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Culburra Beach NSW 2540



Coastal Reform Team,
Office of Environment and Heritage
PO Box 290
Sydney South. 1232.

29th February 2016

Dear Coastal Reform Team,

Submission regarding the NSW Coastal Reform Package.

The Lake Wollumboola Protection Association Inc welcomes the opportunity to comment on the draft Coastal Management Bill and associated documents.

The Lake Wollumboola Protection Association Inc is a community environment group involved in advocacy, community education, bushcare and wildlife protection, promotion of nature tourism and historical research. The Association's main objective is to achieve protection of the natural and cultural environment of Lake Wollumboola and its catchment. **Since 1993 we have played a major role in initiatives to protect and conserve Lake Wollumboola and its catchment as part of Jervis Bay National Park** Whilst our main focus is Lake Wollumboola, we are also concerned with conservation and protection of coastal environments in the Shoalhaven and more generally, for the entire NSW coast. The Association is a member organisation of the Nature Conservation Council of NSW.

We appreciate the invitation by the Minister for Planning the Hon Rob Stokes MP at the November 2015 Coastal Conference to become engaged in a collaborative process achieve a framework for future protection and management of the coast, that would avoid a legacy of "wicked" problems, inherited from a legacy of coastal management based on misunderstandings regarding coastal processes and the sensitivity of the coastal environment.

We welcome the opportunity to make a submission on the coastal reform package and to future involvement in the process of its development.

In principle we support the government's commitment to develop new coastal protection laws for strategic planning and management of the coast in accordance with the principles of Ecologically Sustainable Development and for the long-term public interest. We also appreciate that the Government seeks to develop and implement the reforms in partnership with local coastal Councils and communities.

However there are some aspects of the reform package, which are of concern or which would benefit from modifications. We have addressed these concerns and proposed changes in our attached submission.

Our capacity to comment with certainty regarding the effectiveness of the package is however limited until we have had an opportunity to review the mapping for the coastal zone and Coastal Management Areas and the draft Coastal Management SEPP. We acknowledge that the Office of Environment and Heritage has advised that these will be made available for public comment in the near future.

Also it has been difficult to fully address the reform package over the summer, as several of our members are community volunteers in the NPWS Shorebird program and Shoalhaven City Council's Bushcare Program. Accordingly I apologise for lack of substantial comment regarding the Coastal Management Manual.

Yours sincerely,

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President.
Lake Wollumboola Protection Association Inc.

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Overview

The NSW coast is part of our cultural identity, yet substantial evidence is available to show that many of our beaches, coastal wetlands, estuaries and lakes are significantly degraded including the NSW Coastal Lakes Inquiry 2002 which found that of over 90 NSW coastal lakes, only 16 were in natural or near natural condition, with the extent of impacts directly related to the extent of development and rural uses in their catchments. Moreover most coastal vegetation communities and nesting Shorebird species including Little Terns and Hooded Plovers are listed as Threatened under the NSW Threatened Species Conservation Act, with coastal habitat connectivity increasingly compromised.

Increased urban development and other uses are placing intolerable demands on these sensitive coastal environments, with over 80% of the NSW population now living on the coast and predicted to rise thus generating further pressure. The social and economic well-being of coastal communities including industries such as tourism, fishing and oyster farming are also under pressure, being dependent on healthy coastal environments.

The NSW coast is rich in Aboriginal cultural heritage, with Aboriginal communities continuing to fulfill their traditional custodial responsibilities for the land. However, development expansion also threatens this heritage with coastal dune development destroying middens.

Sea level rise and increased storminess are predicted to exacerbate natural coastal erosion and flooding, further threatening beaches, rocky shores, wetlands, estuaries and coastal lakes and their ecosystems as well as Aboriginal coastal heritage.

Many coastal residents including local politicians lack understanding of the complex dynamics of coastal physical and ecological systems or the challenges presented by urban expansion and climate change and do not appreciate the intrinsic values of the coastal environment or importance of its conservation and protection including through ecologically sustainable development.

It is important therefore that the NSW Coastal Reform Package attempts to address these issues. We welcome it as an important commitment by the NSW Government to an ongoing leadership role in strategic planning and management for the coast, in partnership with coastal Councils and communities.

The draft Bill and Coastal SEPP have potential to provide the legislative and regulatory foundation for long-term conservation of the NSW coastal environment and its significant cultural and social values whilst providing for ecologically sustainable planning, management and use of the NSW Coastal region, against a background of increasing pressures from population increase and climate change, especially sea level rise and increased storminess.

For us, it is particularly significant that the overarching statement regarding objectives, is that “the objects of this Act are to manage the coastal environment of New South Wales, consistent with the principles of ecologically sustainable development” and that ESD principles will be promoted in planning and management decision-making.

With regard to the specific objectives of the draft Bill, we are pleased that they address protection and enhancement of natural coastal processes and environmental values, encompassing both the physical and living environment, whilst recognising that environmental, social and cultural values underpin economic values.

We are hopeful that the existing protections for high conservation value, sensitive coastal environments, are to be maintained and improved, including controls on development within 100 metres of the coastline and more extensive protections for coastal wetlands, littoral rainforests, and foreshores and catchments of coastal estuaries, lakes, and lagoons.

We trust that community engagement will become an integral part of each aspect of coastal conservation and protection planning and management.

We welcome the proposed establishment of a NSW Coastal Council although we would like to see a broader role for it.

However it is concerning that the objects of the draft Bill simply seek to “acknowledge Aboriginal peoples’ spiritual, social, customary and economic use of the coastal zone” and that their rights in relation to the coast under the Native Title Act and the NSW Aboriginal Land Rights Act 1984 are not mentioned further in the Draft Bill or Coastal Management SEPP-Expression of Intended Effect. These issues must be addressed in later versions of the Bill and other documents.

The objectives also commit to the long-term public interest, ongoing public access to the coast as well as community participation to better equip coastal communities through their Local Councils to respond to the challenges presented by increased coastal populations, existing coastal hazards and the threats posed by climate change.

We appreciate that the objectives emphasize integrated, co-ordinated coastal planning, management and reporting, including Objective J) “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.”

The NSW Coastal Policy 1997 includes a Policy Statement for an Ecologically Sustainable Coast, nine goals and nine objectives, together with specific strategic actions for each, for which responsibilities for implementation are allocated.

The Minister for Planning in his speech to the 2015 NSW Coastal Conference also emphasized the importance of co-ordination, and strategic integration of implementation and management.

Accordingly, we are surprised and concerned that the Reform package does not include statements of policy priorities, strategic intent or funding commitments. A Policy, statement of priorities and strategic direction over a specified timeframe is critical to implementation and evaluation of progress towards achievement of objectives over time with specific strategies, targets, and funding needed to make this possible.

So also is Ministerial responsibility for overall performance of the arrangements under the Act, including consistency with the objectives of the Act, both in relation to the proposed Coastal SEPP and compliance by Councils with the Coastal Management Manual in identifying Coastal Management Areas and preparing and implementing Coastal Management Programs. However

However the Minister’s responsibilities and functions under the Act in the draft Bill are very limited by comparison and we encourage further consideration of these important issues. They include directing local Councils to prepare a Coastal Management Program, certifying or refusing a Coastal Management Program, publishing and reviewing the Coastal Management Manual. appointing the Coastal Council etc

Two issues highlight the need for policy leadership and identification of priorities and greater strategic direction in the reforms.

It is concerning that the reforms do not articulate a leading role for the Government with regard to addressing climate change as it affects the coast, especially sea level rise and increased storminess. Sea level rise and increased storminess due to climate change are already occurring and international expert advice is that these hazards will intensify way beyond the parameters of the current dynamic coastal environment.

The principle of intergenerational equity requires that sea level rise and increased storminess be addressed as a priority now, for the sake of current and future generations and the coastal environment on which their well-being will depend. Yet it is hard to find references to sea level rise and increased storminess in the documents and there is no recognition or urgency both in terms of management strategies such as planned retreat, or a leadership role by the Government, in supporting coastal communities to understand and respond to the fundamental changes that lie ahead. Such a leadership role is essential to ensure that coastal communities are well prepared to face these unprecedented challenges.

Whilst the draft Bill, including proposals for Coastal Management Areas and Coastal Management Programs, proposals for a Coastal SEPP and the Coastal Management Manual provides comprehensive direction and advice to local councils, a clause from the existing Bill has been included which would enable a Council to opt out of preparing Coastal Management Plans unless directed by the Minister.

We trust that these and other issues will be addressed in the draft Bill, SEPP and related documents.

In addition we have provided below a summary of specific issues of concern below.

Issues of concern.

Aboriginal Rights under law not appropriately addressed

The objects of the draft Bill seek to “acknowledge Aboriginal peoples’ spiritual, social, customary and economic use of the coastal zone,” whereas their rights in relation to the coast under the Commonwealth Native Title Act and the NSW Aboriginal Land Rights Act 1984 should be incorporated and addressed throughout the Draft Bill, Coastal Management SEPP and Coastal Management Manual.”

Division of the Coastal zone into Coastal Management Areas.

The move away from one coastal zone to Coastal Management Areas is likely to result in differing objectives and reduced protections, with the potential for Councils to focus on one Area or location, rather than management of the entire coast.

Absence of maps.

The absence of mapping for the proposed Coastal Management Areas, creates great uncertainty regarding the integrity of the proposed Management Areas and how they will be overlaid, especially when the proposals include reductions for the coastal zone for “Coastal use areas.”

Hierarchy of objectives.

The proposed hierarchy of objectives for Coastal Management Areas is not consistent with the principles of Ecologically Sustainable Development. All of the coastal environment objectives should take precedence over coastal vulnerability and coastal development/use objectives.

State Environmental Planning Policy (SEPP) Explanation of Intended Effect

The statement is light on detail, particularly regarding how the existing matters for consideration in SEPP 71 or the Standard Instrument LEP are addressed in the proposed new objectives and development controls. The proposed Areas are based on the existing Coastal SEPPs rather than bringing together related highly sensitive environments whilst at the same time providing, ecosystem-specific development controls. It is concerning that provisions for concurrence with Office of Environment and Heritage for approvals have not been included.

Coastal Management Programs.

Provisions that allow for Coastal Management Programs to cover particular locations, no matter how small, in addition to “Coastal Management Areas,” are contrary to a long-term strategic approach to coastal planning and management. It is concerning also that development of Coastal Management Programs is not mandatory for all “Areas” with a Council able to satisfy requirements by preparing one program for one area only.

Inadequate requirements included in the Coastal Management Manual.

The Coastal Manual must include clear, mandatory requirements for Councils developing coastal management programs to ensure that Councils apply the best science, engage with local communities and adequately assess and respond to threats to the coastal environment.

Limited focus on planning and management to address climate change, especially sea level rise and increased storminess.

It is concerning that the reforms do not identify the Government as adopting a leading role in addressing the hazards and risks to the environment and community from sea level rise and increased storminess due to climate change. It is important that the Government as well as local councils, adopts a leading role in not only planning and management of such risks, but also in educating and engaging with the community.

The advice of climate change expert scientists is that the impacts of climate change are already occurring and that the impacts of sea level rise and increased storminess etc will intensity well beyond the current impacts of natural coastal hazards. Yet the proposals do not address strategies for planned retreat or requirements based on peer-reviewed expert advice regarding broad coastal benchmarks as well as local coastal compartment assessments.

Composition and functions of the Coastal Council.

The role, functions and membership of the proposed Coastal Council are too narrowly focused on local Council compliance with the Coastal Management Manual in preparing Coastal Management Programs. A wider advisory role with respect to integrated approaches to coastal policy and planning and community engagement in the long term would be more appropriate.

No program to acquire sensitive coastal lands.

Given the significant environmental values and vulnerability of the coastal zone, existing land acquisition provisions should be retained. This provision is especially important for relatively small, isolated areas that may not qualify for inclusion in national parks, yet provide important coastal habitat corridors including those recognised in international agreements for coastal threatened species such as native and migratory shorebirds and sea birds and as well as future support for movement of threatened coastal ecosystems.

Interaction with other legislation and agencies.

Other organizations under different legislation have major responsibilities for coastal conservation and management. These include the National Parks and Wildlife Service under the National Parks and Wildlife Act 1974 and the Marine Estate Management Authority under the Marine Estate Management Act.

The draft Bill does not make clear how the new Coastal Management Act would interact with these Acts, together with the proposed new biodiversity conservation laws.

Draft Coastal Management Bill. Part 1. Preliminary

1.1 Name of proposed Act- “Coastal Management Act.”

Issue. Title of the Bill.

We are concerned that the change in title from “Coastal Protection Act” to “Coastal Management Act” misrepresents the scope of the objectives of the Bill, particularly those objectives that aim to protect and enhance the natural coastal environmental values and to support social and cultural values. Moreover, the term “Management” is associated more with a process, rather than an objective that can be used as the basis for assessing outcomes. We would like to see this potential conflict removed.

The Minister for Planning explained at the November 2015 NSW Coastal Conference that the name change derived from his understanding of the dynamic nature of the coast, and as a consequence how it could be managed more for resilience than for maintaining its current values. Whilst it is recognized that the impacts of climate change will impact on the physical and biological character of the NSW coast, it is considered that if the Act focuses primarily on “management” rather than on protection, enhancement together with increasing reliance of natural coastal environmental values and on social and cultural values, to the maximum extent possible, these critically important characteristics of the coast could be neglected and lost.

Recommendation 1

“that the title, “Coastal Protection Act” should be retained to ensure that the coastal environment is protected to the highest extent possible, recognising the changes due to climate change and impacts of existing and proposed levels of development and use.

1.3 Objects.

Fundamental role of ESD principles.

We support the proposed overall objective stated as:

“to manage the coastal environment of NSW consistent with the principles of ESD for the social, cultural and economic well-being of the people of the State.”

However consistent with our concern regarding the title of the Bill, it is proposed that the over-arching objective be amended to read, “to protect and manage the coastal environment of NSW.”

We also support inclusion of the existing definition of “Ecologically Sustainable Development” (ESD) as defined as in section 6 (2) of the Protection of the Environment Administration Act 1991 and their prominence as the over-arching principles of the Bill.

We regard ESD principles as the fundamental means whereby environmental, social and economic objectives are weighed up and applied in decision-making.

Detailed objectives are set out at a) to l).

The scope and detail of the objectives are supported, with suggested amendments.

They cover social and cultural values, specifically referring to Aboriginal heritage, public access, facilitating coastal development and land use planning, mitigating current and future risks from coastal hazards, taking account of effects of climate change, recognition of the local, regional scale effects of coastal processes and dynamic nature of shoreline, including loss of land to sea, impacts of uncertain climate, storms etc

We appreciate that the first specific objective focuses on the natural environment aiming to:

“protect and enhance natural coastal processes and coastal environmental values including natural character, scenic values, biological diversity and ecosystem integrity and resilience.”

We are pleased that this object recognizes the intrinsic values of the natural environment.

The following amendments are proposed:

- Clause 3 (b). The wording of draft sub-objective b) aims to “...maintain public access, amenity and use.” This statement represents a weakening of existing provisions, which uphold the right to public access. The Coastal Protection Act 1979 includes Objective C (d) to “recognise the public’s right to access

The right to public access should be reinstated. Sub-objective b) should therefore be amended as follows: “to support the social and cultural values of the coast and maintain the public’s right of access and sustainable amenity and use ...”

- Clause 3 (d) This sub-objective refers to supporting “sustainable coastal economies.” However the wording should clarify the intent that the well-being of coastal economies is dependent on ecologically sustainable management of the coastal environment.

This objective should be changed to “to facilitate ecologically sustainable coastal natural coastal management to support a vital economic zone and healthy coastal economies.”

- Clause 3 (e) This sub-clause should be strengthened to reinforce that ecologically sustainable planning and development on the coast should be the first consideration and that such planning provisions should be the precursor to ecologically sustainable development.

Clause 3(e) should be amended as follows: “to facilitate ecologically sustainable coastal land use planning and development decision-making.

Recommendation 2. Amend clause 3, the over-arching objective as follows,
“to protect and manage the coastal environment of NSW.”

Recommendation 3. Amend clause 3 (b) as follows:
“to support the social and cultural values of the coast and maintain the public’s right of access and ecologically sustainable amenity and use ...”

Recommendation 4. Amend clause 3 (d) as follows:
“to facilitate ecologically sustainable coastal natural coastal management to support a vital economic zone and healthy coastal economies.”

Recommendation 5. Amend clause 3(e) as follows:
“to facilitate ecologically sustainable coastal land use planning and development decision-making.

1.4 Definitions

We support inclusion of new specific definitions including for:

- Beach fluctuation zone.
- Coastal Hazard, particularly coastal inundation and tidal inundation.
- Coastal sediment compartment.

It is considered that “Resilience” should also be defined.

Issues.

We wish to comment on particular definitional issues.

Foreshore and Estuary

The definition of “Foreshore” seems much narrower than the definition of “Foreshore” in the Local Government Act. The Definition in the Bill is “the land between the mean high water mark and the mean low water mark in tidal waters.

The Local Government Act 1993 and amended in 1998 provides for Community Lands categorised as “Natural Areas, including “Foreshore.” Clause 1.3.6 of that Act categorises “Foreshore” as “the land situated on the water’s edge and forms a transition zone between the aquatic and terrestrial environment.”

This definition appears preferable to the proposed definition in the Bill, which does not take account of all types of coastal foreshores.

It is concerning that definitions of “estuary” and “foreshore” included in the draft Bill are not necessarily applicable to intermittently closing and opening lakes and lagoons. (ICOLLs)

Some ICOLLs including Lake Wollumboola, are at times “perched” above mean sea level and high tide levels. As a consequence water levels reach heights above that of “highest astronomical tide” when the Lake is closed. The definitions should be amended to incorporate high water levels of ICOLLs as assessed by hydrological studies.

The same applies to the definition of “foreshore” which should also be amended to ensure it applies to ICOLLs.

For ICOLLs “Foreshore” should apply to land between high and low water levels as assessed by hydrological studies and the transition zone between aquatic and terrestrial environments.

“Coastal biodiversity” and “ecosystem function.”

Whilst the list of definitions covers some physical aspects of the coast, definitions should also be provided for “coastal biodiversity and ecosystem function.”

A greater focus on coastal biodiversity and ecosystems is justified when many coastal vegetation communities are Endangered Ecological communities and fauna species listed as Threatened. This concern applies throughout the draft Bill and SEPP Statement.

The coast-specific “Endangered Ecological Communities” (EECs) identified in the Threatened Species Conservation Act 1995, are not mentioned in either the draft Bill or SEPP Explanation of Intended Effect, yet they form a critical part of “coastal biodiversity and ecosystem function.”

Coastal EECs include Coastal Saltmarsh, Bangalay Sand Forest in the Sydney Basin and South East Corner Bioregion, Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner Bioregion and Swamp Sclerophyll forest of coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregion. Littoral Rainforests are also listed in the Threatened Species Conservation Act as “Endangered Ecological Communities” and in the Commonwealth Environment Protection and Biodiversity Conservation Act as Critically Endangered Ecological Communities.

“Littoral Rainforests” are not defined for purposes of the Bill, although featured in the proposed “Coastal Wetlands and Littoral Rainforest Management Area.”

“Coastal Wetlands” are not defined either.

It is important that definitions of Coastal Wetlands and Littoral Rainforest are provided, to avoid a situation where they are confined under the new Bill and SEPP to the current mapped areas, preventing addition of other sites.

The term, “Coastal biodiversity and ecosystem function ”also encompasses coastal aquatic species, such as sea grasses, algae and fauna and aquatic and terrestrial fauna including, coastal bird species such as shorebirds and threatened species and migratory species. These are not specifically mentioned in the Bill/SEPP Explanation of Intended Effect, although it should be clarified that they are covered by the objectives of the Bill.

Wetlands, estuaries, coastal lakes and lagoons.

Whilst “estuary” is defined, definitions are not specified for “coastal wetlands” or “coastal lakes and lagoons.” Definitions should be provided to encompass both the physical and ecological characteristics of these coastal features provided in both the Bill and the proposed SEPP.

The Guidelines for categorising land as Wetland in the NSW Local Government Act, state that:

“Land is categorised as a natural area should be further categorised as wetland under section 36 (5) of the Act if the land includes marshes, mangroves, backwaters, billabongs, swamps, sedgeland, wet meadows, or heathlands that form a waterbody that is inundated cyclically, intermittently or permanently, with fresh, brackish, or salt water or salt water, whether slow moving or stationary.”

“Intermittently closing and opening lakes and lagoons” are now recognized as distinct group, within the coastal lakes and lagoons with unique and sensitive ecosystems due to their reliance on catchment surface and ground water runoff and long periods of closure from ocean influence. Accordingly a definition should also be provided for these formations.

Recommendation 6.

That consideration should be given to including and/or clarifying the following terms and coastal features, including referencing definitions in the NSW Threatened Species Conservation Act, or other sources:

Resilience, Foreshore, Coastal biodiversity, Coastal ecosystem function, Endangered Ecological Communities, Coastal Wetlands, Littoral Rainforests, estuaries, coastal lakes and lagoons, intermittently closing and opening lakes and lagoons.

Part 2 Coastal zone: Coastal Management Areas

Coastal zone and management objectives for coastal management areas.

Clause 5. The Bill provides for four Coastal Management Areas comprising:

- a) coastal wetlands and littoral rainforest areas.
- b) coastal vulnerability area.
- c) coastal environment area.
- d) coastal use area.

Issues.

We are concerned regarding the implications of the proposal to change the current Coastal Zone to four Coastal Management Areas as a series of overlays, with differing objectives and protections. Whilst not opposing it we consider that changes need to be made. In addition we would like to know the rationale for

these changes and would need to have an opportunity to review the proposed Area maps before giving our support to the concept.

The proposals also raise doubts regarding maintenance of existing levels of protection for the coastal environment. The hierarchy of Objectives in Clause 10 prioritises Coastal Vulnerability objectives over Coastal Environment Objectives when these Area overlap, thus potentially jeopardising environmental values. See discussion below.

Reductions in environment protection could occur as a result of the proposed reduction in the distance from the coast for Coastal Use Areas and because the objectives for the Coastal Vulnerability Area and Coastal Use Area in particular do not include objectives to generally protect the environment.

All areas of the coast including developed areas, retain remnant features of the natural coastal environment including beaches, vegetation and riparian areas integrated with housing and commercial development, which although they may not be of high conservation significance are of environmental and social value and should be protected.

In addition the Coastal Areas proposal is likely to confuse the general community regarding the purpose and location of the Coastal zone, with the proposals already been viewed as representing discrete areas.

Furthermore as indicated previously we have concerns that greater prominence has not been given to Aboriginal people' rights in relation to coastal conservation, protection management and use.

We are aware that many Aboriginal people consider that their rights should be considered separately. We are recommending that a separate "Aboriginal Cultural Area" be considered in consultation with Aboriginal coastal communities, but do not consider it appropriate to comment in detail.

Lack of access to mapping.

We are very concerned that mapping of the new coastal zone areas has not been made publicly available. The mapping is critical to understanding application of the new definitions and boundaries for the proposed coastal zone and how the proposed Coastal Management Areas would inter-relate. For many people the inter-relationship is very confusing without access to the detailed maps.

Furthermore, we are concerned about the quality and scale of maps. The maps should be of sufficient quality and scale to identify local environmental physical and ecological characteristics.

We find it difficult to fully support the coastal Reform package without having the opportunity to scrutinise the maps and assess. how they are applied to the Areas, particularly in relation to how they are overlaid..

We appreciate recent confirmation that the maps will be made publicly available in the near future for public comment.

Separate areas for high conservation environments.

We have substantial concerns regarding the separation of "Coastal Wetlands and Littoral Rainforest" from the "Coastal Environment Area," although the latter includes related environments, the estuaries, coastal lakes and lagoons and their catchments. No explanation has been provided so it is assumed that this division derives from the current SEPPs, that is SEPP 25 "Littoral Rain Forests" and SEPP 14 "Coastal Wetlands," and SEPP 71 the "Coastal SEPP," rather than any comparison or ranking of conservation values.

Nevertheless we do not support this separation of related high conservation value environments.

Instead LWPA supports integration of the physical and hydrological coastal environment with coastal biodiversity and ecosystem integrity in one Area, as expressed both in the objects of the Draft Bill and the scope and objectives of Areas (a) and (c), as well as in the SEPP Statement of Intended Effect and Coastal Management Manual.

An integrated approach is critical, given the extent to which sensitive coastal environments have become degraded resulting in most coastal ecosystems being listed as Endangered Ecological Communities, with many coastal species listed as Threatened under the NSW Threatened Species Conservation Act. In addition and Coastal Lakes Inquiry 2002 identified only 16 of over 90 coastal lakes as in natural or near natural condition. Now these coastal lakes identified for “Comprehensive Protection,” are increasingly recognised as highly vulnerable to degradation from development and use pressures.

Coastal physical environments and ecosystems do not exist in isolation and should be considered holistically, in parallel with recognition of the physical character of the open coast in coastal compartments.

Moreover coastal lakes, lagoons and estuaries include coastal wetlands and littoral rainforests, with many listed as “Wetlands of National Importance,” and fewer as Ramsar listed Wetlands of International Importance. These ecosystems and their catchments should be conserved, protected and managed holistically.

Accordingly we recommend that the focus on the coastal environment, reflected in the objectives of the Bill, and the significance of conserving and protecting the coastal environment to achievement of all other objectives, should be realised through a “catchment to coastal waters” approach to conservation, protection and management, adopted in a “Coastal Conservation Area” rather than the proposed artificial separation of Area (a), “Coastal Wetlands and Littoral Rainforest Area” from the “Coastal Environment Area (c).”

Lack of recognition and priority accorded to high conservation value high biodiversity and ecosystems

A greater focus on coastal biodiversity and ecosystems is justified, given that many coastal vegetation communities are Endangered Ecological Communities and most coastal fauna species are listed as Threatened. This concern applies throughout the draft Bill and SEPP Statement.

As discussed in the comments regarding Definitions most coast-specific Ecological Communities and Threatened Species listed in the NSW Threatened Species Conservation Act and Commonwealth Environment Protection and Biodiversity Conservation Act are not mentioned in either the draft Bill or SEPP Explanation of Intended Effect.

In addition to threats from increased clearing, development and population pressures, these EECs and Threatened Species are under increased threat from climate change, including sea level rise and increased storminess. A “Coastal Conservation Area” would bring together all high conservation value coastal environments in recognition of the inter-relationship of the physical, hydrological and biological coastal systems and the need for them to be conserved and managed in an integrated manner, rather than “Coastal Wetlands” and “Littoral Rain Forests” and being separated from other related coastal environments.

There would be no justification for reducing the existing protections in planning and development controls by comparison with existing in the coastal SEPPs. Our comments regarding planning and development controls are included in the section of the submission dealing with the Coastal Management SEPP Explanation of Intended Effect.

One integrated “Coastal Conservation Area” to encompass all high conservation value coastal environments, would better integrate with Environment and Water Zones as defined in the LEP Standard Instrument, Council principal Local Environment Plans and existing Council Coastal Zone Management Plans. One “Coastal Conservation Area” would reduce confusion regarding coastal ecosystems that encompass categories such as coastal lakes, estuaries and wetlands which, where they occur together, should be conserved, protected and managed under one set of objectives and with planning and development provisions, specified for each category.

Artificial separation of Coastal Wetlands Littoral Rainforests from estuaries, lakes and lagoons and their catchments.

Furthermore separation of Coastal Wetlands and Littoral Rainforests from high conservation value coastal environments that include them is artificial and ignores the interdependence of coastal physical, hydrological and ecological environments. Coastal Wetlands and Littoral Rainforests are for the most part, integral to estuaries, lakes and lagoons (although some Coastal Wetlands are fresh water wetlands behind dunal barriers.)

They, together with beaches and dune systems, headlands and rock platforms are all part of a continuum from terrestrial catchments to the dynamic interface between aquatic and terrestrial environments at the immediate coastline. The coastal ecosystems they support are ephemeral rather than static, with for example Coastal Salt Marsh, occurring in wetlands in estuaries, lakes and lagoons dependent on seasonal water levels and lake opening duration, sometimes re-emerging after many years of inundation.

All are dependent on maintenance of the natural quality and variability of the catchment environment, particularly the quality of native vegetation cover and the natural-low nutrient surface and ground water runoff as well as maintenance of the natural dynamic interface between terrestrial and ocean conditions. Therefore they should be conserved, protected and managed holistically.

Confusion regarding definitions of “Wetland.”

A “catchment to coast” area would also reduce community confusion regarding coastal ecosystems that encompass categories such as wetlands, estuaries, coastal lakes and lagoons, which, where they occur together, should be conserved, protected and managed under one set of objectives, whilst allowing for maintaining and enhancing existing planning and development controls.

Such integration would still allow for separate planning and development controls to apply for Littoral Rainforests and Coastal Wetlands estuaries, to those which are proposed for estuaries, coastal lakes and lagoons and their catchments.

The draft Bill does not provide a definition “Coastal Wetlands” or “Littoral Rain Forest,” however it is assumed that they are defined as mapped in the current SEPPs.

However, clarification is needed, given that different definitions apply to “Wetlands of International Importance” under the Ramsar Convention and “Wetlands of National Importance” as listed in the Directory of Important Wetlands of Australia with these wetland categories including coastal estuaries, coastal lakes and lagoons, as well as Coastal Wetlands included under SEPP 14.

Lack of recognition of the environmental significance of “beaches.”

Physical features of beaches, sand bars, dunes and foreshores are critical elements of the coastal environment. They also support unique ecosystems including coastal dune and foreshore vegetation, Endangered Ecological Communities and fauna, including Threatened shorebirds and seabirds aquatic and terrestrial organisms on which they depend.

It is concerning also that “beaches, sand bars, dunes and foreshores” are not included in the definition of “Coastal Environment Area in 8.1) Objective 8.2. e) “to maintain the presence of beaches and foreshores” simply repeats the Coastal Vulnerability objective for “beach.” This definition is inadequate to address the environmental significance of beaches.

Recommendation 7. We recommend that Area A) should be named “Coastal Conservation Area.”

This Area should include all high conservation value, sensitive coastal environments. These include:

- Coastal Wetlands and Littoral Rainforests.
- Land containing coastal features, including the coastal waters of the State, estuaries, coastal lakes and lagoons and land adjoining those features including headlands, rock platforms, beaches and dunes in natural and near natural condition and their catchments.
- Areas identified as coastal vegetation communities listed as Endangered Ecological Communities under the Threatened Species Conservation Act and Australian Government Environment Protection and Biodiversity Conservation Act.
- Aquatic vegetation including Mangroves, Sea grasses, Coastal Salt Marsh.
- Habitat for all coastal threatened flora and flora listed as Threatened under the Threatened Species Conservation Act or under the Environment Biodiversity Conservation Act as threatened or migratory species.
- Coastal wildlife corridors, both north-south and east-west, essential to migration of native coastal species and international migratory coastal species, particularly shorebirds, waders and seabirds.

10.3 Hierarchy of management objectives if overlapping.

Inappropriate hierarchy of objectives.

We are concerned regarding the hierarchy of objectives for “Coastal Management Areas.”

Clause 10 (3) sets out an hierarchy of objectives to apply to a single parcel of land identified in a State Environmental Planning Policy, if management objectives are inconsistent.

We agree that an hierarchy of objectives is needed to address priorities when Management Areas overlap. However we do not support the hierarchy as proposed, that is:

1. “Coastal wetlands and littoral rain forest Area”
2. “Coastal Vulnerability Area.”
3. “Coastal Environment Area.”
4. “Coastal Use Area.

This order of priority accords differing priorities to high conservation value environments included in the Coastal Wetlands and Littoral Rain Forest Area” and the “Coastal Environment Area.” No explanation has been provided as to why this should be and we do not consider it is justified

Our concern at this priority differentiation between Coastal Wetlands and Littoral Rain Forests from other high conservation value environments and species applies throughout the draft Bill and to the SEPP Explanation of Intended Effect.

This order implies that “Coastal Wetlands Area and Littoral Rain Forest” are more environmentally significant and sensitive than other ecosystems identified in the “Coastal Environment Area,” yet as mentioned previously they are integral ecosystems within coastal estuaries, lakes and lagoons.

The implication is clearly inappropriate also, when as indicated, most coastal vegetation communities are listed as Endangered Ecological Communities in the NSW Threatened Species Conservation Act (TSCA Act) or the NSW Fisheries Management Act as well as specific coastal plant species also listed in the TSCA Act and some are also listed in the Commonwealth Act.

Objectives for all the high conservation value coastal environments objectives should therefore be identified as the first priority in their own right.

Our recommendation for a “Coastal Conservation Area” to include all high conservation value, sensitive coastal environments would address this issue.

Moreover coast-specific fauna species such as native and migratory shorebirds potentially found in both Areas (a) and (b), are listed as Threatened under either or both the NSW Threatened Species Conservation Act and the Australian Government Environment Protection and Biodiversity Conservation Act.

Our second concern is that the proposed hierarchy of objectives, places planning and actions to minimise erosion and inundation specified in “Coastal vulnerability Area” objectives as of higher priority than protection of Threatened coastal ecosystems and habitats for Threatened Species, as included in the objectives for (c) “Coastal Environment Area.”

This priority is inconsistent with recognition in the Coastal Vulnerability Objectives that the first action that should be taken to minimise coastal erosion is to protect coastal vegetation and allow natural recovery processes.

Furthermore, the placement of objectives for the “Coastal Vulnerability” objectives ahead of the “Coastal Environment Area ”objectives is inconsistent also with the principles of Ecologically Sustainable Development.

Application of the precautionary principle to coastal hazards and risk management strategies, would require that objectives for all high conservation value coastal environment areas, that is the proposed “Coastal Wetlands and Littoral Rain Forest ” Area and “Coastal Environment Area” are included in the first priority in the Hierarchy objectives and prior to the Coastal Vulnerability Area objectives.

Recommendation 8.

That s10.3 regarding an hierarchy of management objectives, which is to apply when Management Areas and therefore their objectives overlap, be replaced by the following order of objectives;

- a) “Coastal Conservation Area.” b) “Aboriginal Culture Area”- first priority.
- c) “Coastal Vulnerability Area.”-second priority.
- d) “Coastal Development Area.”-third priority

Need for objectives to be consistent for related environments.

The adoption of a “Coastal Conservation Area” that incorporates Coastal Wetlands, Littoral Rain Forests, estuaries, lakes and lagoons and their catchments would resolve inconsistencies between the proposed “Littoral Rain Forests and Coastal Wetlands Area” and the “Coastal Environment Area.”

Need for objectives to be consistent for related environments.

The adoption of a “Coastal Conservation Area” that incorporates Coastal Wetlands, Littoral Rain Forests, estuaries, lakes and lagoons and their catchments would resolve inconsistencies between the proposed “Littoral Rain Forests and Coastal Wetlands Area” and the “Coastal Environment Area.”

Recommendation 9

That the objectives of the “Coastal Conservation Area” comprise:

“1. The Coastal Conservation Area means land identifies by a State Environmental Planning Policy to be for the purposes of this Act, land and coastal waters of the State containing littoral rainforests, coastal wetlands, coastal estuaries, coastal lakes and lagoons and land adjoining these features including beaches, dune systems, headlands, rock platforms, foreshores, riparian areas and catchments.”

2. The management objectives for the Coastal Conservation Area are as follows:

- (a) to protect and enhance in their natural state, including their biological diversity and ecological integrity, the coastal environmental values and natural processes of coastal waters, Littoral Rainforests and Coastal Wetlands, coastal estuaries, coastal lakes and lagoons and land adjoining these features including beaches, dune systems, headlands, rock platforms, foreshores, riparian areas and catchments.
- (b) to reduce threats to and improve the resilience of coastal waters, beaches, Littoral Rainforests, Coastal Wetlands, coastal estuaries, coastal lakes and lagoons, to the impacts of climate change, including sea level rise and storminess, allowing opportunities for migration.
- (c) to promote the rehabilitation and restoration of degraded Littoral Rainforests, Coastal wetlands.
- (d) to maintain and improve natural water quality and ecosystem health of Littoral Rainforests, Coastal Wetlands, coastal estuaries, coastal lakes and lagoons.
- (e) to progress listing under the Ramsar Convention of coastal water bodies assessed as meeting criteria for listing as Wetlands of International Importance.
- (f) to maintain and improve the biological diversity and ecological integrity of coastal aquatic and terrestrial vegetation communities, flora and fauna, in particular Endangered Ecological Communities, vegetation protected under the Fisheries Act, Threatened Species and species listed under international treaties including Migratory shorebirds.
- (g) to support the social and cultural values of coastal waters, Littoral Rainforests, Wetlands, Estuaries, Coastal Lakes and Lagoons, recognising the native title rights of Aboriginal people.
- (h) to maintain ecologically sustainable public access, amenity and use of beaches, foreshores, headlands, rock platforms and coastal water bodies

Objectives for Coastal Management Areas as proposed in the draft Bill.

If our recommendation for a “Coastal Conservation Area” is not accepted, then consideration should be given to consistency in objectives for the proposed “Coastal Wetland and Littoral Rainforest Area” and the proposed “Coastal Environment Area.”

Recommendation 10

“That where appropriate objectives for the proposed “Coastal Wetland and Littoral Rainforest Area” and the proposed “Coastal Environment Area” should be consistent.

We also propose the following amendments to the objectives for the four “Coastal Management Areas.

Objectives of Coastal Wetlands and Littoral Rain Forest Area.

The stated objectives for Area a) are supported. However Area a) objectives should be consistent with those of and Area c) if they remain as separate areas.

It is inappropriate for objectives relating to interdependent physical, hydrological and ecological environments such as coastal wetlands, littoral rain forests, estuaries, lakes and lagoons and their catchments to be inconsistent. Yet, inconsistencies exist in objectives between those of Area (a) and Area (c).

It is important that Area a) objectives include improving the resilience of wetlands and littoral rainforests to impacts of climate change, provision of opportunities for species migration as per Area (c).

Also important is inclusion in Area a) of an objective for “Maintaining water quality and **ecosystem** health and reducing threats” as included in “Coastal Environment Area” in c) as applying to related ecosystems such as estuaries.

Recommendation 11.

That the following additional objectives be adopted for Area a).

- a) “to maintain and improve water quality and ecosystem health of wetlands.”
- b) “to reduce threats to and increase the resilience of Coastal Wetlands and Littoral Rain Forest to the impacts of climate change, including sea level rise, allowing opportunities for migration”

Coastal Vulnerability Area Objectives.

Issues.

It is important that public safety and prevention of risk to life are included in the objectives as well as maintaining public access, mitigating current and future risk due to effects of climate change. However it is considered that given that sea level rise and increased storminess due to climate change will have impacts on a scale and dimension not experienced in recent geological history, they should be specifically mentioned.

The strategic planning and adaptive capacity approaches adopted are supported. These mark an important change from the existing primary focus on emergency response.

Objective 2 c) “ to maintain the presence of beaches and foreshores.” This objective should be strengthened to ensure that wherever possible hazard management measures seek to maintain or enable the natural adaptation of the physical and biological character of beaches and foreshores as well as their cultural and social values and as the most effective management measures.

It is noted and welcomed that objective f) (i) to adopt coastal management strategies recognise in the first instance the importance to reduction of exposure to coastal hazards of “restoring or enhancing natural defences including coastal dunes, vegetation, wetlands.” This recognition should also be followed through into management program requirements.

Another concern is that whilst the Coastal Vulnerability Area refers generally to coastal hazards, most of the emphasis appears to be on coastal erosion rather than coastal inundation and flooding, which in the longer term is likely to have much more extensive impacts than beach erosion. Therefore it is considered that consideration of coastal inundation and flooding should be significantly upgraded.

Objective 2 e)” to encourage land use etc” is also concerning. It should say that land uses and development are **discouraged** in areas of high exposure to risks from coastal hazards and that coastal planning, development and management strategies that reduce exposure to risks from coastal hazards, should be adopted.

Recommendation 12

- Sea level rise and increased storminess due to climate change should be specifically mentioned in the objectives together with reference to coastal inundation and flooding.
- The environmental values of beaches and foreshores referred to in 2 g) ie biological diversity and ecosystem function, should be included in 2 c) so they are taken into consideration in all aspects of hazard management.
- Strengthen Objective 2 c) “ to maintain the presence of beaches and foreshores” to ensure that wherever possible, hazard management measures seek to maintain or enable the natural adaptation of the physical and biological character of beaches and foreshores as well as their cultural and social values and as the most effective management measures.

8. Coastal Environment Area objectives.

The objectives for the Coastal Environment Area reflect integration of the physical and ecological features of the coast and recognise coastal estuaries, rivers, lakes and lagoons as important environments that require protection and conservation.

However it is concerning that the environmental values of “beaches, sand bars, dunes and foreshores” are not recognized in the definition of “Coastal Environment Area in 8.1)

Objective 8.2. e) “to maintain the presence of beaches and foreshores” simply repeats the Coastal Vulnerability objective for “beach.” This definition is inadequate to address the environmental significance of beaches.

Physical features of beaches, sand bars, dunes and foreshores are critical elements of the coastal environment in their own right. They also support unique ecosystems including coastal dune and foreshore vegetation, Endangered Ecological Communities and fauna, including Threatened shorebirds and seabirds aquatic and terrestrial organisms on which they depend.

As is acknowledged in the Coastal Vulnerability Area objectives, maintenance of coastal dune and foreshore vegetation is also recognised as critical to reducing the impacts of coastal erosion and assisting in restoration

Whilst the Area A objectives refer to opportunities for migration of coastal aquatic systems landward in response to climate change, Objective b) for Coastal Environment Areas does not include this objective. Yet it should also apply to beaches, sand bars and dunes, coastal estuaries and lakes and coastal ecological communities such as Coastal Salt Marsh. The objective should be expanded and refer to “the impacts of climate change, including sea level rise, allowing opportunities for migration.”

The Coastal Environment Area should also include a specific objective to protect and conserve native coastal vegetation and wildlife corridors including habitats recognized as part of the East Asian-Australasian Flyway, and as are proposed in the development controls for Coastal Use Areas. Coastal wildlife corridors are essential to annual migration of native species, particularly birds as well to international migratory species now and in the future as coastal and ocean temperatures rise with global warming. Wildlife corridors exist for east-west fauna movement and north-south in the Great Eastern Ranges, but not north-south along the coast.

Recommendation 13

That the “Coastal Environment Area” include objectives that:

a. specifically refer to beaches, sand bars, dunes, foreshores eg.

“to protect and enhance in their natural state, the environmental values and natural processes of beaches, sand bars, dunes and foreshores and enhance natural character, scenic value, biological diversity and ecosystem integrity whilst enhancing resilience.”

Alternatively beaches, sand bars dunes and foreshores should be included in Objective 2 a).

b. specifically aim to protect and conserve native coastal vegetation and wildlife corridors north-south on the coast.

c. that Objective 2. b) be revised to:

“To reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, to the impacts of climate change, including sea level rise, allowing opportunities for migration”

d. that the following be included:

“To maintain and improve water quality and natural hydrological processes. (Estuary health is already covered in a)”biological diversity and ecosystem health.”

Coastal Use Area objectives.

Amending the title to “Coastal Development Area” would clarify the purpose of this Area, ie development, both residential, commercial, industrial, infrastructure as well as natural resource use and recreation.

Objectives for protecting and enhancing the environment must be included in the Coastal Use area as Areas a) and c) address the highest conservation value environments, but not the remaining natural environments. It is concerning that environmental values except as defined in Areas a) and c) are not recognised as worthy of protection. The principles of ESD must apply to all areas to ensure that the coastal environment is protected from development and use impacts. Therefore the objectives for Area d) “Coastal use area” must include protection of the coastal environment.

The objectives should also make clear that decisions on location of development and use are made at the planning stage, so that ecologically unsustainable development is prevented via the SEPP and LEPS.

Any expansion of development and use in the coastal zone also needs to be critically assessed in accordance with ESD principles and Threatened Species requirements under the Environmental Planning and Assessment Act 1979.

Objective 9. 2 iv refers to “adequate public open space is provided including for recreational activities and infrastructure.”

“Adequate” is not defined. It is essential that public open space and sites for recreational uses are provided in development expansion areas, however they must be ecologically sustainable with the impacts of development expansion on existing coastal environments considered.

Existing beaches and surrounds are over-crowded during summer, with existing open space and car parking facilities unable to cope with increased people, their dogs, vehicles and competing recreational activities.

Recommendation 14

That:

- a. the first objective for the “Coastal use area” should be:

“Development and uses should be ecologically sustainable with the impacts on the surrounding coastal environment and amenity considered and decided at the planning stage, so that adverse impacts are prevented consistent with the principles of ESD.”

- b. Objective 9.2 should be amended to refer to “Ecologically sustainable public open space.”

10. Matters relating to identification of coastal management areas.**10 (1) LEPs may amend SEPPs to identify coastal management areas.**

10 (1) states that LEPs may amend SEPPs to identify coastal management areas. 10 (2) provides for the Recommendation of Minister to be required for such amendments.

We are concerned regarding proposals for LEPs to be able to amend SEPPS.

This provision seems to allow the overall policy framework of the Coastal Act and SEPP to be undermined, potentially by wholesale changes between and within Coastal Management Areas.

Changes via LEPs should not be a means whereby private landowners are able to dispute and undermine the integrity of the Maps. The Department of Planning and now the Department of Planning and Environment has allowed several Coastal Councils to exclude or significantly modify Environment zones E 2-4 as provided in the Standard LEP, following private interest lobbying of Government. Moreover the Review of Environment zones in the Far North Coast Council areas proposes that existing private uses be a key determinant of zoning rather than validated assessment of values..

For the general public to have confidence in the integrity of the Coastal Reforms, the integrity of the boundaries and quality of mapping of the Coastal Management Areas is paramount. Strict criteria should apply to defining the Coastal Management Areas and the mapping of boundaries to ensure that the need for changes is virtually eliminated, whilst also applying to any proposals for amendment.

Cases where on-ground environmental surveys provide evidence that boundary changes to the original mapping of Coastal Management Zones are justified in accordance with strict criteria, should be the only cases where changes to a SEPP as a result of changes to an LEP are justified. Strict criteria should apply to consideration of any changes.

Recommendation 15

That the capacity for a Minister to recommend that an LEP amend a SEPP should be strictly limited by rigorous criteria that would ensure the integrity of Coastal Management Areas and associated mapping is maintained

S 10.2.Recommendation of Minister required. This part refers to the Minister’s recommendation being required for any environmental planning instrument that identifies a coastal management area (or part thereof). Whilst there are references throughout the draft Bill to the “Minister” the responsible Ministerial portfolio is not identified.

The proposed Coastal Management SEPP would be the responsibility of the Minister for Planning. However given that the main functions of the Minister are in relation to the draft Coastal Management Bill, the Coastal Management Programs, the Minister for the Environment seems to be the most appropriate portfolio.

Recommendation 16.

That: The Coastal Management Bill identifies the Minister for the Environment as the Minister responsible for administration of the Coastal Management Act.

10 (3) Hierarchy of management objectives if overlapping is addressed under “**Coastal Management Areas.**” See Recommendation 8.

Part 3 Coastal Management Programs and manual.

Division 1. Application of Part.

s11 Part applies to local councils and land within coastal zone.

Whilst this part states it applies to a local council or any other authority that exercises functions in connection with the coastal zone, there is no reference to the Minister's significant statutory role in relation to specific functions in the Act.

A revised section 11 must refer to the Minister and state that Part 3 Coastal Management Programs in which the Minister has direct responsibility, applies directly to the Minister administering the Act.

Recommendation 17.

That: "A revised section 11 must refer to the Minister and state that Part 3 Coastal Management Programs in which the Minister has direct responsibility, applies directly to the Minister administering the Act."

The National Parks and Wildlife Service administers large areas of the NSW Coast under the National Parks and Wildlife Act. That Act provides detailed requirements for National Parks Plans of Management.

Some Coastal lakes are part of National Parks, whilst others are managed by Councils. Coastal lake catchments may be entirely in a National Park or part private property, with planning and development under an LEP, within the responsibility of a local Council.

Much of the details of the studies applying to Coastal Management Programs for example for coastal hazards and risks to the coastal environment would be beneficial in developing and reviewing Plans of Management for National parks, particularly those that would apply to coastal estuaries, wetlands and coastal lakes and lagoons. However whilst it would be advisable for the National Parks and Wildlife Service to take account of the processes and expert advice provided in the Coastal Management Manual it should be essential.

The National Parks and Wildlife Service should of course participate in co-ordinated management of the land within the coastal zone with Councils and other Government Agencies, whilst maintaining the integrity of its National Parks Plans of Management.

However overlapping management responsibilities should be avoided, so that Coastal Management Programs do not overlap with National Parks Plans of Management.

This situation with regard to potential overlaps between Council Coastal Zone Management Plans and Estuary Management Plans and National Parks Plans of Management already cause confusion. This situation should not be replicated in the new Coastal Management System.

Accordingly the proposal that Coastal Management Programs apply all authorities that exercises coastal zone functions may not be appropriate for National Parks and Wildlife Service.

Furthermore the Marine Estate Management Authority under the Marine Estate Management Act has responsibilities that relate to the draft Coastal Bill. Further consideration is needed to clarify the relationship between this Act and new Coastal Management Act together with the proposed new biodiversity conservation laws.

Recommendation 18.

- a) That further consideration is given to the application of clause 11 (a) of Part 3 Division 1 to the National Parks and Wildlife Service.
- b) That the relationship between the draft Coastal Management Bill and the Marine Estate Management Act be clarified.

Division 2. Coastal management programs.

12. Purpose of Coastal Zone Management Plans.

We support the proposed statement of purpose with its focus on setting the long-term strategy for co-ordinated management of land within the coastal zone, together with the focus on achieving the objects of the Act.

However we are concerned that the provisions in the Bill will not achieve the proposed long-term strategy. Such a strategy requires a policy statement with priorities and strategic directions of actions and targets that need to be achieved over specified time frames with responsible organizations identified and specific requirements for their key results. Such a strategy also needs a commitment of funds.

It is concerning that the reform proposals do not add up to such a strategic framework. Instead, the requirements for preparing and making coastal management programs are minimal, with Councils not required to prepare even a minor Coastal Management Program, unless directed by the Minister. Furthermore the requirements are not adequately enforceable and there is no commitment to government funding.

Some of these provisions have been transferred from the Coastal Protection Act 1997, seemingly without consideration of their appropriateness to current and future coastal conservation and management issues. The increased levels of threat now and in the future from over-development and climate change are well documented and justify much stronger requirements coastal management.

Whilst the Coastal Management Manual refers to preparation of a Coastal Strategy Statement in the final stages of the process for developing a Coastal Management Program, most of the Manual is concerned with implementation rather than strategy. The Statement seems come too late in the process to enunciate policy priorities, strategic directions, targets and timeframes and to ensure they are reflected in the detail.

In any case provisions to permit a Council to prepare one Program for part of a “Coastal Management Area” and moreover for one limited to one site only, are contrary to a long-term strategic approach and simply undermine the intent of a key component of the reform package.

We suggest that consideration be given to retaining Coastal Zone Management Plans in the proposed Bill as the vehicle for setting policy priorities, strategies, targets and timeframes for achievement of objectives, with Coastal Management Programs regarded as the requirements for implementation of the CZMPs and strategies.

Furthermore, we are concerned also regarding the extent to which provisions for preparation of Coastal Management Programs are discretionary when:

- Councils “**may**” prepare coastal management programs:
- A Coastal Management Program “**may**” be in relation to any part of the coast;
- Councils must “**consider**” rather than give effect to essential matters such as the objects of the Act and State and regional policies.

Also the Minister has discretion in relation to directing a Council to prepare a Coastal Management Program and the legislation would allow that the Minister's direction to a Council "may" be inconsistent with the Manual. (clause 14(2)). Again, this undermines the intent of the Reforms.

13. Requirement for Coastal management programs.

s13. (1) states that "A local Council may and must, if directed to do so by the Minister, prepare a Coastal Management Program, in accordance with this part." "May" is not a mandatory term.

It seems more appropriate that a Council "must" prepare a Coastal Management Program etc...." given potential losses to environmental, social, cultural and economic values and public funds due to any protracted process whereby a Council refuses to prepare a Plan and has to be investigated prior to the Minister issuing a Direction.

Recommendation 19.

That clause 13.1 be amended to state "A local Council must prepare a Coastal Management Program etc...."

Clause 13. 2) states that, "A coastal management program may be made in relation to the whole, or any part, of the area included within the coastal zone.

This clause is a major concern, particularly when no definitions are provided of circumstances that would justify a Council preparing a Coastal Management Program for one small location or Area on the coast, whilst and not progressing Programs for other Area. The discretion allowed would enable a Council to both satisfy the requirements and avoid Ministerial intervention whilst ignoring other priorities. Likewise the Minister could also satisfy the requirement by ignoring any strategic intent and directing a Council to prepare a Program for a small location for one Area.

This degree of flexibility is not consistent with a strategic approach. A a strategic approach would involve a "Coastal Management Program" for one Council area, or one which combined with an adjacent Council area for a coastal compartment, or for an entire Coastal Management Area. To allow Councils to prioritise to the degree suggested in the draft Bill, creates opportunity for manipulation of Coastal Management Programs whereby Councils opt to prioritise a "Coastal use or Development Area" Management Plan in isolation of other values and priorities, particularly sensitive high conservation value environments.

To allow such manipulation would undermine the objects of the proposed Act, being inconsistent with the principles of Ecologically Sustainable Development, particularly the precautionary principle.

It would allow a "Coastal Hazard Management Plan" or a "Coastal Use Management Plan" to be prepared prior to detailed assessment of environmental values and objectives, overturning any hierarchy of objectives.

It would be preferable for strategic planning purposes for Councils to have one Coastal Management Program for all "Coastal Management Areas, consistent with Council principal LEPs. However, given the scale of the task it may be necessary to allow a staged preparation, within an overall strategic Plan.

Moreover, it will be extremely difficult for community members to come to terms with the complexities of Coastal Management Programs that apply to single issues or locations as opposed to one overall Program. Currently coastal communities deal with Coastal Zone Management Plan, Estuary Management Plans, Entrance Opening Plans as well as local plans for recognised Hazard hot spots etc etc. The proposed new jigsaw seems infinitely more complicated and confusing.

Recommendation 20.

That, “Provisions for Part 3 of the draft bill must be strengthened by including clear, mandatory requirements for Councils and the Minister in relation to the preparation of Coastal Management Programs.

Recommendation 21.

That “Clear parameters must be set for making of “Coastal Management Plans” for parts of the Coastal Zone.

Preparation of coastal management programs.

Clause 14.3.3 sets out what Council may do in preparing a coastal management program, that is prepare Coastal Management Program in accordance with the Coastal Management Manual.

Sub-clauses a), b) and c) use the terms, “consider,” “give effect to” the objects of the Act, management objectives for coastal management areas and State and Regional Policies and plans prescribed in regulations. These terms appear weak and undermine the strength of the prescriptive requirement as they allow a “tick the box” response where Councils may “consider” but ignore the intent of the requirement.

Part A of the Coastal Management Manual refers to approaches that are flexible and that identify a strategic approach. The scope of a Coastal Management Plan allows for both an integrated plan covering multiple issues across more than one coastal management area or a plan specific to one issue or area.

The flexibility to allow a plan for a specific issue mitigates against a strategic, integrated approach and is inconsistent with ESD principles. It encourages issues being addressed in isolation without consideration for unexpected and potentially damaging impacts on other aspects of coastal management.

Recommendation 22

“Terms such as “consider” need to be replaced with “must abide by, or be consistent with.”

15. Matters to be dealt with in a coastal management program.

We note that the requirements for this section are mandatory requirements.

Whilst most of the specified actions are supported, the following issues should be reconsidered.

Specific requirements are stated for Coastal Vulnerability Areas but no explanation is provided regarding why this Area is addressed but others are not. It is considered that specific requirements should also be identified for other coastal management issues for each of the four Coastal Management Areas.

Also regarding the Coastal Vulnerability Area, and issues regarding potential risks to development and human life that must be addressed, risks applying to other issues, for example the environment and Aboriginal cultural heritage, are not addressed.

These omissions are concerning, given the significance of native coastal vegetation in minimising coastal erosion and the impacts of flooding which the Coastal Vulnerability objective f) (i) acknowledges, that is “to adopt coastal management strategies which emphasise recognition in the first instance of the importance of “restoring or enhancing natural defenses including coastal dunes, vegetation, wetlands” in coastal management to reduce exposure to coastal hazards.

Also concerning is the absence of any reference to potential risks due to coastal flooding and inundation particularly due to sea level rise and increased storminess.

The scale of risk and threat of harm to coastal environments and communities is likely to be much higher from coastal inundation and flooding and increased storminess than from coastal erosion, yet no provisions are proposed to address these issues in the Act.

Furthermore, Clause 15.3 provides for a Coastal erosion emergency action subplan for beach erosion. The clause outlines the roles and responsibilities of all public authorities in response to emergencies regarding beach erosion when it occurs through storm activity or an extreme or irregular event.

Again there are no provisions for sub-plans in relation to emergencies caused by cliff erosion and coastal flooding and inundation. If planning for these events is managed under a different Act, then surely such provisions should be referenced in and co-ordinated with actions under the proposed Act.

Although the provisions for emergency sub-plans are included in this section, no guidance is provided regarding on how they relate to Coastal Management Programs or Coastal Zone Management Plans.

Consistent with the claimed strategic intent of Coastal Management Programs, sub-plans for all coastal hazards, not only erosion, should be part of the overall Program. It is essential that the requirements make clear that emergency actions must not be permitted to override, suspend, modify or contravene or subvert Coastal Management Programs or Coastal Zone Management Plans.

Recommendation 23

That the requirements in Clause 15

- **must identify in detail the coastal management issues for each of the four Coastal Management Areas (not only the Coastal Vulnerability Program) that must be addressed by the Coastal Management Program and Coastal Zone**
- **must require that a Coastal Management Program identifies potential risks from coastal hazards to the environment and to Aboriginal cultural heritage consistent with the objectives of the draft Bill.**
- **must require that a Coastal Management Program identifies potential risks from cliff erosion, coastal flooding and inundation and sea level rise and increased storminess due to climate change.**
- **must require that coastal emergency sub-plans be prepared for all coastal hazards and referenced in and co-ordinated with all such actions under the proposed Act.**
- **emergency actions must not be permitted to override, suspend, modify or contravene or subvert Coastal Management Programs or Coastal Zone Management Plans.**

16. Consultation.

Clause 16.1) requires that a local Council must consult the community on the draft program before adoption.

It is concerning that mandatory consultation is required only at the end of the process, even though the Coastal Management Manual Part B Stage 1 seeks to engage “stakeholders” upfront and recommends development of a stakeholder engagement strategy to raise awareness and engage.

In contrast the Plan Preparation Process for a Coastal Zone Management Plan includes developing “the proposed community consultation process before commencing the planning process.

Furthermore, it is not clear whether these provisions apply to the entire community or to selected stakeholders only. It is essential that coastal communities generally are informed and engaged at the beginning and during the course of such processes, as their experience and expertise would assist in quality of the final product and result in general support.

It is concerning that the intent that community consultation is mandatory is reversed, with Clause 10.3) stating that, “A failure to comply with this section does not invalidate a coastal management program.”

The right of communities to be consulted should not be over-ridden in this manner.

Recommendation 24

- **That Coastal Management Programs cannot be approved unless a Council has undertaken comprehensive community and stakeholder consultation at the beginning, during and at the end of the development process.**
- **Remove clause 10.3).**

17. Certification, adoption and gazettal of coastal management program.

Both Clause 17. 1 and 3, leave to Council’s discretion decisions regarding the submission of draft coastal management programs to the Minister for certification and regarding adoption and gazettal of programs. These actions should be mandatory, with “must” substituted for “may.”

Clause 17. 4 Includes a Note referring to the “good faith” provisions in the Local Government Act, with respect to Councils not incurring responsibility regarding land affected by coastal hazards or any actions in relation to such land.

The Note goes on to state that a “Council is, unless the contrary is proved, taken to have acted in good faith for the purposes of this section if the advice was furnished, or the thing was done or omitted to be done in accordance with the principles and mandatory requirements set out in the Coastal Management Manual.”

Circumstances have arisen where Councils in preparing Plans related to coastal hazards have relied on in-expert advice, potentially leaving them exposed to a challenge that they have not acted in good faith.

Recommendation 25.

Requirements must ensure that Councils in preparing Programs related to coastal hazards associated with climate change adopt expert advice in climate change science, including sea level rise, so they cannot be considered to have acted in good faith if they have relied on inexpert advice.

20. Minister to prepare coastal management programs in certain circumstances.

It is hoped that Councils would prepare Coastal Management Programs so that Ministerial intervention would not be needed. It is however important to have these provisions for circumstances where Councils either fail to submit or submit a Program that is not consistent with the Manual.

The requirement that the Minister seeks the advice of the Coastal Council in the preparation and adoption of a coastal management program under this section is supported.

Division 3 Coastal Management Manual.

21 Coastal management manual.

Clause 21.2) states that, “the manual is to impose mandatory requirements and provide guidance in connection with the preparation, development, adoption, amendment, and review of the contents of, coastal management programs.”

Clause 21.3 itemises the content in terms of information and process.

Part A of the Coastal Management Manual states that Councils should identify the priority management issues and opportunities affecting the coastal zone where the program is to apply and provides a list of possible issues.

The first is “coastal processes and environmental values.” Whilst it is important that environment values are identified at the top of the list, the statement is lacking and should be expanded as follows:

“coastal processes and environmental values including natural character, scenic values, biological diversity and ecosystem integrity and resilience.”

The approach is generally supported, particularly with regard to a risk management process, which incorporates identification and assessment of risks to environmental as well as social and economic values and benefits and technical information and guidance on hazard mapping, ecological health, cost benefit analysis as well as funding tools.

Also important is that clause 21.3 d) specifies that the manual sets out requirements relating to consultation that must be undertaken.

Given that the objectives of the draft Bill refer to climate change it is concerning that acceptable sources or standards for climate change science, including sea level rise have not been specifically mentioned in these requirements.

It is noted that at Clause 21.3 g) the Manual is to include “guidance regarding the local council’s integration of its coastal management program with its integrated planning and reporting framework under the local Government Act, and that the specific obligations are specified in Clause 21.7.

It is to be hoped that integration with other Council programs does not result in changes in priority for action and funding or reductions in the amount of State Government funding provided for Coastal Management Programs.

The preparation, certification and adoption of Coastal Management programs together with integration in Councils programs under the Local Government Act is likely to require long lead times, possibly resulting in proposed actions being out of date by the time funding is released.

Division 4. Obligations of local councils and other public authorities.

s 22 implementation of coastal management program by local Councils.

Clause 22.1 provides for “A local council to give effect to its coastal management program and in doing so, is to have regard to the Objects of this Act.”

This terminology gives Councils considerable flexibility. It is important to ensure that Councils do respect and adhere to the objects of the Act, as Councils are known to treat the objects of State Acts with disdain.

Recommendation 26

“s22 should state that “a local Council ... must comply with the objects of the Act.

23. Other public authorities to have regard to coastal management program and coastal management manual. This issue is addressed earlier in the submission.

PART 4.

NSW Coastal Council. Clauses 24 and 25

Establishment of the NSW Coastal Council and Functions of the NSW Coastal Council.

The previous NSW Coastal Council provided advice to the NSW Government and individual Ministers, Ministers, to Planning decision-making bodies and local Councils over the full scope of the NSW Coastal Policy. The membership included a full-time Chairperson and membership covering expert advice in a range of disciplines, broad stakeholder representation including local Government and representation from relevant Government agencies. Community engagement was a major priority.

The proposed NSW Coastal Council is a very welcome aspect of the draft Bill. However the Coastal Council's role and functions are more limited than the previous Coastal Council. Local Council compliance with the Coastal Management Manual in preparing Coastal Management Programs is the major function, not integrated approaches to coastal policy and planning and community engagement.

Role and functions.

The following section discusses inconsistencies between the role, functions and expertise of the Coastal Council and the objectives and the provisions of the draft Bill including the Minister's functions, particularly regarding high level policy and strategic management.

The Bill provides for a Coastal Council as an expert body, with functions primarily concerned with the Minister's functions under the Act, including compliance by local Councils with management objectives and the coastal management manual in preparing and reviewing coastal management programs and performance audits of the programs.

The Minister's functions under the Act include responsibility for overall performance of the arrangements under the Act, including consistency with the objectives of the Act, both in relation to the proposed Coastal SEPP and compliance by Councils with the Coastal Management Manual in identifying Coastal Management Areas and preparing and implementing Coastal Management Programs.

Objective J) of the Draft Bill is "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." The Minister in his speech to the 2015 NSW Coastal Conference emphasised the importance of such co-ordination, and strategic integration of implementation and management.

However, the Minister's role as specified in the draft Bill does not provide for these important functions. Furthermore no mechanism is provided to monitor and review this objective.

Neither does the Coastal Council have a role in advising the Minister regarding policy and co-ordination across agencies and facilitating strategic integration of management activities and community engagement.

Statements regarding the functions of the Coastal Council are confined very much to auditing Council Coastal Management Programs, to ensure compliance by local Councils, with the Coastal Management Manual.

It is concerning also that the Coastal Council does not have the parallel role in providing advice in relation to the Coastal SEPP and related planning matters.

It seems also that the Coastal Council's role is viewed exclusively as essentially an "expert" role, based on the proposed range of expertise.

The wide scope of the objectives of the draft Bill, highlight the complexity of coastal protection, conservation and management and the expertise required to achieve those objectives. The objectives also provide for community consultation. However, neither the objectives nor the expertise for membership of the Coastal Council address the urgent and ongoing need to engage coastal communities in understanding complex coastal processes, coastal biodiversity and ecosystem function, recognising the impacts of coastal development and population increase on coastal environments, and participating in addressing the “wicked” problems of planning and managing the coast in a changing climate.

Communication links between coastal experts and managers and those involved in community engagement and change agents within coastal communities are critical to addressing these issues and the Coastal Council should play a leading role in bridging the gap between coastal management expertise and community expectations, including those of local councillors.

Aboriginal communities have rights under both the Commonwealth Native Title legislation and the NSW land Rights Act and should have a major role in advising the Government through the Coastal Council

Stakeholders in coastal management have much to offer including coastal environmental volunteers, coastal conservationists, surf club members, recreational users, local residents, fishers, coastal tourism operators etc.

An approach that combines representation of both expertise and community stakeholders is considered to fitting for the leadership/motivational role that Coastal Council should perform.

Membership and organisation.

The narrow role and functions of the proposed Coastal Council together with the small numbers proposed for membership, suggest a part-time role is envisaged for the Council.

In the light of the issues we have raised, it is considered that the Chair position would need to be fulltime, supported by a modest full-time staff.

Organisational options that would increase the Council’s effectiveness include:

- capacity for the Coastal Council to appoint sub-committees, including expert sub-committees.
- focus on high-level skills that integrate the various fields of expertise.
- reliance on expert agencies such as the Office of Environment and Heritage to provide expert advice to the Coastal Council.
- include community/stakeholder representation in Council and/or subcommittees.

The number of members should be increased to at least nine, with criteria that would attract a wide range of expertise.

Suggested criteria.

- Prior experience in coastal management.
- Technical or professional qualification in field relevant to coastal management.
- Demonstrated association or network within State’s diverse coastal management communities.

Recommendation 27.

- That the title “Coastal Council” be retained.
- That “advice on policy and strategic functions in relation to the Act,” be recognised as a critical function of the Coastal Council.
- That membership criteria include:
 - Prior experience in coastal management.
 - Technical or professional qualification in field relevant to coastal management.
 - Demonstrated association or network within State’s diverse coastal management communities.
- Aboriginal representation on the Council.
- That consideration is given to increasing membership and allowing for a full-time Chairperson and support staff.

Schedule 3 Part 2 s 7 Temporary Coastal Protection works.

We do not support the inclusion of the provisions of schedule 3 Part 2 draft section 7-Temporary coastal protection works.

These provisions would continue arrangements whereby ad hoc coastal protection works can be constricted by private land owners, without approval and exempt from all relevant legislation and where public land may be used for this private purpose, without any assessment of environmental impact or public consultation and outside the provisions of any existing plan of management.

Continuation of such provisions conflict with the entire strategic, planned approach to coastal management represented by the draft Bill and Coastal Management Manual and with the objectives of the draft Bill, including the principles of Ecologically Sustainable Development. They would undermine provisions included in Coastal environment Areas and the Coastal Vulnerability area and the integrity of Coastal Management Programs as they would permit the granting of development consent anywhere within the coastal zone, providing that conditions regarding the threats to public access and safety are met.

We are very concerned that the high conservation and social values of beaches could be put at risk.

Recommendation 28.

That provisions for Temporary Coastal Protection works are deleted from the Coastal Management Bill.

Coastal Reforms-Coastal Management SEPP Explanation of Intended Effect.

COMMENTS.

The Nature Conservation Council “Protection of Sensitive Coastal Environments-Policy for the 2015 NSW State Election” which Lake Wollumboola Protection Association Inc supports sought better integration of coastal conservation, protection, planning, development and management in a new Coastal Protection Act.

NCC also recommended conservation and protection of high conservation value public and private coastal lands, including Crown lands, with regional and strategic plans based on expert assessment of coastal conservation values and natural resources consistent with ESD principles.

NCC also sought;

- exclusion of new urban and rural residential development from coastal areas and catchments known or likely to be important for conservation and sensitive to development impacts as identified in the Coastal Lakes Inquiry 2002 to protect water quality and ecology of coastal lakes, estuaries and wetlands, whilst maintaining connectivity and resilience of native vegetation significant for wildlife in the catchments.
- exclusion of new public and private development from within 100 m of shorelines of beaches, coastal foreshores, wetlands, littoral rain forests and riparian areas to conserve and protect such areas.

The LWPA Inc supports the NCC Policy Statement.

We consider that the Coastal Management SEPP Explanation of Intended Effect goes a considerable way towards achieving these proposals, should they be adopted in the SEPP.

It is important also to acknowledge that the ambulatory nature of the immediate coast and the impacts of sea level rise and increased storminess will be taken into account in planning measures.

There are nevertheless some aspects which are concerning or where enhancements could be made. These are discussed below together with responses to questions contained in the document.

Coastal Management SEPP

The proposed SEPP to replace the existing Coastal SEPPs is a welcome initiative. It is designed to integrate and co-ordinate coastal planning and management, to map coastal areas that comprise to coastal zone, to establish a framework for land use planning and decision-making, whilst managing development and protecting environment assets The SEPP will incorporate existing Coastal SEPPs and increase levels of protection for sensitive coastal environments.

The Statement proposes four coastal areas, consistent with the draft Bill. **As indicated previously consideration should be given to combining Coastal Management Areas 1 and 3 to create one, “Conservation of Coastal Environments Area.”**

Once the Coastal Management Areas are finalised in the SEPP, **coastal Regional Plans should be amended to ensure consistency with the SEPP.**

The Statement foreshadows that LEPs will also require amendment to ensure consistency with the objects of the proposed Bill and SEPP, the Coastal Management Manual including the up-dated OEI “Coastal Planning Guidelines: Adapting to Sea Level Rise.”

The advice in the Statement that the new SEPP will go on public exhibition is welcomed, recognising that the SEPP would be made under the Environmental Planning and Assessment Act, independent of the Coastal Management Bill.

At this stage the draft SEPP and its maps are not available for public comment, so these comments are preliminary.

Recommendation 29.

That coastal Regional Plans be amended to ensure consistency with the Coastal Management SEPP, once completed.

Mapping for and boundaries of Coastal Management Areas.

The Statement advises that maps for the four coastal management areas will be part of the SEPP and will be sourced from existing and new data.

It is welcome news that mapping of wetlands is to be up-dated to include natural changes in boundaries and distribution and that wetlands not currently covered by SEPP 14 would be considered for inclusion.

It is important that community members have the opportunity to recommend eg wetland areas not currently mapped as SEPP 14 Wetlands.

“Coastal Environments Area.”

It is noted and welcomed also that for coastal environment areas, identification/mapping of coastal lakes, rivers, estuaries, lagoons and coastal waters and submerged lands, headlands and rock platforms will be based on the current coastal zone, with some modification to include land around coastal lakes.

As previously discussed it is concerning that protection of “beaches, foreshores and dunes” is not identified in Coastal Management Areas a) and c).

Coastal use areas are to be based on the current coastal zone with options for mapping included for comment. See later.

The Office of Environment and Heritage is identified as being responsible for mapping Coastal Vulnerability Areas, with Councils also to undertake further detailed research and analysis.

The advice that the maps will be available digitally via the Department’s e-planning system is an important initiative.

Coastal Reforms-SEPP Explanation of Intended Effect-Answers to Questions.

Note that recommendations in this section are embodied within the text in view of the question and answer format.

Note: We support the following Coastal Management Areas:

- **Coastal Conservation Area, comprising the current Littoral Rainforest and Wetland Area and Coastal Environment Area.**
- **Aboriginal Culture Area.**
- **Coastal Vulnerability Area.**
- **Coastal Development Area, (rather than Use.)**

See Recommendation x

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

Yes, but under strict conditions. No changes should be permitted prior to the expiry of a 3-year no-change period after the publication of the SEPP and then only under strict criteria and concurrence with the Office of Environment and Heritage.

Changes proposed to reduce the boundaries of coastal environment areas should not be permitted. (ie those proposed for the SEPP as Littoral Rain Forest and Coastal Wetlands and Coastal Environment Area-alternative proposal Coastal Conservation Area.)

Substantial research and analysis is to be undertaken in the initial stage, by Office of Environment and Heritage and Councils, so changes should not be necessary, except under special circumstances eg where there is evidence of changes in the ambulatory shoreline.

Recommendation

- on-ground surveys must be utilised as part of the mapping of coastal management areas.
- community members are able to propose additions to existing mapped areas, for Coastal Conservation Area and Coast Vulnerability Area.
- any future Planning Proposals for changes to maps and boundaries have the concurrence of the Office of Environment and Heritage prior to consideration by the Department of Planning and Environment.

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

The Development Controls should be included in the SEPP to ensure the application of controls across Councils is consistent with the Objects of the Act and SEPP.

Development controls.

The Explanation of Intended Effect (EIE) proposes Development controls specific to each Coastal Management Area. These are drawn from the existing Coastal SEPPS with additions.

Coastal Management Area 1 Coastal Wetlands and Littoral Rainforest.

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

No. The existing and proposed development controls for these areas permit a wide range of development types, including Residential development in Coastal Wetlands and Littoral Rainforests. These uses are not ecologically sustainable in these fragile environments. Accordingly a statement should be included that no **new** developments of the type listed on page 14 of the EIE should be permitted. Weed control and native vegetation restoration works should remain permissible activities in buffer areas

Office of Environment and Heritage concurrence should apply to acceptance of any “Environmental Impact Statement” for development consent, if it is decided that development is to continue to be allowed.

Issues. Littoral Rainforest.

The S states that development consent conditions are the same as for any existing development that is permissible in either the designated Littoral Rainforest or the 100 m buffer.

The EIE also proposes that the SEPP will include an additional matter for consideration based on the Standard Instrument LEP clause 5.5, subclause (2) (e) in relation to any development on land identified as littoral rainforest.

It states “Development consent must not be granted to development on land identified as a Littoral Rainforest unless the consent authority is satisfied that there are sufficient measures proposed to protect the biophysical, hydrological and ecological integrity of the littoral rainforest.”

Satisfaction is not adequate in establishing that protection of the integrity of the littoral rainforest will be achieved. Certainty is required for such sensitive environments. Accordingly the words “establish with certainty, in accordance with the precautionary principle...” should be substituted as criteria for Consent Authorities.

The additional measure to protect the biophysical, hydrological and ecological integrity of the Littoral Rainforest is supported. However it is concerning that it will not apply to residentially-zoned land. Residential development in the buffer zone would cause degradation of the environmental integrity of such Forests.

Whilst the protection offered by the additional matter for consideration is supported, it is recommended that the conditions should be consistent with those for coastal wetlands.

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

Yes we support inclusion of a new 100 m perimeter buffer area. We do not support development being permitted, except for environmental protection works and for rehabilitation.

Office of Environment and Heritage concurrence should apply to acceptance of any “Environmental Impact Statement” for development consent, if it is decided that development is to continue to be allowed.

Issues

Coastal Wetlands.

It is concerning that that development will continue to be permissible, in Coastal Wetlands even though it is generally accepted that as much as 80% of NSW coastal wetlands have been lost or significantly degraded by development and clearing. Whilst the proposed 100 m buffer around wetlands to allow for natural fluctuations and reduce development impacts is supported, the benefit will be compromised if the new conditions apply to residentially zoned land.

We support the new conditions of consent. However it is weakened by the consent authority only needing to be “satisfied” that there will be no significant impact of development in the buffer zone on;

- “the biophysical, hydrological and ecological integrity of the adjacent coastal or
- the quantity and quality of surface and ground water flows to the coastal wetland if the development is on land within the catchment of the wetland.”

“Certainty” not “satisfaction” is required for such sensitive environments.

Accordingly the condition should state that, “Development consent must not be granted.... Unless the consent authority has “established with certainty, in accordance with the precautionary principle, that the development will not have a significant impact...”

Coastal Vulnerability Area 2.

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

Yes, except that the objective 2 e) should be to **dissuade**, not encourage further development in coastal vulnerability areas. Accordingly the conditions of consent must be stringent.

The Consent Authority should therefore, “establish with certainty, in accordance with the precautionary principle,” that a development application will achieve the requirements, not simply be “satisfied” that the development will not have a significant impact.

In the absence of any intent to exclude new development from coastal vulnerability areas, development controls must specifically state that development consent is required for any proposed damage or removal of coastal dunes, vegetation and wetlands and that such consent must also require that any damage be rehabilitated and restored.

Issues.

Development controls should address objective 2 e) for the Coastal Vulnerability Area, ie “that in adopting coastal management strategies that reduce exposure to coastal hazards, i) in the first instance and wherever possible, by restoring or enhancing natural defences including coastal dunes, vegetation and wetlands, etc.”

Coastal Environment Area. (rename Coastal Conservation Area, with addition of Littoral Rainforest and Coastal Wetlands)

Issues.

As previously recommended Areas 1 and 3 should be merged into one, “**Coastal Conservation Area,**” with objectives for all high conservation value environments accorded the first priority in the hierarchy of objectives when Areas overlap.

The conditions of consent specified for the “Coastal Environment Area should be transferred to the “Coastal Conservation Area” with amendments to strengthen the conditions.

New urban and rural residential development should be excluded from coastal catchments known or likely to be important for conservation and sensitive to development impacts. This position is based on concern regarding cumulative impacts on the water quality and ecosystems of the sixteen “Comprehensive Protection” coastal lakes and lagoons now identified in a Schedule to the SEPP.

Proposals for development expansion in these highly sensitive areas would be best prevented at the planning stage. However although the Standard LEP Environment zones and lot sizes limit urban expansion to a certain extent in these sensitive areas, not all coastal Councils have included E 2 Environment Protection and E 3 Environment Management zones in their LEPs.

We support the list of lands and water bodies on Pages 17 and 18 of the SEPP EIE that are “ecologically sensitive to impacts from coastal development,” that is:

- State Waters and submerged lands plus a 100 metre landward perimeter area.
- Estuaries plus a 100 metre landward perimeter area.
- Coastal lakes and lagoons, and the land comprising the catchment of those lakes and lagoons, if the lake or lagoon is identified as requiring comprehensive protection (refer to schedule 1.)
- Other coastal lakes and lagoons, plus a 500 metre landward perimeter area.
- Headlands and rock platforms.

However we have concerns with several of the provisions and seek to have them strengthened as follows;

1. The 15 Coastal Lakes and lagoons should be included in the body of the SEPP not in a Schedule.
2. The proposal for the controls to apply to “other coastal lakes and lagoons plus a 500 metre landward perimeter represents a reduction from the current 1 kilometre coastal zone to 500 m, which should be reinstated.

The Coastal Lakes Inquiry “Comprehensive Protection” classification identified Nelson Lake one of the 16 lakes in this category. However it has not been included in the Schedule. Its status should be clarified.

Question 6. Are the proposed development controls for coastal environment areas (Coastal Conservation Areas) appropriate for that land?

Planning measures as well as development controls are critical to protecting these areas.

Whilst the scope of the proposed controls is supported the specific wording is not supported.

Issues

The test for a Council to simply “consider” the extent to which the development has the potential for adverse impacts on these values is not supported. This requirement is likely to encourage a “tick the box approach.” The conditions should be strengthened so the Consent authority must not grant development consent to land within these areas, unless it, “establishes with certainty, based on reliable evidence and consistent with the principles of ESD, particularly the precautionary principle” that the development:

- Must achieve neutral or beneficial outcomes for the biophysical, hydrological (surface and ground water) and ecological environment, with cumulative assessment of potential impacts to demonstrate no likelihood of causing longterm adverse impacts.
- Is not likely to cause adverse impact on geological and geomorphological coastal processes.
- Protects and preserves native vegetation
- Preserves undeveloped headlands in a natural and undeveloped state.
- Protects Aboriginal cultural heritage. (consider separate program needed)
- Incorporates water sensitive design to achieve management objectives for this area.

Proposals to remove concurrence provisions are not supported. Several coastal Councils have not included Environment Protection zones in their LEPs (except perhaps for Coastal Wetlands) with the agreement of the then Department of Planning and Infrastructure.

Furthermore the Review of North Coast Environment zones which recommends modification of Environment zones poses an unacceptable threat to all Environment Zones in LEPs. Whilst uncertainty regarding the future of Environment Zones persists concurrence provisions concerning Office of Environment and Heritage should persist.

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

Yes, it is very important that the conservation value and sensitivity of these Lakes and lagoons are included in the proposed Coastal Conservation Area. However they should be included in the SEPP itself not in a Schedule.

The list is derived from the Healthy Rivers Commission Coastal Lakes Inquiry Report 2002. The Report identifies 16 not 15 NSW Coastal Lakes in the “ Comprehensive Protection” category. Nelson Lake on the NSW South Coast has not been included.

The status of Nelson Lake should be clarified in terms of inclusion in the list for the proposed Coastal Management Planning Policy.

Coastal Use Area 4.

The Statement sets out three options for to be considered for initially mapping the area, with the ability for councils to refine maps in future to pick up local characteristics.

Whilst the Statement advises that Coastal Use Areas will have similar boundaries to the existing coastal zone, three different options are proposed. Yet there is no explanation of why the changes are proposed.

A case should be made for any change.

The principles for mapping the coastal zone are the same as those in the current Act.

Question 8. Which is the best option for mapping the Coastal use Area?

This area should be renamed “Coastal development Area” as uses such as public uses will occur in all areas.

The existing boundary of 1 kilometre from the coast would be the most appropriate, given that no case for change has been made.

Option 3 would be the next choice.

Option 1 and 2 should be rejected as they have the potential to significantly reduce coastal development controls that already apply.

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

How would such changes be possible, without adverse impacts on Coastal Conservation Areas and Coastal Vulnerability Areas? Pressures from development expansion have already had significant adverse impacts on the coastal environment. Moreover it is likely that the impacts of coastal hazards will increase making it highly unlikely that development expansion could occur at the expense of the Coastal Vulnerability Area.

Question 10. Are the proposed development controls for the mapped a coastal use/development areas appropriate?

The proposed development controls are considered generally appropriate but the proposal that Councils “consider the extent to which a development does or does not do certain things is not supported. This is a weak and ineffective control, when what is required is definitive statements.

The following is proposed:

A consent authority must not grant development consent to development on land within this area, if the consent authority establishes with certainty that the proposed development:

- Does not protect and enhance the natural environment.
- Does not maintain or enhance public access
- Exceeds the scale and size of existing buildings
- Does not incorporate measures to maintain or improve the amenity of foreshores.
- Does not protect visual amenity and scenic qualities of the coast.
- Does not appropriately protect Aboriginal Cultural Heritage and places of material and spiritual significance.

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

Yes. However the Department must ensure that exempt and complying provisions for these areas have been adequately assessed to ensure the objects and provisions of the *Coastal Act 2016* are furthered.

Q 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?

No. See our comments in answer to Q3 above. No new development of any kind which disturbs these areas of coastal native vegetation or the catchments of sensitive coastal lakes should be permitted at all. Coastal *conservation* areas should be subject to minimal disturbance, and leaving assessments of complying development in these areas up to certifiers is less than optimal and counter-intuitive.

Q 13: Should any provisions be retained to allow the use of emergency coastal protection works in emergency situations? What limitations should be put on such works being undertaken by private individual or public authorities?

No. No provisions should be retained for emergency coastal protection works in emergency situations. 'Emergency works' are a discredited concept, which is incompatible with strategic integrated approach to coastal zone planning to address foreseeable risks. Emergency situations should not mandate any new *ad-hoc* unapproved 'emergency works' because in reality 'emergency situations' are only created by those who ignore the strong likelihood or foreseeable potential for storms to activate and or exacerbate coastal hazards, and deliberately fail to plan for this inevitability.

All planning and approvals for all coastal protection works should be carried out under the relevant provisions of the *Environmental Planning and Assessment Act 1979*.

Every limitation possible, including an explicit 'ban', should be put on all so-called 'emergency works' whether they are being undertaken by private individuals or public authorities.

Frances Bray. 29th February 2016