

To Coastal Reforms Team,
Office of Environment and Heritage (OEH),
New South Wales

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RE: NSW GOVERNMENT'S DRAFT COASTAL MANAGEMENT BILL 2015

This submission addresses the following items concerning the Stage 2 Reforms:

- 1. Support for Beach Nourishment**
- 2. Omissions in Emergency Plans**
- 3. Concern about Hazard Lines**
- 4. An omission in the Bill's Objects**
- 5. An omission in the SEPP**
- 6. Concern about Asset Management**
- 7. Support for Clarence Valley Council (CVC)**

This document is based on information provided by the Woolli CCPA (Coastal Communities Protection Alliance) but is the responsibility of the writer.

1. Support for Beach Nourishment

The Stage 2 documents are encouraging in their repeated support for beach nourishment and beach scraping as "soft protection" measures to defend beaches. Beach nourishment being a comprehensive term describing replenishment of sand to a specific area; and beach scraping is an example of beach nourishment using sand adjacent (from below the tide line) to an area of sand deficit. Bringing sand (by truck or dredge for example) into an area of sand deficit is an example of beach nourishment, but is not the only technique of beach nourishment. The document is positive in the sense that it states:

"To adopt coastal management strategies that reduce exposure to coastal hazards, in the first instance and wherever possible, by restoring or enhancing natural defences including coastal dunes, vegetation..."

At Woolli, our Dune-Care programme has been very successful over the last 5 years using sand trapping and replanting to reinforce and grow our dunes. "Value is retained as the beach is maintained through sand nourishment strategies."

However, there are related areas under the heading of Support for Beach Nourishment in which the Stage 2 documents could be substantially improved:

A.Funding. Funding needs to be strengthened.

The Manual states that "an LGA (Local Government Area) perspective can run the risk that relevant impacts on the local community may not be identified. Therefore, a socio-economic profile of the local community is required to be undertaken to enable such impacts to be better understood by analysts." It must be understood the proposed Manual must be expandable to meet present and future needs.

Recommendation: The Manual should require (not suggest) that a socio-economic profile of the local community be undertaken to enable funding impacts to be assessed.

Also, the Manual is limited to only reviewing existing funding options. There used to be funds within Government that were set aside; what is the availability of other funding?

Recommendation: Incorporate broader funding ideas including:

1.1 The wide range of options used in similar situations overseas (e.g. bed tax, beach amenity tax; zero-interest mortgage loans)

1.2 Proposals in the Australian Productivity Commission's recent report into Disaster Funding. This recommends a major restructure of Australian Government funding for natural disasters. The recommendations include financial support to the states and territories for natural disaster relief and recovery be reduced while mitigation funding be increased to encourage governments to manage natural disaster risks more sustainably and equitably;

1.3 Funding natural disasters, (fire, flood, erosion, etc.) equally. The ABC recently reported this change of funding for bush fire management: "(Then) Treasurer Gladys Berejiklian said the Government would abolish the emergency services levy, currently paid on insurance policies and replace it with a property levy which will be paid as part of Council rates. The Government believes this will spread out the cost of funding emergency services across all landowners across NSW.

B. Sourcing Sand for Beach Nourishment

"The availability and cost of sand to undertake nourishment" is referred to in the Manual. Sourcing sand for Woolli CZMP's beach nourishment strategy was extensively investigated. A major outcome of this research was to uncover the very blinkered view and obstructive approach taken by both the Clarence Valley Council (CVC) and some State agencies. They are seemingly in ignorance of the work done with beach scraping at New Brighton by the Byron Shire Council and the associated research as well as the positive impact on beach structure.

Review of these matters should take into consideration the prior work that has been done over many years witness the Woolli Beach Rehabilitation Plan, 2005. The then Mayor Tiley lent his support to this plan as well as supplementary measures for dune stabilization including dune toe reinforcement, planting, and patch management. In those days dredging of sand from the river, as is being done in other NSW communities, was considered a management option. Even the Worley Parsons Report of 2009 included beach scraping as a management option. Over time the CVC and other Government agencies have moved away from beach scraping. Their recent study on beach nourishment was doomed from the beginning as it required sand mining in the National Park. It has even been proposed to truck sand in from the northern end of the Woolli beach, which is good, and deposit the sand below the tide line, which is useless. Lower cost lower impact measures like beach scraping are better, and CCPA has proposed a study to assess the benefits and impact of beach scraping on the Woolli Beach.

C. The Honest Broker.

The report proposes adding to the "role and skills" of the Coastal Council. Does this mean the CVC or does this mean the CVC's Coastal and Estuary Management Committee (CEMC)? I agree with the need for an honest broker to conciliate between Government departments, including Lands, Marine Parks, National Parks and Wildlife, Planning, and OEH, and the local Councils. Considering the history of the CVC they can hardly be considered as an honest broker, similarly with their CEMC, a rubber stamp body (without significant rate payer representation) which has refused constructive approaches to beach management at Woolli. The honest broker would need to be empowered by State to have powers of decision making, or at least direct line to the Minister.

Too much has been manipulated and controlled by some CVC officers and progress has been derailed. I have written about the Fallacy of Retreat for Coastal Zone Management and published this essay online at Menzies House link:

<https://web.archive.org/web/20130110095654/http://www.menzieshouse.com.au/2011/06/the-fallacy-of-retreat-for-coastal-zone-management.html>

2. Omissions in Emergency Plans

The Stage 2 documents are encouraging in their frequent references to the need for and preparation of Emergency Plans. For example, from 4.3.1.5 of the Manual, "...the coastal erosion emergency action sub-plan in the draft CMP should include Council's preparation responsibilities, triggers for emergency actions, a clear statement of how Council will and will not respond (linked to the strategic direction for coastal management units) and how post emergency rehabilitation of coastal lands under council's care and control will be managed."

However, there are two omissions in the Emergency Planning documentation at Section 1.7 and Figure B3.2 which clearly need to be addressed:

1. Emergency actions to help protect private assets are not mentioned among the nine objectives for coastal vulnerability areas and
2. Giving a high priority to emergency actions is restricted to applying only to situations where there is a need to protect infrastructure.

Recommendation: Adjust Section 1.7 and Figure B3.2 to recognise that relatively small but prompt emergency actions (e.g. reshaping the fore-dune at Woolli before the next storm can impact the main dune) could provide a dramatic improvement in protection for all assets, both public and private. This would require Councils to have pre-approved and pre-funded plans ready to action immediately an agreed trigger point is reached.

3. Concern about Hazard Lines

The use and method of hazard lines need improvement or replacement. There is too much emphasis given to a line drawn on a piece of paper, which may be irrelevant. A hazard zone would be a better concept, and make it elastic and evidence based (see below).

Improvement (Manual, section 21 part (c)):

If hazard mapping, using hazard lines, is to remain what time horizon and what probability of projection will be used? When the State passed the responsibility for sea level rise (SLR) projections

in hazard studies to coastal Councils, Councils could, and in a number of cases did, simply go their own way as the result of local lobbying. The magnitude of the uncertainties in global sea level rise projections many times exceeds the magnitude of local variations in sea levels. Thus there is no need for Councils to depart from uniform SLR projections for NSW, unless they form the view that they have cases to justify, and gain OEH agreement to, minor local variations.

Recommendation: That the missing SLR coverage in the Toolkit include these parts:

OEH's uniform SLR projection advice to all NSW coastal Councils.

A consolidation of SLR research applicable to NSW. Based on this, Councils will be able to consider whether they have cases to justify, and gain OEH agreement to, minor local variations.

This would retain the policy of Councils having prime responsibility for arriving at hazard studies which take account of possible local variations, whilst giving the necessary control under the guidelines to exclude the past arbitrary and unscientific variations in the SLRs adopted. It would result in productivity gains at both State and Local Government levels, and importantly, councils would continue to be responsible to their communities for the ultimate SLRs used in hazard studies. In the same vein, the horizon for studies relating to coastal dwellings should be the same, up and down the coast, to provide uniformity of perceived risk. If, for example, some Councils were to move to a 50 year hazard study horizon, and others retain a 100 year horizon, the relative "exceedance" lines would communicate entirely different perceptions of risk and property values on similar beaches. I look to such arbitrary and misleading comparisons being excluded under the relevant guideline.

Replacement

"The only justifiable continued use of conventional "hazard lines" is as a "first pass" for undeveloped coastal areas in order to determine the information required for a more informed assessment. Effective and credible coastal management should be based on a more sophisticated and defensible scientific platform that is also sensitive to social and economic considerations" (Gordon, 2015)

The case for replacing hazard lines with more modern tools is made in this article.

<http://protectwooli.com.au/2015/12/31/hazard-lines-sooo-last-century/>

Recommendation: The Manual should openly discuss this case and use evidence-based assessments to decide the future of hazard lines not just accept them unquestioningly.

4. Omission in the Bill's Objects

The Missing Object (refer Bill, Part 1, Para 3).

This Bill has twelve objects to explain why it is needed and what it is intended to achieve. The objects identify ten actions (protect, promote, support, etc.) impacting interested parties ranging from planners and the Aboriginal communities to the public and the Marine Estate Act.

However, the glaring omission is that there is no object specifically dealing with the promotion of fair and reasonable adaptation for existing coastal communities and their assets (except those in Sydney).

Recommendation: Include this missing Object.

Which Assets? (Refer Bill, Part 1, Para 3, Point (i)).

Point (i) identifies the need to improve the resilience of coastal assets. However, it does not clarify which assets are to receive this attention.

Recommendation: Adjust this point to state “public and private coastal assets”.

5. Omission in the SEPP (State Environmental Planning Policy)

The Missing Explanation.

The SEPP is intended to be an Explanation of Intended Effect (EIE). However, there is an obvious lack of explanation of the intended effects on coastal communities and property owners.

Recommendation: Include this missing document focused on the positive and negative impacts on this group.

Recommendation: Use Plain English. Replace jargon with plain English e.g. “exceedance” to be replaced by “an X% likelihood of erosion reaching here in 50 years...”

6. Concern about Asset Management

Stage 2 generally, and the Coastal Manual in particular, deals extensively with Risk Management while it largely ignores Asset Management. This appears to relegate the approach to asset management to one of “fix it when it is broken and blame someone else”. In fact, the approach looks mostly focused on Local Government reform, with coastal reform relegated to being simply a sub-set of the local Government delivery program.

Without real asset management we see major potential problems:

Longer term (say 10 year) planning and budgeting are likely to be left out of coastal management programs and the reforms risk being undermined by a lack of leadership.

Several parts of the Manual (e.g. Part B Section 5.3.2) do make reference to asset management concepts. However, there is a lack of reference to appropriate support/framework, in particular:

There is no specific asset management expertise proposed for the Coastal Panel. A panel member with asset management experience would recognise that the IPR (Integrated Planning and Reporting) framework used by local Government is totally inadequate for delivery of asset management for long-lived assets. Asset management programs, particularly those that feature “soft engineering” such as nourishment and beach scraping are required. The IPR framework is a very poor tool for managing any medium to long term Council and private assets.

There is no specific asset management framework recommended (refer Note 1 below);

While the Manual generally attempts to address whole of community assets, sections such as 5.3.2

imply consideration of Council assets (and remain largely silent on community assets). In fact, the coastal legislation reform is targeted at a context where the local authority is only one owner of assets, and a range of other (private) owners probably account for the greater value of assets (refer Note 2). The benchmark Asset Management framework for most local authorities is the International Infrastructure Asset Management Manual (IIAMM) and the Australian Infrastructure Financial Management Manual. These documents are complimentary to each other, were published by the IPWEA (see Note 1) in later 2015 and are compliant with AS/ISO standards for asset management. Not only do these documents represent best practice (arguably world best practice), they represent the aspiration of most local government authorities, and display an intention entirely consistent with that of the new legislation. Note that this framework comprehensively covers relevant risk management currently discussed in the manual.

Recommendation:

Prepare a companion document to the IPWEA documents to tailor the underlying principles to scenarios addressed by the new legislation that include consideration of whole of community assets, not just local authority assets. Preparation of this companion document could be undertaken by the IPWEA with support from relevant community groups, and readily incorporated into the manual. The result for the above will be consistent with legislation and local authority objectives.

7. Support for Clarence Valley Council (CVC)

CCPA has worked closely with CVC to develop the CZMP for Woolli which is currently before the Minister. With the same sense of constructive cooperation CCPAs support the following issues/suggestions raised by CVC arising from their review of the Stage 2 legislation:

Consultation period

Due to the failure to issue draft Coastal Management Area maps for Council and community feedback by mid-January 2016 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;

Development controls in vulnerable areas

Coastal protection works (e.g. beach nourishment and beach scraping) are an example of a development that needs to be catered for in coastal vulnerability areas. The development controls proposed in the Manual 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.

Consultation with public authorities

Not all authorities share a common management philosophy when it comes to managing coastal hazards. 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 authority's 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 do not 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.

Resourcing

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.

For example, Council has traditionally prepared CZMPs for specific localities centred on coastal towns and villages (e.g. Woolli). The separation of these villages by swathes of National Park has not provided the incentive for a whole of LGA coastline CZMP. The Manual 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 Manual enable preparation of locality-specific CMPs.

NSW Coastal Policy 1997

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. What has happened to the "Sartor Legislation".

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.

The Coastal Council

Like local councils, other public authorities have roles in CMP preparation, review and implementation and, like local Councils 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.

CMP Certification

Section 17 should be amended to enable the Minister to certify a CMP when other public authorities don't reasonably engage with local Councils.

Notes:

1. The benchmark Asset Management framework for most local authorities is:

- International Infrastructure Asset Management Manual (IIAMM);
- Australian Infrastructure Financial Management Manual.

These documents are complimentary to each other, were published by the Institute of Public Works Engineering Australasia (IPWEA) in later 2015 and are compliant with AS/ISO standards for asset

management. Not only do these documents represent best practice (arguably world best practice), they represent the aspiration of most local government authorities, and (again arguably) display an intent entirely consistent with that of the new legislation. Note that this framework comprehensively covers relevant risk management currently discussed in the manual.

2. Optimising the success of the stage 2 Coastal Reforms will be partly dependent on the leadership and cultural context in which all stakeholders are engaged, and it is our contention that this aspect of the draft manual could be improved.

In setting the context for this discussion, reference is made to the Quick Guide to the IIAMM published late in 2015 by the IPWEA, which is aligned with ISO standards, and arguably represents best practice asset management. Clearly this manual (IIAMM) has been written to facilitate best practice asset management in local authorities. Two key requirements to note for the purposes of this discussion are the need for:

1. Customer engagement (Section 2.1);
2. Strong leadership and team engagement (Section 4.1).

These needs are described (in the IIAMM) in the context of local authorities providing outcomes to communities from their own resources. The coastal legislation reform is targeted at a context where the local authority is only one owner of assets, and a range of other (private) owners probably account for the greater value of assets - so arguably the "customers" are now on the "same side of the fence" - albeit in a larger paddock as the local authority.

A key component of Section 4.1 (and the ISO standard) is leadership and establishment of an appropriate organisational context to facilitate success. We suggest this is much more challenging in the context of coastal legislation because:

1. The stakeholder group is much more diverse than the local authority alone;
2. Local authorities are typically used to considering the other asset owners as customers (at best) rather than fellow asset owners.

These challenges make it more imperative that the leadership and team context be established at the outset for the coastal legislation reform to be successful. While the processes recommended by the IPWEA are generally applicable, the detail would need further development. For example, the coastal manual should have a revised equivalent IIAMM Section 4.1 to establish a framework for leadership and team development in the coastal reform legislation context. It is quite possible that other elements of the IIAMM, and its companion document AIFMM could also provide advantages to the coastal manual.

Regards,

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