the area of beach at Wharf Road identified as a coastal erosion hot spot. Certification of the Wharf Road Plan, when finally achieved, will meet the conditions of the Ministerial Directive.

A Case Law precedent in relation to Wharf Road (Saunders vs Environment Protection Authority [1994] NSWLEC 187) has been established in respect to the Crown taking possession of submerged lands within an estuary or river. It is the responsibility of the Crown to advise property owners of their intention to take possession of the submerged lands and alter the title accordingly.

**Policy**

The Eurobodalla Coastal Hazards Adaptation Code 2015 precludes development at sites considered at immediate risk from coastal erosion.

**Asset**

If the land is purchased by the NSW government it is likely that Council will take final possession and be responsible for ongoing management and maintenance.

**Financial**

Implementation of some actions from the Plan will require an initial financial commitment from Council. Notwithstanding, grant funding is available to implement actions from a certified Plan. Access to these funds is subject to a successful application but Council has in the past received funds from this program for environmental works. No commitment will be made until sufficient grant funding has been secured.

**Community Engagement**

Details of the consultation program delivered during the preparation of the Plan are outlined under Section 1.8 on Page 5 of the plan. No further community engagement is required as a result of the recommended changes due to their minor nature.

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**PSR16/044 CERTIFICATION OF THE WHARF ROAD COASTAL ZONE  
MANAGEMENT PLAN**

**E12.6263**

**CONCLUSION**

The Minister for Planning and Environment has commended Council on preparing the Wharf Road Plan and has advised that the Plan will be certified providing minor revisions are made and the plan is re-submitted. This report presents to council the final Wharf Road Plan inclusive of the minor revisions requested by the Minister prior to re-submission to him for final certification.



**Rob Stokes**  
Minister for Planning

MD16/2828

Dr Catherine Dale  
General Manager  
Eurobodalla Shire Council  
PO Box 99  
MORUYA NSW 2537

EUROBODALLA SHIRE COUNCIL	
FILE No:	E12.6263
ACTION OFFICER:	L. Usher
DATE:	25 OCT 2016
FOLLOW UP CODE:	14
DOC. No:	ENT:

Dear Dr Dale

**Certification of the Wharf Road North Batemans Bay Coastal Zone Management Plan**

Thank you for submitting the Wharf Road North Batemans Bay Coastal Zone Management Plan (CZMP) for certification under the *Coastal Protection Act 1979*.

I referred the CZMP to the NSW Coastal Panel for advice under section 55G (3) of the Act. The panel provided its advice to me and I enclose a copy for your consideration.

I commend Eurobodalla Shire Council for preparing a CZMP which presents a good strategic pathway forward for managing this coastal area. The CZMP also builds on the recent E2 Environmental Conservation and W1 Natural Waterways re-zonings within the subject area. The plan seeks to return this precinct to public ownership and restore unimpeded public beach and foreshore access to these margins, which will be of significant benefit to the local community.

Following the advice of the panel, I will be happy to certify the CZMP once it has been updated to incorporate advice from Department of Industries (Dol) – Lands and resubmitted. The required changes are minor edits to accurately reflect the roles and responsibilities of Dol-Lands in the CZMP and Wharf Road Emergency Action Subplan. The Office of Environment and Heritage (OEH) and Dol-Lands will work closely with council to give effect to these changes.

If council has any questions about this matter, please contact Ms Gabrielle Pietrini, Regional Manager, Illawarra, OEH, on 4224 4159 or at [gabrielle.pietrini@environment.nsw.gov.au](mailto:gabrielle.pietrini@environment.nsw.gov.au).

Yours sincerely

  
**Rob Stokes**  
Minister for Planning

Enclosure

23 OCT 2016



Advice to the Minister for the Planning on the Draft Wharf Road North Batemans Bay CZMP

**Recommendations**

The NSW Coastal Panel recommends that the Minister for Planning:

- Commends Eurobodalla Shire Council for preparing a CZMP for this coastal hotspot area which presents a good strategic pathway forward for managing this problematic area that builds on the recent E2 Environmental Conservation and W1 Natural Waterways re-zonings within the subject area;
- Commends Eurobodalla Shire Council for committing to a CZMP that will return this precinct to public ownership and restore unimpeded public beach and foreshore access to these margins which will be of significant benefit to the local community;
- Commends Eurobodalla Shire Council for diligently preparing the CZMP in consultation with the community and in partnership with OEH and other Government agencies with jurisdictional responsibilities for parcels of land that fall within the operation of the Plan;
- Note that in the opinion of the Coastal Panel, the Wharf Road North Batemans Bay CZMP is **suitable for certification** in accordance with provisions of the *Coastal Protection Act 1979*, contingent on the Plan being re-submitted with some minor revisions prior to finalisation and gazettal, concerning the following elements:
  - (i) Action 1 of the implementation strategy (Table 5) seeks to "make application for the purchase of tidal and sub-tidal private properties and beaches at Wharf Road". **It is the view of the Coastal Panel that the judgement in *ENVIRONMENT PROTECTION AUTHORITY v. ERIC SAUNDERS [1994] NSWLEC 187 (29 November 1994)*, offers the view that submerged lands automatically revert to the Crown and therefore are not required to be acquired. This should be correctly reflected in the CZMP;**
  - (ii) There are a number of minor edits required to accurately reflect the roles and responsibilities of Department of Industries – Lands (DoI – Lands) in the CZMP and EASP. DoI – Lands are happy to facilitate discussions with Council to attend to necessary amendments prior to re-submission.
- Include advice to Eurobodalla Shire Council outlining suggestions that, in the opinion of the Coastal Panel, might provide relevant guidance to augment various initiatives and actions proposed in the Plan. The following suggestions are not considered a pre-requisite to be addressed in order to certify the Plan, but includes:
  - (iii) It is noted that the area the subject of the Plan has a long history involving several court proceedings that are prominent in the NSW coastal case law. There might be benefit in providing a small appendix that lists or captures this relevant information; and
  - (iv) It is recommended that the Plan goes a step further in describing actions that could be undertaken once the relevant private landholdings have been acquired including removal of building stock and restoration of the land. Council should also consider removal of the groyne structure that currently prevents unimpeded access along the foreshore. This will have the added benefit of providing rock armour that could be recycled to facilitate necessary protection of the threatened infrastructure at the road corner.

### Next Steps

#### The Coastal Panel recommends the following next steps:

- That the Minister writes to Council congratulating them on what they have achieved in the development of the Wharf Road North Batemans Bay CZMP to date and the specific aspects which have been outlined above.
- Notifies Council, if the Minister agrees, that the Minister is prepared to certify the Plan in accordance with provisions of the *Coastal Protection Act 1979*, contingent on the Plan being re-submitted with some minor revisions addressing the issues denoted in points (i) and (ii) outlined above.
- Notifies Council of suggestions from the Coastal Panel, which might improve outcomes for the Wharf Road North Batemans Bay CZMP, but are not a pre-requisite in order to certify the plan and denoted in point (iii) and (iv) above.

## Attachment 9

**From:** [Bob & Jo Pullinger](#)  
**To:** [John Stuchbury](#); [Patrick Aiken](#)  
**Subject:** FW: Further Follow up of answer for outstanding questions.  
**Date:** Friday, 20 January 2017 5:12:24 PM

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**From:** luke.walton@planning.nsw.gov.au [mailto:luke.walton@planning.nsw.gov.au]  
**Sent:** Friday, January 20, 2017 5:08 PM  
**To:** Bob & Jo Pullinger  
**Subject:** RE: Further Follow up of answer for outstanding questions.

Bob

See below. Sorry for the delay, I'm swamped at the moment.

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**From:** Bob & Jo Pullinger [mailto:bobnjop@bigpond.net.au]  
**Sent:** Friday, 20 January 2017 4:19 PM  
**To:** Luke Walton <luke.walton@planning.nsw.gov.au>  
**Subject:** RE: Further Follow up of answer for outstanding questions.  
**Importance:** High

Hi Luke

Can you provide an answer to these outstanding questions so the issues can be taken into account for the submissions due Friday 20<sup>th</sup>.

Cheers

Bob

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**From:** Bob & Jo Pullinger [mailto:bobnjop@bigpond.net.au]  
**Sent:** Wednesday, January 18, 2017 12:26 PM  
**To:** 'luke.walton@planning.nsw.gov.au'  
**Subject:** RE: Further Follow up of questions.

*Hi Luke*

*Now we are able to establish contact with our Collingwood community it is promoting plenty of questions.*

*Regarding your email below, I would really appreciate clarification of a couple of points:*

**1** *can a Council impose planned retreat in a coastal zone management plan without acquiring the properties subject to planned retreat or paying any compensation to those owners?*

*I am not aware of any obligations for councils to acquire private properties, though they may choose to do so.*

**2** *If the coastal zone management plan specifies planned retreat and no protection of*

*private properties, does this mean the owners would not be able to get consent for protection such as a rock wall. This is taking into account that a rock wall would be contrary to the provisions of the coastal zone management plan?*

***No. Landowners can still lodge development applications which are assessed on their merits. The assessment pathways (ie who the consent authority is) is determined by the Coastal Management SEPP. In this case it is likely to be a specially constituted Joint Regional Planning Panel with some coastal experts as members of that panel.***

***As the closing date for submissions is Friday 20 Jan 2017, could we get a response soon to these two questions.***

***Cheers***

***Bob***

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**From:** [luke.walton@planning.nsw.gov.au](mailto:luke.walton@planning.nsw.gov.au) [<mailto:luke.walton@planning.nsw.gov.au>]  
**Sent:** Tuesday, January 17, 2017 11:18 AM  
**To:** [bobjop@bigpond.net.au](mailto:bobjop@bigpond.net.au)  
**Subject:** RE: Follow up of questions.

Hi Bob

I've just had a look back through my emails and this is the only one I can find where I have not yet responded. Have you also sent questions through to the [coastal@planning.nsw.gov.au](mailto:coastal@planning.nsw.gov.au) email address?

With regards to the 'planned retreat' question below...

The Government does not have a policy of planned retreat and the Minister has stated his preference for coastal protection works (eg beach and dune nourishment, seawalls and groynes) to be put in place to protect existing houses. The Government has announced a multi-million dollar funding program to help councils and communities put in place such protections.

Nevertheless, there may be circumstances in the future where planned retreat is the most viable option simply because other measures (seawalls etc) will not provide the necessary protection or are prohibitively expensive. Councils will need to make such a policy decision in consultation with their community and the State Government will need to agree to certify any program. I would also note that landowners who do not agree with this retain the right to put in place their own protection works, providing they have received development consent for those works.

With regard to compensation, I refer to my earlier advice to you. If the council decides to acquire the land (for whatever reason) then compensation will be payable under the Just Terms Compensation Act. If the land is not being acquired by the council then no compensation is payable. This is the sort of thing that might be covered in a coastal management program, which councils will be required to prepare under the Coastal Management Act.

I hope this helps.

I look forward to your submission.

Regards

Luke

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**From:** Luke Walton  
**Sent:** Wednesday, 21 December 2016 12:49 PM  
**To:** 'Bob & Jo Pullinger' <[bobnjop@bigpond.net.au](mailto:bobnjop@bigpond.net.au)>  
**Subject:** RE: Follow up of questions.

Hi Bob

People can email their questions to the [coastal@planning.nsw.gov.au](mailto:coastal@planning.nsw.gov.au) email address. We will do our best to respond in a timely manner, though please be aware that our office is about to shut down for a couple of weeks and my small team will also be assessing submissions in January. I will ask one of the team to prepare a response to your question below.

Regards

Luke

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**From:** Bob & Jo Pullinger [<mailto:bobnjop@bigpond.net.au>]  
**Sent:** Wednesday, 21 December 2016 9:08 AM  
**To:** Luke Walton <[luke.walton@planning.nsw.gov.au](mailto:luke.walton@planning.nsw.gov.au)>  
**Subject:** Follow up of questions.

Luke

Thanks for facilitating your team and agencies to join with the Collingwood community on Friday.

I trust it was a safe trip home for yourself and Santina.

As expected, we did not get to get to address all the questions and answers ?

Do you have any suggestions on the appropriate mannerto address that. I have some ideas but prefer to hear your thoughts first.

I would appreciate your answer to one important issue, "Planned retreat" namely ,

Make the key stakeholders aware of whereabouts in the Coastal Reforms one will find Council's are liable to compensate key stakeholders if planned retreat is an option ?

If it is not in the Coastal Reforms, provide an explanation of the commitment Council has for compensation under planned retreat ?  
How does this compare to the obligation the government has to property owners when land is resumed for, let's say West Connex ?

Thanks

Regards

Bob Pullinger

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