

## **Tweed Shire Council Submission to the NSW Coastal Management Reforms 2015**

**Monday 29 February 2016**

### **General Comments**

Council congratulates the NSW Government in developing the draft Bill and generally welcomes the proposed changes encompassed in the coastal management reforms. Specific comments are provided below on the various components of the reforms.

The recent advice that the Government will put the full Coastal Management SEPP on public exhibition later in the year is welcomed. Likewise the advice that Councils will be further consulted regarding the mapping of the Coastal Management Areas.

### **Coastal Management Bill 2015**

Council is generally supportive of the approach outlined in the Bill, particularly in regard to the intention to balance environmental, social and economic values and provide for a high level of assessment of these in decisions making in the coastal zone. The shift from a focus on coastal protection to coastal land use planning and management is supported,

The legal advice provided to the Sydney Coastal Councils Group, as provided to Tweed Shire Council by Local Government NSW, raises concern on the positive obligation on Council's to implement the Coastal Management Program (s22 of Draft Bill). There is the potential to expose Council to litigation by third parties seeking compliance for actions, works or responsibilities in any CMP which may/may not have been undertaken due to range of reasons including financial or resource limitations. **Therefore Council opposes the wording of s22 of the Draft Coastal Management Bill 2015 and urges the Government to ensure that any replacement clause does not impose a positive obligation to give effect to CMPs.**

The linkages between the identification, mapping and use of Coastal Management Areas as the basis for planning controls are supported. The use of a hierarchy of management objectives is also supported.

**The importance of utilising Local Government mapping and available existing data including local knowledge and expertise to refine mapping of Coastal Management Areas is strongly reiterated.**

The focus and name change of Council's coastal planning documents to *Coastal Management Program* (CMP) is strongly supported; as is the incorporation of the Coastal Management Program into Councils Integrated Planning and Reporting Framework. However, to ensure that all aspirational actions are not deleted from Programs, **there should be allowance for flexibility in delivery of action outcomes.** The current legislation implicates punitive measures which may arise following audits of individual Council CMPs. For example, many actions in the current Coastal Zone Management Plans are 'aspirational' or 'opportunistic' around potential grant opportunities or may be

implemented through additional resources becoming available. It is important for these items to be retained in plans and programs to enable them to be included in grant applications and Council priority setting.

The ability for a Council to develop a CMP for the whole or part of the coastal zone is supported, as is the inclusion of consideration of coastal sediment compartments in the consultation stage. This consideration of sediment compartments should also be included in the development of hazard definition studies as a mandatory requirement in the Coastal Management Manual.

One issue not provided for fully in the current Bill is resolution of the issue of right-line and ambulatory boundaries on eroding open coast and/or receding estuarine foreshores.

## Coastal Management State Environmental Planning Policy

The following comments relate specifically to the Coastal Management SEPP and respond directly to questions raised in the document *Coastal Management State Environmental Policy – Explanation of Intended Effect dated November 2015 prepared by NSW Department of Planning and Environment*.

Coastal Management SEPP - Part B Policy Questions	General TSC Notes/Response	TSC Position and Items Requiring Clarification
<p><b>Question 1</b> Should councils be able to propose changes to the maps for all or some coastal management areas?</p>	<p>The ability of Council to remap areas and amend through the planning proposal process is supported for the following reasons:</p> <ul style="list-style-type: none"> <li>• TSC has prepared fine scaled/refined vegetation mapping that could be used to inform the development of contemporary Littoral Rainforest and Coastal Wetland mapping.</li> <li>• Significant errors are apparent in the existing Littoral Rainforest and Coastal Wetland SEPP mapping (since the gazetted SEPP mapping was prepared).</li> <li>• The current protocol in requesting a remap of Littoral Rainforest and Coastal Wetland is unclear. Efforts from TSC to seek re-mapping at some sites have been stalled due to uncertainty in SEPP reform.</li> <li>• In relation to coastal management areas, Council is well placed to ensure that management area boundaries are accurate and remain up to date/contemporary.</li> </ul>	<p>Further clarification is required in respect to:</p> <p>Littoral Rainforest and Coastal Wetland diagnostic criteria and mapping methodology</p> <p>Timing on the release of Littoral Rainforest and Coastal Wetland mapping</p> <p>Process/protocol required to incorporate locally refined mapping into the final SEPP</p>
<p><b>Question 2</b> Should the development controls be included in the proposed Coastal Management SEPP or as mandatory clause in Councils LEP?</p>	<p>It is understood Clause 5.5 is to be repealed from the standard LEP instrument and those matters of consideration are to be reflected in the proposed CM Act and Coastal Management SEPP. This is supported where those matters are appropriately aligned to each of the management areas as generally proposed.</p>	<p>The inclusion of Clause 10(3) of the CM Act relating to situations with overlapping management objectives is acknowledged and supported.</p>

Coastal Management SEPP - Part B Policy Questions	General TSC Notes/Response	TSC Position and Items Requiring Clarification
<p><b>Question 3</b>            Do the proposed development controls for mapped coastal wetlands and littoral rainforests remain appropriate for that land?</p>	<p><u>Coastal Wetland</u></p> <p>The inclusion of a 100m buffer is supported to allow for consideration of climate change impacts and opportunities for migration.</p> <p>The ‘additional’ development controls for the core coastal wetland area is acknowledged.</p> <p><u>Littoral Rainforest</u></p> <p>The ‘additional’ development controls for the core littoral rainforest area is acknowledged.</p> <p>With the exception of terminology (issues noted in adjacent column), Council acknowledge and support the proposed development controls.</p>	<p><u>Coastal Wetland</u></p> <p>Clarification is required as to whether those ‘additional’ matters for consideration for the core coastal wetland area are in fact ‘additional’. That is, will the matters for consideration under the existing SEPP 14 Clause 7 remain? TSC advocates for the retention of those matters currently reflected in Clause 7 of SEPP 14</p> <p>TSC recommend that the activity of ‘subdivision of land’ similar to that required to be considered under the Littoral Rainforest provisions also be applicable to the assessment of Coastal Wetlands. The inclusion of this activity would enable decision makers to consider coordination and long term management arrangements of coastal wetlands where proposed to be subdivided across multiple lots</p> <p>The use of terminology ‘destroying or removing native vegetation’ is considered inadequate to capture a suite of activities that may have a detrimental impact on coastal wetland values and associated structural elements. Expanded and more robust terminology currently prescribed in SEPP 26 Clause 7 should be adopted being <i>‘disturb, change or alter any landform or disturb, remove, damage or destroy any native flora or other element of the landscape’</i></p> <p><u>Littoral Rainforest</u></p> <p>Terminology as discussed for Coastal Wetlands is considered inadequate. Reference to ‘destruction or removal of native vegetation’ should be replaced with <i>‘disturb, change or alter any landform or disturb, remove, damage or destroy any native flora or other element of the landscape’</i></p> <p><u>General</u></p> <p>Clarification on the term ‘residential land’ is required. Council</p>

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		<p>recommend that development controls relating to Littoral Rainforest and Coastal Wetlands be applied on 'residential' or other urban zoned land where such land is capable of future subdivision.</p> <p>Council note that environmental protection works (as defined under the standard instrument) carried out within a Coastal Wetland Management Area shall require development consent. Council are of the opinion that low impact bushland restoration works as an activity of environmental protection works should be allowable without consent where occurring on Council or Crown land. The requirement for a development application for such activity may be seen as a barrier/impediment to facilitating conservation outcomes. This may become a particular issue given that the extent of Coastal Wetland on Council or Crown land is likely to be expanded through contemporary mapping. Notwithstanding, those environmental protection works that involve changes to hydrology or landform, or involve earthworks or result in the disturbance, removal, damage or destruction of any native flora or fauna habitat within a Coastal Wetland should require development consent regardless of tenure/management arrangements.</p>
<p><b>Question 4</b> Do you support the inclusion of a new 100m perimeter area around the mapped wetlands including the additional controls?</p>		<p>Yes. See above</p>
<p><b>Question 5</b> Are the proposed</p>	<p>Council acknowledge and support the proposed development controls. A query is raised on the ability of the JRPP to always have</p>	<p>It is considered that the NSW Coastal Council may have a role in providing expert advice to the JRPP on new coastal</p>

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development controls for mapped coastal vulnerability areas appropriate for that land?	the appropriate experienced expert with regard to assessment of new coastal protection works.	protection works where no coastal management program applies.
<b>Question 6</b> Are the proposed development controls for coastal environment areas appropriate for that land? \		Council acknowledge and support the proposed development controls.
<b>Question 7</b> Is the inclusion of the catchments of the 15 sensitive lakes (listed in schedule1) within the coastal environment area appropriate?	None of the listed sensitive lakes occur within the Tweed Shire (requiring comprehensive protection in <i>Coastal Lakes Final Report 2002</i> ).	It is noted that significant lake systems such as Cobaki, Terranora, Cudgen, Wommin Lake and Wommin Lagoon (the latter two waterbodies not included in the inquiry) have not been identified. Notwithstanding, the mapping criteria for the Coastal Use Area would involve applying a minimum 500 m buffer measured form the mean high water mark from such features.
<b>Question 8</b> Which is the best option for mapping the coastal use area?		Option 3 as detailed in Schedule 2 – ‘Boundary generally one kilometre inland which can be increased without limit but only decreased to 500 metres’ may be preferred to allow Council to capture local values extending beyond the 1 km boundary. Further mapping analysis would be required to evaluate the effect of adopting this methodology.
<b>Question 9</b> Should councils be able to propose variations to the Coastal Use Area maps over time to take into account local characteristics?		Yes

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<b>Question 10</b> Are the proposed development controls for mapped coastal use areas appropriate for that land?	Council notes that the Coastal Management Area 4 - Coastal Use Area, proposed development controls identifies ecological values as matters for consideration (see pp. 20 of the SEPP Explanation of Intended Effect 2015). However, from review of the <i>Coastal Management Bill 2015</i> - Clause 9 (2) related to Coastal Use Area objectives, the clause fails to include/make reference to the protection and enhancement of ecological/biodiversity values.	In order to be consistent with the Coastal Management SEPP the protection and enhancement of ecological/biodiversity values should be included within Clause 9 of the CM Act.
<b>Question 11</b> Should the current exempt and complying development provisions be retained for coastal management areas?	Council acknowledge that no change is to occur to the current SEPP (Exempt and Complying Development Codes) 2008 and support retaining existing provisions pursuant to comments below.	
<b>Question 12</b> 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 wetland and littoral rainforests or in the catchments of sensitive coastal lakes and lagoons	It is understood provisions relating to 'environmentally sensitive land' for the purposes of the SEPP (Exempt and Complying Development Codes) 2008 are to remain unchanged.  Mandatory LEP Standard Instrument Clause 3.3 titled <i>Environmentally sensitive areas excluded</i> , prevents exempt and complying development being carried out in areas of (but not limited to): <ul style="list-style-type: none"> <li>• Coastal waters of the state</li> <li>• A coastal lake</li> <li>• Land to which SEPP 14 Coastal Wetland and SEPP 26 Littoral Rainforest applies</li> <li>• Within 100m of SEPP 14 Coastal Wetland and SEPP 26</li> </ul>	Council supports maintaining exclusions for exempt and complying development within environmental sensitive land and associated buffers. However, Council suggest that certain low impact type activities/uses may be allowable as exempt and complying development within the respective 100m buffer zones. A risk analysis would be required to be undertaken to determine which activities/uses may be appropriate for inclusion.
<b>Question 13</b> Should any provision be retained to allow the use of emergency coastal protection works in emergency	Most Council's should now hold sufficient hazard mapping to identify vulnerable / potentially vulnerable areas. Unless identified in a <i>coastal erosion emergency action sub-plan</i> , protection works that are not designed and considered in context can be ineffective and have potential public safety implications.	Only those works identified in a <i>coastal erosion emergency action sub-plan</i> should be permitted. Site specific actions including properly designed temporary protection works options would be identified in the sub-plan.

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situations? What limitations should be put on such works being undertaken by private individuals or public authorities		



## Coastal Management Manual

Council welcomes the updated Coastal Management Manual and the information received to date on this document provides some basis for assessment. It is noted that there has been extensive consultation around the development of the Manual and the Government is to be congratulated on that.

The approach taken to the development of the Manual and the scope of its contents are considered sound. The savings provisions for the transfer of existing Coastal Zone Management Plans to Coastal Management Programs are essential to ensure that Councils are not disadvantaged.

It is noted that there is a heavy reliance on involvement and input from the Office of Environment and Heritage in the development of Council's CMPs. While this is supported, there must also be a commitment from the NSW Government to ensure the expertise and capacity to provide this assistance is strengthened and maintained within this Department.

As noted above, the consideration of sediment compartments should also be included in the development of hazard definition studies as a mandatory requirement in the Coastal Management Manual.

It will be very important for the Coastal Management Manual to **include guidance and a standardised methodology to undertake tidal inundation assessments** (2.6.3). It is noted that this is currently shown as 'upcoming' in the coastal management manual toolkit. If vulnerability assessments are required for certain areas or assets, the risk triggers to require detailed assessment should be identified. It is noted that there will be significant additional cost to Councils in undertaking such investigations, particularly in situations where a number of coastal areas overlap and multiple investigations and assessments are required.

The above submission was coordinated by Jane Lofthouse, Coordinator Natural Resource Management, Tweed Shire Council. For further detail or clarification on the above please contact Jane by telephone: (02) 6670 2743 or email: [jlofthouse@tweed.nsw.gov.au](mailto:jlofthouse@tweed.nsw.gov.au).