



SYDNEY COASTAL COUNCILS GROUP INC.

councils caring for the coastal environment

SUBMISSION

A New Planning System for NSW Green Paper

October 2012

Prepared by: Sydney Coastal Councils Group Incorporated (SCCG)

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Submitted (via email) to: New Planning System Team
Department of Planning and Infrastructure
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1. Sydney Coastal Councils Group Incorporated (SCCG)

The SCCG is a voluntary Regional Organisation of Councils (ROC) representing 15 Sydney coastal councils (www.sydneycostalcouncils.com.au/). We are the peak NSW local government association representing coastal councils and the third largest NSW ROC based upon population. We have over 20 years' experience in providing leadership through a coordinated approach to sustainable coastal management.

In relation to significant coastal policy and legislative initiatives we make comprehensive submissions which harness the individual and collective knowledge of our Member Councils, a suite of technical and academic experts as well as other stakeholders. Consultation is undertaken through workshops, information sessions and publications. Accordingly, we are uniquely able to play a key role in the delivery of a strategic and sustainable planning system, especially in relation to the coasts*.

* a reference to 'coasts' in this Submission includes estuaries.

2. Scope of this submission

A number of our Member Councils (and/or ROCs of which they are members) have made detailed and comprehensive submissions. In addition, the NSW Coastal Management Planning Policy is still to be prepared (see below). Accordingly, to avoid duplication and focus upon our specialist area, rather than individually address each of the Paper's 23 *Transformative Changes*, our submission presents the fundamental framework which we believe should underpin the New Planning System. It draws upon the area in which we have specific knowledge and expertise, namely the urban coastal environment and is to be considered in that context. This Submission echoes recommendations we continue to promote, for example, in our Strategic Plan and in relation to other relevant 'reforms' such as the NSW Coastal Management Reforms 2010

(www.sydneycostalcouncils.com.au/sites/default/files/sccgpackage2010.pdf).

Please note that the fact that we have not specifically addressed certain elements in the Paper is not to be construed as an endorsement thereof.

Council elections were held in early September 2012 and, as a result, many of our Member Councils have not yet had the opportunity of formally nominating new delegates to our Full Group. Accordingly, our Submission has not been considered and adopted by delegates. Indeed, until our first information session with delegates, many may not have informed views on the proposed changes to the planning system. In this regard, an extension of time was requested but, to date, no substantive reply has been received. Therefore, it may be necessary for us to make an amended or supplementary submission in due course.

3. Structure of this submission

This Submission is organised into numbered sections. Our recommendations appear at the beginning of each section, numbered (in bold) and boxed. The rationale upon which our recommendations are based, including the context where necessary, follows the recommendations.

4. NSW Planning Policy – coastal management

Recommendation 1

The NSW Planning Policies be developed and published in draft as the next phase of the reform.

Recommendation 2

Meaningful consultation take place and submissions be invited and considered on the NSW Planning Policies before the preparation of a White paper.

Recommendation 3

The NSW Planning Policies be statutory instruments with decisions made thereunder subject to judicial review.

Rationale

The Paper properly regards coastal management as a key planning area which is the subject of a specific NSW Planning Policy providing *practical high level planning direction*. Unfortunately, no such policy has been made available for consultation and comment. It is essential that the proposed policy is considered alongside the Paper and feedback sought before it is issued in its final form. Its absence significantly limits the utility of the Paper as it pertains to the coast.

To alleviate ambiguity and uncertainty in the application of such a key planning area, the policy must be given statutory force.

5. Integrated legislation, planning and management

Recommendation 4

An integrated planning system. In particular, the New Planning System integrate:

- a) with existing legislation
- b) with reviews and/or amendments to related policies, frameworks and legislation (for example, those dealing with the coast, land use planning and land use management), in particular the:
 - i) NSW Coastal Reforms; and
 - ii) review of the *Local Government Act 1919*
- c) ecological, social, cultural, governance and economic considerations across the full range of temporal and spatial scales
- d) with the machinery of government.

Rationale

1. Our coasts are finite, being circumscribed by certain immutable limits such as size, biomass, biodiversity and biogeochemical cycles. There is not an endless supply of resources for consumption or an infinite sink for wastes. All living organisms impact in some way upon their surroundings, however human activities and patterns of energy and resource use create the greatest impact. Development modifies landscapes and coasts have been highly modified because they are popular places to live, work and play. These modifications can diminish ecosystem services and thus the quality of life. The use and exploitation of coastal resources must therefore be carefully managed. This involves good planning.

Development pressures can undermine the very physical, geographical and biological elements that make coastal environments so valuable. The pressure upon coastal resources is accelerating. Careful resource planning over multiple time and geographical scales is required rather than reactive, short-term disjunct systems. Areas must be considered spatially and functionally.

Planning and management are not synonymous concepts; however they are linked and overlap. Management considers goals, vision, mission, values, objectives, outcomes and roles and responsibilities whereas planning is the process of implementing and applying actions to achieve them. Management provides guidance, direction, boundaries and outcomes for planning.

Good management and planning is strategic and integrated (see also discussion on integrated coastal management in Section 7). Strategic planning is interwoven into and forms part of good management. Strategic planning is multidimensional (considering physical, social, economic, environmental, political and cultural factors) and a continuous, adaptive and systematic process applying a long-term vision. It assumes access to necessary data (on an ongoing basis) and appropriate monitoring and enforcement.

2. The New Planning System must consider, take account of and implement relevant management frameworks. That is, policies, frameworks and legislation dealing with land use planning and land use management must be integrative. One of the stated objectives of the New Planning System is that it be *Integrated - promote greater cooperation and partnerships between all levels of government...* (page 17). However the overhaul of the planning system is not integrated because they fail to take into consideration the following:
 - a) The Coastal Protection Act 1979 is the principal legislation relating to coastal management in New South Wales. The *Coastal Protection Amendment Bill 2012* was introduced into Parliament (and had its first and second reading speeches) on 12 September 2012. It was introduced without notice to the community and four days after the local government elections on 8 September. The Bill has potentially far reaching implications for local government and the community by proposing to:

- make changes to the regulatory scheme governing the placement of certain coastal protection works (such as sandbags) on beaches, or sand dunes adjacent to beaches, to mitigate the effects of wave erosion on land;
- reduce the maximum penalties for offences relating to the placement, maintenance and removal of such coastal protection works; and
- repeal existing regulations, relating to the categorisation of certain coastal land by reference to the level of the risk that the land will be adversely affected by coastal hazards (such as beach erosion, shoreline recession and coastal inundation).

These Coastal Reforms have been undertaken in a vacuum without proper and meaningful participation and consultation and undermine any efforts to provide for strategic coastal planning. They derogate from an integrated partnership approach and the New Planning System's 'strategic approach'.

The 2011 Australian State of the Environment Report (in brief) notes that *the future of our coasts depends on whether government and governance arrangements can be developed that allow a much more strategic approach to managing coastal resources, over spatial scales that match the scale of the challenges* (emphasis added). At a council level, it further notes that *[l]ocal governments are expressing concern about the lack of guidelines, standards and national strategic approaches to address coastal development, growing populations and environmental impacts.*" We have repeatedly advanced these concerns.

- b) By Circular to Councils dated 27 August 2012, Premier and Cabinet advised that the Hon. Don Page M.P. had appointed the Local Government Taskforce to review, *inter alia*, the *Local Government Act 1993*.

It is well known that Local Government has a key role in land use planning and management and this is recognised in the Paper:

- *Local government will be key participants by legislation in the making of Regional Growth Plans and Subregional Delivery Plans*
- *Local government be key participants on Regional Planning Boards*
- *Local government will be responsible for making Local Land Use Plans*
- *Local government will participate in the assessment of State Significant Development and Priority Infrastructure Projects*
- *Local government will be the consent authority for Merit Assessed Development and merit-related issues and design matters for Code Assessment Development*

(at page 21)

The Local Government Act Taskforce will consider the provisions of the Local Government Act 1993 and, in particular its practical operation so as to:

- Ensure that the legislation and statutory framework meet the current and future needs of the community, local government, and the local government sector
- Strengthen and streamline the legislation to enable local government to deliver services and infrastructure efficiently, effectively and in a timely manner
- Ensure that the legislation is progressive, easily understood and provides a comprehensive framework, while avoiding unnecessary red tape
- Provide greater clarity on the role and responsibility of local government.

(Adapted from the Taskforce's Terms of Reference)

- c) New South Wales' 13 Catchment Management Authorities (CMAs) are charged with, amongst other things, natural resource planning at a catchment level. On 4 October 2012 the Minister for Primary Industries, The Hon. Katrina Hodgkinson M.P. announced that the CMAs functions (as well as those of the Livestock Health & Pest Authorities and the agriculture advisory services of Agriculture NSW) will be assumed by *Local Land Services*.
- d) On 7 June 2011 the Minister for Primary Industries, The Hon. Katrina Hodgkinson M.P. and the Minister for the Environment, The Hon. Robyn Parker M.P. announced the appointment of the Chair to lead the independent scientific audit which will, among other things, determine the effectiveness of the existing marine park zoning arrangements in NSW. The Audit report was released on Thursday 16 February 2012 and public submissions on the Audit report closed on 30 June 2012. The Government is formulating its response.

The Paper espouses that the focus of the New Planning System will be on good *upfront strategic land use planning* and that the government is placing *community participation at the forefront of planning policy*. It cannot do this without integrating other initiatives by Government to review and amend legislation like those outlined above.

6. Coastal context

Recommendation: 5

A values-based approach to planning which considers not only economic values, but experiential, social, natural and cultural values (for example, access to the coast, social justice and equality).

Our coasts are iconic and have special meaning. They are the most intensively populated, heavily exploited yet most important of all urban environments: their natural capital generates a vast array of ecosystem services with myriad special natural, lifestyle, economic, cultural and landscape values. It is no surprise that most people live on or close to the coast and that it is a key tourist destination.

We depend upon the abundant yet finite resources offered by the coast. The coast is particularly vulnerable to both anthropogenic pressures (population growth, pollution, habitat degradation, resource use conflicts, resource over-exploitation and climate change) and natural pressures (such as erosion and accretion). The Australian State of the Environment Reports have recognised the stresses upon these fragile systems.

Physically, coastal ecosystems are at the interface of the land and sea. They are dynamic, exhibiting complex spatio-temporal patterns, not only physically but also in terms of governance and their social, cultural, political and economic systems. These complex coastal forms and natural and human systems and processes present particular challenges for planners and managers.

Successful, healthy and resilient communities operate in combination with their environment. Our coasts are worth protecting and this requires sustainable management and planning, preserving ecosystem function and integrity.

7. Delivery of sustainability outcomes

Recommendations 6-9

6. The policy principles of sustainable development be clearly translated into the New Planning Act (Act).
7. The Act must:
 - a) prescribe sustainable development as:
 - i) the primary objective
 - ii) a mandatory relevant consideration that is applied (rather than merely considered) and taken into account by decision-makers
 - b) provides guidance on the weight or priority to be given to sustainable development over other relevant matters.
8. All development must:

- a) be ecologically sustainable, that is, ecological sustainability is considered in relation to all socio-economic decisions (rather than environmental imperatives being balanced against socio-economic considerations)
- b) meet minimum environmental standards
- c) apply a values-based approach (see Section 6 above).

9. The key concepts of sustainable development include:

- a) the ESD principles detailed in:
 - i) S. 6(2) of *Protection of the Environment Administration Act 1991*
 - ii) NSW Whole of Government Sustainability Principles 2006
 - iii) S.4 of *Commissioner for Environmental Sustainability Act 2003(Vic)*
- b) integrated coastal [zone] management
- c) the Sydney Regional Coastal Management Guiding Principles articulated in Section 4.2 of the SCCG Strategic Plan 2010-2014 (Section 4.2 appears in Annexure 1 of this Submission)
- d) natural risks and hazards and the implications of climate change
- e) ecosystem based management
- f) landscape ecology
- g) adaptation and adaptive management
- h) a duty to cooperate with all other government agencies
- i) a consideration of actual and potential cumulative impacts
- j) recourse to the best available transdisciplinary knowledge (e.g. humanities, engineering, history, natural and social sciences) referenced against baseline data which is stored and made freely available in readily accessible formats
- k) integration of and free and ready access to necessary data and information together with ongoing development of datasets
- l) promotion of renewable energy sources and the reduction, recycling and reuse of resources (e.g. enhancing BASIX) to (i) expand resources (developing renewable resources, creating substitutes for non-renewable resources, more effective use of existing resources) and (ii) reduce demands upon them
- m) effective and meaningful public and stakeholder participation - participation that engages and actively involves individuals, groups, communities and organisations in decisions about things that affect them
- n) proper monitoring, evaluation and reporting
- o) adequate human, technical and financial resources, including continuing training and education.

Rationale

The Paper states that *[t]he new planning system will deliver sustainable outcomes and improve people's quality of life and that [t]he achievement of sustainable development will remain the main objective of the Act* (at pages 3 and 17 respectively). Sustainable development is to be facilitated by *balancing competing outcomes without getting bogged down in red tape* (page 9). Facilitating sustainable growth is expressed as *one fundamental tension that must be addressed in the process of strategic planning* (page 29).

Unfortunately, the Paper is silent as to what actually constitutes 'sustainable' development. The concept is renowned for being difficult to define, especially because it is continually evolving and has been variously defined for the purposes of policy and law as well as interpreted by the courts and in literature. For example, the *Protection of the Environment Administration Act 1991 (NSW)* has codified 'ecologically sustainable development'.

Difficulty is already experienced with interpreting and properly and consistently applying legislative definitions of sustainability and the lack of a clear definition in the New Planning System will exacerbate this situation. Transitioning from theory to practice is difficult and thus a functional definition is required (Recommendation 9) accompanied by an explanation which also addresses its challenges and the means to achieve it in different situations. The absence of a definition in the Paper therefore calls for a discussion on the concept of sustainability so we can enunciate the way in which it should apply:

Sustainability

Sustainability is the principle of optimising the benefits of a system while maintaining the ability to provide those benefits in the future. The concept can apply to a range of activities: sustainable development, sustainable management, sustainable governance etc. Sustainability is informed by the notion that the Earth's resources are finite and their use should be efficient, economical and equitable.

Sustainability is tripartite in nature – seeking to maximise the economic, social and cultural benefits that can be derived from ecosystems without compromising their health and productivity. Sustainable development is analogous to the Triple Bottom Line concept which was initially coined as a means of measuring and reporting corporate performance against economic, social and environmental parameters.

Sustainability does not refer to a static state of affairs. It implies adaptation and improvement. Adaptive management draws upon a continuous process of doing, learning, sharing, improving and self-correcting. Sustainable development implies adaptation and improvement.

Sustainable development adopts a holistic integrated approach. All environments occurring in the land–ocean transition, such as beaches and estuaries must be considered. Integrated coastal management (ICM) is a holistic planning and management process pertaining to coasts. It considers the interests and responsibilities of all those involved in the

development, management and use of coastal resources. Integration is spatial (e.g. land, sea and air) and across government, sectors and disciplines. It is a subset of sustainable development – requiring the integration of ecological, social, cultural, governance and economic considerations across the full range of temporal and spatial scales. Principles of good ICM have been formulated as they have for planning and management (see for example Rupperecht Consult. 2006. Evaluation of Integrated Coastal Zone Management (ICZM) in Europe. European Commission. 360 pp; UNESCO 2006. A Handbook for Measuring the Progress and Outcomes of Integrated Coastal and Ocean Management. IOC Manuals and Guides, 46; ICAM Dossier, 2. Paris. 224 pp).

Coastal areas are susceptible to natural hazards such as flooding, storm surge, erosion and accretion, and many of these processes may be influenced by climate change. Climate change is therefore an essential sustainability consideration.

A detailed local knowledge of the characteristics of the natural and built environment and the uses to which they are put (and the way in which they can change over time and space) is required to make sustainable decisions. Specifically, ecological sustainability requires knowledge of such things as the structure and function, biodiversity and the resilience of systems to perturbation. Local knowledge is important because a “one size fits all” approach often does not account for the variety of situations confronting councils of varying sizes and growth rates in coastal and inland metropolitan, regional and rural areas.

An ecosystem-based approach to management (EBM) can also facilitate sustainable development. It focuses on maintaining the functional and structural integrity of the ecosystem, on which its health and productivity depend, understanding the direct and indirect impact of communities within the ecosystem and endeavours to manage human behaviour and activities to minimise these impacts.

The 1983 UN Commission on Environment and Development investigated the relationship between the environment and development. The resultant Brundtland Report advocated a case for sustainability, that is, growth based upon policies that sustain and expand the resource base that supports it.

In Australia, sustainable development is often considered within the policy paradigm referred to as 'ecologically sustainable development' (ESD). In NSW, the definition in the *Protection of the Environment Administration Act 1991* (and summarised by Preston J in *Telstra Corporation Ltd v Hornsby Shire Council* [2006] NSWLEC 133; (2006) 67 NSWLR 256) was expanded by the NSW Whole of Government Sustainability Principles 2006. Such principles assist to elucidate the manner in which sustainability can be incorporated into day-to-day decision-making. The four main principles of ESD are:

- inter- (and sometimes also intra-) generational equity
- the precautionary principle
- conservation of biological diversity and ecological integrity
- improved valuation, pricing and incentive mechanisms.

ESD demands that ecological integrity, systems and processes are maintained. Development must be accommodated within a landscape rather than modifying the landscape to suit the development, that is, managing those exploiting coastal resources rather than managing the resources themselves.

Sustainable development necessarily requires adequate human, technical and financial resources, including continuing training and education. It must also be complimented by community involvement and education to facilitate attitudinal changes and value systems which advance sustainability, ensure collaboration, promote voluntary participation, coordination and compliance.

The New Planning System must specifically incorporate the principles of sustainability in clear and unambiguous terms. There must be not a tacit reference to sustainability principles or a *post-hoc* exercise which endeavours to limit negative impacts of a development. The concept of sustainability must be translated into practice: an adoption of its principles and commitment to their application and enforcement.

ANNEXURE 1

SYDNEY REGIONAL COASTAL MANAGEMENT GUIDING PRINCIPLES SYDNEY COASTAL COUNCILS GROUP STRATEGIC PLAN 2010 – 2014 SECTION 4.2

I. Protection of the environment and cultural values

The coastal and estuarine environments of Sydney contain significant environmental services and cultural values that should be identified, protected and restored. In ensuring this principle is met the SCCG and its Member Councils will identify, support and implement activities that:

- Protect, improve and restore coastal, estuarine and marine features.
- Ensure maintenance of natural processes that shape coastal and estuarine environments.
- Identify, protect and restore threatened species, communities and their habitats.
- Conserve sites and landscapes of cultural, scientific, and historical significance.
- Identify, protect and manage Aboriginal cultural heritage in partnership with Aboriginal communities.

III. Sustainable use of coastal and estuarine resources.

The sustainable use of coastal and estuarine resources requires management that does not lead to environmental damage or resource depletion, thereby maintaining these resources to meet the needs and aspirations of present and future generations. The SCCG and its Member Councils will contribute to the sustainable use of natural coastal and estuarine resources in Sydney through activities that:

- Ensure an integrated analysis of economic, social, environmental and cultural heritage implications of decisions.
- Manage community use of foreshore land, infrastructure and other assets to return the greatest public benefit while protecting environmental and social values.
- Maintain and enhance appropriate access to coastal public lands except when there is the need to protect high value environmental and cultural resources or for safety reasons.
- Ensure that economic and recreational opportunities are sustainable and sensitive to the natural environment and the unique coastal character of Sydney.

II. Integrated planning and decision making based on the principles of ESD

The protection and management of coastal and estuarine environments must be facilitated through integrated planning and decision making that provides clear goals and directions for the future. The SCCG and its Member Councils will contribute to integrated planning and decision making in the coastal and estuarine environments of Sydney through the delivery of actions that:

- Ensure integrated coastal zone planning and management that takes into account the ecological, social and economic implications of decisions.
- Ensure that the values of coastal and estuarine resources are identified and the impacts of proposed uses or developments are understood and considered before decisions are made.
- Provide clear policy in relation to coastal and estuarine planning and management that is implemented through management plans, planning schemes and governance arrangements.
- Ensure the best available science, adequate resources and guidance is available to coastal planners and managers so that they can make informed decisions.
- Consider cumulative implications of all decisions and impacts.

IV. Appropriate and meaningful public participation

Effective public consultation and engagement are essential to integrated coastal zone management and should be facilitated before public policy and decisions are made. Decision making processes must be open and transparent. The SCCG and its Member Councils will ensure appropriate and meaningful consultation and engagement through the following actions:

- Encouraging communities, including local industries and business, to share direct responsibility for management of local coastal areas and to participate in the development and implementation of management strategies.
- Promoting sustainable decisions by recognising and communicating the needs and interests of all participants, including decision makers.
- Seeking out and facilitating the involvement of those potentially affected by or are interested in a decision.
- Providing participants with the information they need to engage in a meaningful way.



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