



PORT STEPHENS
COUNCIL

20 January 2017

Environment and Building Policy
GPO Box 39
Sydney NSW 2001

Dear Director,

Submission to Draft Coastal Management State Environmental Planning Policy

Thank you for the opportunity to provide comment on the draft Coastal Management State Environmental Planning Policy (draft SEPP). In general, Council supports the NSW Government's aim to provide a new coastal management framework that will better equip coastal communities to respond effectively to existing and emerging coastal challenges and opportunities.

A summary of key issues raised in this submission include:

- Inclusion of draft littoral rainforest mapping in the Local Government Area (LGA) to be finalised and included within the coastal SEPP.
- Concern over the consent authority for all works within a coastal zone where a certified coastal zone management plan does not exist is the JRPP. Recommend that Council be the consent authority for less contentious applications.
- Request for further guidance on how Council will determine whether the application 'is not likely to cause adverse impacts' to ensure a consistent approach across the State is applied.

General Comments

Council supports a new definition of the 'coastal zone' comprising four distinct coastal management areas as opposed to one homogenous strip of coastline. It is agreed that differing coastal areas require differing rules and guidance to better manage the diversity of land use, environmental and coastal hazard issues that exist. Council also supports the definition of each zone not being legislated to allow for local variations.

The ability for Council to propose adjustments to the coastal management area maps is also supported. It is noted that these changes would need to occur through a planning proposal process. Given the review period of the maps over Christmas it is requested that further time is given to Council to highlight areas for inclusion to avoid having to prepare a planning proposal.

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The exhibition material outlines that the majority of the proposed development controls will reflect the development controls which currently apply under clause 5.5 of the Standard Instrument Local Environment Plan (LEP). Despite this, the controls within the draft SEPP are general and ambiguous. It is recommended terminology such as 'not likely to' be removed which is difficult to assess and enforce particularly when considering the cumulative development impacts. The proposed development controls need to have defined terminology and specifically address protective measures to be implemented.

Draft State Environmental Planning Policy

Coastal Wetlands and Littoral Rainforests

While a buffer area is supported that is less stringent than controls within the wetland area it is unclear why residential zones have been excluded from consideration of these impacts. All types of development should ensure that the proposed development will not significantly impact on the wetland. Exempting residential zonings from the buffer area results in the loss of connectivity between the wetland and buffer area which defeats the purpose of having a buffer area.

Recent investigations undertaken by Council have indicated eight areas of known littoral rainforest in the LGA. Further verification of extent, determination of biometric vegetation type in accordance with the Biobanking Assessment Methodology (2014) and conservation significance as a threatened ecological community (TEC) listed under the *Threatened Species Conservation Act 1995* (TSC Act) and *Environmental Protection and Biodiversity Act 1999* (EPBC Act) is currently in progress by Council. Council have verified a small patch of littoral rainforest (PCT1536) in Salamander Bay. The conservation significance has been confirmed which identified the littoral rainforest as commensurate of both the Littoral Rainforest EEC (TSC Act) and Littoral Rainforest and Coastal Vine Thickets of Eastern Australia TEC (EPBC Act). Council notes that identification of Littoral Rainforest in the LGA also has implications on the review of bushfire mapping and updates that are currently being undertaken. Council wishes to work with the State Government to formalise these maps as soon as possible.

The CM SEPP removes the need to obtain concurrence of the Director of the Department of Planning leaving the decision to grant consent solely to the discretion and expertise of local councils. Without this level of additional oversight clear guidance for Council is requested on how 'Biophysical, hydrological and ecological integrity should be assessed.

Coastal Vulnerability Area

Council supports the focus on the implementation of Coastal Management Plans (CMP) to provide local based controls and protection works. Local Councils are expected to undertake further mapping of their coastal hazard areas as part of their coastal management plans by December 2021. In recognition of the fact that not all coastal hazards are currently identified, the draft SEPP includes a requirement for a consent authority to consider coastal hazards throughout the coastal zone. It is assumed the requirement to consider risks from coastal hazards across the entire coastal zone will no longer be necessary.

For LGAs such as Port Stephens that have large areas of coastline and do not have a Coastal Zone Management Plan it will take some time to prepare and finalise CMPs for the entire area. Furthermore, the identification of hazards will be a continuous process. It is therefore recommended that the requirement to consider coastal hazards across the entire coastal zone be maintained.

The controls requiring consideration of coastal hazards are therefore important to ensure all hazards are adequately identified and considered. As currently drafted, the controls are too generic and apply to a range of differing hazards. It is requested that more guidance is provided on how to assess each of the seven hazards identified in the draft SEPP.

Coastal Environment Area

The Port Stephens LEP 2013 includes clauses relating to water courses and lands affected by tidal waters. Further clarification is required how these clauses will be affected by the SEPP.

Also, as previously raised, further guidance on how Council will determine whether the application 'is not likely to cause adverse impacts' to ensure a consistent approach across the State is applied.

Coastal Use Area

The mapping for the coastal use area is similar to the mapping of the coastal zone in SEPP 71, which identifies the area as being 1km inland of coastal waters, estuaries and lakes. While this approach in general is supported, it is necessary to ensure that discretion can be applied to consider the topographical profile of the area.

Concern is also raised by a number of controls within clause 5.5 of the Standard Instrument – Principal Local Environment Plan that have not been retained including, the cumulative impacts of the proposed development and other development on the coastal catchment, stormwater and effluent considerations, consideration of biodiversity and ecosystems such as flora and fauna.

Clause 23 Flexible zone provisions provides "a provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, has no effect."

This clause prevents the use of PS LEP 2013 clause 5.3 Development near zone boundaries within the designated Coastal Zone. The inclusion of this area within the 'coastal zone' is considered restrictive and may prevent the occurrence of development which is in keeping with the aims and objectives of the LEP that does not have impact upon coastal processes or operations. For example, as the Raymond Terrace CBD area is located in close proximity to the Hunter River, a large portion of commercial, industrial and residential zoned land is impacted by this clause.

Coastal Protection Works

Council supports the proposed changes to allow private land owners to seek consent for coastal protection works for either temporary or longer term measures. Concern is raised that the consent authority for all works within a coastal zone where a certified coastal zone management plan does not exist is the Joint Regional Planning Panel (JRPP). This is also the case for a public authority.

The current Port Stephens Local Government Area (LGA) coastal zone stretches from Fern Bay in the south to Yaccaba Headland in the north, including Shoal Bay Beach. The LGA contains two major estuarine systems. The Port Stephens Estuary covers an area of approximately 140 square kilometres and the Hunter Estuary approximately 26 square kilometres. Port Stephens Coastal zone is not certified.

Concern is raised over to the JRPPs resources to deal with the number of applications it will receive affecting approval timeframes. It is recommended that referral requirements be reviewed and council be the consent authority for less contentious applications.

Other Matters

Coastal Management Manual

The *Coastal Management Act* requires local councils to use the manual in the preparation and review of coastal management programs. The coastal management manual toolkit is a compendium of technical information and best practice techniques to assist local councils to develop their coastal management program. It has been advised that this does not form part of the gazetted document, and will be updated regularly as new information becomes available. Despite this, the Manual is still in draft form along with various components of the toolkit such as 'Using Cost Benefit Analysis to assess coastal management options - a guide for local councils'; 'Funding mechanisms to implement coastal management actions: Guidance for local councils' and 'Coastal and estuary management guidelines and manuals - A guide to managing estuary ecosystems'. Further advice on when these will be finalised to help inform the preparation of CMPs.

Funding

Further clarification is sort as to the arrangements to access NSW Government committed funds. It appears that funding is separated into funding to undertake coastal management plans and to address coastal hazards identified in existing coastal management plans.

In the past, councils have been able to access funds through the Coastal and Estuary Grants Program that were not dependent on a certified coastal zone management plan. Without this funding, councils would have struggled to undertake required foreshore works. Under this new process, a certified coastal zone management plan/CMP is required to access funds. Given the time anticipated to undertake a CMP, concern is raised over access to funds for these councils in the interim of preparing a CMP. For example, if a significant new hazard was identified after a storm event that was not identified in a coastal management program, the time, cost and certification of a new program would restrict access to external financial support and timeframes to address the hazard. This is a large financially burden for councils to cover and in many cases, would not have been budgeted for.

Overarching legislation

Council strongly supports the consolidation of SEPPs the state governments aim to streamlining the approval process. It is therefore encouraged that the government further works to consider the range of other overlapping legislation including the *Threatened Species Conservation Act 1995*, *Fisheries Management Act 1994*, *Marine Estate Management Act 2014* and Biodiversity Reforms.

Council supports the development of the NSW Coastal Reforms and looks forward to working with the Department in further developing the Plan before its finalisation.

Please contact Renee Read, Principal Strategic Planner on 4980 0163 if you would like to discuss any of the above points further. Council looks forward to your feedback on this submission.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'Mike McIntosh', with a long, sweeping horizontal line extending to the right.

Mike McIntosh
Group Manager Development Services