Our understanding of the science underpinning climate change is constantly evolving.

The timing of its impacts on coastal processes are largely speculative - the effects of climate change are potentially uncertain and variable and not expected until forty, fifty or even one hundred years into the future.

When the life of most planning instruments is only 10 years, the challenge for policymakers is to come up with a sensible approach, which acknowledges the present level of information, is flexible enough to adapt to changes in information, encourages resilience and adaptability to enable existing coastal communities to grow, yet balances costs to future generations against the economic need to facilitate appropriate coastal development

If the foregoing paragraph accurately summarises what should be aims of any current coastal management legislative regime, **then I am sorry to say NSW's Stage Two Coastal Reforms can only be described as an epic failure on all counts.**

I strongly object to the Stage 2 Coastal Reforms for the reasons outlined below.

A. FAILURE IN DUE PROCESS – PUBLIC CONSULTATION PERIOD

I refer to my earlier emailed submissions on 13 December 2015 and 3 & 16 February 2016 which highlighted some significant shortcomings with the proposed Public Consultation Period (copies **attached**)

I have received legal advice that the shortcomings inherent in the Public Consultation Period are of such a serious nature that the enactment of the Stage Two Coastal Reforms ["reforms"] could be susceptible to legal challenge in due course, and I reserve my rights in that regard. In this regard, please note that I have only adopted the phrase "Public Consultation Period" within this submission for ease of reference, and assert that Public Consultation Period has a number of fundamental deficiencies which do not enable the process attempted by the Government to constitute a lawfully valid Public Consultation Period.

I note that no-one sought to substantially address the fundamental shortcomings identified in my previous submissions and that I never received any substantive response from OEH during the Public Consultation Period.

Instead, I received the NSW Coastal Management Reforms Newsletter - Edition 2 two business days before the close of the "Public Consultation Period" in which it was noted:-

"In response to early feedback, the NSW Government has decided to exhibit the full draft Coastal Management State Environment Planning Policy (SEPP), including the maps of the coastal management areas, separately in the coming months for public consultation. Prior to exhibition of the draft SEPP, the NSW Government will also consult with coastal councils to ensure that mapping aspects of the reforms are developed using local information and knowledge.

Future public consultation on a full draft of the SEPP and maps of the coastal management areas will occur in the coming months. The government will not finalise the coastal reforms until the second stage of public consultation is completed."

The problems of failing to exhibit the mapping (which informs the draft legislation, the SEPP Statement of Effect and the Manual) and failing to consult with Councils with respect to those materials, until after the relevant Public Consultation Period has closed (as corroborated by the meeting papers disclosed by many NSW Councils to the public on their websites) are fatal legal flaws.

The Government's position is further compromised because these failings were direct contradictions of very clear representations made by OEH representatives at the workshops held in November 2015.

Inexplicably, the Government has elected to publicly admit to some of the legal failings in the Public Consultation Period in the above mentioned newsletter, yet proposed a revised procedure that does not cure those legal deficiencies in process.

The proper lawful approach would have been to simply extend the entire consultation period.

B. BIAS TOWARDS RETREAT

The now Minister Stokes has told the NSW Parliament the following:-

"It is ironic that one of the fundamental causes of the erosion problems at Belongil Spit, which lies at the heart of this legislation, is the car park developed on the beach by the Department of Public Works and Services.

There is nothing planned about retreat that expropriates people's homes without recourse or assistance. Planned retreat without anywhere to go is surrender by another name.

The reality of an ambulatory coastline and of coastal storms and erosion are not reasons to completely sterilise the development potential of coastal land, nor is uncertainty about the impact of a changing climate on sea levels always a reason to stop residents protecting their homes while also preventing them from making any improvements to their properties, forcing retreat when it is not the only option" [2010 Speech]

"The reality of an ambulatory coastline and of coastal storms and erosion are not reasons to completely sterilise the development potential of coastal land, nor is uncertainty about the impact of a changing climate on sea levels always a reason to stop residents protecting their homes while also preventing them from making any improvements to their properties, forcing retreat when it is not the only option.

It may well be that coastal hazards, amplified by rising sea levels, render some coastal properties ultimately too vulnerable or too expensive to protect. Local and State governments historically have stepped in to purchase such properties, as Warringah Council has done in the case of certain properties at Collaroy, and as the State Government did in the case of the hamlet of Sheltering Palms on the far North Coast. But a policy that uses uncertainty over climate change as a reason to make notations on conveyancing documents that reduces property values and facilitates emergency works that are too small to provide any benefit in an emergency was never going to work." [2012 Speech]

The now Minister appears to be absolutely hell bent on ensuring that "retreat" is the only solution practically available pursuant to the reforms because the reforms:

(a) Do not facilitate the use of modern coastal engineering techniques

There is, by statutory compulsion, an obligation to adopt as coastal management strategies "**in the first instance and wherever possible**" – natural defences such as sand dunes, vegetation and wetlands. Only if these prove insufficient can other action be taken.

This is sheer lunacy particularly given the serious restrictions on the types and quality of sand that is permissible in these applications, and the very limited sources from which such sand can be accessed given the limitations imposed by legislation, guidelines and other rules issued by the three levels of government and government authorities such as the Marine Park Authority.

Sand nourishment is an extremely expensive solution in NSW vs other States because there are very strict controls with respect to composition, sediment size and a number of other criteria.

Councils will be at serious risk of losing the "good faith" defence if they do not implement "retreat" as the first mandatory response to every single erosion hazard, whatever the cause (natural or man-made)

(b) Abolish the emergency protection measures

As noted in the extracted speeches above, even the now Minister acknowledges the current emergency protection provisions to be completely useless in practice. I have been responsible for submissions in 2010 and 2012 documenting the shortcomings.

It is little wonder no-one has used these emergency protection measures to date

(c) Contain twelve Objects of the reforms which are prescribed to be conjunctive

This very long wish list set out in Section 3 is drafted so that each of the twelve limbs is separated by the word "and".

Accordingly, this has been designed to be a big impediment to anyone trying to do coastal protection work as it would be practically impossible for any coastal management policy to be consistent with all twelve objects.

(d) Prescribe a benchmark for permanent protection that is far too rigid and inflexible, and impossible to achieve in practice

For instance, the test for permanent protection in a coastal vulnerability area pursuant Section 7 requires the avoiding of any adverse impacts on adjoining land, resources or assets. How is that practically possible?

It is clear that the legislation gives no flexibility at all to Council. They can only do protection works if they avoid adverse impacts and provide for the restoration of a beach or land adjacent to the beach of any increased erosion. Even if they can do this they still have to satisfy all of the objects that are in Section 3.

As mentioned above, sand nourishment is not a practical or cost effective option to ameliorate the downstream impacts of protection works in NSW.

Again, Councils will be at risk losing the "good faith" defence if they allow any protection which has any adverse impacts on adjoining land, resources or assets.

This legislation is a long way away from a flexible community based approach empowering Councils to protect their established coastal communities (or parts thereof) as long as any adverse impacts are offset by benefits to the community elsewhere.

For instance, a three hundred metre rock wall may have some immediate adverse downstream effects; however, these might well be offset as part of a coastal planning policy that also preserves the next 20 kilometres of coastline in its pristine condition.

This principle of "environmental offset" is used in other facets of planning and environmental regulation and in other jurisdictions both within Australia and abroad.

Why should NSW Councils be deprived of this type of flexibility in coastal planning?

(e) Absorb so much capital cost in the mandatory first round defences, there will be no funds left for effective protective solutions

As mentioned previously, the mandatory first round natural defences such as sand dunes, vegetation and wetlands will be exceedingly expensive solutions particularly because of the stringent controls over the type, composition and size of sand.

There is no doubt these mandatory first round defences will be an abject failure in a high proportion of applications. In this regard, the reforms will be responsible for a massive waste of money.

Critically, once a large amount of money has been wasted on the impractical mandatory first round defence, where will the money come from to implement some sensible protective measures? There will simply be no round 2 in most instances.

The reforms pre-suppose that private citizens and Councils have unlimited funds at their disposal to devote to a cascading list of management options. What a joke!

Even OEH representatives openly joke about how few funds are currently available to be applied to the implementation of coastal management solutions (as opposed to planning). There is little evidence this equation will change under the reforms.

C. OEH CONFIRMATION OF BIAS WITHIN REFORMS TOWARDS RETREAT

If there was any doubt as to this deliberate intention on the part of Government & OEH, the Senior Coastal Engineer at OEH Peter Evans addressed a meeting of Gosford Council's Coast & Catchment Committee on 2 February 2016 and stated:-

> *"The Minister has advised that ANY State funding will be for the planning and implementation of Planned Retreat, not protection works. The State will not fund protection works".*

D. FAILURE TO OBTAIN LEGAL ADVICE OR BUDGET FOR COSTS OF RETREAT

Whilst the reforms are biased favouring "retreat" policies, there is no evidence that the Government has obtained legal advice on the likely legal impediments to the implementation of "retreat" in existing coastal communities, nor whether it has budgeted for the likely costs.

The Government & OEH will be very embarrassed should the reforms flounder when enacted because it proves legally impossible to practically implement "retreat" policies or when it discovers that the real cost of implementation exponentially exceeds the expectations of its proponents.

E. FAILURE TO COLLABORATE WITH COUNCILS

A PowerPoint presentation entitled "Stage Two Coastal Reforms" presented by Marian Fitzgerald in July 2015 **["Coastal Reform Objectives PPT"]** attributed Minister Stokes as outlining in November 2014 that:-

> *"We need to replace our current legislative and policy settings with a modern, coherent coastal management framework that is responsive to current needs and future challenges"*

More specifically, Minister Stokes was attributed as identifying that the reforms should, inter alia:

- *be designed in collaboration with coastal councils*
- *promote greater collaboration between communities and councils in deciding how coastlines are to be managed*

As mentioned above, the meeting papers prepared by staff for many NSW Councils (publicly accessible on their websites) opine that there has been no consultation undertaken by OEH with Councils in relation to the reforms. Rather inexplicably, all of these meeting papers also complain that there has been no consultation with those Councils regarding the mapping that OEH representatives promised would be available during the Public Consultation Period at the workshops.

For the reasons outlined earlier and in the attached submissions previously lodged, the Public Consultation Period is flawed. There has been minimal consultation with the public; inexplicably, there was not even a workshop held in the Central Coast region. If the Government cannot even get the Public Consultation Period right, what expectation do the public have for any effective future collaboration with Councils and the community in relation to actual coastal planning policies?

The reforms, in their current state, do not deliver on either of these fundamental underlying objectives attributed to Minister Stokes.

F. BIAS PITTING ADJACENT COUNCILS AGAINST EACH OTHER

Not only has there been no collaboration with local government, the reforms do not implement any changes which would further encourage Councils to collaborate and work with each other. In fact, many of the mechanisms contained within the reforms will be biased towards solutions which will inevitably see Councils in conflict with each other.

A good example is the cost benefit analysis paper which purports to provide guidelines to Councils as to how to evaluate the cost benefit of coastal management options. This is an ill-conceived and flawed document in many respects.

It is important to remember than many LGA boundaries are established based on geographical landmarks such as river mouths, headlands etc, many of which constitute coastal erosion hazards.

The guidance provided in these reforms is that Councils should only account for losses and benefits within the LGA boundaries when preparing a cost benefit analysis paper.

Since OEH has dictated that losses accruing to land, resources and assets outside the LGA are not to be accounted for in the cost benefit analysis paper, any cost benefit analysis prepared in accordance with OEH guidelines will be biased towards solutions which cause downstream erosion issues to land, resources and assets situated in the adjacent LGA.

On this basis, Councils will be forced to seriously consider implementing coastal management solutions such as the Tweed River Headwalls which cause very severe downstream erosion problems outside their LGA notwithstanding those particular protection works ended up costing the NSW State hundreds of millions of dollars in compensation and on-going sand by-passing solutions.

Again, Councils will be at risk of losing the "good faith" defence if they do not prepare the cost benefit analysis paper strictly in accordance with OEH guidelines, and strictly follow the results of that cost benefit analysis paper notwithstanding these OEH guidelines are "allegedly" not mandatory.

This is wishful thinking. As noted in the attached submission lodged 3 February 2016, OEH has already been caught trying to force the application of these OEH Guidelines relevant to the Stage 2 Coastal Reform Package (and only one month into the public consultation period) to the preparation of a draft CZMP under the current, and entirely different regime of coastal management legislation.

The OEH representative threatened Byron Shire Council that OEH would ensure that no funding would be available to the Council unless they strictly applied these OEH Guidelines.

G. FAILURE TO COLLABORATE WITH FEDERAL GOVERNMENT

As noted in my submission dated 3 February 2016, the Government & OEH have failed to consult and/or collaborate with the Federal Government with respect to the reforms which:-

- Ignore the recommendations of the Productivity Commission (particularly Recommendation 11.1)

- Are sought to be enacted in advance of, and in isolation to, a national initiative to produce a collaborative response to coastal planning and climate change announced by the Federal Environment Minister Greg Hunt on 1 November 2015 at a UN climate conference.

The coastal planning community is a small world in NSW, even Australia. It is clear that both the Government and OEH had advance notice of this Federal Government initiative many months ahead of the announcement (I understand there was a session devoted to this initiative at the last coastal planning conference), yet chose to deliberately proceed with the reforms with a cavalier disregard for the Federal Government initiative.

This represents yet another failing of Minister Stokes to live up to the objectives he subjected the government to in November 2014 in the Coastal Reform Objectives PPT which outlined that the Stage Two Coastal Reforms would:-

> *"promote greater collaboration between communities and councils in deciding how coastlines are to be managed"*

H. FINISHING FRANK SARTOR'S POLICY OF ABROGATION OF POWER TO COUNCILS

The reforms perfect Frank Sartor's attempts in the dying days of a corrupt Labour government (reliant on Green support) to abrogate control of coastal management from the State to Councils.

Inexplicably, the reforms are now introduced by a Liberal Government who opposed Sartor's changes to the Coastal Protection Act in 2010 by giving that legislation the moniker *"Coastal Destruction Act"* as they perceived Sartor's sole motivation was to strip the incoming Liberal Minister of these powers.

Because of the vagaries of local government politics and the varying political and economic allegiances from Council to Council, it is imperative for the State to safeguard that a uniform policy of

coastal management be implemented through NSW. The Minister should retain ultimate control over whether a Coastal Management Plan should be put in place or revoked.

A Minister has to consent or not consent to other planning instruments, such as LEP's.

Sea level rise and coastal erosion are global issues. At the same time Minister Hunt is telling the United Nations he is hopeful of implementing uniform national standards and mapping in 2017, the NSW Government proposes abrogating power back to Councils. This is foolhardy policy.

I. ECONOMIC SUICIDE ON SO MANY LEVELS

Coastal protection is a serious issue for the economic well-being of NSW.

State interests of housing supply and diversity, liveable communities, tourism, construction and development all support the desire for increased density around existing infrastructure/employment opportunities. Those state interests should be balanced against, not overridden, by a fear of coastal hazards. Pushing development away from existing infrastructure and employment centres will simply transfer infrastructure costs from one point to another, by reducing reliance on existing infrastructure.

Because most coastal hazards are potentially several decades away, significant economic benefits may be lost in the interim, if overly restrictive coastal planning policies are introduced now.

This reform package poses a threat to the property of this State, the economic prosperity of its communities and small business, infrastructure and further investment in NSW.

The National Assessment prepared for the Australian Government assessed that:

(i) between 44,000 and 68,000 residential buildings may be at risk from sea level rise in NSW with a replacement value of $14-$20 billion;

(ii) light industrial buildings with a replacement value of $0.8 to $1.16 billion were also at risk in NSW; and

(iii) there are a large number of infrastructure facilities including ports, road and rail potentially at risk under a changing climate in NSW.

As mentioned above, the reforms are biased towards "retreat" as a coastal management option and make no attempt at all to build resilience into our coastal communities.

The reforms unnecessarily and irresponsibly place all of these assets, land, resources and infrastructure at far greater risk than they need to be.

No responsible government at a Federal, State & Local level can afford the likely write-downs and provisions against these assets on their balance sheets, that that these reforms will bring.

The "Old Jetty Site" in Byron Bay is a good practical example where approximately an acre of beachfront land has disappeared into the sea because the State has taken no steps to protect this land (and effectively undertaken a policy of "retreat" of its own volition). Based on comparable sales, this land which has disappeared would be worth $35 million in a community where property values are already marked down based on the fears of "retreat".

Nor can rank and file private property and business owners in very affected areas afford the erosion of asset values that these reforms will bring, and which will effectively bankrupt entire communities. It is an attack on all property and business owners and those whose livelihood and/or business interests rely on coastal communities.

When the true intent of these reforms, and its likely repercussions, are understood by the investment community, it is likely that these reforms will be considered a "sovereign risk" event and deter investment in coastal communities that might otherwise have proceeded.

These perceptions will seriously erode business confidence in NSW.

This effect won't be restricted to the big end of town either. Anyone with any sense will be selling beachside assets in NSW and redeploying those funds in beachside assets in Queensland or Victoria where coastal management policies based on the implementation of modern coastal engineering practices are in place.

The Queensland and Victorian Governments, Councils, tourism bodies and real estate industries must be salivating at the prospect of these reforms being enacted and the massive wealth transfer from NSW to those adjoining states that will follow.

J. ABOLITION OF TEMPORARY PROTECTION

As identified by the now Minister in his 2012 speech extracted above, the current legislation provides for a standard and specification of temporary protection that offers no practical protection. The pre-conditions to any implementation of temporary protection are cumbersome and unlikely to be able to be achieved with any urgency in an emergency situation.

A policy enabling temporary protection is a very sensible and integral part of coastal management strategies in other States of Australian and elsewhere in the world.

It beggars belief that the NSW Government is abolishing temporary protection. If anything, the current provisions should be improved to provide some effective interim protection, in a user friendly manner.

K. FAILURE TO INCLUDE MANDATORY POLICY THAT DIFFERENTIATES POLICIES APPLICABLE TO EXISTING COASTAL COMMUNITIES VERSUS GREEN-FIELD SITES

There is no doubt that the 70% of NSW coastline that is "untouched" must be protected.

These green-field sites allow greater scope for implementing coastal management controls and obtaining a cost effective buffer for land genuinely affected by coastal erosion is likely to be an achievable feat for local Councils.

The logistics of implementing coastal planning within coastal communities which may have existed for 100-150 years is seriously constrained, having to work within an existing network of infrastructure (such as roads), public & private assets, and business, environmental & community interests.

It is important for this significant difference between existing coastal communities and green-field sites to be fundamentally enshrined within the coastal management framework and for different coastal management policies to be applicable to each of these distinct situations.

Once again, the reforms are an abject failure in this regard.

L. "MANAGED RETREAT" MANUAL PART B, STAGE 3

"Hand in glove" with the above mentioned criticism is the superficial and unrestrained regulation of "managed retreat" as a risk management response and opportunity in coastal vulnerable areas.

I strongly object to any suggested implementation of "managed retreat" in existing coastal communities. I also strongly object to the lack of thought, detail and governance in the reforms.

"Managed Retreat" effectively forces coastal property owners to abandon their properties without compensation. The Manual presumably prescribes empowering Councils with power to make:-

- *"a decision not to permit protection of private assets that are located in the immediate hazard impact area*
- *a direction to demolish private assets and to remove any waste, building materials or contaminants."*

Such radical and controversial powers should not be entrusted to the lowest level of government (each with a myriad of local, political and economic allegiances) without considerable detailed safeguards and rights for any such decisions to be reviewed in an independent judicial forum.

The criteria upon which the Manual dictates whether or not "managed retreat" is a viable option are wholly inadequate. They are vague, capable of varying interpretations and open to manipulation.

Consideration should also be given to whether it be mandatory for any such policy to be accompanied by a compensation mechanism. A legal review of the likely impediments to any implementation of "managed retreat" may determine this to be a practical reality.

The policy of "managed retreat" should be restricted to green-field sites and not permissible in existing coastal communities (in line with the previous Manual)

M. FAILURE TO RECOGNISE THE REALITY OF LITIGATION AND THE LIKELY REPERCUSSIONS AND COSTS TO THE STATE, COUNCILS AND COMMUNITY

There can be no doubt that those detrimentally affected by any implementation of coastal planning policies will litigate to protect and/or preserve their interests.

In many instances, coastal planning policies will be seen as an attack on the main asset and livelihood of the general public who live in coastal communities. The reality is these people will fight these policies determinedly because they will have lost everything and will have nothing more to lose.

The recent development of class actions within our legal system and the proliferation of firms specialising in this sort of litigation, and their access to the man in the street means this is a reality that the Government must contemplate in putting together these reforms, particularly given their bias towards the implementation of divisive and destructive "retreat" policies.

In addition to the quantum dollar cost of defending this anticipated influx of litigation, Councils and the State Government must be prepared for the provisions that will need to be applied to their balance sheets to recognise their potential contingent liability in these claims.

Administrators must realise, right from the outset, that these types of claims may have disastrous consequences for authorities.

If a Council loses a compulsory acquisition case and has to pay more to a landowner than it originally budgeted, the Council still has the consolation that this asset will sit on its balance sheet with a higher value than expected.

However, if a Council loses a claim relating to a coastal planning policy that has rendered a valuable asset worthless, the Council will have to compensate for the previous value of an asset and have no corresponding asset to hold on its balance sheet because that asset has been rendered worthless.

N. DISCRIMINATION BETWEEN REGIONS

The regional coast of NSW is very important for NSW's future prosperity given the reality of a Sydney that is "bursting out of its seams".

As mentioned, no mapping is available, but many regions of the Central Coast will presumably have properties situated many kilometres from coastal hazards regulated within the coastal vulnerability areas.

Why is there a 200 metre limit within metropolitan Sydney?

To an independent observer, this does seem hypocritical with one rule for Sydney silvertails and a different rule for the battlers on the regional coast of NSW

Why were there no OEH information sessions with respect to these reforms held on the Central Coast?

Is this fair? I am certain those on the regional coast will voice their opinion next time they vote.

O. LAWYER'S PORN

Minister Stokes labelled the current legislative framework as "lawyer's porn" ridiculing its complexity.

The reforms are more than double the complexity of the current legislation.

- Councils are to manage the coastal environment having regard to 12 inconsistent objects and, in vulnerable coastal areas, another 9 objectives, making 21 objects and objectives
- There are a further 5 objectives for coastal wetlands and littoral rain forests, 6 for coastal environmental areas and 2 for coastal use areas.
- There will also be a new local planning directive which will require any planning proposal to comply with at least 7 categories of regulations being:
    1. the 12 objects
    2. the Manual
    3. any coastal management programme
    4. the Coastal Design Guidelines – with a further 5 principles and at least 7 objectives
    5. The Coastal Planning Guide on Adapting to Sea Level Rise
    6. all other relevant guidelines
    7. all other relevant strategies.

As you would expect, this will provide lawyers with even more ammunition to litigate the claims of their clients aggrieved by coastal planning policies which detrimentally affect their interests.

P. MANDATORY REQUIREMENTS MUST BE PASSED THROUGH PARLIAMENT

According to the provisions of section 21(2), the Manual is to impose **mandatory** requirements and provide guidance in connection with the preparation, development, adoption, amendment, and review of, and the contents of, coastal management programs. This includes the determination of what protective works may be carried out in the coastal zones.

The reforms provide for the Manual to be able to be compiled and later amended without the scrutiny of the Parliament as would be the case if these **mandatory** requirements were contained in the Act.

This does not meet the probity of the "checks and balances" of the NSW legislative framework. The Minister should not have unfettered power to amend these critical mandatory aspects of the Manual without the scrutiny and governance of Parliament.

Q. COASTAL COUNCIL – JUDGE & JURY?

It is envisaged that the Coastal Council will advise the Minister as to whether Coastal Management Plans have met the technical requirements of the Manual, and then decide whether there has been compliance.

The reforms are silent as to whether the Coastal Council will have any influence, direct or indirect, over the contents of the Manual from time to time?

Since the Coastal Council decides whether or not there has been compliance and whether or not the Minister certifies or not certifies, the Coastal Council could potentially become a law unto themselves.

R. COMPOSITION OF COASTAL COUNCIL

Many of the impacts of the reforms will ultimately be felt by private land & business owners or those whose livelihood depends on existing coastal communities.

The proposed composition of the Coastal Council is too skewed towards candidates whose credentials are based on academia or careers in the public service and with no business experience.

The proposed composition should include candidates with a vested interest in the future growth of existing coastal communities to encourage balanced and considered debate within the Coastal Council and ensuring outcomes which will enable those coastal communities to grow where possible.

S. PROPOSAL FOR LAND BOUNDARIES TO MOVE LANDWARD

The OEH workshop in Newcastle was addressed with proposals to:-

- change the current common law of erosion and accretion;
- to reduce the opportunity for land boundaries to move seaward; and

- for fixed boundaries to be converted to receding ambulatory boundaries,

with the following preview:-

"According to two legal experts, there was no certainty around fixed boundary dimensions as specified on titles and that a paper will be released in March 2016 to assist to clarify these issues"

The intent is to allow the public beach to recede on to private property and for fixed boundaries to be converted to receding ambulatory boundaries (with no compensation), with the revised boundary being the new landward beach boundary.

I object strongly to any such proposals and note that such proposals cannot be lawfully implemented. Combined with the restrictions which prevent a private landowner from protecting their property, these proposals represent an unacceptable and fundamental attack on basic property rights and the indefeasibility of title.

T. DOCTRINE OF REGULATORY TAKING

The doctrine of regulatory taking refers to a situation where excessive government regulation limits the use of private property to such a degree that the regulation effectively deprives the property owners of economically reasonable use or value of their property to such an extent that it deprives them of utility or value of that property (even though the regulation does not formally divest them of title to it)

This is an entitlement that is enshrined in the US Constitution.

In Australia closer regulation of land use and more comprehensive planning controls have produced a strong backlash from landowners.

Similar arguments are frequently heard in Australian public debate, and even in the High Court. The dissenting judgment of Heydon J in ***ICM Agriculture Pty Ltd v Commonwealth*** concludes that payment of compensation for 'infringements of the private sphere' is necessary to uphold the rule of law.

It is difficult to envisage how the reforms could not offend the doctrine of regulatory taking.

This is a growing and dynamic body of law.

I reserve my rights with respect to the abovementioned boundary proposals and with respect to the reforms generally.

U. "USING COST-BENEFIT ANALYSIS TO ASSESS COASTAL MANAGEMENT OPTONS"

I have already mentioned one criticism of this document. A further gem of OEH guidance is that Councils should ignore the value of properties of owners who do not live permanently in the LGA. Losses incurred by "absentee owners" are to be disregarded when considering the costs or benefits of a particular option.

Yet, other benefits such as beach amenity are not to be discounted by any consideration of how many of those who may have benefitted reside outside the LGA (which you would expect is likely to be a proportion that corresponds closely with the proportion of absentee owners).

The results of any cost benefit analysis undertaken in accordance with OEH guidelines will clearly be affected by this bias against absentee property owners.

This document is so ill-conceived and ill-prepared. An independent firm should be engaged to prepare some sensible and balanced guidance from scratch without reference to this document.

V. RESERVE RIGHT TO PROVIDE FURTHER COMMENT

I consider the Public Consultation Period to be legally invalid for the reasons outlined above.

As such, I reserve the right to provide further comment when the maps and draft SEPP are finally released for consultation, noting that, inter alia:

- The draft bill (and other documentation) does not provide information on the key parameters which define each management area, for example, the 'coastal vulnerability' area is undefined in terms of planning timeframe, sea level rise benchmark, hazard(s) being mapped, and probability and/or severity of hazard(s). This information is required to gain an understanding of whether or not this element of the reforms is robust and 'reasonable'.
- From the broad definitions in the draft Bill many locations are likely to be subject to overlapping management areas, the hierarchical nature of the management objectives seems logical however it is difficult to comment further without the maps being available.

W. CONCLUSION

The reality is that humans have been holding back the sea for centuries.

(a) Venice has been slowly sinking for the last hundred years. Sea level rises will contribute to the inundation of Venice but the City will continue to adapt. There is a planned, vertical retreat as residents abandon lower levels of their houses as the seas rise. Venice is also planning hollow floatable flood gates, to hold out the rising tides.

(b) The Netherlands relies on flood gates and other engineering solutions to keep out the sea.

NSW Councils should not be forced to implement "retreat" under threat of losing the good faith defences available to them.

A flexible coastal planning framework should enable them to be able to consider defensive civil engineering and infrastructure works, such as seawalls, retaining walls levees, non-return valves etc.

Against that background, good coastal planning policy should:

(a) be locality specific

(b) respond to the best available information, and be easily capable of updating when new information comes to light;

(c) allow development proponents to demonstrate that development can respond to natural coastal process and risks can be managed through adaptable design;

(d) balance environmental risk management, economic development and social factors;

(e) encourage resilience, innovation and adaptability (in both the public and private sectors);

(f) contain clear and generous provisions recognising existing development commitments (given the uncertain and variable long term nature of coastal hazard risks associated with climate change).

Building in resilience and adaptability allows for a balance between risk management, economic development and allowing communities to live and work on the coast. That balance should be the guiding principle applied in coastal management policy

The reforms are an abject failure in this regard.

If and when some sensible coastal planning policy, untinged by "retreat" policy is ever introduced into NSW, it will become an embarrassment to OEH and previous government administrations when many of the erosion and other hazards in coastal erosion "hotspots" that have plagued the NSW Coastline for decades are solved by simple and cost effective solutions implemented at little or no cost to Councils and/or the Government.

And at a cost that is dwarfed by the tens of millions of dollars that has been wasted on reports to date.

John James

From: John James
Sent: Sunday, 13 December 2015 7:39 AM
To: [redacted]
Subject: Information sessions on the coastal management reforms
Attachments: SCopier15100812380.pdf

Dear Marian, Santina & Bruce

I attended the Ballina workshop afternoon session for coastal managers on 25 November in my capacity as a member of the Byron Shire Council PRG for its draft CZMP

At the workshop, I voiced my opinion that it was premature to seek any effective feedback given the state of the materials able to be publicly exhibited (and the number of critical documents and mapping unable to be disclosed to date), and the timing in the calendar year was such that it effectively made it very difficult to meaningfully respond within the prescribed time line.

I re-iterate and elaborate about these concerns below. I have also referred to responses made by some of you during the workshop. Please do not take these as any personal criticism of yourselves as these references are not intended as such, but merely to provide a succinct indication of how little information is available on critical issues and how premature this consultation process is. I can only imagine what a herculean task producing the Stage Two Coastal Reform Package must represent.

During the workshop, attendees were encouraged by you to respond with feedback as early in the process as possible, and in a staged manner if need be. In later emails, I will deal with the specific content of the Stage Two Coastal Reforms

A. Coastal Reform Objectives

To illustrate some of the criticisms, I have referenced a powerpoint presentation entitled "Stage Two Coastal Reforms" presented by Marian Fitzgerald in July 2015 **["Coastal Reform Objectives PPT"]**

That document attributed Minister Stokes as outlining in November 2014 that:-

> *"We need to replace our current legislative and policy settings with a modern, coherent coastal management framework that is responsive to current needs and future challenges"*

More specifically, Minister Stokes was attributed as identifying that the reforms should, inter alia:

- *"deliver a modern and simpler legislative framework that minimises our exposure to future risk and liability*
- *allow communities to better manage the significant legacy of risk from past settlement patterns by providing better support for local decision making*
- *establish a more sustainable approach to funding and financing coastal management actions*
- *be designed in collaboration with coastal councils*
- *promote greater collaboration between communities and councils in deciding how coastlines are to be managed*

For reasons outlined in some detail below, the Stage Two Coastal Reform Package, in its current state, does not deliver on many of the fundamental underlying objectives attributed to Minister Stokes

B. Why has the consultation begun on such short notice when all the documents are not available?

It is impossible to have effective consultation when we don't have the SEPP, the Mapping or the Manual as at today's date. Given the time of year, it is now effectively impossible to obtain any meaningful advice until well into the 2016 especially having regard to the likely complexity of the documentation and the interaction between coastal planning and the over-riding legal framework.

The deadline for submissions on the Stage Two Coastal Reform Package must be extended beyond 25 February 2016 because each of the SEPP, the Mapping and the Manual are items which are critical and fundamental, rather than incidental, to the operation of the Stage Two Coastal Reform.

1. **SEPP**

The specific development control plans for the four individual management areas will be contained in a new Coastal Management State Environmental Planning Policy that is not yet available, but we are told it will provide greater detail related to the four new management areas;

- how the planning objectives of the new Act are to be implemented;
- will specify development controls for management areas
- approval requirements for coastal protection works by private landholders and public authorities
- Includes proposals to limit development consent in the coastal vulnerability area and to provide for the migration of wetlands

How is one to meaningfully provide feedback when we do not precisely know what any of these important tests will be?

2. **Mapping**

No mapping is currently available

We were advised by you that the mapping should be available sometime in January

Inexplicably, you intend issuing three (3) different versions of the mapping and seeking feedback in the consultation process on which version should be adopted

So as I understood things, you won't even know which set of mapping will be the ultimate mapping adopted by OEH during the consultation period

How is one to meaningfully provide feedback, when mapping is currently unavailable and the designation of many properties will still be in flux by the close of consultation because the ultimate version of mapping to be adopted will still be unknown?

Furthermore, Bruce Coates advised that it was *"intended to adopt the existing Council hazard line maps in the mapping to identify the vulnerable areas"*

In many localities, this will not be appropriate. For instance, in Byron Shire, the then Minister for Planning has already acknowleged this mapping to be inappropriate and in this regard I refer you to the attached directive from Neil McGaffin, Executive Director, Planning Operations.

3. **Manual**

The Coastal Reform Objectives PPT attributed Minister Stokes as outlining in November 2014 that the draft Manual would be on public exhibition **with** the draft Coastal Management Bill

The draft Coastal Management Bill has been on exhibition for some time now, with no sign of any Manual

This is a complete failure to meet the consultation process as promised by the Minister

Why is it so important for the draft Manual to be on exhibition with the draft Bill?

The reason why it was so important for the Manual to be exhibited along with the Draft Coastal Management Bill is because it is the Manual that forms a critical part of the management framework **requiring compulsory compliance**.

Note the provisions of section 21(2) – the Manual is to impose mandatory requirements and provide guidance in connection with the preparation, development, adoption, amendment, and review of, and the **contents of**, coastal management programs.

Inexplicably, only summary documents (more akin to visionary statements) are available which is particularly alarming given the contents of the Manual will not determined by the checks and balances of the Parliamentary process (even though the Manual creates compulsory requirements).

This is very interesting as previously section 55C set the requirements. What is now envisaged is that, not in the legislation, but in the Manual there would be more "technical requirements" – no doubt written by members of the Coastal Council (see 20(4) which mandates that they have a say).

The Coastal Council then judge whether or not there has been compliance and they tell the Minister who certifies or not certifies. Literally, they are a law unto themselves. They can put whatever they want in the Manual without the scrutiny of the Parliament as would be the case if it were in the Act and they then decide whether there has been compliance.

The failure to exhibit the draft Manual together with the draft Bill casts a negative aspersion with respect to the probity and transparency of the entire Stage Two Coastal Reform Package

The Coastal Reform Objectives PPT attributed Minister Stokes as outlining in November 2014 that the Stage Two Coastal Reforms would:-

"establish a more sustainable approach to funding and financing coastal management actions"

In this regard, the Manual is critical as it is supposed to identify cost sharing principles and a "funding and financing tool kit"

Nothing meaningful about this absolutely critical component of the Stage Two Coastal Reforms is outlined in the vision statements which compose the Manual summary.

At the workshop, Bruce Coates failed to provide any elaboration to an attendee who asked about what funding would be made available and how it would be made available under the Stage Two Coastal Reforms?

Finally, in order to take advantage of the "good faith" defence afforded by Section 733 of the Local Government Act, Councils are required to undertake coastal management planning strictly in accordance with the Manual. This is fundamental to the key objectives of the Stage Two Coastal Reforms and it is imperative for the draft Manual to be properly exhibited. At present, there is no indication how Minister Stokes intends to achieve the following objectives outlined in the Coastal Reform Objectives PPT:-

- *deliver a modern and simpler legislative framework that minimises our exposure to future risk and liability*
- *allow communities to better manage the significant legacy of risk from past settlement patterns by providing better support for local decision making*

C. Why has the Stage Two Coastal Reform Package been undertaken by the NSW Government without reference to Federal Government Initiatives?

1. Productivity Commission

At the workshop, the Panel was asked whether the recommendations of the Productivity Commission had been considered in drafting the proposed legislation?

My impression was that all members of the Panel winced when that question was asked.

Marianne Fitzgerald bravely responded with a "yes".....full stop, no elaboration.

The Productivity Commission made, inter alia, the following recommendations in relation to existing settlements:-

"Existing settlements
RECOMMENDATION 11.1
The Council of Australian Governments should commission an independent public inquiry to develop an appropriate response to managing the risks of climate change to existing settlements. The inquiry should:
• explore, via extensive consultation with all levels of government and the community, in a variety of locations, the community's acceptable levels of risk for public and private assets
• identify the options available to manage climate change risks to these assets
• assess the benefits and costs of each option
• establish policy frameworks that can be applied by state, territory and local governments.

State and territory governments should draw on the findings of the inquiry to:
- *manage risks to their own assets*
- *clarify roles and responsibilities for managing climate change risks for each level of government and the community*
- *provide appropriate support to local governments that face capacity constraints."*

The Coastal Reform Objectives PPT attributed Minister Stokes as outlining in November 2014 that the Stage Two Coastal Reforms would:-

> *"promote greater collaboration between communities and councils in deciding how coastlines are to be managed"*

Why is the Stage Two Coastal Reform Package being undertaken by the NSW Government, in a seemingly "rushed" manner (this is the obvious inference given the incomplete documentation on exhibition) in isolation to other State and Federal Governments, in direct contradiction to one of the key objectives as identified by Minister Stokes?

The Stage Two Coastal Reform Package has produced a highly complex framework of environmental legislation and guidelines that fail to acknowledge the fact that many thousands of NSW regional residents live in the coastal zone and have invested heavily in the coastal zone. Not just financial investment but also an investment in the building of local communities, local employment, futures for their families and importantly the infrastructure that will support a growing population.

This would become plainly evident in any independent public inquiry commissioned by COAG

2. Federal Climate Adaptation Plan

On 1 November 2015, the Federal Environment Minister Greg Hunt made the following press release to the Fairfax media:-

"The entire Australian coastline will be mapped to prepare for projected flooding from rising seas under a government project to be launched at the Paris climate summit that could lead to national standards for how close homes should be built to shorelines.

It is part of a new climate change adaptation plan, amid debates at the Paris talks over how the world will deal in a global agreement with locked in climate change.

That he hoped that the coastal data - due to be completed and made public in late 2017 - would be picked up by state governments to guide planning laws about how close homes and other property should be allowed to be built to the coast given expected future flooding and erosion from rising seas and storm surges

Coastal planning laws have been controversial in a number of states, sparking bitter disputes between local councils, states governments and business. Regulations currently differ between jurisdictions"

The coastal planning community is a small world in NSW, even Australia. It is clear that many of those involved in the Stage Two Coastal Reform Package would have had advance notice of this Federal Government Initiative

It is extremely disappointing, if not inexplicable, for the NSW Government to proceed with the Stage Two Coastal Reform Package in advance of, and in isolation to, a national initiative to produce a collaborative response to coastal planning and climate change.

Again, this directly contradicts one of the key objectives attributed to Minister Stokes in November 2014 by the Coastal Reform Objectives PPT which outlined that the Stage Two Coastal Reforms would:-

> *"promote greater collaboration between communities and councils in deciding how coastlines are to be managed"*

****

Obviously, I would like this submission to constitute a formal submission on this process

Please advise whether I also need to formally lodge this through the "Have Your Say" link on the website

Kind Regards

John James
[redacted]
Brisbane Qld 4000
[redacted]

BRICKWORKS

John James

From:	John James
Sent:	Monday, 8 February 2016 8:27 AM
To:	'coastal.reforms@environment.nsw.gov.au'
Cc:	'Bruce.Coates@environment.nsw.gov.au'; 'Santina.Camroux@planning.nsw.gov.au'; marian.fitzgerald@environment.nsw.gov.au
Subject:	FAKE PUBLIC CONSULTATION PERIOD
Attachments:	NSW Coastal Management Manual - Using cost-benefit analysis to assess co....pdf; SCopier16020306481.pdf

Dear Sir/Madam

I refer to my emailed submission dated 13 December 2015 outlining some significant shortcomings with the proposed Public Consultation period

In the interim, I have encountered certain conduct by OEH representatives that further undermines any legitimacy to the Public Consultation period.

"Using Cost-Benefit Analysis to Assess Coastal Management Options: Guidance for Councils"
As you are aware there is a document entitled *"Using Cost-Benefit Analysis to Assess Coastal Management Options: Guidance for Councils"* ["Draft OEH Guidelines"] which constitutes part of the Draft NSW Coastal Management Manual which is currently on exhibition as part of the Stage 2 Coastal Reform Package.

The only copies of that document that I can locate are clearly marked: "CONSULTATION DRAFT" as per the attached copy.

Stage 2 Coastal Reform Package
A powerpoint presentation entitled "Stage Two Coastal Reforms" presented by Marian Fitzgerald in July 2015 attributed Minister Stokes as outlining in November 2014 that:-

> *"We need to replace our current legislative and policy settings with a modern, coherent coastal management framework that is responsive to current needs and future challenges"*

More specifically, Minister Stokes was attributed as identifying that the reforms should, inter alia:

- *"deliver a modern and simpler legislative framework that minimises our exposure to future risk and liability*
- *allow communities to better manage the significant legacy of risk from past settlement patterns by providing better support for local decision making*
- *establish a more sustainable approach to funding and financing coastal management actions*
- *be designed in collaboration with coastal councils*
- *promote greater collaboration between communities and councils in deciding how coastlines are to be managed*

It goes without saying that the Stage 2 Coastal Reform Package is a completely new regime of coastal management legislation for NSW with new definitions for the coastal zone and an entirely different process for compilation of a Coastal Management Program (compared to the current process relating to draft CZMPs)

Public Consultation Period
I attended the workshop relating to the Stage 2 Coastal Reform Package at Ballina at which Marian Fitzgerald, Santina Camroux and Bruce Coates presented on 25 November 2015 where a number of documents were handed out.

On page 5 of one of those documents entitled *"Our future on the coast – Overview of the coastal management reforms"*, it is outlined:-

- *"The elements of the reform relevant to the current consultation process" include "key elements of a draft coastal management manual"*

- *"**Have your say***
  The public consultation period is an important opportunity for the community to have their say on the reforms. We want to know whether we have the balance right and whether we could improve the draft framework.

  The Coastal reforms: our future on the coast consultation page at www.haveyoursay.nsw.gov.au enables you to make a submission on the reforms, ask a question or get further information.

  We are seeking your feedback on the elements of the reforms that are currently on exhibition:-

  .....

  key elements of a draft coastal management manual."

The public consultation period is allegedly open until 29 February 2016.

Meeting Minutes & Addendum - OEH Handout CBA Comments
I became aware of these documents (copy attached) when they were posted on the Byron Shire Council website late last week as part of the Agenda for the next Council Meeting.

One of those documents is an Addendum that I understand was prepared by Mladen Kovacs, the Chief Economist of OEH and the other is a Minute of a Meeting between representatives of OEH (Phil Watson, Mladen Kovacs & Ben Fitzgibbon), Byron Shire Council and its consultants.

The highlighted sections of these attached documents make a number of references to the Draft OEH Guidelines as the basis for asserting that the Cost Benefit Analysis prepared for Byron Shire Council in furtherance of the compilation of a draft CZMP under the existing legislation *"contains a number of key errors that affect the size and ranking of benefit cost ratios (BCR's) associated with the proposed options"*

The Addendum tabled re-calculated benefit cost ratios (BCRs) as agenda items for highlighting these key errors explained as follows:- *"The benefit cost ratios (BCRs) for coastal management options presented in the original CBA have been re-calculated correcting for data and calculation errors and any assumptions that were inconsistent with the OEH guidelines for CBA in relation to coastal risk"*

There can be little dispute that OEH has sought to apply the Draft OEH Guidelines relevant to the Stage 2 Coastal Reform Package (which are still, almost two months later, subject to the public consultation period) to the process of preparation of a draft CZMP under the current, and entirely different regime of coastal management legislation.

Fake Consultation Period
Given OEH has already sought to apply the Draft OEH Guidelines, it seems a reasonable conclusion that OEH never really intended to seek any public comment on the Stage 2 Coastal Reform Package in its entirety and that OEH had pre-determined the implementation of the Stage 2 Coastal Reform Package, as is, without regard to the legislative and parliamentary processes by which new statutory frameworks are normally enacted within NSW.

These are matters of very serious concern which undermine the legitimacy of the enactment of the entire Stage 2 Coastal Refrom Package and contradict many of the representations personally made by the presenters at the workshop I attended.

Kind Regards

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BRICKWORKS

John James

From: John James
Sent: Tuesday, 16 February 2016 4:06 PM
To: 'coastal.reforms@environment.nsw.gov.au'
Subject: Where is the mapping?

Dear Sir/Madam

I refer to my emails of 13 December 2015 and 8 February 2016 and note that I have not received a substantive response to the very serious concerns raised in those emails.

I have also not received an OEH PD Coastal Reform update email since Christmas Eve.

I attended the Ballina workshop afternoon session for coastal managers on 25 November (at which Marian Fitzgerald, Santina Camroux & Bruce Coates from OEH/Planning each presented) in my capacity as a member of the Byron Shire Council PRG for its draft CZMP.

I would like to address the representations made by the presenters at the workshop about the availability of mapping during the consultation period in response to the consternation voiced by a number of attendees about mapping not being available.

My recollection is that it was promised that the mapping would be out in January; in fact it was intended for three versions of mapping to be released and feedback was sought on which version should be adopted.

There is less than two weeks left in the scheduled consultation period.

As I understand things, there is still no mapping available.

Obviously, this reality directly contradicts the representations made at the workshop, which also paints a different light on a number of the other representations made by the presenters at the workshop.

Is the mapping being deliberately concealed from the public during the consultation period?

Can I ask you how you expect people to make submissions without any mapping being available?

The deadline for submissions must be postponed until the public has had reasonable access to the proposed maps of the four new management areas.

Kind Regards

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JAMES ST

BRICKWORKS

NSW GOVERNMENT | Planning & Infrastructure

Mr P Holloway
Acting General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Dear Mr Holloway

Byron draft Local Environmental Plan 2012 – Certificate to exhibit draft Plan

I am writing in response to your Section 64 submission dated 25 June 2012 and subsequent correspondence, requesting certification of Byron draft Local Environmental Plan 2012. I am pleased to advise that I have endorsed the draft Plan for exhibition and have attached the section 65 certificate.

As an opinion has not been issued by Parliamentary Counsel that the plan may be legally made, the Department has issued this certificate on the understanding that Council, when exhibiting the draft LEP, makes it clear to the public that the draft Plan may be changed to satisfy legal drafting requirements. Council must also provide a plain English version of the Plan for exhibition explaining what the Plan does.

Please note that references to the particular sections of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') in this letter relate to the previous plan making provisions repealed on 1 July 2009.

Council is reminded to place the relevant State Environmental Planning Policies, any Regional Environmental Plans (deemed SEPPs) and section 117 Directions that apply on exhibition with the certified draft Plan.

It has been identified that the draft Plan is inconsistent with the section 117 directions 1.1 *Business and Industrial Zones*, 1.2 *Rural Zones*, 1.3 *Mining, Petroleum Production and Extractive Industries*, 1.5 *Rural Lands*, 3.2 *Caravans and Mobile Home Parks* and 5.3 *Farmland of State and Regional Significance* and I have determined that the inconsistencies are justified as matters of minor significance in each case.

Schedule 2 of the certificate includes conditions requiring Council delete proposed clause 6.15 and the Coastal Risk Planning Maps (and make any consequential amendments) and amend the maps by deleting the area zoned E2 which corresponds with the area affected by the Coastal Risk Planning Maps and designating these areas as "deferred matter".

The reason for this condition is that as indicated to Council by letter from the Director General of 22 May 2012, the department prefers that no action be taken on coastal risk issues pending the outcomes of the Ministerial task force on improvements to coastal planning policy and the possible adoption of a new coastal zone.

[redacted]

Further minor changes to the format of the LEP maps may be required to be undertaken by Council after exhibition to ensure consistency with the *Standard Technical Requirements for LEP Maps Version 1.2 – March 2009*. The Department's Regional office can assist with this as necessary.

It is important that community consultation on the draft plan engages key stakeholders including government agencies. In particular landholders whose zoning designations have been altered to an environmental zone should be consulted and made aware of the proposed changes. Adequate supporting information should be made available to these landholders to explain the proposed new zones, land use permitted and the basis for establishing the zones.

Council should ensure that any final draft plan and maps submitted to the Department following community consultation are consistent with the Act and Regulations. Council should also note that the Department and Parliamentary Counsel may modify some local model clauses and your plan may need to be amended accordingly. The Department's Regional Office can assist Council to review the final plan before submission to the Minister.

I would like to thank Council for progressing the draft LEP in a highly professional manner and look forward to your ongoing commitment to finalise this new planning instrument.

If you have any questions in relation to this matter, please contact Jim Clark in the Department's Grafton Office on [redacted]

Yours sincerely

Neil McGaffin
Executive Director
Planning Operations

Enc: s65 Certificate, for Draft Byron LEP 2012*

NSW GOVERNMENT
Department of Planning

LEP practice note

STANDARD INSTRUMENT FOR LEPS

Standard zones

Note	PN 09–002
Date	30 April 2009
Related	

Environment Protection Zones

The purpose of this practice note is to prove guidance to councils on the environment protection zones in the standard instrument and how they should be applied in the preparation of local environmental plans.

Overview

The standard instrument for principal local environmental plans (LEPs) contains four environment protection zones specifically for land where the primary focus is the conservation and/or management of environmental values. The zones provide for varying levels of environmental protection from zone E1 to E4:

- **E1 National Parks and Nature Reserves**
  This zone is for existing national parks, nature reserves and conservation areas and new areas proposed for reservation that have been identified and agreed by the NSW Government.
- **E2 Environmental Conservation**
  This zone is for areas with high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. The zone provides the highest level of protection, management and restoration for such lands whilst allowing uses compatible with those values.

  It is anticipated that many councils will generally have **limited areas** displaying the characteristics suitable for the application of the E2 zone. Areas where a broader range of uses is required (whilst retaining environmental protection) may be more appropriately zoned E3 Environmental Management.
- **E3 Environmental Management**
  This zone is for land where there are special ecological, scientific, cultural or aesthetic attributes or environmental hazards/processes that require careful consideration/management and for uses compatible with these values.
- **E4 Environmental Living**
  This zone is for land with special environmental or scenic values, and accommodates low impact residential development.

  As with the E3 zone, any development is to be well located and designed so that it does not have an adverse effect on the environmental qualities of the land.

Additional considerations of each zone are located in Attachment 1.

Application of environment protection zones

The environment protection zone E1 is only to be applied to existing areas identified under the *National Parks and Wildlife Act 1974* or areas identified as proposed for national park or nature reserves agreed by the NSW Government.

The environment protection zones E2 through to E4 are applied where the protection of the environmental significance of the land is the primary consideration. Their importance for visitation, tourism and job creation should also be carefully considered.

Prior to applying the relevant zone, the environmental values of the land should be established, preferably on the basis of a strategy or from an environmental study developed from robust data sources and analysis. This is particularly important where land is identified as exhibiting high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. For example, in most cases, council's proposal to zone land E2 needs to be supported by a strategy or study that demonstrates the high status of these values. Under such a strategy or study, zoning would need to be appropriate and land uses would need to be capable of being sustained.

The application of these zones is also to be consistent with relevant legislation, State and regional planning policies and subregional strategies.

The zones are to be applied consistently so that their value is not diminished by inappropriate application or by permitting incompatible uses.

The detailed zone guide attached to this practice note will assist council's application of the environment protection zones. In selecting additional uses, council is supported by the requirement that these be consistent with the mandatory zone objectives and any mandatory uses.

Supplementary detail

Zones E2 to E4 will generally need to be supplemented by detailed provisions in the development control plan. These would most likely cover the design, construction and management of uses in these zones, particularly with respect to eco-tourism, tourist accommodation and dwellings (where permissible).

Identification of areas for future acquisition

Land to be acquired for certain public purposes

Where council is aware of land to be reserved for future acquisition for certain public purposes, such land will be identified according to its intended future public purpose under the *Environmental Planning and Assessment Act 1979*.

The land reserved for future acquisition is to be identified on the Land Reservation Acquisition Map accompanying the principal LEP and the acquiring authority of the State shown in clause 5.1.2 of the principal LEP. Land listed in clause 5.1.2 requires the relevant authority to consent to the listing.

Other circumstances

The range of uses proposed to be permitted in the E zones is a consideration for council in consultation with the Department of Planning. In determining uses, council should be aware that the range of uses should not be drawn too restrictively as they may, depending on circumstances, invoke the *Land Acquisition (Just Terms Compensation) Act 1991* and the need for the Minister to designate a relevant acquiring authority.

Unless a relevant acquisition authority has been nominated and that authority has agreed to the proposed acquisition, council should ensure, wherever possible, that the range of proposed land uses assists in retaining the land in private ownership.

Use of alternative zones

Where the primary focus is not the conservation and/or management of environmental values, a different zone type should be applied.

Such zones may be applied in conjunction with local environmental provisions and maps in the principal LEP to identify any special considerations.

Local environmental provisions

Local environmental provisions may be applied where zone provisions need to be augmented in order to ensure that special environmental features are considered. For example, rural land that is still principally for agriculture but which contains environmentally sensitive areas may be zoned RU1 or RU2 and the environmental sensitivities managed through a local provision and associated ('overlay') map.

The benefits of this approach include:

- The intended conservation or management outcomes for land can be clearly articulated in the LEP.
- Areas are clearly defined and controls streamlined.
- Sub-zones are not created. (These are not permitted under the standard instrument).

Provisions for environmentally sensitive areas may include multiple natural resource or other features such as acid sulfate soils and riparian land. A local provisions clause may include objectives and, where the sensitivity is a mappable attribute, a map would accompany the provision.

Any local provision will apply in addition to the objectives and land use table for zones. The local provision must be consistent with mandated objectives and permissible or prohibited uses of the relevant zone/s.

Split zone considerations

Where council wishes to acknowledge different land capabilities on a single allotment, council may consider applying more than one zone across the land. For example, this approach may be considered appropriate over an allotment to distinguish between areas of environmental value and areas for agricultural purposes.

In choosing this approach, council needs to consider the implications of such splits. Appropriate minimum lot sizes and development standards are to be selected to support the intent of the zones and identify a suitable scale and intensity of development. Identifying appropriate minimum lot sizes at the same time as zone splitting would reduce the potential for future uncertainty if land is proposed for subdivision at a later stage.

Application of legislation

Council needs to be aware of the following:

- section 117 directions apply, including Direction 1.3—*Mining, petroleum and extractive industries* and Direction 2.1—*Environment protection zones*. Council must check the relevance of all directions and justify any proposed inconsistency
- State and regional environmental planning policies apply and may include other uses that may be permissible in a particular zone. Other uses may be provided in other planning instruments, e.g. State Environmental Planning Policy (Infrastructure) 2007 and State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.

Further information

A copy of this practice note, the standard instrument, and other specific practice notes and planning circulars on using the standard instrument for principal LEPs, can be accessed on the Department's website at http://www.planning.nsw.gov.au/planningsystem/localplanning.asp.

Authorised by:

Sam Haddad
Director-General

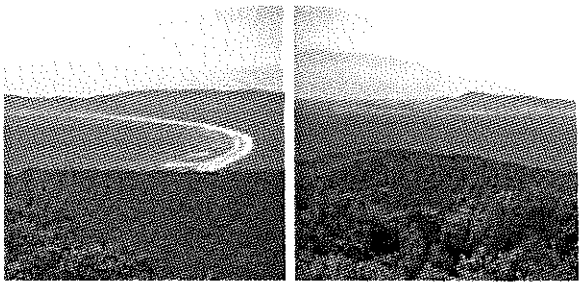
Attachment 1 – Additional zone considerations
Attachment 2 – Frequently asked questions

Important note

This note does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this note.

E1

National Parks and Nature Reserves



Application

This zone is for land reserved under the *National Parks and Wildlife Act 1974*, including existing national parks, reserves and conservation areas. This zone is also to be applied to new areas proposed for reservation as identified and agreed by the NSW Government.

This zone is not generally intended to apply to Crown land reserved for conservation purposes under the *Crown Lands Act 1989*.

Objectives and uses

It is not necessary to add any additional objectives or uses to this zone, as the relevant matters are already covered by the standard provisions.

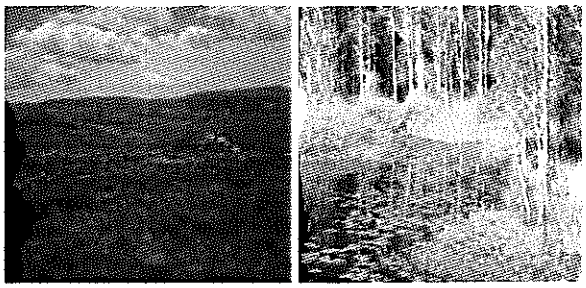
Uses currently authorised under the *National Parks and Wildlife Act 1974* are permitted without consent within the zone.

Other considerations

Land reserved for acquisition for future national park should be identified on the Land Reservation Acquisition Map. The approval of the Department of Environment and Climate Change must be obtained for the reservation of such land.

Waterways within a National Park will also be zoned E1.

E2
Environmental Conservation



Application

Use of the zone will depend on land capabilities and the proposed future uses based on environmental protection values and strategic directions.

The use of the E2 zone needs to be supported by an appropriate assessment of the area meeting the zone objectives of high ecological, scientific, cultural or aesthetic values of this zone.

The following are examples of where the E2 zone should also be applied:

- lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing endangered ecological communities
- high conservation coastal foreshores and land acquired, or proposed for acquisition, under a Coastal Lands Protection Scheme
- some land with a registered BioBanking agreement
- land under the care, control and management of another catchment authority such as the Department of Water and Energy or a council for critical town water supply, aquifer or catchment as appropriate
- land with significant Aboriginal heritage values, if appropriate
- **coastal foreshores and land subject to coastal hazards, including climate change effects**
- land currently zoned for environmental protection where strict controls on development apply, e.g. steeply sloping escarpment lands, land slip areas.

The section 117 Direction 5.2—*Sydney drinking water catchments* identifies Special Areas (owned or under the care, control and management of the Sydney Catchment Authority). In the hydrological catchments in this direction, an E2 zone is to be applied to those parts of the Special Areas above the full water supply level.

Objectives

The mandatory zone objectives focus on protecting land with high conservation value and preventing development that could destroy, damage or otherwise have an adverse effect on that value.

Local objectives may reflect the particular types of values in the E2 zone within the council area. For example, an LEP might include an additional objective to identify the protection of drinking water catchment lands.

Objectives referring to land uses need to be carefully worded to avoid reducing the conservation focus of the zone. For example objectives such as 'to provide uses compatible with the high ecological, scientific, cultural or aesthetic values of this zone' may be appropriate under carefully controlled conditions.

Uses

There are no mandatory permitted uses for this zone.

Councils should carefully choose uses that protect the high conservation value of the land and avoid adverse effects in relation to natural hazards.

Additional uses that may be suitable (as permitted with consent) depending on location, include, but are not limited to:

- bed and breakfast accommodation
- eco-tourism[1]
- environmental facility
- farm stay accommodation
- Information and education facility (environmental information and education)
- water recreation structure
- wetland rehabilitation.

It is important that councils maintain the integrity of the E zones by including only uses consistent with the zone objectives. As well, **councils should, wherever appropriate, retain existing uses that maintain conservation land capabilities.**

In relation to the standard instrument for principal LEPs the following uses are mandatory prohibited uses: business premises, hotel or motel accommodation, industries, multi dwelling housing; recreation facilities (major), residential flat buildings, retail premises, seniors housing,

[1] The draft definition of '**eco-tourism development**' means nature-based tourism development with a primary focus on the education, interpretation, cultural understanding and appreciation of the natural environment that is managed to be ecologically sustainable.

service stations, and warehouse or distribution centres.

Councils should be aware that uses should not be drawn too restrictively as they may, depending on circumstances, invoke the *Land Acquisition (Just Terms Compensation) Act 1991* and the need for the Minister to designate a relevant acquiring authority.

In selecting additional uses, the following are unlikely to be suitable in the E2 zone:

- intensive agriculture
- rural industry
- signage (other than as ancillary to environmental facilities).

Where conservation is not the main objective, another zone series is appropriate, e.g. the residential or rural zone series.

Other considerations

Generally an acquisition authority for E2 land would not be identified unless the land is expressly set aside for a public purpose under section 26(1)(c) of the *Environmental Planning and Assessment Act 1979*, e.g. as public open space or a public reserve.

However, depending on circumstances, if the permitted uses are considered to be drawn too restrictively, a relevant acquiring authority may need to be designated.

E3

Environmental Management

Application

The following are examples of where the E3 zone may be applied:

- areas of special ecological, scientific, cultural or aesthetic attributes that require management in conjunction with other low-impact uses, e.g. scenic protection areas, areas with contiguous native vegetation or forest cover.
- as a transition between high conservation value land, e.g. land zoned E1 or E2 and other land such as that zoned rural or residential.
- where rehabilitation and restoration of its special environmental qualities are the primary purpose.
- highly constrained land where elements such as slope, erodible soils or salinity may have a key impact on water quality within a hydrological catchment.

There are instances where environmentally significant land has been zoned rural in the past but has not been used primarily for agriculture. Such lands should be zoned E3.

However, the zone is generally not intended for cleared lands including land used for intensive agriculture.

Objectives

The mandatory zone objectives focus on protecting, managing and restoring areas with special ecological, scientific, cultural or aesthetic values and to provide for a limited range of development that does not have an adverse effect on those values.

Additional local objectives may be applied if they are compatible with the mandatory objectives and uses.

Uses

Mandatory uses

Dwelling houses are a permitted use (with consent) in this zone. Home occupations may be carried out without consent.

In accordance with the direction for this zone, environmental protection works and roads must be permitted with or without consent.

A number of land uses considered to be inappropriate for this zone are listed as mandatory prohibited uses.

Additional uses

Councils can specify additional uses to be permitted in the zone at Items 2 and 3.

Councils may generally (but need not) permit, with consent, home industries, kiosks, cellar door premises, neighbourhood shops and roadside stalls in the zone. All other forms of retail premises and industries are prohibited in the zone.

Councils should choose uses that do not have an adverse effect on the special values of the land. Generally, if intensive forms of agriculture are proposed, a rural zone would be more appropriate (than an E zone). Additional uses that may be suitable (as permitted with consent) depending on location, include, but are not limited to:

- bed and breakfast accommodation
- building/identification signs and business identification signs, e.g. as exempt or complying development
- community facility
- dwelling house
- eco-tourism[2]
- environmental facility
- farm stay accommodation
- home business, home industry and home-based child care
- information and education facility
- kiosk
- recreation area
- water recreation structure
- wetland rehabilitation.

It is important that councils maintain the integrity of the E zones by including only uses consistent with the zone objectives. As well, **councils should, wherever appropriate, retain existing uses that maintain conservation land capabilities.**

Unless they are existing uses in the zone, the following uses are generally considered to be unsuitable:

[2] The draft definition of '**eco-tourism development**' means nature-based tourism development with a primary focus on the education, interpretation, cultural understanding and appreciation of the natural environment that is managed to be ecologically sustainable.

- intensive plant agriculture and intensive livestock agriculture
- residential accommodation other than detached dwelling houses
- retail premises (excluding neighbourhood shops)
- rural industry
- storage premises.

Councils should be aware that uses should not be drawn too restrictively as they may, depending on circumstances, invoke the *Land Acquisition (Just Terms Compensation) Act 1991* and the need for the Minister to designate a relevant acquiring authority.

Consideration of mining

As part of council's consideration of whether or not to apply the E3 zone, council must take into account the section 117 Direction 1.3—*Mining, petroleum production and extractive industries* in relation to significant resources and Direction 2.1—*Environmental protection zones* and justify any inconsistency.

Under the State Environmental Planning Policy (SEPP) (Mining, Petroleum Production and Extractive Industries) 2007, underground mining can be carried out on any land with development consent. Under this SEPP, surface mining can be carried out with consent on land for which agricultural and industrial uses are permitted (with or without consent).

Where there are mining, petroleum or extractive industries resources identified in a section 117 Direction, and a council proposes to apply the E3 zone, council needs to clarify the permissibility of mining in this zone. Councils are therefore advised to include the following note at the beginning of the E3 land use table:

> 'Note. State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 may apply to land within this zone.'

E4
Environmental Living

Application

This zone will be typically applied to existing low impact residential development. This may include areas already zoned for rural residential that have special conservation values. Where lands have higher conservation values and fewer intended land uses than the E4 zone, an E2 or E3 zone may be appropriate.

Regional councils should distinguish carefully between the E4 zone, the RU4 Rural Small Holdings and R5 Large Lot Residential zones to address environmental, agricultural and residential land capabilities respectively.

Where small holdings undertake agricultural production such as viticulture or cropping such as growing berries, the RU4 zone should be considered. If there are few environmental considerations, then R5 may be the appropriate zone.

Objectives

The mandatory zone objectives seek to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values and to ensure that residential development does not have an adverse effect on those values.

Any additional objectives should reflect local characteristics and not duplicate the matters covered in the core objectives.

Uses

Mandatory uses

The zone permits dwelling houses (with consent) and home occupations (without consent).

In accordance with the direction for this zone, councils must permit environmental protection works and roads with or without consent in the zone.

Additional uses

Councils can specifically list additional uses to be permitted in the zone at items 2 and 3. The direction for this zone allows home industries to be permitted if desired (they would otherwise be prohibited under the term industries).

Care should be taken to select uses that are in keeping with the special conservation values of the land and complement low impact residential development. Additional uses that may be suitable (as permitted with consent), depending on location, include, but are not limited to:

- bed and breakfast accommodation
- building identification signs and business identification signs
- caravan park
- community facility
- dwelling house
- eco-tourism[3]
- environmental facility
- home business, home industry and home-based child care
- information and education facility
- kiosk
- recreation area
- secondary dwellings, e.g. attached to the principal dwelling
- tourist and visitor accommodation.

Additional uses that are generally unsuitable in the zone include:

- business premises
- office premises
- residential accommodation (other than dwelling houses and secondary dwellings)
- retail premises
- rural industry
- storage premises.

Other considerations

Where environmental capabilities are the primary concern on land that may be zoned R5 Large Lot Residential, RU4 Rural Small Holdings or E4 Environmental Living, preference should be given to the E4 zone.

[3] The draft definition of '**eco-tourism development**' means nature-based tourism development with a primary focus on the education, interpretation, cultural understanding and appreciation of the natural environment that is managed to be ecologically sustainable.

Frequently asked questions

Q. How are additional local environmental provisions to be referenced in LEPs?

A. Areas should be mapped and a separate clause included. For example a map identifying scenic protection areas should be referred to as follows:

6.1 Scenic protection

(1) The objective of this clause is_____.
(2) This clause applies to land identified as a scenic protection area on the Scenic Protection Map.
(3) Before granting consent to development to which this clause applies, the consent authority must be satisfied that the development:
  (a) _____
  (b) _____.
(4) For the purpose of this clause, Scenic Protection Map means the [Name of local government area or other relevant name] Local Environmental Plan [Year] Scenic Protection Map.

It is important that the map clearly identifies 'Scenic protection area' in the legend and is prepared in accordance with the LEP Mapping Requirements.

Q. Is the E2 zone suitable for public open space land that has high conservation value?

A. Public open space principally used for public recreation purposes should be zoned RE1 Public Recreation, as this zone includes the protection of the natural environment among its core objectives. (Where recreational space is to be used for golf courses, registered clubs, caravan parks and the like it should be zoned RE2).

Areas of bushland within a public reserve will be protected under the plan of management required for community land under the *Local Government Act 1993.*

The E2 or E3 zone can be applied to public land such as bushland reserves with very high conservation value if the land meets the criteria for the application of the zone, for example where future land use is restricted for conservation reasons. This may be considered particularly where a bushland park offers recreation on walking trails and in the form of lookouts rather than as sporting fields and children's playgrounds.

Q. How would zone changes affect existing uses?

A. Existing legal land uses will not be affected, providing these remain in use.

Q. Can dwelling houses be prohibited in the E2 zone?

A. Yes, however, this needs to be adequately justified on conservation grounds. Note, if dwelling houses and other uses were previously permitted on this land and uses including dwelling houses are then proposed to be prohibited, the land may be considered to be an acquisition zone if a reasonable range of uses are not permitted.

Q. Council has recent detailed mapping of vegetation that differs from areas identified in SEPP 14 and SEPP 26. Should the new information be used to determine the zone boundaries or should the mapping be based on the SEPP maps?

A. The extent of SEPP lands remains that identified in the relevant SEPP map. Where new information identifies additional land with conservation value assets, these lands may be considered for inclusion in an appropriate environment protection zone, e.g. land including old growth forest.

Q. How should land be zoned which is owned by the Sydney Water Catchment Authority but which lies below the high water mark or is operational land.

A. This land should be zoned SP2 Infrastructure and the uses annotated on the relevant land zone map.

Addendum - OEH Handout CBA Comments

BYRON BAY Coastal Erosion Mitigation CBA – preliminary comments

A review by OEH has identified a number of major errors and issues in the Cost-benefit Analysis prepared in association with the *Coastal Management Hazard Study – Byron Bay Embayment* prepared for Byron Bay Council (hereafter "the CBA"). Errors and issues have been broken down into 4 main categories: use of erroneous data and / or assumptions, over-estimation of property values, insufficient scoping of tourism impacts, and costing of works.

1. Use of erroneous data and / or assumptions

The benefit-cost ratios (BCRs) for coastal management options presented in the original CBA have been re-calculated correcting for data and calculation errors and any assumptions that were inconsistent with the OEH guidelines for CBA in relation to coastal risk[1]. Errors that have been corrected are listed below:

1. Planning and assessment horizon has been set at 35 years for all Options (was previously 36 years for Option 6) [minor change in BCR of Option 6 only]
2. Option 2 (Retreat) includes the cost of repairing a breach of Belongil Spit (annual cost of $180,000 based on total cost of repair of $1 million and breach event associated with 1 in 5 ARI) **in every year of the 35 year planning horizon, except Year 1**.

   We have reversed this situation such that a breach of Belongil Spit would be repaired if it were to occur in Year 1. Any breach occurring after Year 1 would **not** be repaired, given that property damages have already been written down and there would be no requirement to maintain access to affected dwellings.

[Note that we do not consider that this scenario of "immediate retreat" represents an economically efficient Retreat strategy, but have entered costs and benefits consistent with an "immediate retreat" assumption for the sake of accuracy in the CBA]

3. Property value losses due to wall removal under Option 2 (Retreat) have been entered as total rather than marginal values. It appears from the CBA text that this was not the consultant's intention (although the text is somewhat unclear):
   "For the purposes of this assessment, the value of the avoided loss of property damage under the retreat option is the value of assets protected under Scenario 1 (as the Status Quo limits the damage to this level through maintaining the existing seawalls and geobag structures). The avoided expenditure on this maintenance is included as a benefit of retreat, once it has been implemented."

   The treatment of property damage costs in the spreadsheets is inappropriate – damages have been entered into CBA calculations are the full value of "AAD after walls removed" without subtracting the value of property damage that would have occurred under the status quo (labelled as "AAD status quo" in spreadsheets). Property damage costs have been recalculated as the marginal damage, relative to the status quo.
4. Estimated property impacts have been halved to account for 50% non-owner occupied properties. For non-owner occupied properties impacts are either external to the CBA reference population, and / or likely to be offset by price effects in other (non-impacted) rental properties.

   The figure of 50% was taken from reported home ownership status for the 3 relevant SA1s (smallest possible statistical areas) in the most recent Census data.
5. Tourist visitation expenditure ("Tourvis") entered into spreadsheet calculations does not account for the proportion of Byron tourists who visit the beach (although it appears from Table 11 of the original version of the CBA that it was the consultant's intention to account for this portion of tourists and that this is a transcription error).

[1] Using Cost-benefit Analysis to Assess Coastal Management Options: Guidance for Councils – draft report submitted by OEH to NSW treasury for review

6. Tourist expenditure has been reduced to 0.3 x the original value to represent only producer surplus portion (0.3 has been used as the parameter as an outcome of discussions with DPI)
7. The original CBA estimated tourism impacts "when [the beach is] eroded" (as labelled in spreadsheet comments) accruing to 83% of the relevant tourist population. This figure was calculated on the basis of research into likely rates of beach substitution. However, we consider that the substitution rates have been (unintentionally?) misapplied:
   The effect of erosion on the 83% of tourists who **are** willing to substitute beaches is likely to be minimal (these tourists are likely to incur only a small additional travel cost[2]). Economic impacts from reduced tourism participation (i.e. reduced tourism expenditure) will only arise from the 17% of tourists who are unwilling to substitute beaches. We have recalculated loss of tourism expenditure accordingly.

[Note that additional impacts on tourist experience ("when (beach is) not eroded" in the consultant's spreadsheet note) are still calculated to account for the entire tourist relevant tourist population (those that use Belongil).]

8. Tourism calculations assume that beach width remains constant under the 'status quo'. However, current retreat of the Belongil Beach site suggests that further loss of the beach in future years is a more likely scenario. We model a constant rate of beach loss down to 10% over the 35 year planning period (which accounts for the fact that much of **public land** access is likely to be lost over that period). We note that altering this assumption to reflect a situation where 50% of access is retained at year 35 has only a minor effect on the outcomes displayed in Table 1.
9. Tourist benefits have been assumed to commence in Year 1 for all Options (this was previously inconsistent amongst Options)
10. We consider that resident recreation values have already been captured in resident house values, so including additional values for this field represents double counting. Even if this were not the case, we assume that most residents would substitute for another beach, incurring only minor travel costs.

Amended BCRs are provided in Table 1.

Table 1: BCRs from CBA with errors and erroneous assumptions corrected**

Option	Description	NPV (original)	NPV (amended)	BCR (original)	BCR (amended)
2	Planned retreat	-16.86	**-4.04**	0.73	**0.85**
3	Groyne Seawall Nourishment	17.14	**-26.69**	1.31	**0.52**
4	End Control Seawall Nourishment	17.36	**-21.26**	1.37	**0.55**
5	End control Seawall no Nourishment	19.26	**-8.94**	1.65	**0.70**
6	Adaptive management	230.6	**-16.02**	1.63	**0.56**

** Note "uplift factor" of 14% (see 2B below) has also been removed for calculation of figures in Table 1.

[2] This assumes no effects of beach crowding at other sites – see Section 3 for full discussion

2. Over-estimation of property values

In addition to correcting for errors and inconsistencies with OEH guidelines, we have identified additional errors relating to the over-estimation of property values. However, a lack of clarity around methods employed in the CBA and have precluded definitive correction of property estimation errors[3]. We believe over-estimation of property values arises from a number of sources:

A. An alternative property valuation by the Centre for International Economics (CIE) found that an the unimproved property value of affected properties is likely to be around $60M (compared with $108.7M used in the CBA)

B. The property "uplift factor" of 150% that has been applied to account for differences in unimproved vs. market values is problematic for two reasons:

   First, an independent assessment by CIE indicates an uplift factor of 129% would be more appropriate for waterfront properties in Byron Bay (those within 110m of the coast)

   Second, the consultant has applied the uplift factor to all impacted properties, regardless of whether they are improved or unimproved. This is particularly problematic given that the uplift factor appears to have been calculated from sales of improved properties only, and that ~75% of properties likely to be immediately affected by erosion are unimproved (from figures contained in the associated UNSW / WHL report).

C. The one-off property "uplift factor" associated with an increase of property values in response to protective structures appears unwarranted. Prices in the affected Belongil region appear to have retained value equivalent to other waterfront Byron properties (from CIE figures described above). Moreover, it would be difficult to ascribe any recent decline in property value to the risk of erosion – particularly given other substantive changes relating to the regulation of holiday letting within the Byron LGA.

Table 2 presents amended BCRs when property values are corrected for low- and high-range over-estimation of property values.

Table 2: BCRs with amended property values

Option	Description	BCR (original)	BCR (Table 1)	BCR (low-range over-estimation)	BCR (high-range over-estimation)
2	Planned retreat	0.73	0.85	0.93	1.17
3	Groyne Seawall Nourishment	1.31	0.52	0.50	0.46
4	End Control Seawall Nourishment	1.37	0.55	0.53	0.48
5	End control Seawall no Nourishment	1.65	0.70	0.66	0.58
6	Adaptive management	1.63	0.56	0.53	0.56

[3] To date, OEH has not been given access to property value data or Monte-Carlo modelling that has been used to inform property valuations for full review

3. Insufficient scoping of tourism impacts

The scoping of tourism values in the CBA is very limited, and fails to account for any potential reduction in beach-based tourism values that might arise in association with amenity impacts or changing surf conditions.

We have undertaken a sensitivity analysis to simulate potential loss of consumer surplus from changed amenity in association with coastal erosion and / or built structures. We tested for loss of consumer surplus ranging from 2.5 to 15%.

We also consider that additional efforts should be made to account for potential impacts of the proposed Options on local surfing conditions. We note that the consultant mentions in his report that surfers have a relatively high WTP for improved surf conditions. He also notes that only 1.3% of the general population surfs (although rates of participation in coastal areas is likely to be higher), and that the nature of change in surf conditions (improved vs. diminished) is unknown.

We believe a number of other factors to be salient:

- The beach-use survey undertaken by Umwelt as part this project indicates that 43% of Byron beach users are surfers
- Belongil is one of the top four iconic surf breaks of the Byron region
- Surf breaks are unlikely to be easily substitutable – different breaks appeal to different skill levels, are available under different weather conditions, and Byron surfers already report crowding as a major issue.

Effects on surfers are likely to comprise a major component of the overall tourism impact and require further investigation.

Table 3 shows the results of sensitivity analysis of potential tourism impacts associated with alternative management options.

Table 3: BCRs arising from sensitivity analysis of potential impacts on beach-based tourism values

Option	Description	BCR (original)	BCR (low-range property over-estimation)	BCR (+ low-range tourism impact)	BCR (+ high-range tourism impact)
2	Planned retreat	0.73	0.93	0.64	1.07
3	Groyne Seawall Nourishment	1.31	0.50	0.39	0.66
4	End Control Seawall Nourishment	1.37	0.53	0.44	0.67
5	End control Seawall no Nourishment	1.65	0.66	0.61	0.69
6	Adaptive management	1.63	0.53	0.51	0.56

Meeting minutes

Byron CBA Workshop 2

8 December 2015

Workshop time: 11.00 -17.00 (EST)
Location: Bond University, Gold Coast

Meeting attendees:
Shannon Burt (BSC), Sharyn French (BSC), Catherine Knight (BSC), James Carley (WRL), Dave Anning (sub consultant GCCM), Mladen Kovac (OEH), Elizabeth Heagney (OEH), Phil Watson (OEH), Ben Fitzgibbon (OEH)

Chair: Shannon Burt

Agenda Items:

No.	Agenda Item
	Opening remarks by Mladen Kovac (OEH Chief Economist): • CBAs are difficult and challenging, • Some elements of Byron's CBA exceeds what other councils have done and in some respects it is the most comprehensive so far – but it contains a number of key errors that affect the size and ranking of benefit cost ratios (BCRs) associated with the proposed options • BCRs from this CBA are extremely sensitive to key assumptions.
1	**Discuss the results of OEH CBA review with a particular focus on-**
	a) Clarifying OEH technical advice on revising cost and benefit calculations in the CBA:
	(i) Council has requested a particular focus on Table 1 of the OEH CBA review advice as a baseline for the discussion. With reference to the numbered points in the OEH Handout (see Addendum), under the first main point (1) 'Use of erroneous data and assumptions', it was noted/agreed: #1: Minor impact. Planning and assessment horizon 35 years (Options 1 to 6), 36 years (Option 6 only). Agreed to amend error. #2: Minor impact. Option 2 (retreat) includes annual breach repair of $180,000 in every year except year 1 ($1M total cost of repair, 1 in 5 year ARI). Agreed breach repair to continue until property values to the north drop below the value of repair. Note also that status quo situation has changed since the latest version of the CBA due to recently constructed works at Manfred St. #3: Most significant impact. Property value losses due to wall removal under Option 2 (Retreat) have been entered as total rather than marginal values relative to the Status Quo. Agreed to correct. Application of marginal values to status quo. Note two possible permutations to the status quo, minimal property losses vs greater property losses. Note that as this error applied only to a single option (Retreat) it has a major effect on the ranking of different options in the original CBA.

No.	Agenda Item
	#4: Significant impact. Non-owner occupied portion of properties is 50%, as based on most recent ABS census data. Property impacts have been halved to account for 50% non-owner occupied properties. Council suggested sensitivity testing based on two scenarios (50% and 100%). Note however OEH position that Treasury Guidelines for CBAs require an LGA boundary to the CBA (hence the 50% figure should be used). #5: Minor impact. Tourist visitation expenditure ("Tourvis") does not account for proportion of Byron tourists who visit the beach, transcription error at Table 3 of CBA. Agreed to amend error. #6: Moderate impact. Tourist expenditure has been reduced to 0.3 x the original value to represent only producer surplus portion. Note Draft CBA Coastal Guidelines, November 2015 regarding producer surplus. #7: Minor impact. The effect of erosion on tourists and visitation to beaches can be calculated in a number of ways. Agree to run with consultant's figures given that the impact on BCRs is minor (especially in light of corrections made at #6). #8: Minor impact. Tourism calculations should account for diminishing beach width under the status quo. Technically agree with adjustment to Status Quo Option. #9: Minor impact. Tourist benefit assumed to commence in year 1 for all Options, inconsistent. Agree with year 1 for all options (or 1 year after works for adaptive management or other staged works). #10: Minor impact. Agree with consultant that resident recreation values have been captured in resident house values for only a subset of Byron Shire residents. Agree with consultant's approach. **NB** Table 1 figures also reflect removal by OEH of the one-off property uplift factor (14% reverse premium) from property values. Refer 2(c) of OEH handout. The application of the 14% uplift factor is not considered relevant to the Byron context (unless it can be proved otherwise through analysis of housing data or other suitable method)
	(ii) Clarify what the data source was (for relevant analyses) and how it was treated in the analysis. Detailed at (i) and Addendum where relevant for the OEH analysis.
	(b) Identifying if/where alternate approaches are suitable on the basis of new information provided by council in relation to property values or other data not yet seen by OEH:
	(i) Property values Valuer General figures used for property land valuation, plus house cost (Rawlinsons Australian Construction Handbook, building footprint). Agreement with approach, a non-issue. Clarification that property 'uplift factor' of 150% not used by consultants in CBA analysis, only used in report commentary as a guide. This is separate to the one-off uplift factor (14.1 % reverse premium) as a market response to engineered protection being implemented that the OEH removed from Table 1 from property values. Average annual damages calculated based on probabilistic assessment of planned retreat, Monte Carlo simulations. AAD did not take into account 20 m trigger for retreat from

No.	Agenda Item
	erosion escarpment. Losses for buildings occurred when erosion escarpment reached structure , losses for land were calculated to the edge of erosion escarpment.
	(ii) Breach of Manfred Street Refer Appendix J of report for concept of breach and treatment under Planned Retreat, based on 2012 photogrammetry, dune (seawalls removed) breached in a 5 year ARI storm erosion event. Assume 1 major repair over CBA period ($1M), equates to $180,000 each year. Note comments under agenda item 1a (i) #2 above.
	(iii) Other n/a
	(c) Presenting CBA sensitivity to key parameters relating to tourism & property effects and discuss implications.
	Sensitivity to property values With reference to the second main point (2) 'Over-estimation of property values', at the OEH Handout (Addendum), it was noted/agreed by participants: #2a: Property valuation data from CIE clarified, refer 1(b)(i). Agreed, non-issue. #2b: Property 'uplift factor' of 150 % not used by consultants in CBA analysis, only used in report commentary as a guide. Agreed, non- issue. #2c: One-off property uplift factor associated with increase of property values in response to protective structures has been removed from the OEH BCRs in Table 1, refer note at 1(b)(i) As per #2a and #2b, the property value sensitivity analysis, Table 2 in OEH advice, is no longer necessary.
	Sensitivity to tourism values With reference to the third main point (3) at the OEH Handout (Addendum), it was noted/agreed by participants: #3: There are a range of tourism impacts beyond beach width and access, for example potential loss of producer surplus as a result of changed amenity from coastal erosion and/or built structures, for example surfing impacts. Given sensitivity, as per Table 3, OEH suggest further investigation and analysis.
2	**Discuss application of CBA to coastal management options, with particular focus on:** **a. Scoping and selection of coastal management options** i. Staging of works through time • Engineering options • Retreat • Adaptive Strategy
	(i) Staging of works through time - Engineering options: All engineering works will be staged and timing of works will affect economic analysis.
	Staging of works through time – Retreat: Discussion around two retreat options: active removal of all seawalls upfront (in year 1

No.	Agenda Item
	under current Option) and passive removal of seawalls (failure through natural physical processes) – up front 'active removal of seawalls' and associated cost in year 1, may affect results, noted for further consideration as per a sensitivity analysis.
	Staging of works through time - Adaptive Strategy: Under an adaptive approach, timeframes for stages somewhat unknown and dependent on outcomes / performance of former stages but an assumed staged timing has been developed and documented in CBA.
	Uncertainty surrounding major cost components, direction of BCRs by applying sensitivity assumptions: **Sand Nourishment** Acknowledged this is a critically sensitive component. OEH expressed serious doubts about feasibility of the sand nourishment options proposed. Two costings within the CBA – large and minor scale nourishment, there is also a 'no nourishment' Option. CBA may benefit with an adaptive option with no nourishment, noting that *Coastal Protection Act 1979* (CP Act) requires CZMPs to make provision for protecting and preserving beach amenity and managing associated impacts for proposed construction of coastal protection works, refer CP Act 55(c)(1).
	ii)Uncertainty surrounding major cost components • Display the direction of the BCR ratios by applying sensitivity assumptions. • Engineering costs may change from estimates, consultant noted 15% contingency is common engineering practice, but 20% contingency built into figures for this project.
3	**Concluding discussion and where to from here.**
	Minutes to be distributed to attendees for confirmation. Discussion was very beneficial, many issues associated with the CBA, as prepared by the consultants, and the OEH review of the CBA, were clarified.
4	**Seek confirmation of Minutes**

From: Matthew Clark [redacted]
Sent: Monday, 14 December 2015 9:53 AM
To: OEH PD Coastal Reforms Mailbox
Cc: Marian Fitzgerald
Subject: FW: Information sessions on the coastal management reforms
Attachments: SCopier15100812380.pdf

See submission below

From: John James [redacted]
Sent: Sunday, 13 December 2015 8:39 AM
To: Bruce Coates; Marian Fitzgerald; Santina Camroux
Subject: Information sessions on the coastal management reforms

Dear Marian, Santina & Bruce

I attended the Ballina workshop afternoon session for coastal managers on 25 November in my capacity as a member of the Byron Shire Council PRG for its draft CZMP

At the workshop, I voiced my opinion that it was premature to seek any effective feedback given the state of the materials able to be publicly exhibited (and the number of critical documents and mapping unable to be disclosed to date), and the timing in the calendar year was such that it effectively made it very difficult to meaningfully respond within the prescribed time line.

I re-iterate and elaborate about these concerns below. I have also referred to responses made by some of you during the workshop. Please do not take these as any personal criticism of yourselves as these references are not intended as such, but merely to provide a succinct indication of how little information is available on critical issues and how premature this consultation process is. I can only imagine what a herculean task producing the Stage Two Coastal Reform Package must represent.

During the workshop, attendees were encouraged by you to respond with feedback as early in the process as possible, and in a staged manner if need be. In later emails, I will deal with the specific content of the Stage Two Coastal Reforms

A. Coastal Reform Objectives
To illustrate some of the criticisms, I have referenced a powerpoint presentation entitled “Stage Two Coastal Reforms” presented by Marian Fitzgerald in July 2015 [“Coastal Reform Objectives PPT”]

That document attributed Minister Stokes as outlining in November 2014 that:-

“We need to replace our current legislative and policy settings with a modern, coherent coastal management framework that is responsive to current needs and future challenges”

More specifically, Minister Stokes was attributed as identifying that the reforms should, inter alia:
* “deliver a modern and simpler legislative framework that minimises our exposure to future risk and liability
* allow communities to better manage the significant legacy of risk from past settlement patterns by providing better support for local decision making
* establish a more sustainable approach to funding and financing coastal management actions
* be designed in collaboration with coastal councils
* promote greater collaboration between communities and councils in deciding how coastlines are to be managed

For reasons outlined in some detail below, the Stage Two Coastal Reform Package, in its current

state, does not deliver on many of the fundamental underlying objectives attributed to Minister Stokes

B. Why has the consultation begun on such short notice when all the documents are not available?

It is impossible to have effective consultation when we don't have the SEPP, the Mapping or the Manual as at today's date. Given the time of year, it is now effectively impossible to obtain any meaningful advice until well into the 2016 especially having regard to the likely complexity of the documentation and the interaction between coastal planning and the over-riding legal framework.

The deadline for submissions on the Stage Two Coastal Reform Package must be extended beyond 25 February 2016 because each of the SEPP, the Mapping and the Manual are items which are critical and fundamental, rather than incidental, to the operation of the Stage Two Coastal Reform.

1. SEPP

The specific development control plans for the four individual management areas will be contained in a new Coastal Management State Environmental Planning Policy that is not yet available, but we are told it will provide greater detail related to the four new management areas;

* how the planning objectives of the new Act are to be implemented;
* will specify development controls for management areas
* approval requirements for coastal protection works by private landholders and public authorities
* Includes proposals to limit development consent in the coastal vulnerability area and to provide for the migration of wetlands

How is one to meaningfully provide feedback when we do not precisely know what any of these important tests will be?

2. Mapping

No mapping is currently available

We were advised by you that the mapping should be available sometime in January

Inexplicably, you intend issuing three (3) different versions of the mapping and seeking feedback in the consultation process on which version should be adopted

So as I understood things, you won't even know which set of mapping will be the ultimate mapping adopted by OEH during the consultation period

How is one to meaningfully provide feedback, when mapping is currently unavailable and the designation of many properties will still be in flux by the close of consultation because the ultimate version of mapping to be adopted will still be unknown?

Furthermore, Bruce Coates advised that it was "intended to adopt the existing Council hazard line maps in the mapping to identify the vulnerable areas"

In many localities, this will not be appropriate. For instance, in Byron Shire, the then Minister for Planning has already acknowleged this mapping to be inappropriate and in this regard I refer you to the attached directive from Neil McGaffin, Executive Director, Planning Operations.

3. Manual

The Coastal Reform Objectives PPT attributed Minister Stokes as outlining in November 2014 that the draft Manual would be on public exhibition with the draft Coastal Management Bill

The draft Coastal Management Bill has been on exhibition for some time now, with no sign of any Manual

This is a complete failure to meet the consultation process as promised by the Minister

Why is it so important for the draft Manual to be on exhibition with the draft Bill?

The reason why it was so important for the Manual to be exhibited along with the Draft Coastal Management Bill is because it is the Manual that forms a critical part of the management framework requiring compulsory compliance.
Note the provisions of section 21(2) – the Manual is to impose mandatory requirements and provide guidance in connection with the preparation, development, adoption, amendment, and review of, and the contents of, coastal management programs.
Inexplicably, only summary documents (more akin to visionary statements) are available which is particularly alarming given the contents of the Manual will not determined by the checks and balances of the Parliamentary process (even though the Manual creates compulsory requirements).
This is very interesting as previously section 55C set the requirements. What is now envisaged is that, not in the legislation, but in the Manual there would be more "technical requirements" – no doubt written by members of the Coastal Council (see 20(4) which mandates that they have a say).
The Coastal Council then judge whether or not there has been compliance and they tell the Minister who certifies or not certifies. Literally, they are a law unto themselves. They can put whatever they want in the Manual without the scrutiny of the Parliament as would be the case if it were in the Act and they then decide whether there has been compliance.
The failure to exhibit the draft Manual together with the draft Bill casts a negative aspersion with respect to the probity and transparency of the entire Stage Two Coastal Reform Package
The Coastal Reform Objectives PPT attributed Minister Stokes as outlining in November 2014 that the Stage Two Coastal Reforms would:-

"establish a more sustainable approach to funding and financing coastal management actions"
In this regard, the Manual is critical as it is supposed to identify cost sharing principles and a "funding and financing tool kit"
Nothing meaningful about this absolutely critical component of the Stage Two Coastal Reforms is outlined in the vision statements which compose the Manual summary.
At the workshop, Bruce Coates failed to provide any elaboration to an attendee who asked about what funding would be made available and how it would be made available under the Stage Two Coastal Reforms?
Finally, in order to take advantage of the "good faith" defence afforded by Section 733 of the Local Government Act, Councils are required to undertake coastal management planning strictly in accordance with the Manual. This is fundamental to the key objectives of the Stage Two Coastal Reforms and it is imperative for the draft Manual to be properly exhibited. At present, there is no indication how Minister Stokes intends to achieve the following objectives outlined in the Coastal Reform Objectives PPT:-
* deliver a modern and simpler legislative framework that minimises our exposure to future risk and liability
* allow communities to better manage the significant legacy of risk from past settlement patterns by providing better support for local decision making

C. Why has the Stage Two Coastal Reform Package been undertaken by the NSW Government without reference to Federal Government Initiatives?

1. Productivity Commission
At the workshop, the Panel was asked whether the recommendations of the Productivity Commission had been considered in drafting the proposed legislation?

My impression was that all members of the Panel winced when that question was asked.

Marianne Fitzgerald bravely responded with a “yes”…….full stop, no elaboration.

The Productivity Commission made, inter alia, the following recommendations in relation to existing settlements:-

“Existing settlements
RECOMMENDATION 11.1
The Council of Australian Governments should commission an independent public inquiry to develop an appropriate response to managing the risks of climate change to existing settlements. The inquiry should:
• explore, via extensive consultation with all levels of government and the community, in a variety of locations, the community’s acceptable levels of risk for public and private assets
• identify the options available to manage climate change risks to these assets
• assess the benefits and costs of each option
• establish policy frameworks that can be applied by state, territory and local governments.

State and territory governments should draw on the findings of the inquiry to:
• manage risks to their own assets
• clarify roles and responsibilities for managing climate change risks for each level of government and the community
• provide appropriate support to local governments that face capacity constraints.”

The Coastal Reform Objectives PPT attributed Minister Stokes as outlining in November 2014 that the Stage Two Coastal Reforms would:-

“promote greater collaboration between communities and councils in deciding how coastlines are to be managed”
Why is the Stage Two Coastal Reform Package being undertaken by the NSW Government, in a seemingly “rushed” manner (this is the obvious inference given the incomplete documentation on exhibition) in isolation to other State and Federal Governments, in direct contradiction to one of the key objectives as identified by Minister Stokes?

The Stage Two Coastal Reform Package has produced a highly complex framework of environmental legislation and guidelines that fail to acknowledge the fact that many thousands of NSW regional residents live in the coastal zone and have invested heavily in the coastal zone. Not just financial investment but also an investment in the building of local communities, local employment, futures for their families and importantly the infrastructure that will support a growing population.

This would become plainly evident in any independent public inquiry commissioned by COAG

2. Federal Climate Adaptation Plan
On 1 November 2015, the Federal Environment Minister Greg Hunt made the following press release to the Fairfax media:-
“The entire Australian coastline will be mapped to prepare for projected flooding from rising seas under a government project to be launched at the Paris climate summit that could lead to national standards for how close homes should be built to shorelines.
It is part of a new climate change adaptation plan, amid debates at the Paris talks over how the world will deal in a global agreement with locked in climate change.
That he hoped that the coastal data - due to be completed and made public in late 2017 - would be picked up by state governments to guide planning laws about how close homes and other property should be allowed to be built to the coast given expected future flooding and erosion from rising seas and storm surges
Coastal planning laws have been controversial in a number of states, sparking bitter disputes between local councils, states governments and business. Regulations currently differ between jurisdictions”

The coastal planning community is a small world in NSW, even Australia. It is clear that many of those involved in the Stage Two Coastal Reform Package would have had advance notice of this Federal Government Initiative

It is extremely disappointing, if not inexplicable, for the NSW Government to proceed with the Stage Two Coastal Reform Package in advance of, and in isolation to, a national initiative to produce a collaborative response to coastal planning and climate change.

Again, this directly contradicts one of the key objectives attributed to Minister Stokes in November 2014 by the Coastal Reform Objectives PPT which outlined that the Stage Two Coastal Reforms would:-

“promote greater collaboration between communities and councils in deciding how coastlines are to be managed”

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Obviously, I would like this submission to constitute a formal submission on this process

Please advise whether I also need to formally lodge this through the “Have Your Say” link on the website

Kind Regards

John James
[redacted]
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[redacted]