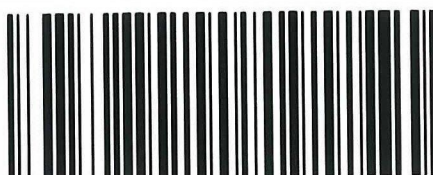


20 January 2017



PCU069188

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

Our Ref: 2017/013316

Dear Director

Draft State Environmental Planning Policy (Coastal Management) 2016

Thank you for the opportunity to provide comment on the NSW draft State Environmental Planning Policy (Coastal Management) 2016.

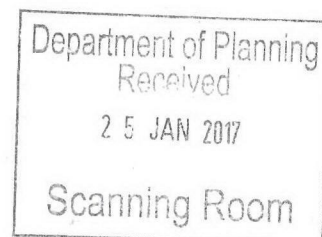
Northern Beaches Council, comprising the former Manly, Warringah and Pittwater Councils has a long history of managing the impacts of coastal processes on both public and private assets.

Overall the intent of the State Environmental Planning Policy (Coastal Management) 2016 (the SEPP) and the provisions it contains are supported. Council looks forward to continuing to work with the Department to clarify some of the issues raised in the attached comments and to refine draft coastal management area mapping to better enable targeted management of the new coastal zone.

If you require any additional information you can contact me on on 9942 2111 or todd.dickinson@warringah.nsw.gov.au.

Yours faithfully

Todd Dickinson
Executive Group Manager, Natural Environment and Climate Change



INTRODUCTION

Northern Beaches Council (NBC) have undertaken a review of the draft State Environmental Planning Policy (Coastal Management) 2016 (referred to as the SEPP or the CM SEPP); Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016; Draft Local Planning Direction – Coastal Management, Section 117(2) and associated coastal management area maps.

The following submission reflects the views of Council's Natural Environment and Climate Change division and Strategic Planning division. All comments submitted are intended to provide positive and constructive feedback to the Department of Planning & Environment (DP&E).

The ability for Councils to successfully implement the SEPP and associated documents will largely depend on the quality of mapping incorporated into the SEPP and level of ongoing assistance the NSW Government is willing to provide to Councils in the form of technical guidance, policy and financial support.

Comments have been provided regarding the relevant sections of the key documents exhibited by DP&E as follows:

1. Draft State Environmental Planning Policy (Coastal Management) 2016;
2. Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016;
3. Draft Local Planning Direction – Coastal Management, Section 117(2)
4. Associated coastal management area maps
5. General comments

1 DRAFT STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2016

1.1 PART 2 - DEVELOPMENT CONTROLS FOR COASTAL MANAGEMENT AREAS

1.1.1 DIVISION 1 COASTAL WETLANDS AND LITTORAL RAINFOREST AREA

Part 2, Division 1, Clause 11(1) – Development of coastal wetlands or littoral rainforest land – only with development consent

Part 2, Division 1, Clause 11(1) of the Draft CM SEPP details that development carried out on land wholly or partly identified as coastal wetlands or littoral rainforest on the area map may only be carried out with development consent including certain activities such as earthworks, damaging and removing native vegetation, drainage works, environmental protection works and any other development.

The extent of the coastal management areas and number of properties affected is significantly greater than currently identified, particularly with regard to land mapped as Coastal Wetland or Littoral rainforest. Data is provided in appendix 1 of this submission to demonstrate the number of properties impacted upon by Part 2, division 1, clause

11. It should also be noted that these properties were not previously impacted upon as SEPP14 and SEPP26 did not include the Sydney metropolitan region.

Part 2, Division 1, Clause 11(2) – Development for which consent required declared to be designated development

In addition to the requirement for a DA for development within coastal wetlands and littoral rainforests, as set out in Part 2, Division 1, clause 11 (2) of the CM SEPP, it is important to highlight the additional implications of the said development being considered as designated development. Designated development is particularly onerous in terms of the cost of the application and requirements of the DA for the applicant especially given that the said development may not have required development consent prior to the mapping of the area as coastal wetland or littoral rainforest; that the area may only be mapped in part and that the development may be minor in nature.

Part 2, Division 1, Clause 12 (1) – Development on land in proximity to coastal wetlands or littoral rainforest

Part 2, Division 1, Clause 12 (1) of the CM SEPP requires that development consent must not be granted to development identified as 'proximity area for coastal wetlands' or proximity area for littoral rainforest' unless a range of issues have been considered by the consent authority. As outlined above and as shown in Appendix 1 of this submission, the implications in terms of cost and requirements on land owners whose properties are mapped as Coastal Wetlands or Littoral Rainforest is considerable in the NBC LGA. Particular concern is with regard to the same requirements on the applicant regardless of whether the property is identified as wholly or partly within the proximity area for coastal wetlands or littoral rainforest.

The mapping details whole or part of a lot but the controls apply to the whole lot regardless of the extent of the lot that is mapped. For example: If the rear of the lot is mapped as littoral rainforest then the controls in the SEPP would apply to the whole lots including those areas outside of the mapped littoral rainforest.

For example, the development of a small retaining wall of 0.3 metres to the front of a dwelling house where part of the lot has been mapped as coastal wetland in the rear corner of the lot (unaffected by the development) would require DA consent declared as designated development.

It has been advised by DP&E that S149(2) certificates should include whether whole or part of a lot is mapped. However, if the controls apply to the whole lot should this approach be applied?

1.1.2 DIVISION 2 – COASTAL VULNERABILITY AREA

Development within a coastal vulnerability area

The draft SEPP does not make provision to prohibit any development. However, certain restrictions on development may be considered and applied by consent authorities. Consent authorities must now give consideration as to whether

development or land use should be temporary when determining a development application or preparing a planning proposal for land within a coastal vulnerability area.

Whilst these provisions will assist councils to defend the application of time limited development consent and planned retreat, such conditions have not been previously supported by the Land & Environment Court. Without the necessary legislative and policy support from the NSW Government, councils will continue to face challenges to restrictions on development with poor prospects of success and increased likelihood of perverse outcomes.

When assessing a development application in a coastal vulnerability area there are currently no requirements in the draft SEPP to consider the impacts of development or land use on the ecological assets of the coastal zone e.g. intertidal areas and dune and beach systems. This appears to be a significant weakening of the relevant provisions of SEPP 71 and does not take into consideration the cumulative impacts of development on foreshore ecosystems.

1.2 ASSESSMENT OF DEVELOPMENT CONTROLS FOR COASTAL MANAGEMENT AREAS

It is recommended that Coastal Zone Assessment Guidelines are developed to accompany the SEPP, providing more detail for DA pre lodgement assessment, DA assessment, reporting and compliance. For example:

- What additional information is required with a DA to satisfy the requirements of the SEPP;
- How applicants can demonstrate compliance with the requirements of the SEPP;
- How Council can assess compliance against the requirements of the SEPP;
- What the thresholds of the requirements are.
- i.e., In what instances are coastal engineering reports required to demonstrate compliance, etc?

If Coastal Zone Assessment Guidelines were provided it is likely that the following concerns would be ameliorated:

- Clause (11)(4) - what constitutes 'sufficient measures'
- Clause (13)(2)(a) - How can an applicant demonstrate compliance with this?
- Clause (14) - numerous reference to 'adverse impacts' – this does not appear to be a defined term with a test to work out the level of impact for the development. It is recommended that what constitutes 'adverse impacts' is defined so that an applicant can demonstrate compliance.
- Clause (15) (ii) how can an applicant prove that 'wind funnelling' will be minimised?

- Clause (15)(b) requires that the Consent authority is to take various things into account regarding the proposed development but does not indicate why. There is no link to potential impacts.

1.3 CLAUSE 19 - HIERARCHY OF COASTAL MANAGEMENT AREAS

The use of a hierarchy of coastal management areas may have a detrimental impact on the perceived priority of areas. For example, (b) coastal vulnerability areas is listed below (a) coastal wetlands and littoral rainforest areas in terms of priority.

1.4 CLAUSE 21 - COASTAL PROTECTION WORKS

The SEPP defines emergency coastal protection works and the length of time they can remain in place. At present the clause states that Emergency Coastal Protection Works "...means works comprising the placement of sand, or the placing of sandbags for a period of not more than 90 days..."

Given the potential for further storm erosion to limit beach recovery for a period greater than 90 days and the attendant risk of further asset damage, the stipulated period of time appears somewhat arbitrary. Conversely, removal of sandbags may prove to be highly problematic if affected beaches recover quickly and could increase the likelihood of adverse impacts if sandbags needed to be excavated for removal from a recovering beach.

This clause should be amended to state that sandbags placed as emergency works are able to remain in place after 90 days if:

- Removal of the works is likely to cause or result in damage to assets being protected by the works.
- Removal of the works will have an adverse impact on coastal hazards and beach amenity.
- An application for permanent coastal protection works has been or is proposed to be submitted if where the works are consistent with a certified Coastal Zone Management Plan or Coastal Management Program.

1.5 CLAUSE 22 - Council consent functions to be exercised by joint regional panel.

JRPPs in the defined Greater Sydney Region have been replaced by 6 District Sydney Planning Panels effective from 21/11/2016. The Draft SEPP needs to reflect this change.

2 STANDARD INSTRUMENT (LOCAL ENVIRONMENTAL PLANS) AMENDMENT (COASTAL MANAGEMENT) ORDER 2016

2.1 SCHEDULE 1, (1) – REMOVAL OF CLAUSE 3.3 OF STANDARD INSTRUMENT LEP – ENVIRONMENTALLY SENSITIVE AREAS EXCLUDED

Clause 3.3 (1) of the Standard Instrument LEP sets out that exempt and complying development must not be carried out on any environmentally sensitive area. The Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016 requires an amendment to Schedule 1, Clause 3.3, (2), (c) of the Standard Instrument LEP to include all land within the coastal wetlands and littoral rainforests area (as shown on the mapping provided as part of the draft CM SEPP) to be considered as environmentally sensitive areas.

As a local example, Schedule 2 of the Pittwater LEP 2014, as shown in Appendix 2 of this submission, details the additional exempt development not specified in SEPP exempt and complying which includes;

- Minor alterations to existing lawful jetties, water recreation structures and wharf or boating facilities
- Moorings – Maintenance of legally approved moorings
- Outdoor areas of community land used for commercial purposes
- Short term holiday rental accommodation

By virtue of the draft amendment (Coastal Management) Order 2016, as detailed above and the extent of areas whole or partly mapped as coastal wetlands and littoral rainforest, none of the properties detailed below in the data provided would be able to commence short term holiday rental contrary to the objectives of the additional exempt development permitted in Pittwater.

The LGA also have a number of public facilities (wharfs, boardwalks, jetties, etc.) that require regular maintenance and has therefore been listed as additional exempt development for this purpose. Any of the facilities that fall within the mapped area would also be affected to the extent that the minor alterations which include repair or replacement would no longer be considered as exempt development within the mapped areas and would require designated development consent. This would also apply to private facilities to the same extent.

The maintenance of existing moorings legally approved (both private and RMS) that fall within the mapped areas would not be considered as exempt and would require designated development consent.

The data set out in Appendix 1 of this review details the number of properties affected by the whole or part mapping of lots in the Coastal Wetland or littoral rainforest areas. Further to this, SEPP14 and SEPP26 did not include the Sydney metropolitan region, therefore, the implications may apply to all LGAs within the Sydney Metropolitan Area.

2.1.1 INCONSISTENCY WITH SEPP EXEMPT AND COMPLYING

The above implications as a result of the draft Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016, result in an inconsistency with SEPP Exempt and Complying as Exempt development is still generally permitted in Environmental Sensitive Areas under the SEPP (Exempt and Complying Codes) 2008 unless otherwise excluded under specified development of a particular subdivision (i.e. 15 Earthworks, retaining walls and structural support), etc.

2.2 SCHEDULE 1 (2) - REMOVAL OF CLAUSE 5.5 OF THE STANDARD INSTRUMENT LEP

As set out in Schedule 1, (2) of the Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016, Clause 5.5 of the Standard Instrument LEP is to be omitted which deals with development within the coastal zone. This will have implications on LEPs within the NBC LGA with the Coastal Zone requirements removed from the standard instrument (Warringah 2011 and Pittwater) LEP 2014.

This means that assessment of development applications proposed within the Coastal Zone will fully rely on assessment against the requirements of the Coastal Management Act 2016 and Coastal Management SEPP 2016 which doesn't include the level of detail contained within Clause 5.5.

Note: From the information provided during the consultation period of the CM SEPP, we have been informed that DCP controls would remain. However, consideration is needed as to the weight of DCP controls given the removal of the Coastal Zone requirements from the Standard Instrument LEP's. Relevant DCP controls include: Warringah DCP 2011 - B9 Coastal Hazard controls of WDCP2011 and Pittwater21 DCP - B3 Hazard Controls e.g. B .3 Coastline (Beach) Hazard; B3.4 Coastline Hazard; B3.7 Estuarine Hazard; etc.

3 DRAFT LOCAL PLANNING DIRECTION – COASTAL MANAGEMENT, SECTION 117(2)

NSW Coastal Design Guidelines 2003

Draft Local Planning Direction, (3) (c) makes reference to the NSW Coastal Design Guidelines 2003. However, various policies and guidelines referred to in the Coastal Design Guidelines 2003 are &/or will be out of date and require updating:

- Regional Plans under PlanFirst
- Coastal Zone Management Manual
- SEPP 71
- NSW Coastal Policy 1997 (The Departments website notes that detail of the NSW Coastal Policy 1997 has been considered in the development of the new arrangements and its goals are reflected in the new instruments. The Policy will no longer apply once the new Act and framework has been finalised and commenced.

Given that elements of the NSW Council Design Guidelines 2003 will still be relevant and useful for Council's which have limited planning controls to protect their coastal areas from ad hoc Planning Proposals which may adversely impact on the character of an area, the Guidelines need updating or to be superseded with new Coastal Design Guidelines.

4 ASSOCIATED MAPPING

Councils must be able to work collaboratively with the Department of Planning & Environment in refining the maps associated with the SEPP over the next 12 months. This includes:

- **Local Government Hazard Data:** Allowing newly merged Councils such as Northern Beaches Council the time and opportunity to ensure coordinated and consistent hazard information is incorporated. Guidance from DP&E needs to be provided as to how the seven defined coastal hazards and their extents should be depicted in coastal vulnerability mapping.
- **Coastal Wetlands and Littoral Rainforest Area Map:** Undertaking the necessary assessment to ensure the correct areas of coastal wetlands and littoral rainforest are included and the appropriate species or ecological communities are incorporated.

The polygons shown need some improvement in terms of accuracy and need to be 'ground truthed'. Some polygons cover very poor condition vegetation and others appear to include golf fairways or other cleared areas. It appears the draft SEPP includes the following vegetation types as mapped in the CMA mapping under the coastal wetlands category:

S_FoW08: Estuarine Swamp Oak Forest
S_FoW12: Coastal Swamp Paperbark-Swamp Oak Scrub
S_FrW03: Coastal Freshwater Wetland
S_SW02: Estuarine Saltmarsh

Council recommends also including the following communities:

Coastal Wetland

S_FoW01: Coastal Alluvial Bangalay Forest
S_FrW02: Coastal Upland Wet Heath Swamp
S_SW03: Seagrasses

Littoral Rainforest

S_RF07: Coastal Escarpment Littoral Rainforest

Additional communities affected by coastal management to be considered for inclusion:

S_GL02: Themeda Grassland
S_WSF11: Pittwater Spotted Gum Forest

- **Coastal Environment Area:** Applying the necessary balance to ensure that this mapping encompasses the appropriate areas of environmental significance without applying burdensome controls or assessment requirements to existing development or uses.

It is also noted the coastal environment area extends beyond the catchment boundaries of Manly, Curl Curl, Dee Why and Narrabeen Lagoons. It is recommended the perimeter area stop at the catchment boundaries.

- **Coastal Use Area:** Consider mapping coastal use areas to include water based assets and uses. Currently the mapping is applied landward only and doesn't cover water based assets such as jetties, boatsheds, wharves, moorings, pontoons, marinas and tidal pools.

The Northern Beaches LGA incorporates the entire Pittwater estuary in the north to its entrance between West Head and Barrenjoey Head, which constitutes the seaward local government boundary for the waterway. Pittwater waterway is zoned for development which includes a variety of water based coastal land uses.

As this type of development has the potential to impact upon the cultural and built environmental heritage as well as public access and scenic quality, Council questions as to why the waterway has not been included as a part of the coastal use area and whether this consideration should extend to other estuarine waterways such as Brisbane Waters and Port Hacking?

For the abovementioned reasons it is recommended that all councils be afforded additional time to ensure all mapping associated with the SEPP covers the correct areas and is precise. A thorough explanation of the assumptions and criteria used to define the current coastal management areas would better assist councils in reviewing and amending mapping and would increase confidence in the accuracy of mapping subsequently produced. Clarification as to why certain data and mapping, already provided by councils, was not incorporated in the exhibited mapping would also be instructional.

5 GENERAL COMMENTS

POTENTIAL IMPLICATIONS OF THE NORTHERN COUNCILS E ZONE REVIEW

Given that the Review of E zones applied to LEP's on the Far North Coast, there is no direct impact on the E zones within the NBC LGA and the associated implications by virtue of Part 2, Division 1, Clause 12 (2) of the CM SEPP. However, the implication of an E zone review with regard to the CM SEPP would be that Clause 12 (2) does not apply to land within the R zone or RU5 zone. Therefore any land currently zoned as an E zone that under a review became an R zone or RU5 zone would be excluded from the provisions of Clause 12 which relates to development on land in proximity to coastal wetlands or littoral rainforest.

EXEMPT AND COMPLYING IN COASTAL VULNERABILITY AREAS

Discussion amongst some coastal councils has raised the question as to whether it is appropriate to continue to apply exempt and complying development provisions in areas mapped as coastal vulnerability areas.

Any potential removal of exempt and complying development provisions in the proposed coastal vulnerability areas would be too onerous particularly with regard to exempt development. Further to this, the provision of minor alterations to waterway structures under Subdivision 40A may be required to ensure public safety from coastal hazards.

However, should the Exempt and Complying Code be expanded then this should be reviewed, particularly with regard to complying development given that development may increase coastal hazards due to the intensification of use within the area and/or the physical development in itself.

CLIMATE CHANGE

There is a lack of direction in the Coastal SEPP that facilitates adapting future development to the impacts of climate change with the impacts of sea level rise and the likelihood of extreme coastal storms increasing with climate change into the future.

Climate change anticipatory adaptation approaches should be incorporated that address the issue of maintaining the beach for public use in accordance with the sustainability principle of inter-generational equity. Climate change adaptation options should address the avoid, retreat, protect or accommodate approaches.

PROVIDE COASTAL ZONE ASSESSMENT GUIDELINES

Across all four coastal management areas a consent authority cannot grant consent unless it is satisfied that a number of specific measures have been or are in place. To ensure implementation of the SEPP and assessment of development applications in the coastal zone occurs consistently it is important that Councils are provided with advice as to how these measures are to be adequately considered and demonstrated.

In response, OEH and DP&E should provide additional advice to councils in the form of development assessment guidelines. Such guidelines should outline the type of evidence, supporting information or action required to adequately demonstrate that objectives of each coastal management area have been met.

AMENDMENT OF COASTAL MANAGEMENT AREA MAPPING

Given that the refinement of coastal area mapping is likely to be an iterative process over a lengthy period of time, it is recommended that DP&E investigates a more convenient process to enable councils to amend their maps in future, to pick up local characteristics, without the need to negotiate the lengthy planning proposal pathway.

DEFINITIONS

It is recommended definitions for the four coastal management areas also be included in the SEPP.

APPENDICES

APPENDIX 1 – LOTS INCLUDED IN THE COASTAL WETLANDS AND LITTORAL RAINFOREST AREA MAP IN THE NBC LGA

Coastal Wetlands (Fully)

LZN	No. Properties
E2	2
R2	1
RE1	3

Coastal Wetlands (Partly)

B7	3
DM	1
E1	8
E2	13
E3	1
E4	10
R2	8
R3	8
RE1	48
RE2	3
RU2	2
SP2	15
W1	1

Littoral Rainforest (Fully)

None

Littoral Rainforest (Partly)

DM	1
E1	12
E2	47
E4	193
R2	10
R5	10
RE1	16
RU2	1
SP2	17

Coastal Wetlands Proximity (Fully)

B1	1
E1	3
E2	2

E3	22
E4	108
IN2	8
IN4	3
RE1	45
RU2	2
SP2	4
W2	2

Coastal Wetlands Proximity (Partly)

B1	2
B2	2
B7	7
DM	3
E1	15
E2	14
E3	14
E4	141
IN2	16
IN4	1
RE1	75
RE2	11
RU2	5
SP1	6
SP2	22
W1	2
W2	2

Littoral Rainforest Proximity (Fully)

E1	12
E2	17
E3	12
E4	661
RE1	19
SP2	11

Littoral Rainforest Proximity (Partly)

DM	2
E1	18
E2	72
E3	10
E4	814
R5	4

RE1	35
RU2	4
SP1	1
SP2	23

APPENDIX 2 EXTRACT OF SCHEDULE 2 OF THE PITTWATER LEP 2014 – ADDITIONAL EXEMPT DEVELOPMENT

Schedule 2 Exempt development

(Clause 3.1)

Note 1. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* specifies exempt development under that Policy. The Policy has State-wide application. This Schedule contains additional exempt development not specified in that Policy.

Note 2. Exempt development may be carried out without the need for development consent under the Act. Such development is not exempt from any approval, licence, permit or authority that is required under any other Act and adjoining owners' property rights and the common law still apply.

Minor alterations to existing lawful jetties, water recreation structures and wharf or boating facilities

- (1) The following works to existing lawful jetties, water recreation structures and wharf or boating facilities, if the works are not carried out on or in a heritage item or a draft heritage item, and if the works comply with the standards specified in this clause:
 - (a) the repair or replacement of the following:
 - (i) decking on a boardwalk, gangway, ramp, jetty, landing or landing steps, pontoon, stairs, steps, skids or wharf,
 - (ii) a handrail or ladder,
 - (iii) the rails of a slipway,
 - (iv) a winch,
 - (v) non-load bearing members,
 - (b) the installation of emergency items such as lifebuoys and any associated signage,
 - (c) painting or other similarly applied surface treatment that is intended to protect a structure from corrosion or weathering,
 - (d) demolition of a structure.
- (2) The standards specified for that development are that the development:
 - (a) in the case of development for the repair or replacement of non-load bearing members:
 - (i) must use members of like dimension to the members being repaired or replaced, and
 - (ii) must not modify the footprint for the structure concerned, and
 - (iii) must use materials that are equivalent to or better than the quality of the materials being repaired or replaced, and
 - (b) in the case of demolition, must be carried out in accordance with AS 2601—2001, *The demolition of structures*, and
 - (c) must not reduce the amount of light penetration to any water below, and
 - (d) must not increase the footprint of any building or structure or change its classification under the *Building Code of Australia*, and
 - (e) must not involve disturbance of or injury to any waterway or any sea grass, and
 - (f) must not include a change to the fire resisting components of, or interfere with the entry to or exit from, or the fire safety measures contained within, any building, and
 - (g) must be consistent with the terms of any applicable development consent.

Note. Despite the above development being exempt development, any requirement for an approval, licence, permit or authority under the *Fisheries Management Act 1994* or the *Protection of the Environment Operations Act 1997* in relation to the above development is still required.

Moorings

Maintenance of legally approved moorings.

Outdoor areas of community land used for commercial purposes

Must be authorised under Division 2 of Part 2 of Chapter 6 of the [Local Government Act 1993](#).

Short-term holiday rental accommodation

Must be used for a period of less than 3 months by any individual or group.