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The Australian Coastal Society is dedicated to healthy ecosystems, vibrant communities, and sustainable use of coastal resources.

AUSTRALIAN COASTAL SOCIETY: SUBMISSION INTO THE NSW PLANNING REVIEW 2011

1. With over 80% of the State's population living in local government areas along the coast and the increasing desire for 'sea change' migration to the coast. Land use planning has, and will continue to have, a critically important role in managing our fragile coastal environment. Our coast includes 1,500km of open ocean coastline, 6,500km of estuarine and coastal lake foreshores, 721 beaches and 130 estuaries and lakes.
2. The coast is a special environment because of its unique position as an interface between activities and processes on land and activities and processes in the marine environment. Because of this it has a unique set of natural characteristics and a wide variety of values placed upon it.
3. In addition to this, an inevitably changing climate and the continuation of this change for generations to come places the coast on the front lines in combating and adapting to these changes. However the inherently dynamic nature of the coast and its ability to respond to changes in conditions as a system is perfectly matched for such a battle. It is our human interaction with the coastal environment through settlement and activities that requires careful consideration and management. The development and implementation of a replacement planning framework in NSW will have a key role to play in striking a sustainable balance between competing demands at the coast.
4. The Australian Government has just completed a first pass risk assessment of built assets for the Australian coast. This work shows that with a projected sea level rise of 1.1m by 2100, approximately 50,000 residential properties are vulnerable to inundation and erosion, while billions of dollars worth of public and private infrastructure and commercial properties are also at risk within NSW.
5. The Australian Coastal Society supports the current review into the NSW planning system and makes the following points as to how the replacement planning framework should best deal with the coastal environment.

PLANNING PHILOSOPHY

6. The current planning regime that governs land use and activities on land has a direct influence on the coastal environment through State Environmental Planning Policies, (and Regional Environment Plans), other State-wide policy, Regional Strategies, Guidelines, other Council strategies and policies, local environment plans, Master Plans and Development Control Plans, development applications, certification and compliance.

7. Development applications can be further divided into local development, regional development and State Significant Development and Infrastructure; and then further split based on geography and scale. Approval can be sought for complex infrastructure projects (e.g. ports and desalination plants), designated development (e.g. marinas), integrated and staged development (e.g. subdivisions), development that needs consent, development that doesn't need consent and certification. In addition to that, selected agencies are also able to issue themselves with approval. Each of these approval processes has different thresholds, information and consultation requirements and the result is a tangle of onerous, overlapping, convoluted processes that often are ineffective in providing ongoing environmental benefit.
8. In this regard, the replacement planning framework needs to be significantly simplified for all stakeholders and better designed to be more resilient to changing management approaches and evolving science. The replacement planning framework should rely less on procedural 'checklists' and place more of an emphasis on achieving good environmental outcomes and compliance monitoring. A system that relies on administrative process, prescriptive requirements and self-checking is not transparent and does not allow for evolving best practice and the delivery of constantly improving outcomes. The NSW Government should look to adopting a performance based, outcome focussed planning model not dissimilar to the model adopted by New Zealand under the *Resource Management Act 1991*.
9. Better integration is required between other pieces of environmental and coastal related legislation e.g. *Marine Parks Act 1997*, *Threatened Species Conservation Act 1995*, *Pipelines Act 1967*, *Offshore Minerals Act 1999*, *Coastal Protection Act 1979*, *Catchment Management Act 2003*, etc. The State government should take this opportunity to repeal some of these pieces of legislation where possible and incorporate their intent into any replacement planning framework. This is critical to ensuring the replacement planning framework remains simple, uncluttered and offers a high degree of certainty to all stakeholders.
- 10. The Australian Coastal Society encourages the State Government to take this opportunity to put in place a robust, resilient, streamlined and transparent planning framework that provides for the protection of the outstanding values of the coastal environment of NSW by ensuring effective integration with all complementary legislation as is currently achieved with the *Local Government Act 1993*.**
11. Such a framework should continue to be founded upon the principles of ecologically sustainable development and give coastal environments special weighting to preserve their unique and (mostly) intangible value to NSW. Fundamentally the concept of 'development control' and 'land use planning' must not be separated from 'environmental effects' and the core principle of 'ecologically sustainable development' - as has been the case in practical terms over the years. This will require a fundamental philosophical and paradigm shift in the way coastal natural resources are managed in NSW. Given the transient nature of coastal landforms that are constantly subject to shifts in position due to erosion or inundation as sea level continues to rise, the replacement planning framework must also recognise that climate change will place both natural and built assets at risk for generations to come and shift property boundaries.

EXISTING POLICY TO RETAIN

12. Whilst the Australian Coastal Society recognises this as an opportunity for NSW to start afresh and become a world leader in environmental management and planning, there are some aspects of existing coastal management mechanisms that should be retained.
13. **The *NSW Coastal Policy 1997* should act as the pre-eminent mechanism detailing the State's vision to achieve good environmental outcomes at the coast. This policy should be regularly updated to stay relevant, and periodically reviewed to track progress toward desired policy outcomes.**
14. The aims and matters for consideration defined under Clauses 2(1) and 8 of *State Environmental Planning Policy 71 – Coastal Protection* should be incorporated into an enhanced *NSW Coastal Policy*. The *NSW Coastal Policy* should also be given special statutory weighting within the replacement planning framework in order to be able to achieve its desired policy outcomes.
15. Such statutory weighting would assist in giving adequate recognition to the increasing levels of vulnerability and risks in occupying and developing low-lying and erodible coastal lands. Such lands have been identified through the implementation of the State Government's *Sea Level Rise Policy Statement 2009* (e.g. the *NSW Coastal Planning Guideline: Adapting to Sea Level Rise, August 2010*) and the preparation of Coastal Zone Management Plans.
16. The treatment of stormwater, effluent and other discharges into the coastal marine environment must also be considered under the replacement planning framework as potentially polluting activities and be appropriately controlled.
17. Public access and preserving the scenic qualities and natural character of the coast including open ocean beaches, estuarine foreshores, saltmarsh and wetlands, cliffs, rock platforms and dunes, must be seen as fundamental principle of protecting the integrity of the coastal environment for the benefit of present and future generations.

GOVERNANCE ARRANGEMENTS

18. There is presently myriad of legislation and policy with respect to coastal management in NSW. A thorough review of the State planning legislation is an opportunity to simplify, integrate and improve the system that is currently in place to manage the coastal environment.
19. Although the coast has long been recognised as a special environment and is highly valued by Australians and tourists alike - no single government organisation is responsible for coastal management. This is further confused by a lack of a clear and consistent administrative definition of the coastal zone.
20. The coast is subject to management by a range of government and non-government organisations with responsibilities that may at times be complementary, but can often be disparate and overlapping. While some good outcomes have been achieved (e.g. the Coastal Lands Protection Scheme, Coastcare groups, the development of the *NSW Coastal Policy* etc.), this current administrative complexity has proven to be a significant barrier to sustainable and integrated coastal management.
21. Agencies that currently have some role in managing, regulating or overseeing activities in the coastal environment include: the Commonwealth government, the

Office of Environment and Heritage, the Marine Parks Authority, the Department of Primary Industries for fisheries and aquaculture, ports, NSW Maritime, Catchment Management Authorities, the Department of Planning and Infrastructure, and Crown Lands to name a few. Coastal local councils share these responsibilities in many ways to further complicate decision-making and implementation of the *NSW Coastal Policy*.

22. Councils and agencies are further confronted with a confusing array of spatial definitions of the coast (for instance there exists four definitions of 'Coastal Zone' as applied to different sections of the NSW coast) as well as the complex division of responsibilities. This fundamental issue needs to be addressed if we are to preserve the unique nature of our coastal environment and protect our communities and valued built assets at risk from storms and sea level rise.
- 23. The State government should ensure that councils and state agencies operate in a system that provides for more effective coordination of coastal planning and management. The aim must be to achieve sustainable economic growth, protection of high value environmental assets such as beaches, estuaries and wetlands; and manage the risks to communities and infrastructure from the impacts of climate change.**
24. There has been little attempt at state-wide coordination in coastal matters since the NSW Coastal Council was abolished in early 2004. The NSW Coastal Council was first formed under Part 2 of the *Coastal Protection Act 1979* and reported to Parliament through the Minister for Planning. It was responsible for advice to relevant Ministers on coastal issues such as the *NSW Coastal Policy*, amendments to legislation, and review of agency and council actions to ensure consistency with the *NSW Coastal Policy*.
25. Independent and coordinated coastal advice has not been forthcoming from the Natural Resources Commission (NRC) or the recently disbanded Natural Resources Advisory Council (NRAC), purported replacements of the NSW Coastal Council. The Natural Resources Commission (NRC) was established under the *Natural Resources Commission Act 2003* to provide the government with independent advice on a broad spectrum of natural resource management issues, including coastal protection. However the objectives of the *Coastal Protection Act 1979* offer a far greater range of values to consider in coastal protection (Section 3 of the *Coastal Protection Act 1979*). The limited scope of the *Natural Resource Commission Act 2003* has meant the NRC has never been able to fully replicate the work undertaken by the NSW Coastal Council and provide integrated advice to the range of Ministers, agencies and local councils that have an interest in various aspects of the coast.
26. The *NSW Catchment Management Authorities Act 2003* devolves natural resource management investment, operation and decision making to 13 Catchment Management Authorities (CMAs) across the State. This includes the Caring for Our Coast programme and funding of Landcare, Dunecare and Coastcare community groups. Catchment Action Plans developed by the CMAs largely remain unincorporated into Coastal Zone Management Plans or local environment plans.
27. This review provides a great opportunity for catchment based natural resource management regime to be strengthened and incorporated as a fundamental principle in the replacement planning framework – giving statutory planning powers and compliance mechanisms to regional bodies (also referred to in the *Report to the*

Natural Resources Commission on NRM Models – Griffith and Associates, March 2009).

28. The State government should consider the current fragmented state of governance arrangements and adopt a regional model for integrating strategic land use - possibly an expansion of the existing functions of Catchment Management Authorities or some other form of regional planning that integrates land use planning, coastal zone management plans and catchment plans. These regional bodies would be responsible for providing advice on regional coastal issues or proposals consistent with overarching State coastal policy and ensure that the strategic planning and sustainable management of natural resources and the built environment are intrinsically linked.
29. The newly appointed NSW Coastal Panel that operates under the Office of Environment and Heritage has no jurisdiction beyond the realms of coastal erosion and advice on Coastal Zone Management Plans. This does not allow the necessary holistic or strategic view of coastal management and planning - vital in keeping ahead of the adaptation required at the coast in a changing climate. There is scope for such matters to be included in an enlarged brief of the NSW Coastal Panel and for assessment of those matters (potentially under Parts 3 and 4 of the *Coastal Protection Act 1979*) to be reported to the appropriate Minister.
- 30. The State government should establish an independent advisory body to maintain an overview of state-wide coastal issues. This body should include elected representatives from each region, supporting technical experts, and have responsibility for the coordination and development of state coastal policy.**
31. The Australian Coastal Society would prefer a return to the pre-2004 situation where the NSW Coastal Council had a clear role as the pre-eminent coastal authority.
32. Alternatively such a body may be established through an expansion of the role of the recently constituted NSW Coastal Panel into a Coastal Council, or potentially through an expansion of the remit of the NRC. Any expanded powers must include jurisdiction to assess matters against all objectives of the *Coastal Protection Act 1979*, including an assessment of land use matters under planning framework (currently seen as beyond the scope of the NRC). The role of such a body must provide clear accountability (either to Ministers or as an independent body) and have oversight of all coastal matters e.g. under the *Local Government Act 1993*, coastal protection, natural resource management, and planning.

KEY PRINCIPLES

33. Effective engagement with local government and communities in decision making in coastal management is vital. Many decisions relating to the use of the coastal zone now and into the future are made at the local level. Increased community engagement at all levels of the planning process should therefore be a fundamental principle on which to build the replacement planning framework based on a set of principles that recognise the fragility and transient nature of coastal assets now and into the future.
34. The replacement planning framework should provide for recognition of the coast (and its many and diverse values) as a matter (or ecosystem) of national importance e.g. "...the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the

protection of them from inappropriate subdivision, use, and development...” (from New Zealand’s RMA 1991).

35. The replacement planning framework should be founded on the following key principles:

- a. **Consideration of cumulative impacts in local planning must be a requirement. This is particularly relevant for the ribbon-like spread of development up and down the coast into previously untouched areas;**
- b. **Coastal planning should be underpinned by ecosystem based management, the preservation of biodiversity, preserving the natural character of the coast, and the maintenance of public access and amenities of beaches, dunes, coastal lakes and estuaries and other natural features;**
- c. **That there be an obligation for state agencies and local governments to consider risk to communities, infrastructure and the environment from coastal hazards (including worst-case scenarios) now and into the future;**
- d. **Allowance for natural adaptation to climate change by recognising the coast as a dynamic, ever-changing environment with shorelines changing the position of property boundaries and potentially threatening the public right to access dunes and beaches and foreshores of estuaries and coastal lakes;**
- e. **Reinforcement of the precautionary approach to planning and decision-making and recognition that science can only give the best answers available at the time e.g. avoid adverse environmental effects first then mitigate if unavoidable; and**
- f. **Provision of some form of statutory weight for climate change as a fundamental consideration in planning and decision-making (e.g. this will be particularly relevant in areas defined as at risk to climate change impacts pursuant to section 56B of the *Coastal Protection Act 1979*).**

36. The Australian Coastal Society also recommends that the NSW Government should investigate the possibility of including (or building in flexibility to allow for) marine spatial planning in State waters. This would allow for the world leading management of activities such aquaculture, Marine Parks, strategic planning for marinas and recreational boat use, protected surf breaks, sand mining, dredging etc.



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