NCA
NSW Coastal Alliance
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**NSW Coastal Alliance Submission – Objection to Stage II Coastal Reforms.**

**Summary**

The Stage II Coastal Reforms have been anticipated and promised by the NSW State Government since 2012 when the Stage I Reforms were promulgated to the people of New South Wales(NSW) by a new Coalition State Government. This process commenced in 2010 when the NSW State Coalition as the Opposition promised to fix the issues created when the NSW State Labor Government introduced the Coastal Protection and Other Legislation Amendments Bill 2010.

This 2010 Bill was met with widespread condemnation by NSW regional coastal communities and those communities were supported by the NSW State Coalition in their claims for widespread change to legislation that introduced draconian requirements for the 40 000 – 60 000 NSW residential properties claimed by government to be affected by future sea level rise.

The coastal management framework proposed in Minister Stokes Stage II Coastal Reforms are not as they have been publicly stated. **They do not put in place a framework that will enable coastal communities to become more "resilient", they will not support his "saltwater economy" and certainly are not "fit for the future".**

The rhetoric of the NSW State Coalition Government is not about any of these claims. It is purely a cynical exercise of passing the costs of the NSW State Government's, **risk aversion style of risk management**, down onto local communities. All levels of government in NSW are absolved of any future compensation or responsibility to protect private landowners against a projected risk of rising seas.

This risk is claimed by the NSW State Government to be the consequence of climate change caused by the use of fossil fuels including coal. The NSW State Government by approving coal mining and being paid mining royalties contributes to that risk on a global scale. NSW is one of the major exporters of coal globally. The NSW State Government ignores all responsibility and in these reform proposals,

transfers all costs of that risk onto those coastal communities that are truly at risk. This is dishonest and a complete abrogation of responsibility. When it comes to emergency protection, this failure of government to accept responsibility and to protect residents at risk is no starker when it is known those same homeowners contribute to the levy that funds emergency services in NSW. In a coastal hazard event they are denied those services other than coordination by the SES and potentially they will attempt to save personal items and people. But they will not attempt to save homes!

Councils have followed the lead of the NSW State Government with emergency action sub-plans that deny responsibility to protect property.

**It is an entirely different prospect for communities affected by bush fires!**

This is not leadership and is not the modern approach that needs to be taken to properly mitigate the projected risk of climate change and sea level rise. It isn't about cost either. It is an ideology that has developed in the absence of any real effort to engage and consult coastal communities.

Embedded in these proposals lies a flawed and toxic ideology of environmental protection equally as disgraceful. While the NSW State Government is happy to destroy swathes of arable land in the Hunter Valley to generate a projected $1.7 billion by 2017 from mining royalties, it is also relaxed in the prospect of damaging the wellbeing and livelihoods of around 150,000 people living in coastal communities in regional NSW. Projected damage that is a direct consequence of the coal mining activity approved and supported by the NSW State Coalition Government.



It's acceptable to allow open cut mines larger than Tuggerah Lakes, take $billions in royalties, use these for the benefit of the whole state, frighten coastal communities with catastrophic projections of sea level rise and then force them to pay for the cost of mitigating potential litigation costs for government.

These reforms will destroy wealth, livelihoods and wellbeing in the State of NSW. And this will occur with no community engagement or consultation and with the assistance of extreme environmentalists who have no concern for the pain they wish inflicted on others.

The NCA is not opposed to coalmining but it is opposed to the duplicity that the NSW State Government openly displays.

The NSW State Coalition Government should be ashamed of these proposals they claim as reforms!

**Background to The Proposed Legislation & Reforms**

**Coastal Protection and Other Legislation Amendments Act 2010** became an amended Coastal Protection Act 1979 and resulted in:

- removed the rights of property owners to protect their homes and property against current and future coastal hazards;
- introduced dysfunctional provisions for emergency protection works which could only be applied in hotspots such as Belongil and Wamberal.
- took away the role of NSW Emergency Services to provide protection for property subject to damage from storms events caused coastal erosion and coastal flooding and inundation;
- imposed a responsibility on local councils to identify coastal hazards based on their likelihood to adversely affect threatened properties and imposed development constraints to address the perceived threat of rising sea levels caused by climate change;
- supported the use of the "precautionary principle" to strengthen "planned retreat" as the chief mechanism for future development constraint in the coastal zone
- development advice for councils regarding the inclusion of notations on Section 149 Planning Certificates that identified property at risk from future sea level rise;
- introduced a new tax in the form of a levy on property that was protected by coastal protection works;
- imposed fines up to $500 000 for non-compliance with the proposed legislation;
- weakened the requirement for government to engage and consult communities affected by future sea level rise as a consequence of climate change by claiming this was a natural occurrence.



**Coastal Protection Amendments Act 2012** became an amended Coastal Protection Act 1979 and some guidelines were revised.

**In September 2012 the NSW Coalition Government announced its Stage I Reforms** on the day before the NSW Council Elections and prior to the Federal Elections of 2013. These reforms were promised since 2010 by the NSW Coalition as the Opposition. The amended Coastal Protection Act overturned some of the earlier amendments but also retained key components. The promises included:

- Make it easier for coastal landholders to install temporary works to reduce the impacts of erosion on their properties;
- Remove the compulsory application of sea level rise benchmarks;
- Deliver clarity to councils on the preparation of section 149 notices by focusing on current known hazards; and
- Support local councils by providing information and expert advice on sea level rise relevant to their local area.

The new provision for temporary protection works, while an improvement, was still unworkable and never utilised. Councils continued to apply the same NSW State Sea Level Rise benchmarks. The NSW State Government continued to demand the completion by councils of Coastal Zone Management Plans.

**Stage II Coastal Reforms were announced in November 2014 by Minister Stokes**.

*"These reforms will:*



- *provide certainty for local communities and councils about coastal management priorities, and put in place the tools and support services they need*
- *enable vulnerable communities to better manage current risks from coastal hazards like erosion, minimise exposure to future risks, and make informed infrastructure decisions*
- *reinforce and promote public access, use and enjoyment of the coast*
- *support the continued prosperity of our saltwater economy.*

*We are not going to rush this through, but take the time to get it right.*

*The legislation doesn't only need to work for regulators and coastal managers: it needs to give effect to the aspirations of those communities whose lives will, in part, be affected by it.*

*For this reason, we will release an exposure draft Bill for broad public comment in the middle of next year, with a view to having legislation before Parliament by the end of 201*5."

**On 15 November 2015, the Minister for Planning for the NSW Coalition Government announced the introduction of a new coastal framework identified as Stage II Coastal Management Reforms**. Amazingly these reforms return coastal management back to an earlier time:

- heavier fines from $250 000 maximum to $5 million maximum
- No provision for emergency works by owners – only by local the authority
- No mandatory consultation requirements
- A new Coastal Council with no community representation
- Highly complex legislation
- Nothing offered for the future certainty of existing settlements
- Mandatory requirements subject to change at any time without the scrutiny of the NSW Parliament

**Consultation Issues**

The engagement and consultation process and strategy implemented by the NSW Government to develop a new coastal management framework is highly flawed and in conflict with many of the principles established by the Federal Productivity Commission Inquiry Report (the Report) on Regulatory and Policy Barriers to Effective Climate Change Adaptation 2012.



In Chapter Eleven of the Report - Existing Settlements, “wide-ranging and inclusive public consultation processes are required to build consensus around options for managing climate change risks to existing settlements”. This has not occurred.

Most communities are not fully informed regarding the risk of future and current coastal hazards despite the $millions spent on coastal management planning by the NSW State Government. Ultimately this is a consequence of the poor attempts at community engagement and consultation undertaken by local government and under the supervision of the State Government through state agencies such the Office of Environment and Heritage. The Report identifies this issue in Chapter 7 under **Tailoring information provision to public needs** and explains that the information must kept simple.

*“In communicating this information, governments need to ensure it is accurate, timely, specific, consistent and explicit about uncertainties, but also tempered by the public desire for clear and simple messages.”*

The information that has been provided has been very complex and copious requiring outstanding comprehension and considerable time spent by individuals to understand the legal and technical information provided. The NSW State Government has rushed this process after many years of opportunity to engage and consult the broader community and especially coastal communities. This is despite promises by Minister Stokes in November 2014 that they would not rush the development of the proposed coastal reforms.

Meetings were attended by a handful of people, the inability of government representatives to answer questions, timing that gave little notice, lack of promotion of information sessions and an incomprehensible decision to run the consultation and exhibition period commencing in late November and finishing in late February all add up to **no engagement and no consultation.**

The timing decision alone has excluded many people from the process of engagement and consultation because their lives at this time were very much about work deadlines, family Christmas celebrations and taking a holiday. The NSW State Government has not been diligent in addressing this issue of ensuring people are fully engaged and consulted. The timing must be considered deliberate and designed to disenfranchise as many people as possible from “having their say”.



There is also a significant issue within the proposed Bill regarding consultation. **The Bill does not mandate a prescribed community engagement and consultation process for the development of a Coastal Management Plan.**

In fact, the Bill in **Section 16 Consultation states in 16(3) A failure to comply with this section does not invalidate a coastal management program.**

Councils will happily run the risk of being warned but are not likely to be fined as happened when Gosford City Council failed to properly advertise a Coastal Zone Management Plan for Brisbane Water Estuary.

**Coastal Management Bill**

Overly complex and further complicated by the extensive use of technical jargon, only understood by coastal engineers and lawyers. There are too many subtle statements that underline the intention of this legislation to remove people's rights to protect their property and to put in place the legal mechanism that will allow forced managed retreat with no compensation.

This process is to be undertaken with a failure to admit that this legislation is about both current and future risks of rising seas, claimed to be the consequence of the unabated use of fossil fuels globally as well as in Australia.

**Coastal erosion and rising sea levels is not a natural process according to all levels of government in Australia and is directly related to the NSW State Government approving and benefitting from the mining and sale of coal on a global record scale.**

The proposed Bill and supporting SEPP and Manual, does not admit this responsibility and yet makes it very clear that the costs of managing these threats identified by government are to be borne by those who are affected by rising seas that are causing an increased threat of coastal hazards.

The Bill and the proposed SEPP and Manual that are an integral part of the proposed legislation, are consequently flawed and illegitimate in their foundation and will ultimately be challenged.



**Objects of this Act**

*"The objects of this Act are to manage the coastal environment of New South Wales consistent with the principles of ecologically sustainable development for the social cultural and economic well-being of the people of the State, and in particular".*

Twelve individual and detailed objects are set out as subsections that should address the quadruple bottom line - social, cultural, economic and environmental principles of ecologically sustainable development.

Not once do any of these objects address the legacy issue of existing developed coastal areas and how this Act will protect the livelihood, culture, wellbeing and social structure of existing settlements.

**Definitions**

A subtle change to the definition of a beach further constrains the potential for using offshore sand for; beach nourishment after storm events, the use of geotextile sand bags, reconstruction of lost dune

systems and the construction or maintenance of offshore reefs/breakwalls and groynes as coastal protection works. **The beach is now extended to include land that lies at a depth of 40 metres** underwater compared to a previous depth of 10 metres. This changed definition alone provides only more constraints on development and the ability to actually protect land from coastal hazards including erosion, inundation and flooding as owners applying for approval to construct protection works will be **forced to guarantee the protection of the beach out to a depth of 40 metres**. Around 2 kilometres offshore

Many of the definitions are themselves described using language that requires further definition such as “beach profile”.

The term “coastal environment” in the first sentence under **Section 3 Objects of the Act** should also be defined to make it clear what land is affected.

**Specific Issues in The Bill**

**Section 6(2)(c)** “to improve the resilience of coastal wetlands and littoral rainforests to the impacts of climate change, **including opportunities for migration”**.



This objective signals a conflict between existing settlements and growing wetland areas. It should be brought into alignment with the proposed SEPP which suggests that there will be no development constraints on residential development in the proposed 100m buffer extending around existing maps of wetlands by ***including “other than migration into existing residential areas”*** to prevent any future development constraints on existing developed residential land where wetlands are allowed to migrate onto those existing residential lands. Councils can amend the SEPP through an LEP.

**Section 7 Coastal vulnerability area,** must be rewritten as it unfairly addresses the issue of existing development by mandating that if coastal management strategies are implemented they must use natural defences in the first instance and where these cannot be used an excessive number of constraints are imposed in the form of conditions that must be met before other than natural defences are used.

This would include the constraint of protecting the beach out to a depth of 40 metres.

This section alone allows the NSW State Government to introduce an unstated policy of **“planned retreat”** when interpreted with Part B Stage 3 pages 17-20 of the Manual. It will be impossible for any development proposals for existing developed properties in the Coastal Vulnerability Area to meet these conditions. They may be appropriate for new subdivisions but not for land currently zoned as

residential. While understanding why the NSW State Government intends to prevent development in new subdivisions that would be at risk from future coastal hazards is one matter! The same constraints cannot be placed on existing residential land and existing development in need of extension or renovation or complete reconstruction without imposing a high level of unfairness.

There is no provision in the Bill for the legitimate use of **protective adaptation for existing settlements** affected by these objectives. Again highly biased to the protection of the environment while ignoring the dilemma of homes that are already located in the Coastal Vulnerability area.

For example: where development exists on dune systems that protect private and public assets landward and are the first line of defence; modern engineered solutions; low lying flood liable suburbs that have never been afforded hard protection. There is no suggestion in the Bill at all that these properties can be secured through adaptation as a first instance which could mean raising land above current flood levels or constructing revetments that also address the public need for future amenity and access. This entire section could be imposed on existing settlements in a way that impacts on their wellbeing, livelihood and social values while protecting the environment only.

**In Section 10** there is provision for a **Council to amend a Local Environmental Plan** with the approval of the Minister.



***"For the avoidance of doubt, a local environmental plan under the Environmental Planning and Assessment Act 1979 may amend a State environmental planning policy under that Act to identify a coastal management area (or part of such an area)"***

This would allow for example, a Council to increase a wetland area out to the boundary of the 100m buffer and change development controls for previously unaffected residential areas. This is a highly flawed provision and should be removed.

**Section 15(3) sets out provisions for a coastal erosion emergency** sub-action plan to outline the responsibilities of local authorities. However, where this same provision is in the current Coastal Protection Act, councils such as Gosford City Council refuse any responsibility to protect property and likewise in this section, the State Emergency Services are absolved of any responsibility to be involved during a coastal erosion emergency.

Coastal communities will be faced with the spectre of no assistance to protect their homes when they are subjected to a coastal erosion event.

**Section 20 Minister to prepare coastal management programs in certain circumstances,** describes the process whereby a council will be forced to adopt a CMP recommended by the Coastal Council. Again a centralised approval process carried out by an unelected body that is not answerable

to Parliament, to ensure consistency with the draconian requirements of the NSW State Government, despite the decisions or agreements reached by local communities. ***"(4) The Minister is to seek the advice of the NSW Coastal Council in the preparation and adoption of a coastal management program under this section".***

**For the purposes of this Act, Governance and Democratic Process are victims of the Bill** as normal democratic process and consultation are denied and the proposed Coastal Council is placed above the law**.**

**In Part 4, the Coastal Council** is not subject to public scrutiny or review, there are no performance indicators or governance guidelines and no operational procedures regarding conduct of council audits. The Coastal Council has the power to advise the Minister against certification of a CMP but the Minister cannot approve a CMP. He must only certify that a CMP meets requirements as advised by the Coastal Council. This puts in place the very notion of a "police state" that can act with impunity.

**In Section 21, the Bill allows the Minister to change the Manual at any time**. The Coastal Council advises the Minister. The Minister controls the Coastal Council totally. The Minister is therefore able to impose changes to mandatory sections of the Manual that are recommended by the Coastal Council without the oversight of Parliament. The Minister and the Coastal Council are truly independent of all public scrutiny in making changes that affect the powers of the legislation.



**This is a very dangerous arrangement and should be withdrawn now. It sets a precedent that places the executive above the law! It is in contravention of democratic principles and undoubtedly the rule of law and will be strongly resisted. Our lawmakers in Parliament are no longer needed.**

As mentioned previously, the Bill puts in place guidelines for consultation under **Section 16** that allow no consultation at all other than what is interpreted by Councils in the non-mandatory section C of the Manual, as a guideline.

The current minimal requirement that Councils advertise in a newspaper that there will be a 21day period of consultation to allow submissions is highly inadequate but is replaced with no such provision in the Bill. Instead section 16(3) actually encourages councils not to consult with their communities and instead drive through the demands of the NSW State Government.

The mandatory section of the Manual, Part A states on page 12 in section 20 "A draft CMP must be exhibited for a period of not less than 28 calendar days." But this is not embedded in the text box titled – "Mandatory requirements" - which is above this statement and suggests that it is not mandatory.

**Explanation of Intended Effect – Proposed new Coastal Management State Environmental Planning Policy**

The single purpose of this document is to protect the Coastal Environment to the detriment of existing developed areas. There is no other way of putting it!

The proposed Coastal Management **SEPP has five policy objectives, carries forward 12 goals of the Coastal Policy and includes 70 development controls across the four new management areas**. It has the potential to end all future development activity in the Coastal Zone. It is bureaucratic in the extreme.

The Coastal Zone becomes **four new coastal management areas** each with its own objects, objectives and development controls:

- Coastal Littoral Forests and Wetlands;
- Coastal Environment – all open coastal waters and enclosed marine waterways;
- Coastal Vulnerability – all land threatened by coastal hazards;
- Coastal Usage – existing and future developed areas.



**Management areas will overlap** resulting in communities and individuals being required to **comply with all objects in a cascading order of hierarchy.**

This is an overly complex and constraining requirement that will be interpreted in different ways and when combined with the oversight of the Coastal Council will result in the most draconian implementation of development constraints imaginable.

**New mapping is to be provided for the four new management areas** but the management areas can **be modified and extended through a Local Environmental Plan** approved by the Minister. However, no mapping has been produced in the consultation period.

There are **100 metre extension zones for littoral forests**, wetlands and coastal usage areas under the proposed SEPP but these areas can be changed by the Local Environment Plan.

There will be a **minimum 500 metre landward extension** of the coastal environment zone around coastal lakes and lagoons. This will severely impact on communities where many homeowners would have thought they were quite disconnected from the impact of the proposed reforms. They will become aware once the maps are provided but by then it will be too late to make an informed comment regarding the proposed Bill.

The maps that would have made it more possible for affected communities to understand how they would be affected were promised to be available by January but will not be available until sometime after the consultation period for the complete package has ended.

The actual SEPP is not available either, just a statement of intended effect. The ability of anyone to provide an informed comment is compromised.

**The Coastal Manual**

As previously stated the major issue confronting anyone who will be impacted by the mandatory provisions of the Manual, is that it can be changed at any time subject to the whim of the Minister and the Coastal Council.

Parliament will not be involved in changing the law.

Another important point to note is that the Manual is designed for the use of Councils, not for the purpose of assisting communities.

Some important issues that come from the Manual are:

- Managed retreat and time limited development consent are reinforced as legitimate management options but with very few guidelines aimed at protecting existing settlements from over-zealous misuse. Combined with a lack of a mandated process of engagement and consultation it is likely that councils will be more confident in adopting such extreme measures.

  The previous manual, the *NSW Coastline Management Manual* (1990), did not consider "managed retreat" as a suitable policy for existing settlements. It recognised that although *"planned retreat from hazardous coastlines may be a viable means of management in undeveloped or partly developed areas … such an approach becomes increasingly expensive and difficult in more intensely developed areas. In such cases, coastal protection may be the only economically viable and socially acceptable means of management."*

- The sample cost benefit analysis is hopelessly flawed in determining that the property of non-resident property owners will not be considered. They are entitled to vote in the local council elections but are not considered as providing any benefit to the local area.
- A range of coastal protections are listed on pages 20 and 21 of the Manual but works such as off-shore reefs, revetments, groynes, land filling and beach scraping have a history of rejection such as proposals at Old Bar, Belongil and the southern end of Umina Beach.

The only successful application of hard protection works on open coastal beaches in recent times were those approved and funded by the previous NSW State Labor Government for the revetment at Cabbage Tree Bay. The previous Minister for the Environment Robyn Parker did arrange support funding for revetment work at Belongil and at Old Bar but Minister Stokes ensured that this funding was withdrawn.

There is no reason to believe that any applications for these type of protection works will be approved under the conditions imposed by the Manual, the SEPP and the Bill.

**Recommendations**

- The Stage II Coastal Reform Process must be reset and recommenced so that all affected regional coastal communities have a say in how their coastal areas of responsibility are managed. The NSW State Coalition Government has very deliberately set about this process in the best of Machiavellian tradition and exposes itself to a future and growing indignation of regional coastal communities as they come to understand the hand they have been dealt by the NSW State Government and its agencies.
- There must be an improved and specific community engagement process designed for coastal management. This must be in Part A of the Manual and referenced in the Bill as a mandatory requirement. The proposed Bill now waters down consultation. Coastal Communities and individuals directly affected by coastal hazards must have more say.
- There must be a much broader category or definition of coastal protection works in the Bill. The Bill at this time is entirely focussed on so-called soft protection or natural protection and defines this as building the dune system first before anything else. All good in theory but the NSW State Government is yet to change the ridiculous situation where sand cannot be “dredged” or mined from offshore (the Bill now includes a changed definition of the beach so that the beach extends to 40 metres in depth or about 2 kilometres offshore).

  Make no mistake, what is proposed in the reforms, is that sand is to be removed from potentially environmentally threatened areas where beach sand is already sourced for construction or other purposes, transported by road and then unloaded onto a beach. It is incomprehensible that such a proposal be even considered let alone embedded into environmental legislation. Even the current Minister for Planning has acknowledged in the past that there must be provision for the relocation of offshore sand to onshore beaches that require renourishment. Queensland has proven the success of relocating sand from offshore for the purpose of beach nourishment; the NSW State

Government undertakes a large scale process of relocation of sand at the entrance to the Tweed river which maintains the opening of the river into the sea while replenishing sand for Queensland's Gold Coast beaches. The NSW State Government again demonstrates it lack of honesty in the development of these so-called Coastal Management Reforms when it is so duplicitous as to not include offshore sand relocation for the benefit of regional coastal communities and the beaches they must manage while currently funding the relocation of offshore sand to Queensland.

- There must be a specific advocate for Coastal Communities who is accepted by those communities. The NSW State Government funds advocacy against coastal communities through various grants programs to conservation groups and to local councils. Local Councils use our ratepayer's funds and funds received from the State Government to establish the Local Government Association which advocates not for coastal communities but against them.
- There must be a much more equitable approach to emergency services provisions and funding for disaster management. Coastal communities punch above their weight in terms of land tax, local government rates and taxes and in contributions to the emergency services levy. But they do not receive the same benefits as other communities e.g. communities in suburban areas, bushfire zones and inland floodplains.
- The ongoing attack on property rights must end. Planned retreat, limited consents for development, restrictions on protecting property and the loss of private land that becomes part of a public beach without any compensation are unfair provisions and the proposed Bill advances those current inequities. Rising sea levels are not caused by those affected coastal communities alone. The State Government plans to secure a future $1.7 billion in royalties from coal mining in NSW alone. Part of this must be set aside to mitigate the impact of SLR on coastal communities and contribute to coastal management costs.
- The Draft Bill is not balanced and fails to properly address the triple bottom line. It is entirely focussed on protection of the coastal environment and imposes draconian requirements on coastal communities that will damage their livelihoods, their wellbeing and their social fabric. As the division between those affected and those not affected widens as a consequence of demands for existing development to be removed from the immediate coastal zone, these divisions will become ever wider and more damaging. The NSW State Government's proposed coastal management framework does not address this issue of social, economic and cultural inequity that has become part of the coastal management process under the NSW State Government.

- The NSW State Government cannot use this legislation and coastal management framework to abrogate itself from all responsibility for the regional coastal zone. The NSW Government is a contributor to the long term use of fossil fuels by allowing the development of coal resources and the mining of coal in NSW to the extent that the State of NSW is one of the major providers of coal globally and one of the world's major beneficiaries of the mining and use of fossil fuels. This must be taken into account because the entire process of coastal management, including the legislation and guidelines, puts forward a fundamental principle that seas are rising and this will cause future coastal erosion and increased inundation of existing developed areas. The issue of current coastal hazards would be far simpler to deal with if the process of hazard mitigation needed to address only current coastal hazards. The concept and principles of increasing future hazards driven by rising sea levels is promulgated by the NSW State Government through its agencies including councils but the NSW State Government fails to acknowledge its contribution to projections of increased coastal hazards and its responsibility to protect those who are threatened by these future hazards which are a construction of government.

Submitted on behalf of the NSW Associations that make up the membership of the NSW Coastal Alliance.



NCA Regional Coordinator