

clarence
VALLEY COUNCIL

4 January 2017



PCU068928

Reference: ECM 1829557
Contact person: Scott Lenton

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

Department of Planning
Received
9 JAN 2017
Scanning Room

Dear Sir

Draft Coastal Management SEPP - Submission

Council resolved at its Ordinary Meeting on Tuesday 13 December 2016 to make this submission on the draft Coastal Management SEPP (CMSEPP) and related legislative amendments. A full copy of the report considered by Council (including attachments) and Council's resolution is attached to provide a more complete context.

The Clarence Valley Council local government area comprises 96 kilometres of open coastline (containing 2 coastal erosion hotspots), nearly 700 kilometres of estuarine shorelines for the Clarence River estuary alone and over 550 km² within the current coastal zone and under the CMSEPP the area of coastal zone will increase further. Hence, Council has a large interest in the legislative and operational effects of the CMSEPP and related legislation.

There are significant concerns with the quality of the draft coastal management area (CMA) maps and the overly bureaucratic process for seeking amendment to these mapping layers post-commencement of the CMSEPP.

Significant errors and omissions in the draft coastal management area (CMA) maps fail to provide reasonable and equitable outcomes if adopted in their current form. In fact, preliminary maps issued to NSW coastal Councils for perusal in early 2016 were in some cases better maps as for example, they contained more complete mapping of coastal vulnerability. This withdrawal of data by the Government is disappointing and inconsistent with the underlying objective of the Coastal Management Act 2016 to apply the principles of ecologically sustainable development, including the *precautionary principle*.

Mapping of the coastal wetlands and littoral rainforests CMA appears not to have improved since the early 2016 draft maps. Council provided examples of obvious and significant errors in this layer in an attempt to prompt the Government to review and improve the final draft maps. No improvement in the maps for the Clarence Valley are evident in the draft CMA maps issued with the draft CMSEPP. The NSW Government has the resources through skilled staff, mapping software and data and it is very disappointing that despite the stated intention for integrated coastal management through the Act and the Minister for Planning's speech at the two most recent NSW Coastal Conferences that the NSW Government is not making a reasonable contribution to establishing quality baseline mapping that will underpin improved

coastal management outcomes for the State's coastal zone. Furthermore, the standard of mapping in the draft CMA maps will produce many inequities between landowners if adopted. Examples for both coastal wetlands and littoral rainforests mapping flaws are provided in Attachment 2 of Council's report (as attached). These are only examples and there are many others that Council has quickly identified using simple mapping and ground-truthing techniques. Council liaised with staff of the Department of Planning and Environment prior to Christmas and **Council intends to provide suggested amendments through a series of annotated maps prior to the end of January 2017**. Staff leave will not enable completion of these 'mark-ups' before the 20 January close of the public exhibition period.

A range of issues are discussed in the report (and Attachments) considered by Council and these documents provide a more complete context for review of the draft CMSEPP by the Government.

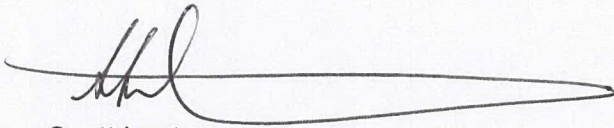
In summary, Council respectfully requests the following:

1. The NSW Government **defer introduction of the Coastal Management SEPP until such time as the coastal management area maps are accurate and robust.**;
2. It is **essential that mapping accurately identifies coastal wetlands and littoral rainforests areas** for effective implementation of the Policy and achievement of the objects of the Policy.;
3. The Government should **consider applying controls on development on land zoned for residential purposes where the land is undeveloped residentially zoned land within the 100 metre 'proximity area' to coastal wetlands.**;
4. The NSW Government should utilise data that it has available to make the **coastal vulnerability CMA maps a better resource for encouraging sustainable development and development of the NSW coastal zone**. This approach would be more consistent with the object of the new *Coastal Management Act 2016* 'to promote integrated and co-ordinated coastal planning, management and reporting'. Council has provided GIS coastal hazard data from the Pippi Beach Coastal Hazard Study to the NSW Government in the Final Report to OEH Funding Branch and that data is requested to be incorporated into the Coastal Vulnerability CMA layer.;
5. **Riverbank erosion hazards should be identified in the coastal vulnerability CMA maps** using a combination of local Council and State Government data with refinement as better data becomes available rather than being adhoc and largely silent on the coastal hazard that exists along shorelines of coastal estuaries.;
6. The Government needs to **review the potential conflict between the ability to have development in the coastal environment area and the stated objectives and criteria on which to assess proposals.**;
7. The **catchment area of Lake Hiawatha (a sensitive coastal lake) appears to extend beyond the coastal zone** and its obvious catchment based on landform interpretation and the Government needs to review this. Studies suggest the water supply for this lake is via underground aquifer/s that originate in the upper Clarence or Richmond River catchments and hence, the area providing water supply to this Lake should be identified and appropriately managed consistent with the Lakes sensitivity. This may require alternative legislation.; and

8. The NSW Government should provide support and assistance for local Councils to review the area covered by the coastal use area and not simply place all cost and responsibility on Councils. This is consistent with the intent of Items 1, 2, 4 and 5 above. **A period of 12 months (minimum) following commencement of the CMSEPP should be provided for coastal Councils to make submissions for alterations to the CMA mapping layers without needing to prepare a planning proposal** and satisfy the terms of the proposed section 117 Direction. A similar arrangement was proposed by the Government in the CMSEPP Explanation of Intended Effects issued for consultation in November 2015.

Please contact me on phone 6643 0234 to further discuss the content of this submission.

Yours faithfully

A handwritten signature in black ink, appearing to be 'SL', followed by a long horizontal line that tapers to a point on the right.

Scott Lenton
Acting Manager, Strategic and Economic Planning

ENCL – Copy of Council report (including Attachments) and resolution – 13 December 2016

ITEM 14.120/16 NSW COASTAL MANAGEMENT REFORMS – CONSIDERATION OF DRAFT STATE ENVIRONMENTAL PLANNING POLICY AND RELATED LEGISLATIVE AMENDMENTS

Meeting	Environment, Planning & Community Committee	13 December 2016
Directorate	Environment, Planning & Community	
Reviewed by	Manager - Strategic & Economic Planning (David Morrison)	
Attachment	Yes	

SUMMARY

The NSW Government is progressing with reforms to coastal management in NSW and have placed a draft Coastal Management State Environmental Planning Policy (CMSEPP), a draft section 117 Local Planning Direction – Coastal Management, and related legislative amendments, including but not limited to, amendments to standard provisions of Local Environmental Plans (LEPs).

OFFICER RECOMMENDATION

That Council provide a written submission to the NSW Government on the proposed draft Coastal Management State Environmental Planning Policy (CMSEPP) and related legislative amendments, including a copy of this report, resolution and Attachments.

COUNCIL RESOLUTION – 14.120/16

Kingsley/Novak

That Council provide a written submission to the NSW Government on the proposed draft Coastal Management State Environmental Planning Policy (CMSEPP) and related legislative amendments, including a copy of this report, resolution and Attachments.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Clancy, Lysaught, Novak, Williamson, Toms

Against: Nil

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Our Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.5 Provide strong representation for the community at Regional, State and Federal levels

BACKGROUND

The NSW Government has been pursuing an agenda of reform to coastal management in NSW for many years. Council last considered a report on these reforms at its meeting in February 2016 where a number of concerns were documented (refer to Attachment 1). Many of those concerns remain.

There appears to be a progressive move by the Government to distance themselves from responsibility in contributing to the management of coastal hazard issues. There is increasing reference to local councils needing to take additional responsibility and to comply with additional procedures in order for effective coastal management to be implemented. Further evidence of that shift is contained in the latest round of documents and draft legislation placed on display for public perusal and comment.

Local coastal communities, and Council staff involved in coastal management, are increasingly frustrated at the additional bureaucracy that is making the implementation of effective coastal management in NSW more inefficient and costly. This is primarily due to NSW Government shifting their policy and guidance, creating excessive coastal funding program administration, and an added bureaucracy and lack of accountability for NSW public authorities with a role in coastal management. Council has first-hand experience with these issues through attempts to prepare and have certified various coastal zone management plans for the open coast and estuaries from Woolli, Sandon, Brooms Head, Yamba and in the Clarence River. The proposed reforms reinforce many of the same issues.

KEY ISSUES

Attachment 2 of this report provides a more detailed commentary on key aspects of the draft CMSEPP and associated legislative amendments for Council's consideration.

COUNCIL IMPLICATIONS

Budget/Financial

The draft CMSEPP in itself does not introduce issues that place a financial burden on Council. However, there is a range of Fact Sheets included on public display that contain additional information in relation to proposed procedures for implementation of the CMSEPP, including revision of new coastal management area (CMA) maps, that introduce requirements for councils that will have financial impacts. Issues relating to cost shifting and added financial implications for Council were included in a Council report and submission to the NSW Government earlier this year (refer to Attachment 2). These issues have not gone away and in fact seem to have been exacerbated, for example removal of NSW Government data from the coastal vulnerability CMA maps and exhibiting maps for the littoral rainforest and coastal wetlands CMA that contain serious flaws, and providing a clear direction that the Government is prepared to add information onto the maps once local councils have completed studies that are supported by a certified management plan. There is a more pragmatic approach that requires the NSW Government to include the data it holds rather than requiring each coastal council in NSW to pay for independent studies to provide information the Government already has.

Council has been trying to get CZMPs ready for certification for many years and knows first hand that the hurdle of obtaining certification is large and very time and resource consuming. The NSW Government knows that as well and requiring councils to fund additional work is another example of the NSW Government intentionally making it increasingly difficult for local councils and the State to proactively move forward with merit-based and effective coastal management.

Asset Management

N/A

Policy or Regulation

The *Coastal Management Act 2016* has been assented to and will be commenced upon gazettal of the CMSEPP. Hence, the CMSEPP is a key ingredient to the NSW Government's plan to implement its coastal reform agenda. The draft CMSEPP, and in particular the draft CMA maps, are not considered suitable for introduction as they contain a range of serious anomalies and inconsistencies that would result in inconsistent and inequitable application of the CMSEPP. Some of these issues are covered earlier and in Attachment 2. The standards of mapping that the NSW Government is proposing to introduce are unlikely to be acceptable to the Government if a local council was to include them in a draft coastal management program. The obvious question then is 'why is it acceptable for the NSW Government to utilise them for legislative purposes?'

A key objective of the Coastal Management Act is to to manage the coastal environment of New South Wales in a manner consistent with the principles of ecologically sustainable development for the social,

cultural and economic well-being of the people of the State...'. One of the key principles of ecologically sustainable development (ESD) is the:

'precautionary principle' - namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
- (ii) an assessment of the risk-weighted consequences of various options,'*

Hence, given the risk of serious or irreversible environmental damage to certain coastal management areas or environments proposed to be administered under the new CM SEPP it is considered essential to apply merit-based and conservative mapping despite a lack of full scientific certainty in some cases. Refer also to discussion on mapping in regard to coastal wetlands/littoral rainforests, coastal vulnerability and coastal environment areas/coastal lakes in Attachment 2.

Consultation

The draft CMSEPP, related legislative amendments and a new local planning direction have been released for public exhibition and comment. Submissions close on 23 December 2016. Relevant Council staff have been advised of the coastal reforms and their general intent.

Legal and Risk Management

The biggest risk with the draft CMSEPP relates to the draft CMA maps. This is a legal risk for the NSW Government. Councils have been advised through Fact Sheets included in the exhibition material that changes to these CMA map layers can be made at the request of local councils following submission of studies. There is a significant objection to this, particularly where the NSW Government has data that is suitable for inclusion on the maps, as to require local councils to provide that data is plain cost, and liability, shifting and delays implementation of equitable and merit-based coastal management in NSW.

Prepared by	Scott Lenton, Environmental Planning Coordinator
Attachment	Attachment 1 – Council report and Attachment on Coastal reforms (February 2016) Attachment 2 – Draft Coastal Management SEPP Notes

ATTACHMENT 1**ORDINARY COUNCIL MEETING****16 FEBRUARY 2016****ITEM 13.005/16 NSW GOVERNMENT STAGE 2 COASTAL MANAGEMENT REFORMS – CONSULTATION AND COMMENT**

Meeting	Environment, Planning & Community Committee	9 February 2016
Directorate	Environment, Planning & Community	
Reviewed by	Manager - Strategic & Economic Planning (David Morrison)	
Attachment	Yes	

SUMMARY

The NSW Government has released Stage 2 coastal management reforms for consultation. The proposed reforms will impact to varying degrees on Council's role in coastal management planning (including emergency management of coastal hazards), development application and planning proposal assessment, environmental assessment for Council projects, management of Section 149 planning certificates and property databases, integration with the corporate Integrated Planning and Reporting (IP&R) framework, and regulatory enforcement. Associated with the reforms appears to be a stronger push from the Government for local Councils to take on additional responsibility for preparing and implementing coastal management programs, however for the reforms to be effective the Government and public authorities also need to play a more constructive role than they have in recent years.

OFFICER RECOMMENDATION

That Council make a written submission to the NSW Government on the Stage 2 coastal management reforms in accordance with Attachments 1 and 3, and include a full copy of the Council report and resolution with the submission.

COMMITTEE RECOMMENDATION

Williamson/Howe

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Baker, Howe, Hughes, McKenna, Williamson

Against: Nil

COUNCIL RESOLUTION – 13.005/16

Hughes/McKenna

That Council make a written submission to the NSW Government on the Stage 2 coastal management reforms in accordance with Attachments 1 and 3, and include a full copy of the Council report and resolution with the submission.

Voting recorded as follows

For: Councillors Williamson, Baker, Simmons, McKenna, Howe, Lysaught, Kingsley, Hughes, Toms

Against: Nil

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Our Leadership

Objective 5.1 We will have a strong, accountable and representative Government

ORDINARY COUNCIL MEETING**16 FEBRUARY 2016**

Strategy 5.1.5 Provide strong representation for the community at Regional, State and Federal levels

BACKGROUND

Reform of coastal management in NSW has been on the agenda of the current and past NSW Governments for several years. For many practitioners and our community working in this field of management the changing nature of coastal reform, Government philosophy and practice is considered to have been a constant and destabilising influence on achieving quality outcomes in the coastal zone. This is not to suggest that quality decisions have not been made or positive outcomes achieved however, in many cases they have not been as timely or as effective as they could otherwise have been. In some cases the coastal management planning process has occupied such a length of time that practitioners and the community have been in a state of uncertainty about future management and how it affects their respective interests while management plans remain unendorsed by the Government or are incomplete.

In NSW there are many aspects to coastal management administered by the Government from the coastal legislation, interrelated legislation, NSW Coastal Policy, Government guidelines, technical expertise and assistance, CZMP certification, funding administration, regulatory enforcement, research and monitoring. This latest reform package concentrates on the legislative, policy and guideline aspects centred on preparing management plans that will now be known as Coastal Management Programs (CMP). It is however understood that other aspects of how the Government manages the coastal management portfolio are also under internal review. From Council's perspective it is equally important that the associated administrative roles and resourcing of coastal management by the Government is reviewed and complementary reform is made to provide greater potential for improved coastal management outcomes to accrue for the NSW coastal zone.

A range of CZMPs exist for parts of the Clarence Valley LGA in various states of endorsement (see Table below for basic information).

NAME OF PLAN	YEAR PREPARED	WHO PREPARED	ENDORSED BY NSW GOVERNMENT
Brooms Head Beach Coastal Study	2001	Maclean Shire Council	Yes
Brooms Head Beach and Lake Cakora Draft Coastal Zone Management Plan	2015	CVC	No. Lodged with Gov't in 2015.
Clarence Estuary Management Plan	2003	Maclean Shire Council	Yes
Sandon River Estuary Draft CZMP	2012	CVC	No. Lodged with Gov't in 2012.
Woody Head/Shark Bay	Unknown	Equivalent of OEH	Unknown
Wooli Beach Coastline Management Plan	1998	Ulmarra Shire Council	Yes
Wooli Beach Draft CZMP	2015	CVC	No. Under review.
Wooli Wooli River Estuary Management Plan	2009	CVC	No.
Wooloweyah Lagoon Coastal Zone Management Plan	2009	CVC	Yes
Yamba Coastline Management Plan	2003	Maclean Shire Council	Yes

Council will be well aware of the recent drive by both the NSW Government and Council to complete coastal zone management plans (CZMPs) for the coastal erosion hotspots at Brooms Head Beach and Wooli Beach. Consideration of the Wooli Beach Draft CZMP at Council's December 2015 meeting resulted in resolutions that are relevant to these coastal management reforms. Particular components of the resolution on Item 13.166/15 in this regard are:

6. *Request the Minister to review the merit of sand extraction from the NSW national park estate for coastal management purposes in special circumstances as well as the potential for public*

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land estate to contribute to future management and adaptation of local communities that are expected to be directly impacted by coastal hazards and processes.

7. *Request provisions be added to the Draft Coastal Management Bill 2015 that enable the Minister to certify a CZMP/CMP despite a public authority not agreeing to a draft CZMP/CMP, especially where actions are likely to provide an environmental or community benefit, for example, as provided for in the Marine Estate Management Act 2014 (NSW) with regards to sand extraction in a marine park.*
8. *Consider the potential for management actions seeking to extract sand from national park estate and investigation of asset relocation and land swap (or similar) in future draft CZMPs or Coastal Management Programs prepared for coastal zones within the Clarence Valley LGA.*

Council's 2015/16 Operational Plan contains six (6) actions (listed below) directly relevant to coastal management and the reforms. Many other actions in relation to Council activities are indirectly related to coastal management and impacts of the reforms.

- Action 4.1.1.1 - Facilitate community involvement in decision making for coastal and estuary and heritage planning;
- Action 4.2.1.4 - Seek and apply for funding for NRM/Floodplain Management improvement programs;
- Action 4.2.2.1 - Complete the Whiting Beach Yamba Coastline Study;
- Action 4.2.2.2 - Seek and apply to State and Federal funding bodies for coast and estuary projects;
- Action 4.3.4.8 - Finalisation of Brooms Head Coastal Zone Management Plan; and
- Action 4.3.4.11 - Preliminary assessment of riverbank risk.

The Council is responsible under the *Coastal Protection Act 1979* for preparation of CZMPs for some 96 km of open coastline and 695 km of estuarine or tidal riverbanks for the Clarence River and its tributaries alone (not including Lake Cakora, Sandon River and the Woolli Woolli River). Along the Clarence Valley's open coastline 71.4 km, or 74.4 %, is directly adjoined by national park estate, and a further 23.4 km (24.4 %) is directly adjoined by Crown land (not including beaches or rock platforms). Hence, only 1.2 km, or 1.2% of land directly adjoining the Clarence Valley LGA open coast is not owned by the NSW Government. These statistics are used in discussion in the attachments.

KEY ISSUES

The reform package is extensive and quite complicated. A detailed summary and comment is contained in Attachment 2, addressing the following components:

- Overview
- Draft Coastal Management Bill
 - Objects of the draft Bill
 - Coastal Management Areas
 - Coastal Management Programs
 - Coastal Management Manual
 - Council obligations
 - NSW Coastal Council
 - Emergency coastal protection works
 - Transitional Provision
 - Other legislative amendments
- Draft Coastal Management State Environmental Planning Policy
- Draft Coastal Management Manual
- Other Coastal Matters

ORDINARY COUNCIL MEETING

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COUNCIL IMPLICATIONS

Budget/Financial

The changes to the NSW coastal management legislation and associated guidelines will have some resourcing demands as staff make necessary adjustments to Council corporate systems, eg Property and Rating System, Section 149 Planning Certificate templates and incorporating CMP actions into Council's IP&R framework. Changes to the process for preparation of CMPs will be managed as part of those particular projects. While there will be no implications on current capital or project budgets expected, this will still involve significant staff resources being allocated at times to revising such systems, and to coastal management planning generally. At this stage, there has not been any indication of additional resourcing/funding from the State.

Asset Management

N/A

Policy or RegulationExisting

Coastal Protection Act 1979 (proposed to be replaced)

Environmental Planning and Assessment Act 1979 (several associated amendments proposed)

State Environmental Planning Policies No 14, 26, 71 and Infrastructure SEPP 2007 (proposed to be replaced)

NSW Coastal Policy 1997

Coastal Planning Guideline: Adapting to Sea Level Rise (proposed to be replaced)

Guide for Preparing Coastal Zone Management Plans (proposed to be replaced)

Section 117 Direction No 2.2 – Coastal Protection (proposed to be replaced)

Coastal Design Guidelines

It is notable that there is no change to the NSW Coastal Policy 1997 proposed. This Policy guides much of the philosophical position of the NSW Government on coastal matters and given the apparent range of other changes to coastal management policy and regulation it is surprising that this Policy is not proposed to be amended. The discussion earlier in this report suggests that the Policy should be reviewed in conjunction with the current coastal management reforms as components of the current Policy are considered to be impediments to innovative and effective coastal management outcomes, for example the prohibition of sand extraction from national parks.

Proposed

Draft Coastal Management Bill 2015 (replaces the *Coastal Protection Act 1979* and includes associated amendment to a number of Acts and instruments, including the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, *Land and Environment Court Act 1979*, *Local Government Act 1993* and *Rural Fires Act 1997*).

Coastal Management SEPP (replaces 3 existing SEPPs and incorporates part on the Infrastructure SEPP)

Section 117 Direction (Coastal Management) (replaces Direction 2.2)

NSW Coastal Management Manual (replaces Coastal Planning Guideline: Adapting to SLR and Guide for Preparing CZMPs)

Consultation

Council has been consulted in development of the Draft Coastal Management Manual. Council staff and members of the Council's Coast and Estuary Management Committee have been advised of the proposed coastal reforms and the opportunity to provide comment invited. Council's Manager Water Cycle has provided input to the response to Question 7 in Schedule 1 of this report. The NSW Government advise that the consultation period for these coastal reforms closes on 29 February 2016. There is concern among coastal communities and coastal management practitioners regarding the way the consultation on these reforms has been managed. In particular, the staged release of different components and more recently the failure to deliver the Draft Coastal Management Area maps to local councils for review in the timeframe

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indicated by the Government when the reforms were announced. It is recommended that Council make comment on this aspect of the consultation and seek some remedial response.

Legal and Risk Management

N/A

Prepared by	Scott Lenton, Environmental Planning Coordinator
Attachment	<ol style="list-style-type: none"> 1. Comments on Stage 2 Coastal Reforms 2. Detailed Summary of Proposed Reforms 3. Responses to Specific Questions – Coastal Management Areas and Development Controls

ATTACHMENT 1 : COUNCIL COMMENTS ON PROPOSED COASTAL MANAGEMENT REFORMS**1. General :**

- (a) Council supports the focus of the reforms being on 'management' of the coastal zone rather than 'protection' consistent with the dynamic and ambulatory nature of the land and issues being managed;
- (b) That due to the failure to issue draft Coastal Management Area maps for Council and community feedback by mid-January 2016 that the Government is advised that full consideration of the reform package has not been possible. Council requests that further time be added to the consultation period equal to the period between mid-January and the date the Draft maps are released for public consultation;
- (c) Council is concerned that the reforms will likely place increased management and planning responsibility on Councils which has not been funded or resourced, and requests that the reforms package properly address increased resourcing and funding to local government commensurate with the increased responsibility.
- (d) Council considers that for coastal management reform to be effective at sustainably managing both the effects of coastal hazards on the coastal zone and the population that reside in and use the coastal zone that there needs to be a stronger partnership philosophy in these reforms and all other aspects of coastal management administration and resourcing in NSW. Public authorities with a role in managing the coastal zone need to share a common proactive management philosophy when it comes to managing coastal issues so as to assist with meaningful integration and commitment to achieve improved coastal management outcomes in NSW; and
- (e) That the Office of Environment and Heritage (OEH) is requested to clarify the status of the various Clarence Valley CZMPs under the current and proposed coastal management legislation.
- (f) The reform package needs to more clearly define the relative legislative status between the various elements of the package including the Coastal Policy 1997, the proposed Bill, SEPPs, Section 117 Directions, Coastal Management Plans and local environmental plans.

2. Draft Coastal Management Bill 2015 :

- (a) That Council reinforce its resolution to Item 13.166/15 (December 2015) to seek amendment to the Draft Bill to enable the Minister to be able to certify coastal management programs, in special circumstances, where a public authority does not agree to proposed management;
- (b) That the following changes to objects of the Draft Bill are suggested:
 - (i) That part of Object (b) in the *Coastal Protection Act 1979*, being the words '*to encourage, promote and secure the orderly and balanced utilisation and conservation of the coastal region and its natural and man-made resources*' should be added into the proposed Draft Bill as a stand alone object or as an addition to Draft object (e); and
 - (ii) That draft objects (f) and (i) in the Draft Bill be merged to read 'to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of uncertain climate future, including extreme storm events, and mitigate current and future risks from coastal hazards, taking into account the effects of climate change' (or similar), as both proposed objects relate to resilience to future risk including climate change;

- (c) That different geographical features above MHWL that are subject to coastal processes and hazards, such as coastal headlands and riverbanks in estuaries, be included in the definitions;
- (d) That the Government recognise that a CMP containing action/s to be implemented by other public authorities can be threatened by restructuring and changes to functions of public authorities after certification of the CMP. To cater for such circumstances, the Draft Bill should enable the Minister to allocate a replacement responsible public authority to implement relevant action/s in a CMP;
- (e) That the emergency action sub plans under the Draft Bill should cater for all coastal hazard emergencies and not only coastal erosion events;
- (f) Section 16(1)(b) should be amended to read, 'if the coastal management program applies to land within the coastal vulnerability area, any local council whose local government area contains land within the same coastal sediment compartment (as specified in Schedule 1)' to avoid unnecessary consultation when a CMP is only prepared for part of the LGAs coastal zone and doesn't affect a common coastal sediment compartment between 2 or more local Councils;
- (g) The functions of the NSW Coastal Council should extend to monitoring and reporting on the performance of other public authorities in CMP preparation, review and implementation to make all public authorities equally accountable and provide for a truly more integrated and coordinated approach to coastal management in NSW;
- (h) Section 17 should be amended to enable the Minister to certify a CMP when other public authorities don't reasonably engage with local Councils; and
- (i) The Government is requested to clarify why failure to comply with the consultation section [vide section 16(3)] does not invalidate a CMP;

3. Draft Coastal Management SEPP :

- (a) That the Government consider the responses to questions regarding the Coastal Management SEPP in Schedules 1 & 3 of this report;
- (b) That Council supports revised mapping of SEPP 14 and SEPP 26 features as it will encourage the relevant level of assessment for new development on land affected by these values;
- (c) That in lieu of the Draft Coastal Management Area maps not being made available for local Council review in a reasonable timeframe it is requested that where a local Council supports any amendment to these maps following gazettal of the SEPP that the NSW Government should actively assist Councils in refinement and modification of the maps; and
- (d) Council requests that the current prohibition in most LEP zones for any person to undertake coastal protection works, especially in an estuary, is overcome in the proposed SEPP;

4. Draft Coastal Management Manual :

- (a) Council supports the proposed structure of the Manual; and
- (b) That the ability for local Councils to prepare locality-specific CMPs be provided for in the Manual;

5. Other matters related to the coastal reforms and the administration of coastal management in NSW :

- (a) That where the Minister requires a whole-of-coast/LGA CMP (or CMP for a significant

length of coast) where a local Council's coastline is dominated by public land (not Council) estate bordering the coastline then Council suggests that the funding level from the NSW Government should be at least 75% of total project cost or reflect the relative proportions of management responsibility;

- (b) That Council suggests that the Government amend clause 7.5 of the Standard LEP Instrument and relevant LEPs to refer to the mapped coastal vulnerability area for the whole of NSW rather than utilise a range of disparate Coastal Risk Planning Maps on the NSW coast;
- (c) That the Government amend other NSW legislation and related policy administering land within the coastal zone to ensure that opportunities for innovative and sustainable coastal management solutions are not blocked. Such opportunities include sustainable use of land and resources within the public land estate;
- (d) That the Government also undertake a full review of the NSW Coastal Policy 1997 to ensure it is consistent with the intent of the proposed reforms and to clarify its status in relation to other statutory provisions. In this regard Council reinforce its resolution to Item 13.166/15 (December 2015) regarding the potential for sand extraction from national parks to be considered on its merits when there are special circumstances;
- (e) The resourcing shortfall of technical staff in OEHS coastal and estuary management area needs to be reviewed urgently to return the Government's support for local Councils to prepare and implement CMPs in a timely manner;
- (f) The level of resourcing and administration of the Coastal and Estuary Management Program by OEH be reviewed to ensure time demands on local Council and OEH staff are commensurate with the quantum of monies being managed for individual projects. A minimum threshold of \$150,000 Government funding before the current higher level administration becomes relevant is suggested; and
- (g) Greater resourcing of research and sharing of coastal data under the coordination of the NSW Government would further improve decisions and outcomes of coastal management in the NSW coastal zone.

ATTACHMENT 2 – Detailed Summary of Proposed Reforms

Draft Coastal Management Bill

Overview – It is noteworthy that ‘Management’ has been proposed in the name of the Draft Bill rather than ‘Protection’ as contained in the current *Coastal Protection Act 1979*. This is significant as the Minister and the Government has openly recognised in the release of these coastal management reforms that the coastal zone is dynamic and sometimes ambulatory in nature. This is true for both short term episodic coastal hazard events, such as shoreline erosion, and longer term change due to sea level rise and progressive tidal inundation for example. Given these ‘natural’ operating conditions of the coastal zone it can be a false object to pursue protection in all circumstances as it is not always reasonably possible or even desirable. Hence, a focus on ‘management’ is supported.

Draft Bill Objects – The objects are key considerations for drafting and implementing the proposed legislation. They set the intent, the context and the tone for what it is the legislation is meant to achieve. However, the objects need to be reinforced by the legislative provisions and related components of the reforms. There are a range of changes to the proposed objects when compared to the current objects under the *Coastal Protection Act 1979*. For example, a greater regard for management (as mentioned earlier) and the principles of ecologically sustainable development are mentioned upfront.

The object of the Bill is in part ‘provide for the integrated management of the coastal environment of NSW’. This is further reinforced by object (j) of the Draft Bill that reads, ‘to ensure coordination of the policies and activities of government and public authorities relating to the coastal region and to facilitate the proper integration of their management activities’. Achieving this object is very much a key to the success of the new legislation and coastal management reform in NSW if this Council’s experiences are any guide. This would appear to be very difficult to achieve when so much of the coastline is currently not considered as part of the coastal management solution as the NSW agency/s who own them are constrained by current policy and legislation that stifles opportunity for innovation and in one circumstance the individual agency doesn’t want to be involved in a conversation due to the wider implications on land they manage in NSW. This is the case at Woolli Beach as considered by Council last December. If the NSW Government is serious about achieving quality outcomes for the NSW coastline then all the cards should be on the table. Local Councils are required to prepare CMPs for the total of their coastal environments yet in the case of coastlines like in the Clarence Valley significant parts of the coast that are part of the coastal management issue are unable to be considered for a reasonable contribution to the solution. In managing dynamic natural environments it is unrealistic to expect sustainable solutions in these circumstances. As a result many plans are unlikely to make substantial reductions to the effects of coastal hazards and the liability for all parties only increases the longer that this philosophy persists.

Object (b) of the current *Coastal Protection Act 1979* reads ‘to encourage, promote and secure the orderly and balanced utilisation and conservation of the coastal region and its natural and man-made resources, having regard to the principles of ecologically sustainable development.’. Whilst ecologically sustainable development has been provided with higher standing in the proposed objects of the Draft Bill the first portion is not retained. In light of the need to keep all land and resources on the discussion table as discussed earlier it is considered essential to include this current object as a stand alone object or as an addition to Draft object (e) being, ‘to facilitate appropriate coastal development and land use planning decision-making,’.

Proposed objects (f) and (i) in the Draft Bill both relate to resilience to future risk including climate change. Hence, it suggested that the two objects be merged to read ‘to encourage and promote

plans and strategies to improve the resilience of coastal assets to the impacts of uncertain climate future, including extreme storm events, and mitigate current and future risks from coastal hazards, taking into account the effects of climate change' or similar.

Definitions – The Draft Bill introduces a range of new definitions (compared to the existing *Coastal Protection Act 1979*) and removes terms that are no longer relevant. There appears to be quite an effort to define the areas of the coastal zone below mean high water mark however, the area above that datum or level appears to have missed out. For example, coastal headlands and riverbanks of estuaries are features of the coastal zone that are subject to mass movement, instability or erosion events under the influence of coastal hazards that are not included in proposed definitions. Preparation of coastal management plans by Councils need to consider the impact of coastal hazards on these features hence, it appears sensible to recognise these areas above MHW in the definitions under the new legislation.

Coastal Management Areas (CMA) – The Draft Bill recognises that the coastal zone is not homogenous and hence, planning and management should recognise variations. In a practical sense this is recognised through the coastal planning process as coastal management studies that document these differing characteristics precede the management plan documents. However, the development assessment process, chiefly through State Environmental Planning Policy (SEPP) No 71 – Coastal Development, does not necessarily provide for different assessment. The Draft Bill proposes to create four (4) CMAs that collectively will comprise the coastal zone. In some cases land will be affected by more than one CMA and hence the CMAs will have a weighting or priority order assigned in the event of an inconsistency between management objectives. The CMAs, in order of highest to lowest weighting, are coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area. The Draft Bill specifies the management objectives for each CMA while the proposed Coastal Management SEPP provides more detail as to how these CMAs need to be considered in a development assessment context.

The coastal wetlands and littoral rainforests area will incorporate land affected by SEPP 14 – Coastal Wetlands and SEPP 26 – Littoral Rainforests. However, maps of these features are dated and hand-drawn leading to debate regarding their accuracy. The NSW Government will refresh the mapping using latest data and modern electronic mapping technology. Apart from assisting implementation of the Draft Bill and the proposed new coastal management SEPP these new maps will require Council to refresh a range of attributes applied to the corporate Property and Rating system associated with issue of Section 149 Planning Certificates. The full effect of the new legislation in this regard cannot be determined at this stage, however the benefit of accurately mapping these environmental attributes and hence, land to which relevant development assessment provisions should apply outweighs the short term additional resourcing needs on Council staff to modify property attributes.

Management of coastal hazard in the coastal vulnerability area demonstrates a clear preference for environmentally friendly management strategies, such as restoring coastal dunes and enhancing natural defences in the first instance. Such 'soft management' approaches are typically desirable as they seek to improve resilience using native beach materials, typically local sand and native vegetation. These resources are likely to retain acceptable beach amenity and encourage lesser environmental impact. Importation of sand, via beach nourishment strategies, is considered to fit this type of management. Councils experience in preliminary investigations of beach nourishment for Woolli Beach is that for it to offer greater resilience and better outcomes than appropriate quantities of sand suited to the native sand on the receiving beach need to be accessed. On a coastline increasingly managed under national park estate the potential to access land-based sand resources is heavily constrained. Nearly three quarters of the Clarence Valley coastline is adjoined

by national park estate. Coastal hazards affect the entire coastline and they do not stop at the boundaries of national park estate so the question needs to be asked as to why these parts of the coast do not have a role in contributing sand resource to enable pursuit of preferred soft management options. The fact that national parks are reserved for preservation of flora and fauna and geological formations is recognised and may have been appropriate in 1974 when the *National Parks and Wildlife Act* was enacted, however in the 40 years since that time the NSW coastline has evolved to the point that the buffer between coastal hazards, assets and human inhabitants is becoming dangerously narrow in many cases. Given the prohibitive costs and technical problems of obtaining sand from large scale offshore sand deposits then the NSW Government is requested to consider policy and legislative change to enable consideration of extraction of sand from national parks where circumstances warrant. In many cases, the area of land impacted by such extraction would be small and unlikely to have significant effects on the total flora and fauna and geological values of the national park estate, let alone the total environmental values of the NSW coastal zone.

There would appear to be merit in the NSW Government changing clause 7.5 of the Standard LEP Instrument and relevant LEPs to refer to the mapped coastal vulnerability area for the whole of NSW rather than utilise a number of Coastal Risk Planning Maps on the NSW coast. These areas could also be referred to in the *SEPP (Exempt and Complying Development Codes) 2008* for consideration of exempt and complying development. Capacity for the NSW Government to utilise the product of this coordinated CMA mapping for wider benefit across all coastal local government areas in NSW would be a positive outcome. Council currently has one area of mapped coastal hazard identified in the *Clarence Valley Local Environmental Plan 2011* on the open coast at Wooli. Riverbank erosion hazard on the Clarence River at Palmers Island and Woodford Dale identified in maps of the *Clarence Valley Local Environmental Plan 2011* are located within the coastal zone (as currently defined) and are also considered to be coastal hazard, however the mapped riverbank erosion area at Ulmarra is upstream of the coastal zone and hence, is not deemed to be coastal hazard for the purposes of administering complying development advice on Section 149 Planning Certificates. Proposed changes to the geographical extent of the coastal zone are likely to change this circumstance for Ulmarra and at the same time provide greater consistency in consideration of riverbank erosion risk and considerations for development which is considered a positive outcome.

The maps of the CMAs are the components of the reform package that have not been released for any review by Council and the community to date (refer also to earlier discussion in this regard). Refer also to discussion on modification of CMA maps by local Councils in discussion regarding the proposed Catchment Management SEPP later in this report.

Coastal Management Programs – As mentioned earlier coastal management program (CMP) is the new terminology proposed to replace coastal zone management plan (CZMP). Consistent with the current legislation there is a clear intent for local Councils to be responsible for preparing coastal management programs rather than the NSW Government, and if the Minister directs a Council to do so then they must prepare the CMP. While public authorities are not required to prepare CMPs when an authority that has responsibility within the coastal zone prepares a management plans for their infrastructure and assets they are required to have regard to any relevant CMP, the objects of the Draft Bill and the Coastal Management Manual.

Plans to manage coastal hazard along the Clarence Valley coastline have traditionally been prepared for specific localities as the majority of the coastline is adjoined by national park and crown land estate. Hence, Council has opted to avoid applying its scarce resources to areas of the coastline that it has no influence over the management of and where the impact of coastal hazards is less significant. Despite that, there is some merit in CMPs covering entire LGA coastlines, or at least common geomorphological units, however there needs to be greater resourcing by the State if

Council is to be encouraged by the State to prepare an LGA-wide CMP when nearly the entire coastline is backed by national park and/or Crown land. This is further complicated by the power that public authorities have in the CMP process by way of maintaining the need for authorities to agree to the CMP. At the December meeting Council resolved to request the Government to review that proposed provision and that feedback is still very relevant.

Content or matters to be dealt with in a CMP are specified by section 15 of the Draft Bill. The Government is seeking levels of certainty in CMPs that is not always reasonable. For example, a CMP that contains actions to be implemented by other public authorities can be threatened by restructuring and changes to functions of public authorities after certification of the CMP. In such cases the Government should allocate a responsible public authority to address the relevant action. This is not a local Councils responsibility to sort out. Further, local Councils should not be penalised through administration of the Integrated Planning and Reporting Framework in cases where other public authorities do not fulfil their obligations and public authorities should be equally subject to scrutiny under the proposed Act. The proposed requirement for CMPs to identify proposed cost sharing arrangements and other viable funding mechanisms for actions to ensure delivery of actions under the CMP may also be difficult to achieve and threaten the preparation of CMPs in a timely manner.

In cases where a new CMP affects land in a coastal vulnerability area the local Council must include a coastal erosion emergency action sub plan to document what action all public authorities (including local Councils) will take in response to coastal erosion emergencies. Coastal erosion is only one of several processes that comprise coastal hazard as defined in the existing Act and Draft Bill. Hence, it seems that there is a gap in documenting how emergencies related to at least some other coastal hazard processes will be managed by local Councils and other public authorities. It is considered that the emergency sub plans under the Draft Bill should cater for all coastal hazard emergencies and not only coastal erosion events. This would require a change to the relevant definition, section 15 of the Draft Bill, guidance in the new Manual and consideration of issue coverage for the different types of emergency management plans in NSW between OEH and the NSW State Emergency Service (SES).

Consultation requirements are specified by the Draft Bill and require that before adopting a CMP a local Council must consult the community, other local Councils who share a coastal sediment compartment/s covered by the CMP and other public authorities if the CMP proposes actions to be carried out by the authority, affect land owned or managed by the authority or proposes emergency actions to be carried out by an authority. These consultation requirements are greater than prescribed in the current Act. The main difference relates to consultation with other local Councils. The concept here is that if a Council proposes management of a section of coastline within a sediment compartment then it is possible that the management could affect a different section of coastline within a different Council area. Hence, it is reasonable for this consultation to occur. Notwithstanding this merit, the draft wording of section 16(1)(b) should be amended to avoid unnecessary consultation when a CMP is only prepared for part of the LGAs coastal zone and doesn't affect a common coastal sediment compartment between 2 or more local Councils. Suggested wording is - 'if the coastal management program applies to land within the coastal vulnerability area, any local council whose local government area contains land within the same coastal sediment compartment (as specified in Schedule 1)'.

A more significant issue for local Councils is consulting with other public authorities as not all authorities share a common management philosophy when it comes to managing coastal hazards and further, some authorities do not want to be involved in a merit-based conversation when management strategies are proposed that challenge an authorities adopted policy position or raise

flow-on effects for that authorities wider estate. These constraints to effective consultation and engagement in preparing CMPs are essential for the NSW Government to address in association with the current reforms as without combined and truly integrated commitment to achieve improved coastal management outcomes in NSW it is unlikely the stated objects of the Draft Bill in terms of coordination of policies and activities and proper integration of their management activities will be achieved. Where authorities don't reasonably engage with local Councils then the Minister should be able to certify a CMP despite these issues by amendment to proposed section 17 of the Draft Bill.

It is noted that failure to comply with the consultation section does not invalidate a CMP. It is unknown why this sub-section would be included and the Government should be asked to clarify the reasoning behind this provision.

Coastal Management Manual (CMM) – A new CMM will replace the current Guideline for preparing CZMPs published by the Government. The Draft Bill provides an outline of what the CMM will include. Draft CMM has been released as part of the reform package and is discussed in more detail later in this report.

Obligations of local Councils – Councils will be required to give effect to their CMP/s through corporate documents associated with the Integrated Planning and Reporting Framework administered under the *Local Government Act 1993* as well as when preparing planning proposals and development control plans under the *Environmental Planning and Assessment Act 1979*. Council includes some aspects of current CZMPs in the IP&R documents (see Background earlier) however the provisions contained in the Draft Bill take this to a higher level than previous legislation on coastal matters. In fact, a level higher than any other non-Local Government Act legislation in NSW. There is obvious merit in actions from these CMPs being contained in Council's corporate plans however the same can be said for any other management plan adopted by Council. The Government is certainly keen to see adopted coastal management actions implemented and sees the IP&R process as a key component of achieving that goal.

NSW Coastal Council – The Draft Bill effectively abolishes the NSW Coastal Panel and replaces it with a NSW Coastal Council with membership of 3-7 Minister-appointed persons comprising specialists across a range of coastal fields, and a member nominated by the Minister administering the *Marine Estate Management Act 2014*. The Coastal Council will effectively provide advice to the Minister in relation to functions under this proposed Act, advice relating to coastal management matters as well as advice to the Minister on compliance by local Councils in preparation and review of CMPs and performance audits of local Councils. As suggested earlier, other public authorities also have roles in CMP preparation, review and implementation and these roles should also be subject to review by the Coastal Council. This provides an opportunity for capacity building and recommendations to relevant Ministers responsible for different public authorities rather than simply targeting local Councils. This again will contribute to make all public authorities equally accountable and provide for a truly more integrated and coordinated approach to coastal management in NSW.

Emergency coastal protection works – The Draft Bill and associated guidelines propose to remove reference to temporary or emergency coastal protection works other than to retain some transitional provisions for any such works that have been authorised under the current legislation and guidelines. The concept of emergency coastal protection works and the community expectation of what could be done by landowners to protect their land from coastal erosion is not complimented by the onerous Code of Practice and related guidance currently issued by the Government. This documentation will now be repealed. Provisions to enable public authorities (including local Councils) to undertake emergency coastal protection works are proposed in the proposed new SEPP (refer also to discussion on new SEPP later). These changes are supported.

Transitional provisions – CVC needs to clarify the status of the various CZMPs with the NSW Government under the current and proposed legislation. For example, the Sandon River Estuary CZMP was sent to the former NSW Minister for the Environment, Robyn Parker MP, in October 2012 seeking certification. The Minister responded in November 2012 advising that they were deferring certification of any CZMPs until the Stage 2 reforms were developed. Over three years later we have Draft Stage 2 reforms. This is just one example of the frustration that Councils and coastal communities have had to work through while waiting for the Governments coastal reform process to evolve.

Draft CZMPs that have been submitted to the Minister for certification before the repeal of the Coastal Protection Act 1979 then the Minister and Council can continue to be dealt with as though the Act wasn't repealed for a period of up to 6 months from the date of repeal. This provision is relevant to at least three (3) CZMPs in the Clarence Valley LGA - Sandon River, Brooms Head Beach and Lake Cakora and Wooli Beach. In addition, CZMPs that have been certified under the current Act will be considered to be a CMP for the purposes of the new Act however such a plan will need to be reviewed before 31 December 2021.

Amendment of other legislation – The Draft Bill will require changes to the *Environmental Planning and Assessment Act 1979* in terms of assessment of development applications, conditions on development consents, enforcement/issue of Orders and functions of the Joint Regional Planning Panel), the *Environmental Planning and Assessment Regulation 2000* (definitions, administration of Section 149 planning certificates and penalty notice offences), *Land and Environment Court Act 1979* and *Rural Fires Act 1997* (minor changes) and *Local Government Act 1993* (modifying section 733 exemption from liability and other minor changes). These changes have no major impact on Councils activities.

Overview

The coastal reform package announced by the Minister for Planning, Rob Stokes, in November 2015 and released by the NSW Government for comment contains the following components:

- Draft Coastal Management Bill 2015;
- Coastal Management State Environmental Planning Policy (Statement of Intended Effect); and
- NSW Coastal Management Manual.

Information contained in the exhibition material indicates that there will be other supporting and associated initiatives including preparation of a new Section 117 Direction (Coastal Management) to guide strategic planning in the coastal zone and absorption of some existing Government guidance publications into the new Manual.

The Governments role in coastal management involves a range of components and as indicated in the 'Background' earlier this reform announcement and consultation process has a clear focus on the legal, policy and guideline aspects. From the perspective of practitioners working in the coastal planning and management space it is equally critical that other components of the Governments role in coastal management are also reformed. It is probable that such reviews would be more internal through agencies like the NSW Office of Environment and Heritage, however it is considered timely for Council to make comment on these related aspects in an effort to improve benefits of the reforms for the States' coastal zone.

Importantly though, the reforms as they have been released for consultation are a package that must be duly considered. A significant difficulty for Council in reviewing the package is that components of the key documents have not been released according to the timeframes previously established by the Government. Some key maps forming critical components of the proposed Planning Policy remain unpublished at the time of preparing this report despite the indication they would be released in mid-January. Hence, Councils review and feedback to the Government will be constrained. The Government held a number of information sessions along the coast for both coastal management practitioners (including local government staff) and the wider community. There was concern raised at one of the Ballina sessions that the staged release of components of the total package did not allow for proper review by interested stakeholders and that this was a significant concern. The failure to issue new maps in a timely manner compounds this reasonable concern and the Government should be advised that this has limited proper consideration of the reform package and to suggest further time be added to the consultation period equal to the period of delay.

Councillors have been provided with links to the coastal reform consultation webpage on the Governments www.environment.nsw.gov.au website. The video presentation by Minister Stokes published on the webpage certainly provides a good overview of the reforms and their intent. From a local Council perspective there appears to be a strong underlying message that local Councils are going to be monitored more rigorously to ensure coastal management programs are implemented. At face value this is a positive message for the coastal zone and our coastal communities, however what it doesn't mention is the parallel and increasing impacts on Council resources to administer their coastal management role whilst the Government reduces its own resources assigned to the task and limits the capacity of Councils to raise additional revenue. The changing assignment of responsibility and resourcing is not new however, it is continually moving the two key players in coastal management – the NSW Government and local coastal Councils – further adrift and much less like a partnership. For coastal management reform to be effective at sustainably managing the effects of coastal hazards on the coastal zone and the community population that call the coastal zone home there needs to be more of a partnership philosophy active in these reforms and all other aspects of coastal management administration and resourcing in NSW. The words are there however the intent appears to be lacking in these reforms. Examples of this will be presented during the following discussion on the key components of the reform package.

A detailed summary and comment on the specific components of the reform package is contained in Attachment 2. These form the basis of the recommended feedback (refer Attachments 1 and 3).

Draft Coastal Management State Environmental Planning Policy

This proposed Policy, hereafter referred to as the CMSEPP, is designed to bring all coastal management matters in current SEPPs into a single document. Current SEPPs 14 (Coastal Wetlands), 26 (Littoral Rainforests) and 71 (Coastal Protection) as well as provisions in SEPP Infrastructure 2007 relating to coastal protection works will be integrated in the new CMSEPP. The goals and principles of the NSW Coastal Policy 1997 will be carried forward into, or significantly influence provisions of, the CMSEPP. In some circumstances this has potential to disrupt achievement of the objects of the Draft Bill and in a more general sense, best possible outcomes for coastal management. Council's recent deliberation on the Woolli Beach Draft CZMP and the option of extracting sand from Yuraygir National Park is a prime example. Despite the technical and likely financial feasibility (albeit significant cost) the ability to investigate this option was in part blocked by an action contained in the NSW Coastal Policy 1997. Further, the Coastal Policy contains some goals that use the word 'protect'. As discussed earlier 'protection' is often not practical, or sometimes not desirable, to

pursue and hence, the Government should be reviewing this Policy to ensure it is consistent with the intent of the proposed reforms.

An Explanation of Intended Effect (EIE) document contains a description of the CMSEPP, including the objectives and framework as well as an outline of how the intent of the current to-be-replaced SEPPs will be presented and what provisions are no longer needed. The CMSEPP introduces four coastal management areas that collectively comprise the coastal zone. The Government has provided an outline of what features these areas are intended to relate to, development controls for each management area, effect on exempt and complying development, coastal protection works, emergency and temporary coastal protection works. Questions relating to the development controls for the different coastal management areas and exempt and complying development are posed in the EIE to prompt feedback on specific issues. The questions and proposed responses are contained at Schedule 1 of this report and should be included as part of Councils feedback to the proposed reforms.

The CMA maps supporting the CMSEPP can be modified by local Councils through preparation of a Planning Proposal to the Department of Planning and Environment. Given the unavailability of Draft CMA maps for local Council review as part of the consultation period (at the time of preparing this report) it is respectfully considered that where a local Council supports any amendment to these maps following gazettal of the CMSEPP that the NSW Government should actively assist Councils in refinement and modification of the maps.

Riverbank instability and the threat to assets located on private and public land appears to be an increasing risk for public authorities and private landowners. Current provisions of the Infrastructure SEPP and the Clarence Valley Local Environmental Plan 2011 prohibit coastal protection works undertaken by a person other than a public authority, such as riverbank protection works, along estuary foreshores. It is considered to be unreasonable to impede the legal ability for a landowner to undertake works to stabilise or reduce erosion of riverbanks. Council officers have discussed this issue with the Department of Planning and Environment and have been informed that the new CMSEPP will address this issue. In cases where no CMP applies then coastal protection works are intended to be permitted with development consent from the JRRP. Council should include a request in feedback to ensure this prohibition in current legislation is overcome in the proposed reforms.

Emergency coastal protection works undertaken by a public authority, such as a local Council, will be enabled through the CMSEPP where they are in accordance with provisions of a Coastal Erosion Emergency Action Sub Plan (CEEASP) in an adopted CMP, or where not in accordance with an adopted program, after environmental assessment has been undertaken. Such works will generally need to be removed within 30 days. Current draft CEEASPs for Brooms Head and Wooli Beach do not propose that Council or any other authority will undertake emergency works.

Draft Coastal Management Manual

The CMM has been developed to provide local Councils with information and guidance to assist development of CMPs that are consistent with the requirements of the Draft Bill and CMSEPP. The CMM also provides information and guidance for other public authorities that have responsibility within the coastal zone in developing management plans for their infrastructure and assets.

The CMM has been prepared in consideration of views and advice from the community, local government practitioners and coastal management consultants. Staff have been directly involved in the North Coast OEH-local government CMM working group since late-2014 in an effort to provide feedback on structure and content of the CMM. OEH have had a huge range of requests for

information to be added to the CMM and the 3-part structure of the Manual appears to strike a good balance between having the core guide (comprising 2 parts) of not excessive size and complimenting it with a range of additional guidance on more technical or detailed aspects through the use of web-based media. This enables easier modification of data as required and without the need to amend the entire Manual. Council should be supportive of the CMM in a structural sense.

The CMM operationalises the Draft Bill in terms of preparing a CMP. There is a clear logic and it is relatively easy to follow how the process of preparing a CMP under this new regime is intended to work. However, there are some issues that need to be clarified or commented on.

Council has traditionally prepared CZMPs for specific localities centred on coastal towns and villages. The separation of these villages by swathes of national park has not provided the incentive for a whole of LGA coastline CZMP. The CMM is not clear as to whether this traditional approach can continue and it appears to suggest that CMPs will need to be prepared for mapped CMA/s or the total coastal zone. Unless there is a significant financial contribution (say minimum 75%) by the NSW Government to funding a whole of coast CMP (or CMP for a significant length of coast) where a local Council has significant public land (not Council) estate bordering the coastline then Council should be requesting that the CMM enable preparation of locality-specific CMPs.

Probably the most significant change to the process of preparing a CMP compared to the current Government guideline is the need for CMPs to include a business plan that demonstrates viable funding mechanisms for proposed management actions. This has potential to make progress on draft CMPs slower as local Councils and communities discuss the merit of different funding options, especially where private landowners are being asked to contribute financially to management actions that benefit them. There is a risk that the cheaper options will be sought in such cases even though they may not offer the best outcome. Cost:benefit analysis is proposed to be included in the cost and funding discussion associated with new CMPs and this will help provide for more objective consideration of positives and negatives by local councils and communities.

Documentation in the CMM on Scoping a CMP has highlighted the ability of local Councils to draw on state-wide maps prepared by the NSW Government in regard to certain coastal hazards at a regional scale. This data sharing is to be commended. In fact, greater resourcing of research and sharing of coastal data under the coordination of the NSW Government would further improve decisions and outcomes of coastal management in the NSW coastal zone. There is great capacity for State and regional scale data gathering where organisations that benefit could pool resources to obtain quality information more efficiently and in a more timely manner. These opportunities need to be further explored in management of coastal issues in NSW and the Government has a great opportunity to be the lead Australian state on this front.

Other Coastal Management Matters

This report has offered discussion and comment on related aspects of the Governments role in coastal management that are not directly addressed by the proposed coastal reforms. It is considered that for the coastal reforms to be more effective and beneficial to the NSW coastal zone and people of the State that the Government also need to consider their approach to other matters. Relevant matters that haven't been covered already in this report include resourcing of technical expertise and assistance for local Councils working in the coastal management space, administration of funding programs, support for and undertaking research and monitoring activity.

The NSW Government/OEH currently employs technical staff along the NSW coastline to assist local Councils in preparing and implementing coastal management plans and related matters. However, in recent years the number of staff has been reduced. This has resulted in these staff covering larger

geographical areas and in some cases a greater range of technical issues. The bottom line is that local Councils have a significantly lower level of service from these technical resources. This is in no way a reflection on the dedication of the staff however it is a reflection on the reduced level of resourcing by the Government on coastal matters. This technical resourcing shortfall needs to be reviewed urgently.

Administration of funding programs administered by OEH in relation to coastal management, particularly the Estuary and Coastal Management Programs, has increased significantly in recent years. It is submitted that the level of resourcing by OEH and the demands that have been placed on local Council staff are not commensurate with the quantum of monies being managed for individual projects. Council recognises the need for the Government to be accountable for monies it spends however the current excessive administration is a constant frustration for all involved. If Councils complete designated projects on budget then the need for copious reporting throughout the term of a project should not be required. A minimum threshold of \$150,000 Government funding before the higher level administration becomes relevant is suggested.

The Government has been an active player in coastal research and monitoring in the past. In fact, many of the original coastal studies were undertaken by the NSW Government. Resourcing these programs appears to have progressively reduced over time and certainly the level of data actively released by the Government has declined. In association with the proposed reforms OEH have coordinated some renewed targeted research and reporting on a range of matters, eg regional scale mapping of certain coastal hazards. This renewed activity is supported. As mentioned earlier greater resourcing of research and sharing of coastal data under the coordination of the NSW Government would further improve decisions and outcomes of coastal management in the NSW coastal zone.

ATTACHMENT 3 – CMSEPP - CVC Responses to questions regarding proposed coastal management areas and development controls

Question 1: Should councils be able to propose changes to the maps for all or some of the coastal management areas?

CVC Response: Yes. However, the NSW Government in consultation with relevant local Council/s should equally propose and make changes when necessary. Not all responsibility should be left with local Councils as both parties may have information from time to time that warrants changes being made. Council is concerned with the inadequate option to review the draft Coastal Management Area maps in the formal consultation period. The unavailability of the Draft maps means that local Councils cannot determine how the different coastal management areas and the associated development controls may affect land in their LGAs and hence, remains a significant issue with the consultation on the reforms. Council suggests that the consultation period should be extended by a period of time equivalent to the delay in receiving the maps given that the Draft maps were to be available by mid-January 2016. In addition, the NSW Government should provide technical assistance for local Councils in revising the maps.

Question 2: Should the development controls be included in the proposed Coastal Management SEPP or as a mandatory clause in council LEPs?

CVC Response: Prefer including these provisions in the Council's LEP as it provides a better visibility and prominence for consideration to proponents, Council staff and the community. However, either option would be adequate.

Question 3: Do the proposed development controls for mapped coastal wetlands and littoral rainforests remain appropriate for that land?

CVC Response: No. In coastal wetlands the proposed development that triggers the need for development consent should be the same as proposed development in areas of littoral rainforests with the possible modification of 'filling' to read either 'earthworks' or 'filling or excavation'.

Question 4: Do you support the inclusion of a new 100m perimeter area around the mapped wetlands, including the application of additional development controls?

CVC Response: Yes. Complying development is already restricted in these buffer areas through the SEPP (*Exempt and Complying Development Codes*) 2008. Hence, applying development controls ensures a consistency with related planning legislation.

Question 5: Are the proposed development controls for mapped coastal vulnerability areas appropriate for that land?

CVC Response: A key aspect of the proposed development controls for the coastal vulnerability area is to define what is meant by the phrase 'for the life of the works'. Is this the approved life or the embellished life? Does it apply to the full life of the development or in the case of development with a known timeframe or life can some impact be accepted provided the pre-development condition is reinstated at the termination of the use? Coastal protection works, and related activities, are an example of a development that needs to be catered for in coastal vulnerability areas. The development controls could be argued to make it impossible to undertake such works that are necessary to sustainably manage areas of the coastal zone. If the NSW Government does not want to enable such works in favour of natural coastal processes continuing as they would without intervention then it should state that intent. If the intention is to allow such works then the controls should enable that to happen recognising that some impact is inevitable and often reasonable given other benefits that the works provide.

The influence of the NSW Coastal Policy 1997 is strong in this aspect of the CMSEPP and Council believes that the provisions of that Policy also need to be revised to be consistent with the objects of the Draft Coastal Management Bill.

It is suggested that the Coastal Vulnerability Maps for NSW should be called up by clause 7.5 of the Standard LEP Instrument and relevant LEPs to cover areas of coastal hazard or risk rather than rely on disparate Coastal Risk Planning Maps on the coast.

See also the Council's response to Question 1.

Question 6: Are the proposed development controls for coastal environment areas appropriate for that land?

CVC Response: Without these areas being mapped and available for Council review it is very difficult to respond to this question. See also the Council's response to Question 1 and 5. The use of the terms 'protect' in some of the proposed controls is considered to be unreasonable. The objects of the Draft Bill include to 'protect and enhance natural coastal processes'. This arguably implies that where shorelines are receding then implementation of the Act will enable those processes to continue or even increase. Under the influence of coastal processes that are expected to be exacerbated under the effects of climate change it is false to offer the ability or expectation to 'protect' coastal vegetation, Aboriginal heritage places and other relatively fixed features of the landscape. In this light, NSW Coastal Policy 1997 and its influence on the CMSEPP and the Draft Bill needs to be revised as a part of this reform package.

Question 7: Is the inclusion of the catchments of the 15 sensitive lakes (listed in Schedule 1) within the coastal environment area appropriate?

CVC Response: There are three (3) sensitive lakes located within the Clarence Valley LGA. These are Lake Arragan (north of Brooms Head within Yuraygir National Park), Lake Hiawatha (located between Diggers Camp and Wooli Road within Yuraygir National Park) and Lake Minnie Water (located 3km west of Minnie Water within Yuraygir National Park). The majority of the catchments to these lakes are within Yuraygir National Park providing them a high level of appropriate and complimentary management. Lake Hiawatha is the water source for the village of Wooli and Lake Minnie Water provides water for Minnie Water village. CVC manages these water extraction and operational infrastructure. Whilst it is acknowledged that the proposed provisions will continue to assist provision of a safe water supply from these two (2) lakes Council also requests that the provisions of the CMSEPP should not impose further regulation on continuing water extraction and related operational infrastructure to service these villages. Small parts of each catchment contains land managed by CVC, eg road reserves, and Council also requests that any provisions in relation to these sensitive lakes should not impose further regulation for Council to maintain current works and infrastructure within those road reserves. Some review of related aspects of the Infrastructure SEPP may be required.

Question 8: Which is the best option for mapping the coastal use area? Is the proposed approach to mapping of the coastal use area for the Sydney metropolitan area appropriate?

CVC Response: Option 1 offers the greatest level of flexibility whilst commencing with a similar coverage to the existing coastal zone mapping. This provides less impact to landowners. Importantly, Option 1 provides Council to ability to increase or decrease the area mapped for coastal use and management under the CMSEPP according to local circumstances. This ensures that the CMSEPP is more relevant and applied on merit rather than a one-size-fits-all approach (as existing).

The discussion of 'Disadvantages' of Option 1 in Schedule 2 of the EIE indicates that local Councils will be undertaking all this mapping. The NSW Government needs to partner with local Councils rather than simply place the responsibility for mapping of the coastal use area on Councils who will not have extra

resources to undertake this work. The NSW Government has better mapping resource capability than local Councils. This appears to be another indication that the NSW Government has a clear intention to increasingly divulge its responsibility for coastal management to local Councils without offering additional resources.

It is not applicable for Clarence Valley Council to comment on mapping for the Sydney metropolitan area.

Question 9: Should councils be able to propose variations to the Coastal Use Area maps over time to take into account local characteristics and circumstances?

CVC Response: Yes. As circumstances and community expectations change over time then the maps should be able to be amended in consultation with relevant Government agencies. Data and technical assistance from OEH should be provided to local Councils for future modifications.

Question 10: Are the proposed development controls for mapped coastal use areas appropriate for that land?

CVC Response: See also responses to Questions 1, 5 and 6 earlier. It is noted that the extent of the coastal use area will be subject to significant upstream extension in the Clarence River as the definition of estuary, being the area of rivers affected by coastal tides, will presumably match the area of the marine estate as identified through the *Marine Estate Management Act 2014*.

Question 11: Should the current exempt development and complying development provisions be retained for coastal management areas?

CVC Response: Yes, in general terms. However, Council suggests that the listing of the Wooli coastal hazard area in Schedule 5 of the *SEPP (Exempt and Complying Development Codes) 2008* should be repealed as this currently unnecessarily duplicates the inability to conduct complying development under the General Housing Code and only serves to complicate provision of advice regarding complying development on CVCs Section 149 certificates and/or Complying Development Certificates.

Question 12: Should consideration be given to applying other controls for these areas? For example, what types of exempt and complying development might be appropriate in coastal wetlands and littoral rainforests or in the catchments of sensitive coastal lakes and lagoons?

CVC Response: Types of exempt and complying development and related provisions for areas of coastal wetlands or littoral rainforest (as well as buffer areas) are already contained in *SEPP (Exempt and Complying Development Codes) 2008* and there is not need to change the current legislative provisions in this regard.

Attachment 2

DRAFT COASTAL MANAGEMENT SEPP NOTES

The draft CM SEPP comprises part of a suite of reforms to the coastal management legislation and policy framework in NSW that have collectively been ongoing for some years. Given the scale of change to legislation and associated policy it is considered likely that these reforms will be in place for a considerable period of time into the future. Hence, it is essential that the Government gets the detail right from the start. Review of the maps prepared in conjunction with this draft Policy concludes that this opportunity has not been realised and the Government's preferred mechanism to review and correct the maps is to place the onus or burden on local coastal Councils through new coastal planning processes and a range of bureaucratic hurdles. Further, it is suggested that if a local Council presented maps in a coastal management program or plan of the inconsistent quality as now released for public consultation then the Government would not accept them. The NSW Government's latest motto is 'Making it happen'. The current proposals do not instil confidence that 'making it happen' is happening in a merit-based and equitable manner throughout the NSW coastal zone.

The main object of the *Coastal Management Act 2016* is - 'The objects of this Act are to manage the coastal environment of New South Wales in a manner consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State...'. One of the key principles of ecologically sustainable development (ESD) is the

'precautionary principle' - namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
- (ii) an assessment of the risk-weighted consequences of various options,'*

Hence, given the risk of serious or irreversible environmental damage to certain coastal management areas or environments proposed to be administered under the new CM SEPP it is considered essential to apply conservative mapping despite a lack of full scientific certainty in some cases. Refer also to later discussion on mapping in regard to coastal wetlands/littoral rainforests, coastal vulnerability and coastal environment areas/coastal lakes.

The NSW Government has the scientific knowledge and data held by, and mapping capability of, the NSW Government compared to individual coastal Councils and hence, it is unreasonable that the Government, who have prepared the Policy, can defer the task of getting the details right to local Councils. **The NSW Government should be requested to defer introduction of the Coastal Management SEPP until such time as the coastal management area maps are accurate and robust.** Alternatively, the NSW Government should provide a period, say 12 months (minimum), following commencement of the CMSEPP for coastal Councils to make submissions for alterations to the CMA

mapping layers without such Councils needing to prepare a planning proposal and satisfy the terms of the proposed section 117 Direction. A similar arrangement was suggested by the Government in the previous exhibition of the CMSEPP Explanation of Intended Effects in November 2015.

Coastal Management Areas

The draft CM SEPP will largely be implemented through four (4) coastal management areas that will be mapped and collectively combine to define the extent of the coastal zone. These areas include the coastal wetlands and littoral rainforests area, the coastal vulnerability area, the coastal environment area, and the coastal use area. In cases where land is affected by more than one of these mapping layers and where management objectives of the areas are inconsistent, the management objectives of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:

- coastal wetlands and littoral rainforests area
- coastal vulnerability area
- coastal environment area
- coastal use area.

Hence, discussion of the draft CM SEPP will review issues associated with each of these coastal management areas in the same order of priority.

Coastal Wetlands and Littoral Rainforests Area

This coastal management area has been provided with the highest priority or weighting in the draft SEPP. Hence, given that status it is important to get the related mapping as accurate as possible. This has not been achieved. Information issued by the Government indicates the coastal wetlands mapping reflects information from recent Government and academic studies. The same claim is not made in respect of littoral rainforests mapping and it is understood the mapping for littoral rainforests has not been updated since the original maps were produced for SEPP No 26 – Littoral Rainforests in 1988, some 28 years ago. Nevertheless, it would appear that the studies relied upon for the coastal wetland mapping have either fundamental flaws or limitations in their methodology.

The objects of the coastal wetlands and littoral rainforests area are considered to be acceptable. However, **for effective implementation of the Policy and achievement of the objects it is essential that mapping accurately identifies coastal wetlands and littoral rainforests areas.** The draft maps do not do this. The individual cases where anomalies and inaccuracies are deemed to exist are too numerous to list and identify in this report, however two(2) relevant examples are provided to highlight this issue.

Firstly, the Iluka Nature Reserve is not identified in whole or part as littoral rainforest on the draft map despite the published fact that the Reserve *'contains the largest remaining stand of littoral 'by the sea' rainforest in New South Wales ...'*. A more complete statement on the NSW National Parks and Wildlife Service website states –

Iluka Nature Reserve is part of the Gondwana Rainforests of Australia World Heritage Area - the most extensive strip of diverse rainforest anywhere on Earth. Iluka is also

significant as it has the largest remaining stand of littoral 'by the sea' rainforest in New South Wales and over 180 unique species of plants.

(Accessed from <http://www.nationalparks.nsw.gov.au/visit-a-park/parks/Iluka-Nature-Reserve/Learn-More#2B3F86ED72A8476C98CA43887F3DA58B> on 22 November 2016).

Omissions such as this cast significant doubt over the reliability of this particular map layer. Even more disappointing given that this fact was brought to the attention of NSW Government staff during a local government consultation session in Ballina when preliminary versions of the maps were released for local Council input.

The second example relates to areas of wetland in the vicinity of Tucabia (refer to Figure 1). This example highlights discrepancies with the coastal wetlands mapping and in particular given the geographic extent of coastal wetland environments within the Clarence Valley LGA, let alone the coastal zone of NSW, raises serious question marks on the reliability of the mapping used for this habitat type, and hence the effectiveness of the draft Policy. Figure 1 shows an extract of the proposed coastal wetlands layer (in blue shading) overlaid on an aerial photo base map for an area south of Tucabia village. Basic aerial photo interpretation raises obvious questions about the accuracy of the map layer that would be undefendable.

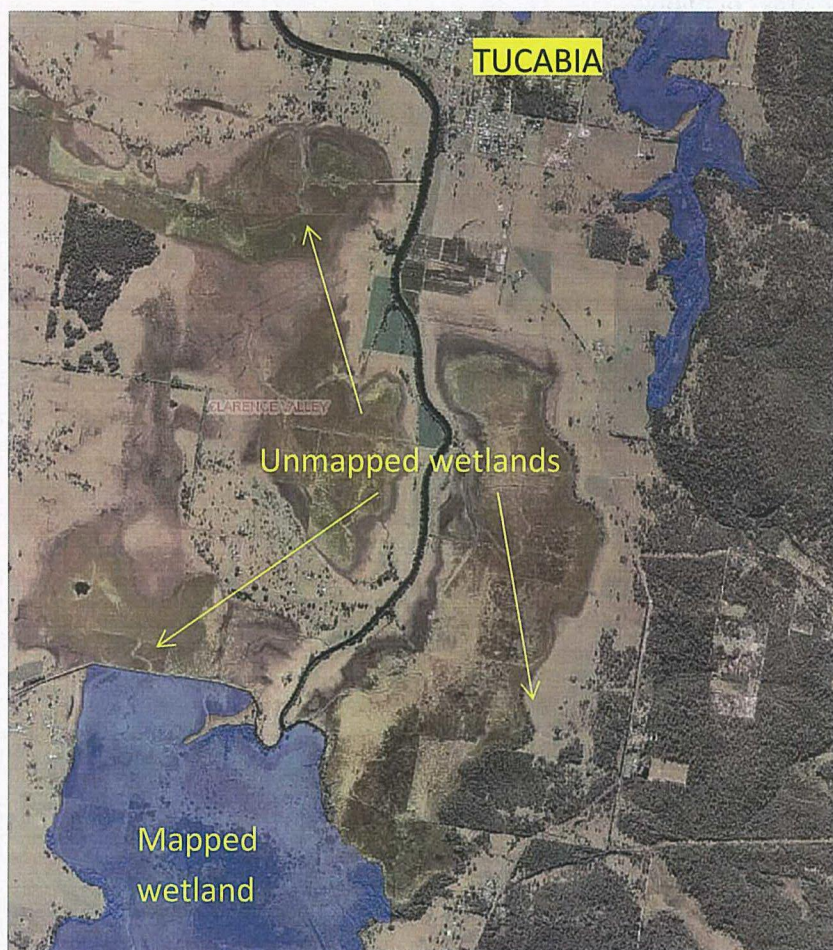


Figure 1 – Annotated extract of proposed coastal wetland mapping layer near Tucabia. Large areas of wetland have not been mapped for implementation through the draft CMSEPP.

In the Clarence Valley LGA there are extensive areas of wetlands that have not been mapped as coastal wetlands and often parts of a wetland that have been mapped and other parts excluded for no apparent reason (eg see Figure 1). For landowners, there would seem to be very good grounds to at least question the validity of the mapping when neighbouring lands appear to have been treated inequitably. Examples of these issues were presented to the NSW Department of Planning and Environment in early 2016 and it appears as though that comment has not resulted in any change to the mapping leaving little confidence that a substantive submission containing detailed mapping changes lodged at this stage of the Policy development will be upheld.

One implication of not mapping this CMA type properly, apart from inequities between landowners, is the potential for exempt and complying development to be able to occur on unmapped coastal wetland areas without any development assessment process. This would have significant potential to be directly incompatible with the future sustainability of the balance of any such wetlands that is identified on CMA maps.

Controls on development within the 'proximity area' or 100m buffer will not apply to land zoned for residential purposes. **It is submitted that the Government should consider applying the controls to undeveloped residentially zoned land.** Residential zoning, as with any land zoning under a local environmental plan, does not give an automatic right to develop and rather enables development subject to the proper development assessment process. If land is constrained by coastal wetlands, any other environmental feature or natural hazard then the impact of the development on, or from, the feature or hazard should be duly considered on its merits.

Coastal Vulnerability

The purpose of the Coastal Vulnerability CMA is sound.

However, there is a clear intent that data to identify and map coastal hazards needs to be obtained by local Councils at their cost. **The NSW Government has access to data in addition to that held by local Councils and this needs to be utilised to make the CV CMA maps a better resource for encouraging sustainable development and management of the NSW coastal zone.** Draft CMA maps provided for local Council review in early 2016 included CV CMA mapping for the entire NSW coastline based on best available information. This mapping has been removed from the latest draft maps and its removal takes away from the ability to achieve the objects of the CM Act and SEPP. It is suggested that mapping should be based on the best available data irrespective of whether it is held by Councils or the Government. For example, the NSW Government is understood to have data to show indicative tidal inundation assuming sea level rise up to the year 2100. Coastal hazards in local coastal studies are required to identify the extent of hazard up to the year 2100. In cases where local Councils do not have more accurate studies then the NSW Government data should be used to supplement mapping until such time as more reliable local coastal hazard study data is available, such as recently obtained by Council for Pippi Beach at Yamba. **Support from the NSW Government in management of the coastal zone in this manner would be more consistent with the object of the new CM Act 'to promote integrated and co-ordinated coastal planning, management and reporting'.**

The scope of the Coastal Vulnerability mapping is intended to apply to all coastal hazards, including erosion caused by the interaction of flood and tidal waters as commonly results in riverbank erosion along the Clarence Valley estuaries. The Clarence Valley LEP identifies riverbank erosion hazard through mapping layers at Ulmarra, Woodford Dale and Palmers Island. This mapping is based on local studies however in terms of mapping the entire area of riverbank erosion hazard these local examples are the tip of the iceberg. Hence, **like with the coastline erosion hazard these riverbank erosion hazards should be identified using a combination of local Council and State Government data and refined over time rather than being adhoc and largely silent on the risk that exists.** Identification of the potential hazard at least gets the matter on the table and considered properly in DA processes.

CVC resolved 15/11/16 as follows:

1. Request the Department of Planning and Environment to incorporate the coastal erosion area, consistent with the findings of the Pippi Beach Coastal Hazard Study, into the Coastal Vulnerability Map in the draft Coastal Management State Environmental Planning Policy (in preparation).

In the Clarence Valley LGA the vast majority (98.8%) of the open coastline is not administered by Council due to National Parks and Wildlife Service estate or Crown land tenure, hence there is no value for Council in preparing studies for these parts of the coastline. Despite that the Fact Sheet indicates that 'It is expected that councils that have not yet undertaken local coastal hazard mapping will do so over the next five years.' Given the various demands on local Council budgets and the ability for the State to provide data for these parts of the coast where they have a direct interest there would appear to be little incentive for some Council to fulfil this expectation. In such cases it would be reasonable and more efficient for the NSW Government to provide the CV CMA data.

Coastal Environment Area

The area to be mapped as coastal environment area is supported with the possible exception of the inclusion of a 500m 'buffer' landward of coastal lakes and lagoons. Why do these features have a wider buffer compared to the coastal wetlands and littoral rainforests buffer of 100 metres, especially when sensitive coastal lakes and lagoons are separately identified and managed with their whole catchment identified?

There appears to be a conflict between the ability to have development in this area and the stated objectives and criteria on which to assess proposals. Whilst the option of having development isn't fundamentally objected to it seems unreasonable and impractical to believe that the criteria that require values to be 'protected' or 'improved' (whether practicable or not) will not be satisfied in many cases. If the NSW Government intends that these tough criteria will be applied then it is likely many developments will not meet the criteria and hence, should be refused. If that is likely then that probability should be clearly indicated to manage expectations from the community and development industry. Alternatively, each of the objectives and criteria could be modified to have the words 'where practicable' added like they have been in relation to the public access objective.

The Coastal Environment Area Fact Sheet states that 'controls identify the need to minimise impacts...', however the objectives and criteria with the terms 'protect' and 'improve' set a much

higher standard than 'minimise impact'. This inconsistency needs to be resolved and the intent clearly articulated.

The mapping of whole catchments of certain coastal lakes and lagoons is acceptable. The Clarence Valley LGA contains three (3) of these 'sensitive coastal lakes and lagoons', being Lake Arragan (near Brooms Head), Lake Minnie Water (west of Minnie Water village) and Lake Hiawatha (west of Diggers Camp village). There is some literature that suggests the water supply that feeds Lake Hiawatha comes from an area well away from the obvious geographical catchment, outside of the coastal zone and potentially in upper Clarence or Richmond River catchments. **This special circumstance needs further investigation and consideration as if the lake is sensitive as suggested then impacts on land in the area providing water supply to this lake via underground aquifers should be appropriately managed. As that land would appear to be outside the coastal zone the Coastal Management Act or draft SEPP may not be the best legislative framework through which to manage this issue and complimentary legislation may be required.** This would appear to be a clear case for application of the '*precautionary principle*'.

Coastal Use CMA

The coastal use area will extend from mean low water mark, being the seaward extent of the local government area, and upstream in estuaries/coastal lakes to the estuary limit. The estuary limit is defined as the upstream extent of the highest astronomical tide for a particular estuary. For the Clarence River estuary the estuary is proposed to extend upstream to Copmanhurst whereas under mapping of the coastal zone in the *Coastal Protection Act 1979* this estuary extends to one kilometre beyond the upstream distribution of mangroves, being just above Brushgrove village. Hence, there will be a substantial addition to the extent of the coastal zone in the Clarence Valley LGA from a legislative perspective. This wider geographical coverage corresponds with the extent of the Clarence River estuary as defined within the Clarence Estuary Management Plan (2003).

The coastal use area will also include land located within one(1) kilometre of the coastal waters, estuaries and coastal lakes. Council provided a submission to the Coastal Management SEPP Explanation of Intended Effect in February 2016 requesting that this 'buffer' commence at 1 kilometre wide with the ability to increase or decrease the width of that zone according to circumstances on merit. However, Council added that the **NSW Government should provide support and assistance for Councils to review this area and not simply place all responsibility and cost on Councils** (refer to Attachment 1).

Coastal Protection Works

One component that the draft CMSEPP proposes to introduce is the ability for landowners to undertake coastal protection works with development approval being obtained. Under the provisions of the *Clarence Valley LEP 2011* and *SEPP (Infrastructure) 2007* private landowners are unable to undertake such works as they are prohibited. Further, Council is unable to amend the LEP to enable such works with consent due to restrictions in the *Standard Instrument (Local Environmental Plans) Order 2006*. Councillors may be aware of landowners who are proposing to undertake such works in the Clarence River and other estuaries within the LGA in order to reduce loss of land due to channel migration and riverbank erosion.

The CMSEPP will require proponents to lodge a DA and in cases where the works are identified in a certified Coastal Management Program (or CZMP) the Council will be the consent authority. Where such a certified Plan doesn't provide for those works then a DA would need to be considered by the Joint Regional Planning Panel that would include appropriate coastal expertise. In most cases, the latter process would apply.

Council supports the ability for landowners to apply for development consent for coastal protection works. Notwithstanding that, Applicants will need to ensure that any such works are designed to ensure erosion does not occur in other areas as a result of the works, that public safety or adverse environmental impacts (both short and longer term) are not created. These matters will be considered in development assessment by the relevant consent authority and in many cases will be difficult to justify. Similar provisions already exist for coastal protection works along the open coast and to date very few, if any, have been approved. Hence, the new Act and SEPP raises an expectation within the coastal community of NSW that coastal protection works will be approved. However, the practical reality is that many proposals may not be approved as providing adequate justification will be beyond the means of many proponents. The new approach may place added demand on local Councils to include specific coastal protection work items in their coastal plans. This is reasonable for plans managing smaller lakes and estuaries or isolated areas of open coastline, however it is much less practical for plans covering large geographical areas like the Clarence River or Clarence coastline.

Any coastal protection works proposed to be undertaken by Council will be subject to a similar assessment process to private applications, except that where such works are included in a certified Coastal Management Program then Council will be able to complete the works after preparation of a Part 5 Assessment. In addition, beach nourishment, being the placement of sand bags for less than 90 days, will be exempt if identified in an Emergency Action Sub Plan (EASP) and if not in such a Plan will be subject to a Part 5 Assessment. Council has prepared draft EASPs for Brooms Head Beach and Wooli Beach and neither of these Plans identify such works.

These changes do not affect Councils ability to repair or maintain flood mitigation works, such as levee walls, involving ancillary works on riverbanks, under the current Infrastructure SEPP.

END