

NSW Coastal Panel	MEETING NUMBER: 31
	LOCATION: BALLINA
	DATE: 25 AUGUST 2016
MINUTES	

Present

Name	Nominating Organisation
Prof Bruce Thom (BT)	Chair
Dr Carolyn Davies (CD)	Office of Environment and Heritage (Deputy Chair)
A/Prof Ron Cox (RC)	Local Government NSW (LGNSW)
Prof Andrew Short (AS)	Local Government NSW (LGNSW)
Ms Jane Lofthouse (JL)	Local Government NSW (LGNSW)
Mr Stephen Wills (SW)	Department of Industry - Lands
Mr Phil Watson (PW)	Office of Environment and Heritage - Coastal Panel Secretariat

Agenda Item 1 – Welcome and Apologies

The Chair opened the meeting at 12.30pm and welcomed Panel members including new Panel member A/Prof Ron Cox. The Chair also thanked Dr Davies for facilitating the role of acting Chair in the interim period following the resignation of Mr Angus Gordon.

Apologies were received from Mr Stephen Murray (Department of Planning and Environment), Ms Jane Gibbs (Secretariat) and Dr Marc Daley (Secretariat).

Agenda Item 2 – Declaration of Interests

RC declared an interest in Item 6, having been involved in peer-reviewing various WRL studies underpinning the CZMP.

Agenda Item 3 – Confirmation of Previous Panel Minutes

Outstanding Minutes to be circulated and confirmed out of session. All agreed.

Agenda Item 4 – Matters arising from Previous Meetings

PW advised that:

- Panel advice was provided to DPI- Lands on 21 July 2016, concerning the proposed construction of a rock groyne and beach nourishment at South Entrance Beach, in accordance with requirements under clause 129 (2A) of Division 25 of Part 3 of the *State Environmental Planning Policy (Infrastructure) 2007*. DPI – Lands were appreciative of the advice;
- Panel advice was provided to Newcastle City Council on 21 July 2016, concerning the proposed council construction of a buried rock seawall at Stockton Beach, in accordance with requirements under clause 129 (2A) of Division 25 of Part 3 of the *State Environmental Planning Policy (Infrastructure) 2007*. Council staff phoned the Secretariat thanking the Panel for their advice; and
- Nambucca CZMP published in the NSW Government Gazette on 5 August 2016.

Agenda Item 5 – Lake Cathie Revised CZMP

On 23 May 2016, the A/Chair received correspondence from Minister Stokes requesting the advice of the Panel, regarding the adequacy of the amended Lake Cathie Coastal Zone Management Plan (CZMP) and its suitability for certification under the *Coastal Protection Act 1979*.

Following a discussion and consideration of the matter, the Panel instructed PW to prepare a draft response to the Minister for circulation and finalisation by the Panel, encompassing the following elements:

- The documents relied upon to inform the Panel's advice include:
 - (i) Port Macquarie – Hastings Council correspondence to Minister concerning the CZMP (4 May 2016);
 - (ii) Lake Cathie Coastal Zone Management Plan (April 2016);
 - (iii) Lake Cathie Revetment Investigation and Design - Detailed design report (Aurecon Australasia Pty Ltd, Reference: 237746, Revision: 3, dated 26 June 2015);
 - (iv) Design drawings for the revetment structure (Aurecon Australasia Pty Ltd, dated 19 June 2015); and
 - (v) Lake Cathie Revetment Technical Specifications (Aurecon Australasia Pty Ltd, Reference: 237746, Revision: 3, dated 26 June 2015).
- Commend Port Macquarie – Hastings Council for preparing a CZMP for this coastal “hotspot” area that provides a practical and pragmatic direction that would appear to also have significant support from the community;
- Commend Port Macquarie – Hastings Council for diligently working with OEH in undertaking all additional elements recommended previously by the Coastal Panel to provide a more authoritative underpinning to the strategic management of the Lake Cathie CZMP;
- Note that in the opinion of the Coastal Panel, the revised Lake Cathie CZMP **is suitable for certification** in accordance with provisions of the Coastal Protection Act 1979;
- Include advice to Port Macquarie – Hastings Council noting that the critical next step in seeking to implement the advised strategy will be the urgent development of a workable funding model based on a distributional analysis that accords with the provisions of the new Coastal Management Manual. Council would be encouraged to continue working closely with OEH to meet the requirements of the new Manual and potential OEH grant funding programs; and
- Include advice to Port Macquarie – Hastings Council concerning improving the robustness of elements of the detailed design of the revetment structure, should be considered further by Council prior to tendering for any construction activities, but, are not considered a pre-requisite to be addressed in order to certify the Plan. The Panel are happy to meet with Port Macquarie – Hastings Council to discuss these issues further, which in the opinion of the Panel, have the potential to result in unforeseen cost escalation if not properly resolved including:
 - (i) Consideration of the appropriateness of the toe scour level adopted (-1m AHD). A recent paper (Carley, J.T., Coghlan, I.R., Flocard, F., Cox, R.J. and Shand, T.D., 2015. Establishing the design scour level for seawalls. In: *Australasian Coasts & Ports Conference 2015: 22nd Australasian Coastal and Ocean Engineering Conference and*

the 15th Australasian Port and Harbour Conference, Engineers Australia and IPENZ) suggests that the design scour level might be lower than that adopted for the Lake Cathie revetment structure. The toe scour level, in part, determines the height of a depth limited breaking wave at the structure which affects the determination of the size of the primary armour used for stability assessment;

- (ii) Consideration of another recent paper (Coghlan, I.R., Carley, J.T., and Cox, R.J., 2016. Hindsight is 20/20? A review of Preliminary Empirical Seawall design at Kingscliff Beach after Physical Modelling. *Proceedings of the 6th International Conference on the Application of Physical Modelling in Coastal and Port Engineering and Science (Coastlab16)*. Ottawa, Canada, May 10-13) which highlights the role of physical modelling to resolve inherent uncertainties with design approaches to ensure stability of the final adopted rock armour size. It is noted the detailed design report recommends physical modelling which is strongly endorsed by the Coastal Panel;
- (iii) There are some inconsistencies between Figures in Appendix B of the detailed design report and the detailed design drawings regarding the toe scour level (-1m AHD). The toe scour level of the structure must be founded at the design scour level rather than set upon an upper level where indurated sand or clay are encountered; and
- (iv) It is acknowledged the detailed design makes some provision for future extension of the structure to the south to combat end effects and possible future outflanking. However, the realisation of these impacts are uncertain and their management will require a proactive approach to ensure the integrity of the engineering structure is retained and that beach amenity and public access are adequately maintained.

Agenda Item 6 – Byron Bay Embayment CZMP

On 21 July 2016, the A/Chair received correspondence from Minister Stokes requesting the advice of the Panel, regarding the adequacy of the draft Byron Bay Embayment Coastal Zone Management Plan (CZMP) and its suitability for certification under the *Coastal Protection Act 1979*.

Following a discussion and consideration of the matter, the Panel instructed PW to prepare a draft response to the Minister for circulation and finalisation by the Panel, encompassing the following elements:

- The documents relied upon to inform the Panel's advice include:
 - (i) Byron Shire Council correspondence to Minister concerning the CZMP (30 June 2016);
 - (ii) Coastal Zone Management Plan Byron Bay Embayment – Part A: General Information (Document No: E2016/41551, dated 29 June 2016);
 - (iii) Coastal Zone Management Plan Byron Bay Embayment – Part B: Coastal Hazards and Risk Management (Document No: E2016/41555, dated 29 June 2016);
 - (iv) Coastal Zone Management Plan Byron Bay Embayment – Part C: Community Uses (Document No: E2016/41556, dated 29 June 2016);
 - (v) Coastal Zone Management Plan Byron Bay Embayment – Part D: Open Coast Ecosystem Health (Document No: E2016/41557, dated 29 June 2016);
 - (vi) Coastal Zone Management Plan Byron Bay Embayment – Part E: Emergency Action Sub Plan (Document No: E2016/41558, dated 29 June 2016);
 - (vii) Department of Industry – Lands correspondence to Byron Shire Council concerning the draft CZMP (3 August 2016); and
 - (viii) OEH Regional assessment of the CZMP against the minimum requirements of the *Coastal Protection Act 1979* and the Guidelines for Preparing Coastal Zone Management Plans (2013).

- Although not forming part of the afore-mentioned documentation, Panel members note the outcome of two recent Supreme Court litigation cases against Byron Shire Council;
- Note the complexity and range of issues in preparing a CZMP for this coastal hazard “hotspot” with exceptionally high hazard risks associated with physical coastal processes affecting residential beachfront development in an internationally acclaimed tourism destination;
- Note that the majority of the Plan (with the exception of the Belongil Spit precinct) meets relevant requirements of a CZMP subject to further consideration of funding and community consultation. In particular, the implementation of master-planning for the iconic tourist hub around the Jonson Street protection works precinct in the CBD area is seen as a high priority for urgent implementation. It is the view of the Panel that the current state of these works requires attention given the location and safety risks due to the position of rocks that form the works. Discussion should be commenced immediately with relevant agencies on how these works can be improved;
- Note that in the opinion of the Coastal Panel, **key elements of the CZMP dealing with hazard management along Belongil Spit do not meet fundamental legislative requirements and therefore cannot be recommended for certification** in accordance with provisions of the Coastal Protection Act 1979. In particular:
 - (i) the recommended strategy of a ‘seawall with walkway’ along Belongil Spit does not adequately address the impact this structure will have on the adjacent and adjoining (downdrift) coastline. Section 55C(1)(g) Coastal Protection Act 1979 requires that the Plan must make provision for managing associated impacts of such works (such as changed or increased beach erosion elsewhere or a restriction of public access to beaches or headlands); and
 - (ii) it is evident from the submissions provided by a range of relevant public agencies that few required amendments have been attended to in the furnished Plan. Correspondence from Department of Industry – Lands to Byron Shire Council (dated 3 August 2016) raises numerous issues for the consideration of Council that would be pivotal to the implementation of the preferred option. Section 55C(2)(b) Coastal Protection Act 1979 requires that the Plan must not include proposed actions or activities to be carried out by any public authority or relating to any land or other assets owned or managed by a public authority, unless the public authority has agreed to the inclusion of those proposed actions or activities in the plan.
- The complexity of the issues surrounding management of the Belongil Spit precinct and the associated high costs of various alternative management options necessitate considerable attention to Cost-Benefit Analysis (CBA) as a key decision making tool for transparent decision making. It is strongly recommended that Council work closely with OEH to undertake a higher level and more detailed CBA in accordance with the procedures advised in the new Coastal Management Manual, including a distributional analysis, as a pivotal step in developing a funding model for the implementation of a management strategy that meets legislative requirements; and
- Note the importance of Council working more closely and collaboratively with Government Agencies than is apparent from the furnished documentation to date, in order to meet necessary legislative requirements that might permit certification of the Plan. This in particular relates to resolving the outstanding issues regarding the Belongil Spit precinct and the management of likely offsite adverse impacts associated with the preferred solution.

Agenda Item 7 – Wharf Road North Batemans Bay CZMP

On 21 July 2016, the A/Chair received correspondence from Minister Stokes requesting the advice of the Panel, regarding the adequacy of the draft Wharf Road North Batemans Bay Coastal Zone Management Plan (CZMP) and its suitability for certification under the *Coastal Protection Act 1979*.

Following a discussion and consideration of the matter, the Panel instructed PW to prepare a draft response to the Minister for circulation and finalisation by the Panel, encompassing the following elements:

- The documents relied upon to inform the Panel's advice include:
 - (i) Eurobodalla Shire Council correspondence to Minister concerning the CZMP (6 July 2016);
 - (ii) Coastal Zone Management Plan Wharf Road North Batemans Bay (July 2016); and
 - (iii) OEH Regional assessment of the CZMP against the minimum requirements of the *Coastal Protection Act 1979* and the Guidelines for Preparing Coastal Zone Management Plans (2013).
- Commend Eurobodalla Shire Council for preparing a CZMP for this coastal hotspot area which presents a good strategic pathway forward for managing this problematic area that builds on the recent E2 Environmental Conservation and W1 Natural Waterways re-zonings within the subject area;
- Commend Eurobodalla Shire Council for committing to a CZMP that will return this precinct to public ownership and restore unimpeded public beach and foreshore access to these margins which will be of significant benefit to the local community;
- Commend Eurobodalla Shire Council for diligently preparing the CZMP in consultation with the community and in partnership with OEH and other Government agencies with jurisdictional responsibilities for parcels of land that fall within the operation of the Plan;
- Note that in the opinion of the Coastal Panel, the Wharf Road North Batemans Bay CZMP is **suitable for certification** in accordance with provisions of the Coastal Protection Act 1979, **contingent on the Plan being re-submitted with some minor revisions prior to finalisation and gazettal, concerning the following elements:**
 - (i) Action 1 of the implementation strategy (Table 5) seeks to “make application for the purchase of tidal and sub-tidal private properties and beaches at Wharf Road”. It is the view of the Coastal Panel that the judgement in *ENVIRONMENT PROTECTION AUTHORITY v. ERIC SAUNDERS [1994] NSWLEC 187 (29 November 1994)*, offers the view that submerged lands automatically revert to the Crown and therefore are not required to be acquired. This should be correctly reflected in the CZMP;
 - (ii) There are a number of minor edits required to accurately reflect the roles and responsibilities of Department of Industries – Lands (DoI – Lands) in the CZMP and EASP. DoI – Lands are happy to facilitate discussions with Council to attend to necessary amendments prior to re-submission.
- Include advice to Eurobodalla Shire Council outlining suggestions that, in the opinion of the Coastal Panel, might provide relevant guidance to augment various initiatives and actions proposed in the Plan. The following suggestions are not considered a pre-requisite to be addressed in order to certify the Plan, but includes:

- (iii) It is noted that the area the subject of the Plan has a long history involving several court proceedings that are prominent in the NSW coastal case law. There might be benefit in providing a small appendix that lists or captures this relevant information; and
- (iv) It is recommended that the Plan goes a step further in describing actions that could be undertaken once the relevant private landholdings have been acquired including removal of building stock and restoration of the land. Council should also consider removal of the groyne structure that currently prevents unimpeded access along the foreshore. This will have the added benefit of providing rock armour that could be recycled to facilitate necessary protection of the threatened infrastructure at the road corner.

Agenda Item 8 – Arrawarra DA Update

PW provided an update on the status of the Assessment Report and independent coastal engineering consultancy.

Agenda Item 9 – Other Business

CD provided an update on OEH's Coastal and Estuary Grants Programs and the status of all CZMPs that have been forwarded to the Minister for certification.

Agenda Item 10 – Date for Next Meeting

Timing of next Panel meeting to be established out of session pending Member's availability.

The Meeting was closed at 3:30PM