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Dear Sir

Our future on the coast: NSW coastal management reforms

[In response, please quote File Ref:2015/87240]

Sutherland Shire Council welcomes the opportunity to comment on the NSW Planning and Environment's Stage 2 Coastal Reforms. Sutherland Shire Council strongly supports the move by the State Government to provide improved and coordinated management of the coastal environment. Sutherland Shire Council has previously called for a more prescriptive approach to be taken to addressing issues within the coastal zone. Council has identified the need for government guidance to assist decision makers undertaking strategic planning and assessing proposed development within the coastal environment.

The following points summarise Sutherland Shire Council's position on the exhibited Stage 2 Coastal Reforms.

Coastal Management SEPP and Coastal Management Manual

In the main part, Sutherland Shire Council supports the proposed provisions of the Coastal Management Manual. Sutherland Shire Council strongly supports the provision for the manual to provide councils with the ability to decide which of the four coastal management areas the coastal management program will apply to and the flexibility it is proposed to afford councils to tailor the level of analysis to local conditions and to develop locally relevant management responses.

1. Lack of Maps

A key component of understanding the full impact of the Coastal Management SEPP and the draft Bill are the maps which identify the coastal management areas to which

the legislation applies. Given the fact that the maps are yet to be released for public comment, it is not possible to provide full and accurate feedback on these documents without this information. It is critical that councils be given the opportunity to provide input into these maps. It is difficult for councils to ascertain the overall affect of the proposed changes without the associated mapping.

Often councils have additional information, including information at a finer scale, which will improve the accuracy of these maps and assist in better achieving the objectives of the coastal management reforms. Every effort should be made to collect this information and refine the maps before it comes into effect.

2. Consideration of Access and Evacuation

One key element that the SEPP (and the NSW Coastal Planning Guideline) must consider is the issue of access and evacuation. Many of the new developments are being designed so as to protect the development itself from coastal hazards, but give insufficient consideration to access and evacuation during extreme events, where road and infrastructure may be impacted. Similarly, impacts to other critical infrastructure servicing new developments, such as power, water and sewer must be considered.

3. Transparency in Determining Coastal Vulnerability

The information that has been used to develop the Coastal Vulnerability Areas should be provided to councils. This would include information on the type of coastal hazard and any studies or projections that have been relied upon. This will assist councils in the management of these areas.

4. Good Faith Requirements

Sutherland Shire Council supports the provisions in the reforms which give Councils the ability for their actions and management measures to meet the good faith requirements of Section 733 of the Local Government Act provided they are in accordance with a certified management program. This is strongly supported.

5. Coastal Council

Council also strongly supports the opportunities the new coastal reforms provide for Councils to seek advice from OEH and the Coastal Council on key milestones in the preparation of a Coastal Management Plan.

6. Funding

The need to include and identify potential sources of funding and funding models will be critical to the effective implementation of many of the actions identified within a CMP, however it is anticipated that in the majority of instances the funding model will be “rely on state government grants”.

Given the unique coastal environment of the Sutherland Shire, this flexibility is considered necessary to allow Council to focus its planning and management on those areas where it is required.

7. Development Controls in SEPP vs Standard Instrument LEPs

In response to the question in the exhibition material regarding the inclusion of development controls in the SEPP or as a mandatory clause in Council's LEP, Sutherland Shire Council supports a comprehensive and consistent approach to the management of coastal risks and suggests that development controls be included as a mandatory clause in Council's LEPs.

Sutherland Shire Council suggests that the controls be provided via a mandatory clause in the LEP with scope being provided for local councils to include additional objectives, standards and clauses that are not prescribed in the Standard Instrument to allow flexibility to address the specific circumstances associated with the subject land and the type and level of coastal risks. Such variations would need to be supported by suitable coastal studies.

Coastal Management Bill

1. NSW Coastal Council

The establishment of a NSW Coastal Council to advise and guide the Minister and consider and review coastal management programs is supported.

2. Sediment Compartments

Council supports the hierarchy of management objectives in clause 10(3), however raises issues with regards to Schedule 1 of the Coastal Management Bill. There is a lack of information as to how the sediment compartments in this schedule have been derived which is necessary for Councils to know. In addition, the maps showing the boundaries of each sediment compartment are critical so that Council's can accurately assess the areas for which they will have responsibility. These are yet to be provided and therefore make it difficult to provide useful comments on this part of the reforms.

Local Government Responsibility

The responsibility for the implementation of the reforms appears to rest largely with Local Government.

Local Government will be responsible for the preparation of coastal management programs (CMPs). However, many areas of the coastal zone are managed and controlled by agencies other than local government. CMPs are also to be developed to cover areas that are not necessarily aligned with local government boundaries (e.g. sediment compartments). Therefore overall success in the implementation of the

coastal management reforms and the achievement of the state governments objectives for the coastal area, go significantly beyond the responsibility of a single Council.

While councils are required to prepare and comply with CMPs, state agencies are only required to take them into consideration, despite the relevant CMPs being signed off by the Minister. This appears a double standard, with a significantly greater burden being borne by local government.

There is a need for councils to ensure that the actions in adopted CMPs are implemented through the local Council's IP&R framework under the Local Government Act 1993 and through the planning system established in the Environmental Planning and Assessment Act 1979, there is no similar obligation on any government agencies to ensure that their identified actions are implemented, again they are only to have regard to the CMP in the exercise of their functions.

Similarly, it appears that the NSW Coastal Council will audit Council's performance in regards to the implementation of coastal management programs, but no audits of other land management authorities, such as National Parks and Wildlife Services, Crown Lands, or NSW Maritime, are proposed. These agencies are responsible for the management of significant areas of the NSW Coastline and should be subject to similar audits.

Mapping the Coastal Management Areas

In February 2013, the NSW Government commenced Stage 1 of the NSW Coastal Reforms which included a significant change in their policy position on sea level rise. Underpinning these reforms was the decision to rescind the 2009 NSW Sea Level Policy Statement in September 2012. From this time, the NSW Government no longer recommended state-wide sea level rise projections. Instead it decided to provide information on available sea level rise projections to assist councils to develop projections relevant to their local area. The NSW Government also began investigating options to provide councils with access to expert advice.

In a letter from the Minister to all coastal councils, the NSW Government advised councils that:

The setting of a single set of projections did not satisfactorily reflect local conditions and that the NSW Government no longer recommends state-wide sea level rise projections but rather encourages councils to adapt locally relevant projections as appropriate, and that, councils should consider adopting a range of sea level rise projections that are widely accepted and competent scientific opinion, to minimise their potential liability.

The above changes were a move away from the NSW Government's previous position on sea level rise and meant that local councils needed to determine the most appropriate scientific advice to consider sea level rise in their local context.

In recognition of the above changes, Sutherland Shire Council commissioned GHD to prepare a Sea Level Rise Risk Assessment for the entire Sutherland Shire LGA. At present, this study is the most up-to-date and detailed information for the Sutherland Shire. In response to the Stage 1 Coastal Reforms regarding coastal hazard notations, at its meeting on 24 April 2015, Council adopted the benchmarks identified in this GHD report as Council's interim position for the purpose of adding notations to the Section 149 Planning Certificates of the affected properties until a policy is developed based on this GHD study.

While it is acknowledged that the proposed SEPP will also include a provision that the OEH will review maps for the Coastal Vulnerability Area at least every ten years to ensure that the mapping accommodates new and emerging scientific information on the dynamics of the coast, it is suggested that councils be able to propose changes to the maps for all or some of the coastal management areas.

On 7 December 2015, Sutherland Shire Council forwarded the GHD sea level rise report to the OEH for the purposes of developing the draft mapping to accompany the SEPP. Representatives from the Department of Planning and Environment indicated that the Council's maps may be used to inform and refine the maps being included in the draft SEPP. Sutherland Shire Council intends to review its maps on a regular basis, and as a result, it is considered necessary that Council's GHD study be included in the draft SEPPs maps and Council has the ability to propose subsequent changes to the maps in the SEPP in line with Council's sea level rise risk assessment.

In early 2015, Sutherland Shire Council, in response to the planning circular issued by the NSW Government on the 13 November 2014, began to place notations on the s.149 planning certificates on those properties affected by current and future coastal hazards. This fulfilled council's requirement in response to Stage 1 of the Coastal Management Reforms.

The FAQ provided as part of the exhibition material quotes the following with regard to s. 149 planning certificates:

"The reforms do not alter the advice provided to local government in the Planning Circular entitled 'Coastal Hazard notations on section 149 planning certificates'. Notations on s 149 certificates will need to align to the SEPP maps, as they are at the time of issuing a s.149 certificate".

At present, the s.149 notations are placed on those properties identified in the mapping prepared in the GHD sea level rise study. Those properties affected were identified through a detailed process outlined in the GHD study, however, should the mapping included in this GHD study not be considered in the preparation of the draft SEPPs maps, the maps currently being used to inform the s.149 certificate notations will essentially be replaced by the coastal vulnerability maps in the SEPP. As a consequence, those properties identified as being affected by coastal hazards, primarily

coastal inundation and coastal erosion, under the GHD Sea Level Rise Study will need to be reviewed and amended to reflect the properties identified in the new SEPPs mapping. The exhibition material notes that the mapping currently being prepared by the Office of Environment and Heritage are for the whole NSW coastline and may not contain the level of detail of the GHD study prepared for Sutherland Shire Council.

While it is acknowledged that the new reforms will allow Council the ability to amend the maps in the SEPP via planning proposal should it hold more detailed and site specific information for the local area, it is considered illogical for Council to prepare a planning proposal to amend the maps to include information which is currently being used to inform the notations its section 149 certificates and for the purpose of development assessment. Sutherland Shire Council therefore urges the NSW Government to give significant consideration to the maps previously forwarded to the Office of Environment and Heritage to prevent the potential need for Sutherland Shire Council to pursue a planning proposal to include information in the SEPPs mapping that is currently being used as the Stage 1 Reforms required.

Coastal Protection Works

The overview of the reform package released by the Government states that the provisions of the Coastal Protection Act regarding coastal protections works are included in the Bill. However, the only relevant provision is proposed in section 27 which provides that development consent cannot be granted for coastal protections works unless the consent authority is satisfied the works will not unreasonably limit public access to or use of a beach or headland or pose or be likely to pose a threat to public safety.

There is no longer provision for carrying out temporary coastal protection works without development consent. This will no doubt be of concern to some landowners who consider that they must retain the right to deposit materials on beaches to protect their land from imminent threats. This is particularly an issue during extreme weather events when there is no time to seek development consent. An exemption is needed for emergency work. It is suggested, that the Coastal Management SEPP contain provisions to deal with such works.

A new provision in the EPA Regulation will clarify that depositing material on beach can constitute 'work' for the purpose of the EPA Act. This means that such an action is 'development' and can be controlled using the suite of enforcement powers under the EPA Act in respect of unlawful development. Therefore, in the absence of any provision making temporary coastal protection works permissible without development consent, carrying out such work without consent will be a breach of the EPA Act.

There are amendments to some of the other existing types of orders which can be issued under the EPA Act to ensure they can be utilised in respect of placement of materials in public places such as beaches. Also, the power to issue orders is extended

to the Minister or Secretary or other prescribed authorities in respect of land in the coastal zone.

These new powers are a welcome tool in respect of protecting the environment and beaches from unauthorised beach protection works but as mentioned above, restrict the ability of landowners to protect their land through placement of temporary works.

Funding Coastal Management Programs

While funding for the implementation of coastal management programs will be critical to their effective implementation, funding must be made available to develop CMPs in the first place as councils often do not have the resources or capacity to develop such plans.

If you require any further information please contact myself, Mark Carlon, Manager Strategic Planning on 9710 0523.

Yours Sincerely



Mark Carlon
Manager Strategic Planning

