

26 February 2016

Coastal Reform Team

Office of Environment and Heritage

PO Box A290

Sydney South NSW 1232

Email: coastal.reform@environment.nsw.gov.au

SUBMISSION ON NSW COASTAL MANAGEMENT REFORM PACKAGE

1. INTRODUCTION

1.1 The Planning Institute of Australia, NSW Division welcomes the opportunity to submit these comments in response to the public exhibition of the NSW Coastal Management Reform Package. The Planning Institute of Australia (PIA) is the peak body representing professionals involved in planning Australian cities, towns and regions. The Institute has around 5,000 members nationally and approximately 1,200 members in NSW and stands for the highest standards of professional practice and ethics amongst planners. It seeks to play a strong advocacy role and to make constructive submissions to the NSW State Government regarding proposed legislative and policy changes affecting the profession.

1.2 On 13 November 2015, the NSW Government continued its Coastal Management Reforms by releasing a new draft framework for coastal management for public consultation. The reforms contain three key elements:-

- Replacing the current Coastal Protection Act 1979 with a new Coastal Management Act;
- New arrangements to support Council decision making, including a new State Environmental Planning Policy (SEPP), a new decision

support framework, a new coastal management manual, and improved technical advice; and

- New arrangements for funding and financing coastal management activities.

1.3 Additional elements of the proposed new framework are planned to be released later for public comment, including further components of the manual, maps of the coastal zone that will form part of the SEPP and proposals concerning the effects of coastal erosion on coastal boundaries.

1.4 There are 30 coastal Councils that have responsibilities for the planning for and management of the NSW coastline.

1.5 Generally, the Reform Package presents an updated, integrated framework that better responds to the social, economic and environmental values and issues relevant to the NSW coast and which is supported by PIA NSW.

1.6 The comments are structured as follows:-

- The Draft Coastal Management Bill
- The Coastal Management Manual
- Integrated Planning and Reporting (IP&R) Requirements
- Coastal Management Programs
- Coastal Management State Environmental Planning Policy
- Other Planning Issues

2. DRAFT COASTAL MANAGEMENT BILL

2.1 The proposed draft Bill creates new statutory objectives for coastal management which aim to enable more integrated and strategic management of coastal communities. The new Act will recognise natural coastal processes and the locally and regionally dynamic character of the coast, and promote land use planning decisions that accommodate them.

2.2 The reforms move away from managing the coast as a single homogenous zone and propose division of the coastal zone into four coastal management areas, those being:-

- a) The coastal wetlands and littoral rainforests area - which will cover an area where coastal wetlands and littoral rainforests have been identified.
- b) The coastal vulnerability area – which will cover land exposed to coastal hazards such as beach erosion, tidal inundation and cliff instability.

- c) The coastal environment area – which will include key features of the coast such as estuaries, lagoons and coastal lakes and critical areas of land adjacent to these features.
- d) The coastal use area – which will contain land with important coastal values.

2.3 It is understood that the four coastal management areas will be mapped by the State Government under the Coastal Management SEPP and published in a digital format that will be accessible via the Department of Planning and Environment's (DP&E) website and that the area covered by these maps may be refined over time.

2.4 A key omission from the Coastal Management Bill and the proposed four coastal management areas is the intergovernmental and policy responses to "hot spots" on the NSW coast. These "hot spots" have already been identified by the Office of Environment and Heritage (OEH) and specified on the OEH website for sectors of the coast in Byron Shire, Ballina Shire, Clarence Valley, Port Macquarie Hastings, Greater Taree City, Great Lakes, Wyong Shire, Gosford City, Pittwater, Warringah and Eurobodalla Shire Local Government Areas.

These "hot spots" require a much higher level of responsiveness because of the potential hazards to properties and the environment – and also because of the enhanced associated risk and liabilities.

2.5 Some of the affected councils have a separate Coastal Zone Management Plan, Emergency Sub-Action Plan and Beach Renourishment Program in response to "hot spots" and which involve joint State Government and Council funding. It is recommended that consideration be given to two categories of coastal vulnerability areas:-

- a) Coastal vulnerability areas that are based upon a low probability of risk, not within the 50 year predicted sea level rise inundation and which are within a 50 year (Building Code of Australia) design life; and
- b) Coastal "hot spots" as currently listed by OEH and with subsequent additions over time based upon certain criteria relating to risk management (likelihood and consequence), predicted sea level rise inundation and implications for meeting the 50 year design life under the BCA and implications for the local Council's asset management plan.

2.6 Consideration should be given to descriptions of coastal hazards and incorporation into LEPs and planning policies so that coastal hazards are

approached within similar legal and policy frameworks as bushfire hazard and flood hazard. For example, in terms of high and frequent hazard and criteria that assist the planning and management responses.

3. COASTAL MANAGEMENT MANUAL

3.1 The intention of the Coastal Management Reform Package to ensure greater consistency for the extent of coastline in NSW is strongly supported. Hence, mechanisms to give clear and consistent oversight of Coastal Management Plans (CMPs) by OEH, the NSW Coastal Council and for development assessment purposes by the relevant Joint Regional Planning Panel is supported.

3.2 Many Councils adopted the NSW Coastal Planning Guideline: Adapting to Sea Level Rise (2009) issued by the previous State Labour Government as policy for their Local Government Areas. The current State Government discontinued the application of this guideline and does not specify predicted sea level rise associated with climate change. This is a significant omission in terms of Councils capacity to undertake soundly based planning and mitigating associated risk and liabilities and several court case judgements have reinforced the exposure and liability of Councils. Councils need to respond to planning proposals / re-zonings and development applications based upon explicit and well considered risks associated with sea level rise. This is an important planning and management issue.

3.3 Changes in terminology and the need to revisit significant mapping of wetlands etc. raises the need for Councils to ensure upgraded and accurate mapping and appropriate clauses for the issue of Section 149 Certificates.

4. CLIMATE CHANGE AND SEA LEVEL RISE

4.1 Under the previous NSW Labour Government there were specified sea level rise levels. These were removed under the current Government and local Councils left to figure out their own. A number of Councils spent a fair amount of resources doing their own studies.

4.2 Many Councils have identified climate change and sea level rise in their Community Strategic Plans – and more importantly in delivery plans and operational plans which embody whole of organisation policy, co-ordination and capital expenditure responses. There are a range of issues which coastal Councils have to address in terms of the implications of coastal management – and notably hazards and sea level rise predictions for their areas to ensure that asset management planning, delivery and operational programs and long term financial plans are soundly based. Again, this is extremely difficult when there is no State Government

formalised and predicted sea level rise policy or guideline. Councils also have to seek to co-ordinate with relevant State Agencies and service providers in managing responses to coastal hazards and sea level rise issues.

4.3 Sea level rise levels not being provided at a state level and left up to individual Councils to determine, may result in significant inconsistencies and cross boundary issues. That, in turn, leads to greater risk and liability exposures.

5. INTEGRATED PLANNING AND REPORTING REQUIREMENTS

5.1 The reform documents acknowledge the disconnect between current coastal hazard management processes and the Integrated Planning and Reporting process. The reforms will attempt to rectify this issue by placing a strong emphasis on implementation by requiring coastal management programs to be given effect within the local government IP&R framework. This has the potential to give weight to Council's decision-making process regarding coastal management and assessment of development. However, giving effect to those programs has major implications for many budget-constrained Councils due to the levels of expenditure (capital and maintenance) that would have to be allocated.

5.2 Under the current State Environmental Planning Policy (SEPP) 14 - Coastal Wetlands and SEPP 26 - Littoral Rainforests, it is very difficult for Councils to maintain infrastructure as the policies prohibit works in these areas. For example, regular maintenance of open stormwater channels and outlets is critical to maintaining a properly functioning stormwater system and water quality benefits. If Councils are not able to undertake this maintenance it potentially reduces the efficiency of the stormwater system, increasing drainage, flooding and water quality problems.

Build-up of mangroves can also lead to ponding of stormwater at outlets and reduce natural flushing resulting in poor water quality. The review of the SEPPs needs to take the maintenance of the various assets that are located in these areas into account and include provisions that permit regular necessary maintenance of those assets.

5.3 It is suggested that the State Government should provide more guidance at a State or regional level. The adopted Illawarra Shoalhaven Regional Plan and draft Hunter Regional Plan are relatively silent on such coastal planning and management issues.

5.4 A number of Councils have spent resources developing Coastal Management Plans – which have not been endorsed by Government e.g. Coffs Harbour CZMP which was submitted to the State Government in

2013. Now the State Government proposes the preparation of new studies under the new draft legislation.

5.5 The maps to accompany this work have not been published as yet. There is no indication as to what scale? They will be at and whether it will be possible to seek amendment if necessary.

5.6 "Actions" are incorrectly referred to as being within CSPs. CSPs are community driven plans providing a strategic framework for a Local Government Area with high level aims and objectives, but do not include actions or plans – as is legislated and directed by the NSW Office of Local Government.

5.7 The toolkit will include guidance on how to conduct analysis to clarify the costs and benefits of the management responses being considered. This information will enable Councils and their communities to select appropriate management options and fair cost sharing arrangements that deliver net benefits to the community.

5.8 There are significant funding and Delivery Program / Operational Plan implications for NSW Councils. The NSW Government is currently reviewing how it contributes to the costs of coastal planning and management so that future funding programs are aligned with the coastal reforms. The review and any resulting changes to current funding programs will be completed in mid-2016, in line with the finalisation of the new legislation and other elements of the reforms.

5.9 A consistent and well founded approach based upon risk analysis is important. Appropriately, the prescribed framework for assessing and evaluating coastal hazards and their associated risk previously set out by the NSW Government, was determined giving consideration to both 'likelihood' and 'consequence' of occurrence. The proposed coastal reforms retain this methodology. Coastal hazard management tools provide the means to ensure Council will evaluate coastal risks and hazards in areas known to be affected.

Further, Councils have legitimate needs to ensure protection from future liability should appropriate steps not be taken to address any known hazard / risk.

6. COASTAL MANAGEMENT STATE ENVIRONMENTAL PLANNING POLICY AND OTHER PLANNING ISSUES

6.1 In order to integrate coastal considerations into land-use planning, the new Coastal Management Act is proposed to be supported by a redesigned package of land-use planning instruments, including the following:-

- A new Coastal Management SEPP;
- A Coastal Management s.117 Planning Direction relating to plan making; and
- Non-statutory planning instruments, such as regional growth and infrastructure plans and Coastal Design Guidelines.

6.2 The proposed Coastal Management SEPP will obviously be a key environmental planning instrument for land-use planning in the coastal zone, and will deliver the statutory management objectives for each of the four proposed coastal management areas that make up the coastal zone (and which are set out in the proposed Coastal Management Act).

6.3 The aim of the proposed Coastal Management SEPP will be to maintain and enhance the relevant provisions that currently apply in the three key SEPPs which relate specifically to coastal matters:-

- SEPP No. 14 – Coastal Wetlands (SEPP 14)
- SEPP No. 26 – Littoral Rainforests (SEPP 26)
- SEPP No. 71 – Coastal Protection (SEPP 71)

6.4 Consolidation and updating of the above existing coastal SEPPs into the new Coastal Management SEPP will mean that existing provisions in Clause 5.5 of the Standard Instrument, and the guidance provided by the NSW Coastal Policy and Coastal Design Guidelines, will also be reflected in the controls and matters for consideration proposed in the single consolidated Coastal Management SEPP, and related planning instruments. In addition, provisions in the SEPP (Infrastructure) 2007 relating to proposals for coastal protection works will be replaced by provisions in the new SEPP.

6.5 The SEPP will specify the development controls that will apply to particular forms of development within each coastal management area (at a state-wide level). The controls will be tailored to the needs of the relevant coastal management area. It should be noted however that the development controls will not be tailored to suit individual circumstances of the various coastal Councils in NSW.

6.6 It is very difficult for PIA NSW or any Council in NSW to provide highly constructive input on this subject without additional information and locally relevant mapping being progressed.

6.7 There is no indication in the exhibited material as to how Local Environment Plan clauses and maps will need to be modified in relation to the identification and upgraded mapping accuracy of wetlands and / or

littoral rainforest as may be directed by the SEPP. There should be opportunities for local Councils to have input into upgraded mapping on wetlands and littoral rainforests to ensure that the process to be initiated achieves upgraded accuracy.

6.8 Consolidation of State policy and local environmental planning provisions will have implications for Section 149 Planning Certificates content and the timely advice to be included within them. Sufficient time needs to be allowed for Councils to amend GIS data and notations in accordance with the Coastal Management SEPP and a transitional period of at least three months should be provided. There are significant implications for Councils here, in terms of the resources and time required to upgrade geographic information systems (GISs) and to complete processes of verification to ensure data validation which is particularly important when issuing Planning Certificates which carry significant risk and liability should any inaccuracies be included.

7. ENSURING LOCAL RELEVANCE

7.1 Coastal hazard mapping at a local level may be in conflict with NSW Government mapping which has the potential to cause community problems with CZMPs in draft at present.

7.2 Existing work done on CZMPs development by some Councils - e.g. Coffs Harbour and Shoalhaven - may require amendment and additional costs to ensure alignment with future legislation and requirements.

7.3 It is suggested that the CMP boundaries are based on coastal geographic features rather than LGAs which will require neighbouring Councils to work together to obtain funding and undertake the plan.

7.4 Mapping which will be chosen for the Coastal Mapping Areas is also under question due to conflicting information provided in various mapping data sets and the lack of mapping in a number of areas.

8. CONCLUSIONS

8.1 PIA NSW welcomes the opportunity to provide this submission in response to the exhibition of the NSW State Government Coastal Management Reform Package.

The Institute strongly advocates sound integration of legislation and policy to the greatest possible extent for service delivery by planners and Local Government generally. The integration of some of the proposed management initiatives into regional plans would be productive and currently there are a lack of explicit policies for coastal planning and

management within the adopted Illawarra Shoalhaven Regional Plan and in the Draft Hunter Regional Plan.

8.2 The full draft SEPP should be placed on public exhibition for further consultation to ensure that detailed content and practicability is ensured – particularly in terms of the implementation capability by NSW Local Government.

8.3 PIA NSW particularly appreciates the opportunity for a direct briefing for a representative (Mr David Broyd in August 2015) regarding the Coastal Management Package and will obviously welcome any further discussions and opportunities to make submissions in response to the progressive finalisation of this Coastal Management Reform Package.

9. RECOMMENDATIONS

9.1 The Draft State Environmental Planning Policy (SEPP) should be exhibited in full to enable public exhibition and the achievement of the needed rigour in the final SEPP.

9.2 Differential planning and land use controls may be needed to achieve different environmental and development outcomes – limited, highly justified, development opportunities in the coastal use area being the prime example, and to enable appropriate maintenance needs of Council assets within the four coastal management areas.

9.3 Coastal Councils need to be highly involved in the mapping of the four coastal management areas to ensure accuracy, compatibility of software and scales and methodologies of use , given the high importance of this mapping for Local Environmental Plans, Development Control Plans and the processing of Section 149 Certificate applications.

9.4 Consideration should be given to two categories of coastal vulnerability areas:-

- a) Coastal vulnerability areas that are based upon a low probability of risk, not within the 50 year predicted sea level rise inundation and which are within a 50 year Building Code of Australia (BCA) design life; and
- b) Coastal “hot spots” as currently listed by OEH (and with subsequent additions over time) based upon risk management, predicted sea level rise inundation and implications for meeting the 50 year design life under the BCA and implications for the local Council’s Asset Management Planning and Emergency Response Capabilities.

9.5 Consideration should be given to descriptions of coastal hazards for planning purposes and incorporation into LEPs and planning policies, so

that coastal hazards are approached within similar legal and policy frameworks as say bushfire hazards and flood hazards, e.g. expression in terms of high and frequent hazard etc.

9.6 That the Planning Institute of Australia, NSW Division be considered as a representative organisation on the proposed NSW Coastal Council to ensure that the Reform package properly integrates with planning legislation, planning policies, planning practices and the needs of the 30 coastal Councils that comprise the coastline of NSW.

9.7 That the State Government restore formal predictions and policies for sea level rise and climate change to enable proper planning relative to predicted sea level rise inundation in 50 year and 100 year planning horizons and to address the risks and liabilities which Councils are exposed to if such predictions and policies are not formally in place.

9.8 PIA NSW supports the increased integration of coastal management and planning into Council's Integrated Planning and Reporting framework and to address the current disconnect between current coastal management processes and the integrated planning and reporting process. However due acknowledgement must be given to the implications for Council funding capabilities and budgets, given that many budget constrained Councils will not be able to afford levels of capital and maintenance expenditures that will be needed to fulfil some of the objectives and needs for coastal management.

9.9 The current prohibitions of development works and activities in SEPP 14 – Coastal Wetlands and SEPP 26 – Littoral Rainforests should be reviewed to enable needed maintenance of Council assets, infrastructure and services within land affected by these SEPPs.

9.10 Clarity should be provided to NSW Coastal Councils about the management of future preparation and finalisation of coastal zone management plans within the context of the Coastal Management Reform Package e.g. Coffs Harbour are seeking their CZMP to be "in abeyance" pending finalisation of implementation of the Reform Package and major Councils like Wollongong City and Shoalhaven City have CZMPs in progress for which clarification of future approach is also needed.

9.11 That the responsible senior management of OEH conduct a workshop with directors of planning or equivalent in the NSW Coastal Councils as part of finalising the Coastal Management Act, the Coastal Management SEPP, and other components of the Reform Package to ensure the optimal compatibility of the Reform Package implementation with the needs and practical realities of implementation at the Local Government level.

9.12 That the NSW Department of Planning and Environment in coordination with the Office of Environment and Heritage conduct a review of the Illawarra Shoalhaven Regional Plan and proceed to finalise the Hunter Regional Plan to incorporate appropriate aspects of coastal management policies. This will give enhanced direction to NSW Coastal Councils for the implementation of LEPs and coastal planning in a compatible co-ordinated manner. The future drafting of regional plans should also be conducted on the same basis. Joint Regional Planning Panels should have the role of monitoring regional consistency of the implementation of such coastal planning policies and development application decision making within relevant regions.

PIA welcomes the opportunity to make this submission and would be pleased to discuss any aspect of the points raised.

Yours Sincerely

A handwritten signature in black ink that reads "Marjorie Ferguson". The signature is written in a cursive style with a large, looped 'M' and 'F'.

Marjorie Ferguson MPIA CPP
NSW President