

22<sup>nd</sup> February 2016

Attention; Coastal Reform Team  
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Ref: CMR-sub

Dear Sirs,

**Re; Submission in response to proposed Coastal Management Reforms Act legislation and SEPP**

Thank you for the opportunity for consultation and the period being out-with the Christmas/holiday period! The below response is prepared from review of:

- The Draft Government Coastal Management Bill,
- The 'Our future Our Coast' overview,
- Coastal Management SEPP Explanation and
- Introduction to the NSW Coastal Management Manual.

All information kindly provided from DoP's Website and my attendance at a brief Workshop hosted by the EDO to explain the reforms.

The proposed Act and SEPP are full of good words with great and good intentions. State Government is to be complimented for prioritising protection of NSW's coastal areas in these proposed reforms. However, as always, 'the devil lies in the detail' and in execution and implementation of the Coastal Management Act and SEPP reforms currently proposed as a draft and for public consultation.

**Overview Comments:**

The documents describing the proposed coastal management reforms appear to have been developed with logical and good ecologically sustainable development principles in mind, as well as simplified development and integration into the LGA strategic planning framework. However, it appears to have been amended in the internal review process before public exhibition for comment, allowing CM Programs to become voluntary or optional and other 'watering down' elements inserted, which make the proposed good reforms difficult to effect, administer and enforce the commendable coastal management intents. This needs to be addressed for effective legislation and strategic planning and moreover, requirement for Coastal Management Plans/Programs should be compulsory, not optional.

**Specific Issue Comments:**

The following comments are made with the intention of addressing issues for improving the effectiveness of the proposed Coastal Management Reform legislation and SEPP:

1. If and when the Coastal Management Reforms (CMR) Act and SEPP be passed/enacted, it is understood the current SEPPs 14, 26 and 71 will be repealed: If this is the case, then there is likely to be a significant period of time from when the State Government has repealed the current SEPPs to when Local Councils "may" take up an option to prepare and adopt Coastal Management Plans/Programs, even if 'required' to do so by 'The Minister'.  
The Act or supporting documentation from Dept of Planning (DoP) needs to address this issue, where there could be no controls in place!
2. It is clear from the proposal documents that SEPPs 14, 26 and 71 will be repealed, but uncertain from the documents if other components of existing Acts and SEPPs (eg SEPP 50) are to be repealed or amended. Clarity is required to be made, at least to all those who provided submissions, before enactment/adoption of the proposed legislation and SEPP.
3. There appears to be no compliance or enforcement clauses and there is a major 'Out Clause' in Section 29, which 'waters down' the effect of the proposed/draft Bill and SEPP to a point where CM programs, compliance and enforcement are questionable. The legislation must support the good policy intent, not weaken it!



4. The Draft Bill and SEPP provide no explanation of who will do the mapping and determination of 'Vulnerable', 'Environmental' or 'Use Area' land attributes: Is this to be the State, DoP, OEH or Local Councils? If, somewhat typically, the workload and costs are to be transferred to Local Councils, who are 'Rate Pegged' by State Government, is there then a funding grant or allocation from State to Local Government to implement the mapping and incorporation of these reforms or do LGAs and Rate Payers have to fund this?

It is suggested that this initially be done by the State Govt. using 'Near-Maps' type high resolution sequential aerial imagery, which is more available to State than Local Councils and then be followed-up with 'ground-truthing' and local knowledge of Local Councils before adoption of the CM Plans.

Under the current proposal, in the case of mistakes in mapping or assessment who is responsible - State or Local Government? And how are they to be resolved? This must be made clear in the Bill and SEPP.

5. If these reforms, which are at best defined as 'Guidelines to be documented at some stage': How are they to be effectively incorporated into the long needed 'Strategic Planning' process for the Coastal Management Zones/areas. - The draft documents need to make this clear.
6. From personal experience as Trust Chair, involved in the Restoration of Yarrahapinni Wetlands, one of the key inhibitors to restoration of this 1970s drained salt-water wetland was SEPP 14. It required a Part 4 Development Application to be lodged through Council, with full research, EIS and expensive documentation and time consuming (*voluntary*) representation to place before a Council that wanted to maintain the status quo of acid sulphate and low DO discharge. To get around this SEPP 14 induced legislative barrier, it was decided to give the area to (now) OEH NPWS and they then lodged the Application under Part 5 with a simple REF! Thankfully, it is now well on the-way in restoration.

There are many damaged/drained wetlands, often on private land, in this and other coastal catchments that discharge acid sulphate (AS), pollutants and low Dissolved Oxygen (DO), ultimately into estuarine waters with dire ecological and economic consequences to Oyster and Fishing industries. While reviewing the SEPP 14 legislation for inclusion into the CM reforms SEPP and learning from the Yarrahapinni Wetlands restoration experience: It is strongly recommended that the new SEPP incorporates some 'Historic State' or 'Restoration' clauses to readily permit restoration of modified/drained or damaged wetlands, salt-water or fresh, so that:

- i. The CM reforms encourage and make it easier for landholders to restore Wetlands, minimise AS & low DO and pollution run-off discharge damage.
  - ii. The legislation make it clear and effective that land-holders/owners are responsible for discharge originating from their lands that affects the environment or economy of others. (Such as oyster farmers and commercial fishermen.) and
  - iii. It be made a simple process to require evidenced/demonstrated damages to be awarded to those affected (or fines effected).
7. The new proposed Coastal Council must be independent of Government influence, made up of a range of peer accredited and qualified experts in the requisite diverse fields of: coastal morphology, hydro-dynamics, ecology and familiar with the cost-benefit of various scenarios and proposed plans and programs. Anything less would be subject to greater dispute and likely further clog-up the Land and Environment Court.
  8. SEPP 50, prohibiting Canal Developments, must be retained or fully incorporated into the new Coastal Management Bill and SEPP. The documents available & reviewed above do not make this clear.

In response to the questions posed in the 'Coastal Management SEPP, Explanation of intended effect:

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

This depends on who (SG or LGAs) does the mapping and on what basis. There should be some flexibility to allow for the unpredicted changes but they should not be altered for a rezoning application that does not stand up to scrutiny against the Coastal Council's judgement. (eg. a development in an inappropriate area.) It is recommended that a DA in a Coastal Area/Zone should be referred to the (well appointed) new and independent Coastal Council, as with Govt Department Referrals.



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

Mandatory Clause in the SEPP requiring the controls be placed in the LGA LEPs.

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

The development controls for Wetlands should be strengthened to accommodate point 6. above and other anomalies: and both SEPPs 14 & 26 should not be repealed before a good and valid Coastal Management program and Plan is in place. Additionally, the mapping needs to be accurate, formulated from the best information available eg. Near-maps sequential aerial type imagery or better with ground truthing and available to question, should it not appear accurate.

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

The perimeter or buffer area should be determined by land attributes of slope, grade, eco-types and vulnerability - not necessarily by an arbitrary 100m distance. It is recommended the mapping establish the 4 area types, as already proposed, but also appropriate buffers. *(In the case of Yarrahappini Wetlands restoration the appropriate buffer varied from 20M in steeper side areas to 3 km up-stream.)*

**Question 5: Are the proposed development controls for mapped coastal vulnerability areas appropriate for that land?**

That depends upon the issue/reason of the area of vulnerability as mapped. Which brings into focus the need for accurate and ground-truthed mapping.

**Question 6: Are the proposed development controls for coastal environment areas appropriate for that land?**

As per response to question 5 above.

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

Yes. They need to be included but with buffers appropriate to be determined by land attributes of slope, grade, eco-types and vulnerability mapping - not necessarily by a nominated arbitrary 500m distance.

**Question 8: Which is the best option for mapping the coastal use area? Is the proposed approach to mapping of the coastal use area for the Sydney metropolitan area appropriate?**

No comment - as I am from a regional area.

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

Yes. Like the response to question 1 above: This depends on who (SG or LGAs) does the mapping and on what basis. There should be some flexibility to allow for the unpredicted changes but they should not be altered for a rezoning application that does not stand up to scrutiny against the Coastal Council's judgement. (eg. a development in an inappropriate area.) It is recommended that a DA in a Coastal Area/Zone should be referred to the (well appointed) new and independent Coastal Council, as with Govt Department Referrals.

**Question 10: Are the proposed development controls for mapped coastal use areas appropriate for that land?**

In theory, yes. But, there are more variables which need to be taken into consideration.

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

That depends upon the adjudication and mapping of the 4 Coastal Management Area types. For example and obviously: Complying residential developments should not be endorsed or Approved in vulnerable or environmental areas. The legislation and SEPP must make this clear.

**Question 12: Should consideration be given to applying other controls for these areas? For example, what types of exempt and complying development might be appropriate in coastal wetlands and littoral rainforests or in the catchments of sensitive coastal lakes and lagoons?**

None in Wetland or Littoral Rainforest areas or correctly mapped lake/lagoons: with the exception of readily 'Approved Restoration' projects.



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

This is a vague and misleading question, dependent upon many factors for consideration. This I feel should be left up to the new independent and technically expert Coastal Council (described above) to assess for the individual scenario to advise and direct Councils as needed to fulfil the intent of the proposed CM SEPP.

**In Conclusion:** I wholeheartedly support the apparent 'original' intent of the Coastal Management Reforms and the well chosen words and intent of its instigators. However, I feel the proposed Bill and SEPP as presented, has perhaps been 'diluted' by a political or bureaucratic process making a couple of changes that has made it un-workable, or at least significantly more complex and onerous to implement. - Or at least not followed through and clarified in the proposal documents.

I trust my comments above 1 to 8 and my responses to the questions posed in the 'Coastal Management SEPP, Explanation of Intended Effect', assist in achieving a positive and effective 'Coastal Management Reform' Bill and SEPP.

Thank you for the opportunity to present this submission. I hope this is given your due consideration and incorporation. and should you have any queries regarding this submission please contact me at any time.

Yours Faithfully



Rupert G.H. Milne Home,  
Registered Landscape Architect.

