

29 February 2016

Coastal Reforms Team
Office of Environment and Heritage
PO Box A290
SYDNEY SOUTH NSW 1232

Shellharbour City Council Submission NSW Coastal Management Reforms

Dear Sir/Madam

Shellharbour City Council officers have reviewed the NSW Government coastal management reform package and wish to offer the following comments. A review of the key reform documents has allowed Council Staff to assess how the reforms may influence coastal management across the various areas of Council responsibility. With the Shellharbour Coastal Zone Management Plan (CZMP) in the final stages of preparation, a review of the proposed policy framework has been essential. The information below highlights a number of areas of concern including areas that relate to the preparation of Council's CZMP.

Coastal Mapping – vulnerability and coastal management areas

Whilst it is recognised that the coastal reforms process is not complete, with additional information to be developed and released, it would have been beneficial for the proposed Coastal Management Areas mapping to have been released with the information that has been exhibited. This would have allowed coastal councils the opportunity to undertake a more informed review of the proposed policy and guidelines and management objectives as they relate to these areas. Release of the mapping would have also provided an opportunity to review the adequacy of the mapping against local and regional technical information for the coastal management areas.

The development of the coastal management areas mapping should be undertaken in consultation with council's and other relevant stakeholders including specific groups within OEH. This consultative approach would allow the integration of any regional programs that have been completed or have commenced that incorporate local and regional data and information in preparing the mapping. The use of local and regional data and information (eg biodiversity mapping) would increase the reliability, effectiveness and assist with the proposed mapping achieving its intended purpose.

There are concerns that the vulnerability and coastal management areas maps yet to be released will not be sufficient for Council to fully undertake their function

Section 149 Planning Certificates

The information Council currently uses on Section 149 certificates is based on comprehensive coastal hazard information that relates specifically to the Shellharbour Local Government Area

Under the reforms process, the requirement to align s149 certificates to the SEPP maps, as they are at the time of issuing, will potentially reduce the level of accuracy of information used for s149 notations. Clarification is required to indicate that if the information that Council holds, in this regard, is more comprehensive and locally relevant, will Council be required to amend the information on s149 certificates to align with the Coastal Vulnerability and Area Mapping under the proposed SEPP.

Certification of CZMP

Under the reforms process there is no certainty provided regarding the certification of coastal zone management plans (CZMP) currently under preparation. Whilst there are provisions under the proposed Act (Schedule 3, Part 2, Clause 6), that pending plans would be considered for certification, there is concern that the cessation of subclause 1 (of the above referenced section of the Act) if enacted in accordance with subclause 2, would not allow for plan certification. This is of particular relevance to Shellharbour City Council, with the Council's CZMP being in the final stages of preparation. Council requests that further information be provided to clarify the NSW Government's intent of certifying plans under preparation.

Climate Change and Sea Level Rise

The Draft Coastal Management Bill provides direction under the objects of the proposed Act for council's to mitigate current and future risks from coastal hazards, taking into the effects of climate change. However the Draft Coastal Management Manual provides limited guidance for councils regarding climate change and specifically sea level rise. Council's key concerns regarding this matter relate to a lack of consistency and fragmentation that may occur across the state, and between local government areas mapped under multiple sediment compartments when addressing climate change related risks. Additionally, the responsibility of council's to develop and adopt local or regional sea level rise projections allows this area of management to be politically influenced. Such influence may result in the objects of the Act not being achieved and future risks unresponsibly addressed. Further policy direction and technical guidance is considered necessary for council's to clearly achieve the objects of the Coastal Management Act and consistently identify potential future risks associated with climate change and formulate suitable management initiatives across the state. Council requests that the NSW Government reconsider its policy direction in relation to providing guidance on planning for climate change for the coast.

Obligations of local councils and other public authorities

Clause 22 places a positive obligation on local government to implement a Coastal Management Program. The effect of this prioritises coastal management works over the other myriad functions of local government. This may expose councils to litigation by third parties if they seek to enforce compliance on actionable items, works or responsibilities in any CMP. It may also mean that actions identified in a coastal erosion emergency action subplan are potentially enforceable.

The changes to the s733 provisions in the Local Government Act that provide statutory exemption from liability will potentially be harder to meet. The threshold has been changed from "substantially in accordance with" to "in accordance" with the coastal management manual. Also, the draft manual does not expressly provide for readily identifiable 'Principles' which was a feature of the Coastal Zone Management Plan Guidelines. The statutory immunities contained in s733 of the Local Government Act 1993, as proposed to be amended by the Bill, continue to refer to the 'principles' in the draft manual.

Proposed security bond for coastal protection works in the event of damage to public assets

In Schedule 4 of the Bill there are proposed changes to the Environmental Planning & Assessment Act. Under the Section 80A changes it proposes a security bond for coastal protection works in the event of damage to public assets.

This has a number of issues in that the damage from the coast protection works may be decades into the future, disputes may arise as to the cause of the damage/erosion, as a development approval condition it is open to appeal and might be considered unreasonable because it's not really operable plus it's a once off payment not suitable for the maintenance of coastal protection structures.

Responsibilities of Council under a coastal erosion emergency action subplan (CEEASP)

Section 15 (3)

In relation to the responsibilities of Council under a coastal erosion emergency action subplan (CEEASP) the protection of all property, including private property, in erosion emergency situations appears to be required. Although private property is not specifically mentioned in this section, other parts of the policy framework have this requirement (NSW Coastal Management Manual, Part A – Consultation Draft, p 8). Currently, councils are not required to do this, and this change will put further pressure on council resources, and potentially expose them to liability for negligence. Council recommends that the responsibility for protection of private property in an emergency situation remain with the landowners, and the provisions for this to be included in the CEEASP prepared for that area.

Savings, transitional and other provisions

Schedule 3 Savings, transitional and other provisions

Section 6

This section states that Coastal Zone Management Plans prepared under the Coastal Protection Act (1979) and submitted to the Minister for certification by the repeal date of that Act can be considered by the Minister under the former Act for up to 6 months after the repeal date. No provision is made for plans that have been substantially completed but are not able to be submitted by the repeal date. Currently, there is no direction from the State Government for councils who might find themselves in this situation. As stated previously, Council needs clear direction from the State Government on this matter. It is recommended that the transitional arrangements be extended to provide certainty in process for all projects funded under the State Estuary and Coastal Management Programs.

Section 733 (4) of the Local Government Act (1993) demonstration of good faith for providing advice

Schedule 4 Amendment of Acts and Instruments

Section 4.4 [9]

The proposed changes to Section 733 (4) of the Local Government Act (1993) in relation to demonstration of good faith for providing advice, doing or omitting to do things related to coastal hazards need further consideration in light of the provisions for the proposed Coastal Management Manual. The concern relates to the change from "substantially in accordance with the principles contained in the relevant manual" to "in accordance with the principles and mandatory requirements set out in the current coastal management manual". Given that the proposed new Coastal Management Manual can be updated from time to time, how is the requirement for compliance with the current manual to be demonstrated if the manual is updated after the preparation of a Coastal Management Program?

It is recommended that the change be “substantially in accordance with the principles and mandatory requirements set out in the coastal management manual current at the time of preparing the Coastal Management Program”.

Funding Mechanisms:

When the State Government announced that the Stage 2 reforms would include information relating to funding and financing mechanism for coastal management actions, it created an expectation that new special funding streams for coastal management might be included.

However, this document has not delivered on that expectation. It is just a compilation of existing mechanisms which councils are already aware of, but there are limitations on the extent to which these can have a significant impact on the capacity of councils to deliver projects. Special rates and charges are mentioned in several places as mechanisms to raise funds for coastal management works. However, the community is generally reluctant to accept these charges, expecting that the rates being paid should be sufficient to fund council services. Various state, federal and other grant schemes are also listed as potential sources of funding. These grants are often competitive, with processing and funding timeframes which do not often align with councils own budgetary planning processes. This means that this guide by itself is not likely to result in a great deal more funding being available for councils for coastal management projects. Consequently, the implementation of projects may continue to be carried out in an opportunistic manner rather than in the planned way expected by the State Government.

Council has reviewed the large volume of material exhibited in the limited time that was available and listed the main issues of concern. The absence of the mapping of the proposed Coastal Management Areas and crucial guidance and direction on sea level rise leaves a great degree of uncertainty that lingered during the entire reform process. Council seeks to have these issues clarified as soon as possible.

If you have any queries regarding the contents of this submission please contact Cheryl Lappin, Acting Group Manager City Strategy on (02) 4221 6127.

Yours sincerely



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