

Our Reference: E09.3154

Date: 01/03/2017

Director, Planning Frameworks  
NSW Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

Dear Sir/Madam

**Submission from Eurobodalla Shire Council regarding the  
State Environmental Planning Policy (Coastal Management)**

Eurobodalla Shire Council supports the concept of introducing a consolidated SEPP for coastal management. This could deliver economic efficiencies in the assessment of coastal development, and improve environmental and social outcomes for the coast. We welcome the provision of mapping as a digital portal that can be accessed by the whole community. However we are disappointed that mapping of the coastal vulnerability area has not been released despite previous commitments to do so.

While we provide in principle support, the coastal management reforms package is currently incomplete. The effects of the reforms on the wider land use planning system need to be addressed and available for consideration. For example, the Coastal Management Manual that will guide the identification of each management area during the preparation of a Coastal Management Program, is not yet available for review.

The Department will need to ensure adequate information and support is available to local councils during the transition period. Clearer advice on how to apply the planning controls within the SEPP for those councils without adopted hazard mapping, needs to be available to ensure the principles of the new Coastal Management Act and SEPP can be applied during the transition period.

In spite of our general support of the SEPP, Council is dissatisfied with the timing of the exhibition. Several local councils advised the Minister and the Department that in order to have meaningful engagement with local government, the timing of the exhibition needed to take into account the endorsement of submissions at a meeting of the respective elected councils. The timing of the exhibition did not consider that council meetings did not occur during the holiday period and therefore a submission endorsed by the elected could not be provided within the exhibition deadline.

We are likewise disappointed mapping of the Coastal Vulnerability Management Area was not released, despite the Minister advising early in the reforms that the vulnerability mapping would be made available. This precludes most councils from applying the clause relating to mapped vulnerability areas and as a consequence, the SEPP should not take effect until the mapping that has been prepared by the NSW Government is published.

Please find attached our detailed response to the draft State Environmental Planning Policy (Coastal Management).

If you have any questions or require additional comment please contact Lindsay Usher, Director Planning and Sustainability Services on 4474 1304.

Yours sincerely

Cr Liz Innes  
**Mayor**

### General support for the Coastal Management SEPP

Council supports a single Coastal Management SEPP that articulates how biodiversity conservation, hazard management and the principles of preserving the scenic qualities of coastal areas will be delivered through sensible land use planning.

The SEPP attempts to manage the trade-offs between promoting growth of a sustainable coastal economy within the constraints of an ambulatory geographical planning area.

The NSW Government needs to be acknowledged for being the first Government to recognise and genuinely attempt to integrate the ambulatory nature of the coast within the planning system.

### Comments on the State Environmental Planning Policy - Coastal Management (CMSEPP)

## **DEVELOPMENT CONTROLS FOR COASTAL MANAGEMENT AREAS**

### **PART 2**

#### **DIVISION 1 COASTAL WETLANDS AND LITTORAL RAINFOREST**

The Consultation note states the *“conservation of native vegetation (including in the coastal wetlands and littoral rainforest area) may be dealt with under the proposed Biodiversity Conservation Act 2016 and associated legislation”*

The full scope of the Land Management and Biodiversity Conservation reforms package is currently incomplete. Comment on the impact of these reforms on the coastal zone will be forwarded when the full package is delivered.

#### ***12(2) (a) – This clause does not apply to R1, R2, R3, R4, R5 or RU5.***

This exemption from the SEPP and related controls for development on land in proximity to coastal wetlands and littoral rainforest, will facilitate expedient assessment of development applications for these lands. This is a good outcome for owners of lots within these zones that will potentially reduce the cost of building and lodging an application for development.

### **PART 2**

#### **DIVISION 2 COASTAL VULNERABILITY**

Council welcomes the clarity this clause and associated sections of the *Environmental Planning and Assessment Act 1979* will provide to local councils in the assessment and conditioning of development in areas subject to coastal hazards. This issue represents the most difficult scenario coastal planners must consider and find solutions to, at both land use planning and individual development assessment levels.

Council has four recommendations to improve the application of this clause:

1. 13(2)(b) amend to read “...or other land now and into the future, and”
2. articulate the mechanism of conditioning a *“temporary use of the land”* as a trigger based consent activated by a coastal hazard event in the CMSEPP, Coastal Management Manual or the *EP&A Act 1979* (s80A)
3. prescribe the form of *“temporary works or building”*

4. include an additional sub-clause (c) that requires a site to be remediated following removal of temporary use, works or buildings.

The development controls proposed in the SEPP should clearly prescribe what “temporary” includes and what development is not appropriate in areas exposed to a current or imminent risk from a coastal hazard.

Section 80A(1)(d) and (e) of the *EP&A Act 1979* grants permission to apply conditions that limit the period of consent or prescribe removal of the works or buildings. The SEPP does not take the additional step of providing guidance on acceptable conditions to limit the period of consent. This is relevant given the case law precedent set against Greater Lakes Council in applying a limited consent based on a date. The SEPP needs to prescribe acceptable trigger-based, limited consents activated by a coastal hazard event to ensure all councils are adopting one approach for the management development in coastal vulnerability areas.

## **DIVISION 2 COASTAL VULNERABILITY - MAPPING**

There is no Coastal vulnerability area mapping for the NSW coast. The SEPP relies on mapping within existing LEPs or DCPs. Many councils, including Eurobodalla, do not have coastal hazard mapping within their LEP. This effectively precludes these councils from applying the full scope of the SEPP in relation to managing coastal hazards. An alternate clause (5(16)) within the SEPP does provide some scope to consider coastal hazards but it lacks the detail of the clause (2(13)) that is specifically drafted to consider Coastal Management Area 2 – Coastal vulnerability.

Council is disappointed the mapping provided to councils prior to the initial consult was not released for public consultation. Eurobodalla has long advocated for the NSW Government to prepare the technical aspects of a CMP and provide each local council with the relevant results and mapping. This approach would have provided a uniform method for assessing coastal hazards particularly for areas where sediment compartments overlap LGA boundaries. By not providing the mapping, the NSW Government has potentially undermined the aim of managing the coastline as an integrated system.

As a consequence of Coastal Management Area 2 – Coastal vulnerability not being mapped, Council is of the view that the SEPP should not be adopted until all coastal management areas are clearly defined by mapping prepared by the NSW Government.

## **DIVISION 3 COASTAL ENVIRONMENT AREA**

We have no comment as we feel this clause provides adequate points of consideration for the assessment of development within a coastal environment area.

## **DIVISION 4 COASTAL USE AREA**

Council recommends the Division has an additional consideration by including a clause stating “a consent authority must be satisfied the proposed development will consider the

potential impacts of climate change”. This is consistent with the soon to be rescinded NSW Coastal Policy 1999, the intent of which is reflected within this clause.

## **DIVISION 5 GENERAL**

Notwithstanding our previous comments, Council supports the inclusion of Division 5(16) *Development in coastal zone generally – development not to increase risk of coastal hazards* in the absence of mapping prepared by the NSW Government.

Division 5(16) directs a council to consider the impacts of a development on coastal hazards but does not require an assessment of the risk coastal hazards present to the development. The provision needs to be extended to more substantially mirror Division 2 and allow councils not listed under 4(2) to apply the full intended scope of the SEPP through consideration of:

- the ambulatory nature of the beach and foreshore
- appropriate measures to manage risk to life and public safety from coastal hazards and whether
- buildings and works, and any use of the land, should be temporary.

## **PART 3**

### **21 (2) Coastal protection works by a public authority**

Council supports the provision allowing councils to undertake beach nourishment, routine maintenance or place sandbags without development consent.

## **SCHEDULE 3 AMENDMENT OF OTHER INSTRUMENTS**

### **3.4 SEPP Infrastructure (2007)**

Eurobodalla Shire Council supports the amendment to SEPP Infrastructure that requires public authorities to consult with councils about works on lands within a coastal vulnerability area. Identifying the long-term strategies of large public authorities for managing coastal hazards has often been problematic.

#### Removal of Concurrence

Eurobodalla Shire Council supports the removal of the concurrence of NSW Government agencies that was a requirement for development approvals under the previous SEPP14 and SEPP26. Councils have the necessary expertise and local knowledge to thoroughly assess the environmental considerations associated with development applications in sensitive areas.

Notwithstanding, the Office of Environment and Heritage needs to maintain the capacity to provide technical advice to councils.

#### Notations on section 149 Planning Certificates

Council acknowledges the advice provided by the Department to inform changes to the *Environmental Planning and Assessment Regulation* regarding the wording of information required on section 149 Planning Certificates. Council has amended the advice provided.

### Mapping – general comments

Council supports the changes to the mapping system and welcomes the innovation of making the maps digital for the first time. This will improve community access to the maps and allow for expedient updates as more information becomes available.

The initiative to review the SEPP mapping in the year following adoption and every five years thereafter, is a significant improvement to the previous process of updating SEPP mapping. The year one review is an intelligent approach to accommodating the introduction a new system.

We do however, recommend alternative pathways for councils submitting a proposal to update the mapping that will avoid the process of submitting a planning proposal.

The *Coastal Management Act 2016* requires councils to prepare a Coastal Management Program (CMP) that will include assessment and mapping of coastal hazards. Completion of these plans may be outside the review periods and therefore a council will be required to submit a planning proposal to support amending the SEPP mapping.

Councils will be required to have a CMP certified by the Minister for Planning and Environment. There is duplication in having to submit a CMP for certification followed by submitting planning proposals to have amendments to the mapping made in accordance with the CMP. The certification and associated mapping amendments should be a concurrent process.

The mapping from a certified or certifiable CMP will have been subjected to a rigorous process of public exhibition and direct community consultation. Duplicating the process of public exhibition via a planning proposal will create unnecessary delays to applying the mapping and SEPP.

If a council identifies changes to the coastal management area mapping through a study other than a CMP, a mechanism similar to that for bushfire prone land mapping under Section 146 (Bushfire Prone Land) of the *Environmental Planning and Assessment Act* would be appropriate and efficient. The function of the Commissioner of the NSW Rural Fire Service in certifying amendments to bushfire prone land mapping could be replicated by the relevant authority in the Department of Planning and Environment for changes to coastal management area mapping.

Concerns had been raised by our local community regarding the mapping and the capacity of community groups to recommend changes to the extent of Coastal Management Areas during the exhibition period without technical mapping skills. Council requests the Department provides community groups with detailed responses in respect to the rationale behind why a suggested change to a CMA boundary was or was not supported.

Comments on accuracy of mapping

*Wetlands*

The mapping has included updates to the extent of coastal wetlands that are generally supported. There are some areas within Eurobodalla that require very minor adjustments but on the whole, the mapping is an improvement over the previous SEPP14.

The extent of wetlands inundated as a consequence of recently adopted or updated entrance management policies for Intermittently Closed and Open Lakes and Lagoons (ICOLLs) may in some instances, exceed the mapped extent of the SEPP. Eurobodalla has steadily increased the management triggers for ICOLLs to encourage the regeneration of coastal saltmarsh and other key wetland communities. This management approach has resulted in a steady increase of these communities. A list of our management triggers has been attached as a guide to the possible future extent of coastal wetlands that are anticipated to extend further than the current draft mapping. An example of where this has occurred at Coila Lake has been included as a guide.

Figure 1: Draft NSW Coastal Management SEPP Maps – Coastal Wetlands at Coila Lake



Figure 2: Extent of wetlands at Coila Lake based on 2mAHD entrance management trigger

