

Draft 2nd October 2011

SLEP 2009 Review Group submission regarding Environment Issues.

This submission addresses Environment and Natural Resource Management issues in the Draft SLEP 2009.

The submission is divided into two parts. Part A contains an analysis of the provisions of the Draft SLEP together with recommendations. Part B contains a brief analysis of the impact of the draft SLEP on **High conservation value sites of Regional significance**.

The list of Recommendations is as follows;

(These are embedded in the text. I will number and include once I receive the OK from group members)

Characteristics of the Shoalhaven Environment.

The NSW South Coast, including the Shoalhaven is recognized as Australia's and possibly the world's last undisturbed natural temperate forest region. Native forests of great age and diversity reach from the mountains to near pristine beaches and coastal lakes, rivers and estuaries. The Region is recognized as having internationally significant natural and cultural values, especially Aboriginal cultural heritage. It is a biodiversity hot spot.

Small towns and villages nestle into the natural and rural landscape, characteristics cherished by many residents.

Statutory Framework.

The draft Shoalhaven Local Environment Plan 2009 Explanatory documents outline Shoalhaven City Council's Ground Rules for preparing the draft Shoalhaven LEP 2009.

The Ground rules most relevant to natural environment issues are as follows;

- "The LEP review will largely be based around an administrative change over from the current LEP concentrating on achieving a "best fit."
- Consider and incorporate relevant provisions coming out of the South Coast Regional Strategy, South Coast Independent review Panel....This is likely to be a detailed requirement of the State Government."

This submission recognizes that there is a tension between these ground rules, given that the existing SLEP was developed in 1985 and the South Coast Regional Strategy endorsed in 2007. Much of the existing SLEP contains provisions designed to protect the environment have been incorporated into the draft SLEP 2009.

Since 1985 much expert scientific advice has emerged about the values of the natural environment and the adverse impacts of over-development on fragile environments. This advice adopts a more preventive approach through strategic planning, which is reflected in the South Coast Regional Strategy (SCRS or Strategy) requirements and South Coast Regional Conservation Plan (SCRCP or Plan) and which Councils are required to consider as a guide to implementation of conservation outcomes. Moreover the Local Government Act adopted the principles of Ecologically Sustainable Development (ESD) in the early 1990's which are binding on Councils. These principles should be used as criteria in assessing the draft SLEP and the changes proposed through public comment.

It is recognized also that the Standard Template for LEPS adds further tensions to the process of developing the SLEP, with its origins in urban rather than regional planning.

Over-reliance on the administrative changeover-best fit rule appears to unduly return the SLEP 2009 to the past, rather than designing an LEP appropriate to meet the challenges of the next twenty years especially considering the increasing pressures of global warming and sea level rise.

Therefore the primary focus of the SLEP 2009 should be on consistency with the broad strategic approach of the Strategy and the Plan including those parts of the SLEP 1985 which are consistent with the Strategy.

Accordingly this submission assesses the Draft SLEP on the basis of the SCRS, SCRCP and the principles of ESD as well as parts of the current SLEP consistent with the Strategy.

Ministerial Direction No 30 of April 2007 issued under the Environment Planning and Assessment Act, requires that the Minister for Planning consider whether the Draft Shoalhaven Local Environment Plan is consistent with the Strategy SCRS as part of the approval process.

Section 5.1 Implementation of Strategies states that, “4. Draft LEPS shall be consistent with a regional strategy released by the Minister for Planning.”

The section on “Consistency” requires that councils not only address consistency with the Strategy in the draft SLEP in any submission made to the Department, but must also set out a basis for any inconsistencies and show that they does not undermine the environmental vision of the Strategy.

Whilst there is much in the draft SLEP to support, it is considered that there are some significant inconsistencies with the SCRS that have not been addressed in the Statement of Consistency. Therefore this submission highlights inconsistencies with the vision of the Strategy, where these are substantial and makes recommendations for changes to enhance this consistency.

1. Aims.

It is very important for the future survival of local and regional biodiversity especially in the face of climate change that we have strong provisions in the SLEP, given that the Shoalhaven is one of the last Local Government Areas on the east coast of Australia where much of the native vegetation is in near natural condition and biodiversity has been largely maintained.

It should also be remembered that at least **x species of plants and animals in the** Shoalhaven are listed as Threatened Species and **x Endangered Ecological Communities** are present. A precautionary approach to development in areas of high natural and cultural values is therefore essential.

The South Coast Regional Strategy aims to,

“protect high value environments including pristine coastal lakes, estuaries, aquifers, threatened species, vegetation communities and habitat corridors by ensuring that no new urban development occurs in these important areas and their catchments.”

Another aim is to “use the recommendations of the Sensitive Urban Lands Review Panel to guide the finalisation of the development form and environmental management of the 17 Sensitive urban lands.”

The Strategy acknowledges that these values and the social and economic benefits they bring “are threatened by a wide range of development pressures that need to be carefully managed.” Accordingly, the Strategy proposes no new urban development in verified high conservation value areas, (HCV) with such development focused in Nowra-Bomaderry and Milton-Ulladulla, no new towns or villages and no new rural residential zones, unless certain stringent criteria are met.

By contrast the draft SLEP aims 2 a and b repeat the aims of the SLEP 1985. They do not aim to protect, maintain and conserve the environment in its own right, rather the environment is regarded as part of a development aim. The Ecologically Sustainable Development principles of biodiversity conservation, intergenerational equity and precaution appear to be bypassed.

The SLEP aims should be rewritten so that conservation of biodiversity and ecosystem function are recognised as having intrinsic values as well as for the ecosystem services they provide to humanity.

Biodiversity includes all plants, animals, fungi, bacteria and other micro-organisms in the natural environment. Biodiversity contributes to fresh air, clean water, soil fertility and pest control. It is fundamental to social and economic well being.

The Draft SLEP aims are not consistent with the SCRS and if they remain in the Draft SLEP, this inconsistency would need to be justified in advice to the Minister for Planning and Infrastructure regarding inconsistencies with the vision of the Strategy.

Recommendation. That Aims 2 a and b be redrafted as follows,

- **“to conserve, maintain and improve biodiversity and ecosystem functions,” and**
- **“to ensure that development is ecologically sustainable, consistent with the principles of Ecologically Sustainable Development and taking into account the impacts of climate change and sea level rise.”**

2. Environment Zones.

The following recommendations are made to enhance what is proposed.

Environment Zone recommendations.

Issue.

The draft SLEP expands protection for areas of high conservation value, both through Environment Protection Zonings and the mapping of Significant vegetation and habitat corridors. This is a welcome achievement, as these areas are the most important for maintaining biodiversity and natural landscapes on private and public land, outside the Reserve System and State Forests.

However the impact of this expansion appears to be reduced by the wide range of development types permissible in these areas by comparison the existing SLEP 1985, as is acknowledged in the Draft SLEP 2009 Fact sheet 13 regarding the Environment Protection zones.

The omission of an E4 Environmental living Zone also appears contrary to increased provision for protection of the environment.

Recommendation. That SCC reconsiders including an E 4 Environmental Living zone in the SLEP.

- Shoalhaven City Council’s decision to opt for two private land Environment zones, E 2 Environment Conservation and E 3 Environmental Management and to omit the E 4 Environmental Living zone appears to have resulted in too many uses being permitted in these E zones.
- This approach appears to place many uses proposed in the E 2 and E 3 zones in conflict with the objectives and potentially threatens the very values that they aim to protect.
- It is considered that introduction of the E 4 zone would assist in better distinguishing the E 2 and E 3 zones from areas where ecologically sustainable development could be allowed without impacts on high conservation value areas.

The LEP Practice Note provides for four Environment Zones, as a gradation from high conservation value areas where minimal development should be permitted, to areas which retain some environment values, where low impact residential development could be permitted.

This approach is relevant to the Shoalhaven, given that the area has so many areas where the natural and Aboriginal cultural values have been retained on private land as well as in the National Parks System and State Forests.

Such an approach should ensure that the high conservation value areas that have already been verified would not be impacted by uses that are clearly ecologically unsustainable.

Areas currently identified as E 2 zones should not be downgraded to enable additional uses to be accommodated. This approach would be in conflict with verification of areas of high conservation value, including areas already protected under the current LEP and Jervis Bay Regional Environment Plan arising from the SCRS and SCRCP processes.

E 2 Environment Conservation.

Issues.

The objectives added to the Environment Conservation zone are supported.

Uses proposed in addition to the Standard uses are not consistent with the objectives of maintaining national park-equivalent values and preventing development that could destroy, damage or otherwise have an adverse effect. Some uses proposed for the E 2 zone would have significant adverse impacts on maintaining the high conservation values and on water quality and are not consistent with the Standard objectives for the E 2 zone and the SCRS and ESD principles or with the Section 117 (2) Ministerial Directive 2.1 Environment Protection Zones.

Recommendation. That the E 2 zone uses permit “Environmental Protection Works” and “Environmental Facilities.”

Comment.

The Standard objective for the E 2 zone is to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values, to prevent development that could destroy, damage or otherwise have an adverse effect etc. The zone applies to public and private lands. The examples provided in the Practice Note describe these values as the equivalent to those of national parks, as they include old growth forests, significant wildlife, wetland or riparian corridors, coastal foreshores, Aboriginal cultural heritage.

It is suggested that the objective “To protect water quality and the ecological integrity of water supply catchments” is amended to clarify that it applies to all catchments, not only drinking water catchments, by the deletion of “supply.” This would be consistent with the objective of the existing 7 (a) e “to protect and enhance water quality in the catchment.

Section 117 (2) Ministerial Directive 2.1 Environment Protection Zones (4) of 1 July 2009, updated 1st February 2011, states that,

“A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in an LEP must not reduce the environment protection standards that apply to the land.”

Thus land uses proposed for any of the E zones must have no greater environmental impact than those in the current LEP “environment protection” zones.

“Environment Protection Works” is the only the Standard use identified for this zone. The inclusion by SCC of “Environmental Facilities” is supported as this use is defined as “a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, board walks, observation decks, bird hides or the like and associated display structures.” These activities are all similar to facilities in national parks.

Unacceptable direct and indirect impacts would occur from the other proposed uses. These are not consistent with the SCRS and if they remain in the Draft SLEP, this inconsistency would need to be justified in advice to the Minister for Planning and Infrastructure regarding inconsistencies with the vision of the Strategy.

Direct impacts for all the additional uses proposed by SCC would involve significant clearing and fragmentation of HCV native vegetation and threatened species habitat. Such impacts would isolate flora and fauna species, diminishing species diversity and habitat corridor connectivity. Such clearing would occur as a result of construction of the proposed buildings or structures but also for bushfire asset protection zones, for roads, for provision of electricity, sewerage and other services, for fencing etc.

Indirect impacts would involve weed and infestations, which would degrade the native vegetation.

Disturbance to native fauna would occur as a result of people, noise and light disturbance and predation from wide-ranging domestic pets. Impacts from housing and other development are usually accepted as extending up to 500 m into bushland.

It is recognised that where these uses already exist, that they may continue.

However uses including aquaculture, Bed and Breakfast accommodation, Dwelling Houses, Emergency services facilities, Home businesses, Home industries, Recreation Areas, Research stations, Roads, Sewerage systems, Water recreation structures, Water supply systems would all individually have direct and indirect impacts on the very landscapes and flora and fauna that this zone aims to protect.

Aquaculture involves disproportionate change in species composition, in food sources, in habitat and in degraded water quality and should not be included.

Emergency Services should be located near to population centres where such services are most needed and not in locations where constant action, noise and vehicle use, both day and night would cause excessive disturbance to wildlife.

Inclusion of dwelling houses as permitted uses in the E 2 zone is not consistent the South Coast Regional Strategy. Appendix 2 recommends sensitive lands currently zoned for residential development to be rezoned E 1 National Park/Nature Reserve, eg parts of Comberton Grange and the Lake Wollumboola catchment. These areas should not include “dwelling houses” in the list of permitted uses as they have been validated as having national park equivalent values, yet are proposed as E 2 zoning, because there is no Government commitment to acquisition.

It is noted that other Councils such as Kiama and Bega do not allow new dwelling houses in the E 2 zone.

Home business and home industry uses rely on dwelling houses being an approved use. The Template 5.4 (3) makes clear that “home businesses” are not intended for the E zones as the only zones specified for this use are R 5, RU 1, R U 2 and R U5. The definition of “home activities” in the existing zones 7 (c) and 7 (e) is not specific and accordingly a like for like translation is in appropriate.

For Home Industries the template at 5.4 (3) makes clear that this use is not intended for E zones as the only zones specified for this use are R 5, R U 1, R U 2 and R U 5.

Regarding Recreation Areas, the definition is too broad for E Zones as it could encompass sports fields, that would result in clearing of large areas of native vegetation, with use of fertilisers, herbicides and pesticides causing damage to the environment as well as disturbing wildlife with lighting and large numbers of people.

Research stations are not appropriate for the E 2 zone. A research station could result in a large development footprint, with clearing of native vegetation, multiple buildings, including outhouses, car parks, conference and administration as well as accommodation all causing disturbance to the surrounding environment.

The definition of Sewerage System includes a full sewerage treatment plant, which would require a large area of native vegetation to be cleared and construction of buildings, plant and ponds. Such largescale development is not ecologically sustainable in an E zone.

Water recreation structures are not consistent with the objectives of an E zone and would result in clearing of and disturbance to the natural environment.

It is understood that “Eco-tourism facilities are under consideration by Department of Planning for the E zones. Such developments are not considered to be ecologically sustainable in an E zone. Such facilities are usually large- scale. They may involve mini-village centres for administration, interpretation, activities, entertainment and catering as well as decentralised accommodation. They rely on provision of extensive services including transport, electricity, water, sewerage and communication.

They are the equivalent of a village, with significant environmental impacts. They are likely to degrade the very environment that they want people to enjoy. The extent of clearing of native vegetation and plantings of exotic species changes the species composition.

E 3 Environmental Management.

Issues

Uses proposed in addition to the Standard uses are not consistent with the objective of protecting, managing and restoring areas with special ecological, scientific, cultural or aesthetic values whilst providing a limited range of development that does not have an adverse effect. The additional uses proposed by Council would have adverse impacts inconsistent with the role of this zone as a “transition zone.”

Recommendation. That the E 3 Environmental Management zone permit Environmental facilities, Dual occupancies (attached), Visitor Information Centre and Roads in addition to the Standard permitted uses.

Comment

The Environmental Management Zone Practice Note distinguishes the E 2 and E 3 Zones, by referring to E 3 areas **as transition zones** between HCV lands and other areas such as rural lands, areas requiring rehabilitation and restoration, and land constrained by natural hazards.

The term “limited range of development” distinguishes E 3 from E 2 and E 4. It is considered that this distinction should be maintained, by reducing the unsustainable uses in E 3 and locating them in E 4 zoned land.

The objectives added to the E 3 zone by SCC are supported. However most of the proposed uses are not related to the objectives of protecting, managing and restoring areas of special ecological, scientific, cultural or aesthetic values and provide an extensive as opposed to limited range of development uses that would have adverse impacts on the values. Therefore they are inconsistent with the Standard Zones and the SCRS. If these uses were to be retained in the Draft SLEP, these inconsistencies would need to be justified in advice to the Minister for Planning and Infrastructure regarding inconsistencies with the vision of the Strategy.

It is noted that “Home occupations” are permitted without consent and that the Standard uses are Dwelling houses, Environmental protection works and Home industries.

Environmental facilities are also considered acceptable in this zone.

The definition of “Information and education facility” includes visitor information centres as well as art gallery, museum and library. Apart from a visitor information centre such uses are likely to be large-scale, with commensurate adverse impacts on the natural environment. Therefore these uses are not supported in the E 3 zone.

There is no major objection on environmental grounds to inclusion of “Child care facilities” in the E 3 zone, however its suitability for this zone is questioned on the basis of safety and isolation from other services, with houses isolated on a 40 ha lot in the bush with bush fire and other risks.

The concerns regarding adverse environmental impacts for uses discussed for the E 2 zone also apply to the E 3 zone.

Aquaculture. See E 2 zone comments.

Animal boarding establishments. These can be large establishments, requiring clearing of native vegetation, and have concerns related to effluent disposal, noise etc. This use is prohibited in all corresponding zones in the current LEP.

Boat Repair facilities and boat sheds as well as Charter Tourism boating facilities. These uses would not meet the zone objectives of protecting water quality as they have the potential to degrade estuaries, lakes, rivers and creeks. They are prohibited in existing equivalent zones.

Cellar door. This use is associated in the definition with a vineyard. It is an agricultural use not an environmental protection use.

Extensive agriculture. The definition of this use covers crops, fodder production, grazing and bee-keeping.

Forestry includes logging. Logging is not an ecologically sustainable use for native forests. Forests using exotic species such as Radiata Pine, result in expansion of “wildings” into the surrounding vegetation causing degradation.

These agriculture and forest- related uses would result in destruction of native vegetation, weed infestations, water pollution and changes in species distribution due to selective fertilisation of particular plants by bees.

Group Homes. This use is not appropriate for the E 3 zone. They involve several homes and administrative facilities. Their purpose is not suitable for isolated sites with bushfire and other safety risks and limited access to support services. They are not related to the zone objectives.

Kiosks and Roadside stalls and Markets. These uses incorporate sale of food and provide an outlet for farm produce, but the E 3 zone is not a rural crop-growing zone, so these uses are inappropriate for E 3. Furthermore such uses cause littering, pest infestations and damage to the surrounding environment. They are not related to the zone objectives.

Tourist and Visitor accommodation is defined as “a building or place that provides temporary or short term accommodation on a commercial basis and includes hotel or motel accommodation, serviced apartments, bed and breakfast accommodation and backpackers’ accommodation.” The draft SLEP prohibits “hotel or motel” but not the other tourist and visitor accommodation uses.

Secondary dwellings are not related to the objective and would be better considered for an E 4 zone.

See comments in E 2 for Home Industries and Businesses, Recreation areas, Research stations, Sewerage systems.

None of these uses are directed at protecting, managing and restoring the environment, as per the zone objectives. All such accommodation would cause major disturbance to native vegetation, fauna and estuarine and beach environments, with clearing for construction, provision of services, including sewerage, power, water, traffic, noise, litter, etc

3. Significant Vegetation and Habitat corridors outside E Zones.

Issues.

- The mapping of “Significant Vegetation” and “Habitat Corridors” is an important contribution connecting areas of high conservation value, including national parks and nature reserves, State Forests and Environment Protection Zones. **See Part B** for comments regarding particular sites and habitat corridor issues. Individual submissions of SLEP 2009 member groups will also identify areas where these corridors need to be augmented
- A major concern is the omission of land within habitat corridors that has been cleared.
- It is a major concern that the purpose of the mapping as Significant Vegetation and Habitat Corridors, that is to protect biodiversity and ecological integrity etc is negated by both the process and content included in the Biodiversity Clause 7.5.4 which forms the basis for assessment of development in these areas. The current Clause assumes that consent would be granted. Council could not use this Clause in court as the basis for defending a decision to refuse a development application.
- It is recognised that Department of Planning and Infrastructure provided this clause and may provide an up-dated version. Any revised clause must be capable of ensuring that development applications are refused if they do not meet the objectives and are capable of defending such refusals. An alternative clause is included below to assist in the revision process.

Recommendation. The mapping of Significant Vegetation and Habitat corridors in the draft SLEP is a significant step forward in protecting the Shoalhaven environment. However amendments should be made to improve the levels of protection and connectivity as follows;

- **Cleared land in habitat corridors should be covered by Biodiversity mapping to foster corridor regeneration and connectivity.**
- **The Biodiversity Clause provided by the Department of Planning and Infrastructure should be revised to ensure that the development application procedures applying to mapped Significant Vegetation and Habitat corridor areas are rigorous and would maintain biodiversity values and ecosystem functions. A revision process should take into account the criteria and biodiversity clause provided below.**

Comments

Habitat corridors both from north to south and from east to west are vital in the survival of species, facilitating their adaptation and migration in response to rising temperatures, sea level rise and increased storminess. The South Coast Regional Strategy and the South Coast Regional Conservation Plan identify habitat corridors and provide the framework for protection of these corridors through the SLEP.

Inclusion of habitat corridors in the Plan is consistent with the ESD principles, especially conserving biodiversity, intergenerational equity and the precautionary principle. It is consistent with the SCRS. The exclusion of cleared areas in the habitat corridors is not consistent with the SCRS and the SCRCP and would need to be justified in advice to the Minister regarding inconsistencies with the vision of the Strategy

The exclusion of cleared sites within the boundaries of habitat corridors is counter-productive to the purpose of habitat corridors and could threaten the survival of species that rely on habitat areas in close proximity, eg species of woodland birds. Maintenance and on-going clearing of such sites would have a cumulative impact on the effectiveness of the entire corridor in maintaining biodiversity and facilitating the movement and migration of species in response to climate change.

Inclusion of cleared sites would result in developments in these areas being subject to the Biodiversity Clause 7.5.4, including structures that would impede movement of fauna species. It would not mean that all clearing or development would be prevented, but rather controlled to protect connectivity.

The purpose of the Biodiversity Clause is to provide the requirements for assessment of development applications in areas mapped as Significant Vegetation and Habitat Corridors.

However the current version does not fulfil this purpose. It would allow development that would reduce biodiversity and inhibit movement of species and defeat the purpose of the habitat corridors. It is weak and would impede Planners in proper assessment of the impacts of development on connectivity values particularly the protection of choke points and their ability to defend their decisions in the Land and Environment Court.

To enable the Clause to fulfil this purpose, it is critical that it meets the following criteria;

- It will result in maintaining biodiversity and ecosystem function.
- It provides qualitative and qualitative indicators for Planners to use as the basis of their judgements regarding the capacity or otherwise of an application to “maintain biodiversity and ecosystem function.”
- It will enable assessment of all adverse impacts across the corridor including cumulative impacts.
- Consideration of alternatives and mitigation actions must be demonstrated.
- It will enable development applications to be refused as well as approved.
- Refusals that would stand up to scrutiny in Land and Environment Court cases.

The process outlined in Clause 7.5.4 does not meet these criteria. The current clause assumes that consent would be granted, merely requiring a consent authority to “consider” potential impacts, rather than establishing that values would be maintained.

Further at a-c this clause deals with avoiding adverse impacts and where these cannot be avoided, they should be minimised. Where these impacts cannot be minimised, they should be best minimised and not adversely impacted.

This process encourages a tick the box approach to assessment rather than a qualitative and quantitative approach as the basis for decisions that would stand up to challenge in the Court.

“Proposed SLEP Draft Biodiversity Clause

7.5 Biodiversity (local)

- 1. The objective of this clause is to maintain terrestrial and aquatic biodiversity, including:**
 - a) **protecting biodiversity of native flora and fauna, and**
 - b) **protecting the ecological processes necessary for their continued existence, and**
 - c) **encouraging the recovery of native flora and fauna and their habitats.**
 - d) **preserving open passage for wildlife along habitat and riparian corridors.**
- 2. This clause applies to development on land:**
 - a) **identified as a Sensitive Area Significant Vegetation or Vegetated Habitat Corridor on the Shoalhaven Local Environment Plan 2009 Natural Resources Sensitivity-Biodiversity Map, and**
 - b) **identified as a Sensitive Area on the Shoalhaven Local Environment Plan 2009 Natural Resources Sensitivity- Water Map, and**
 - c) **situated within 50 m of the bank (measured horizontally from the top of the bank of a natural water body on land identified in (b.)**
- 3. Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that no significant adverse impact on maintenance of biodiversity values on the land has been demonstrated, including:**
 - a) **any potential adverse impact on any of the following:**

1. native ecological communities, especially Endangered Ecological Communities, their condition, local significance and whether they should be substantially retained, and
 2. locally significant species of native flora and fauna, especially Threatened Species, and
 3. any potential to fragment, disturb or diminish the biodiversity values, and
 4. the condition, role and connectivity of the vegetation as part of a locally and regionally significant habitat corridor.
- b) that feasible alternatives have been considered.
- c) that the development must be designed, sited and managed to avoid any potential adverse environmental impact, or
- d) if a potential adverse impact cannot be avoided and feasible alternatives have been taken into account the development must:
- a. minimise disturbance to the existing structure and species composition of native vegetation communities and
 - b. allow native fauna and flora to feed, breed, disperse, colonise or migrate without impediment from fencing or other structures whether seasonally or nomadically.
 - c. minimise and mitigate any residual adverse impact by maximising the regeneration and revegetation of degraded lands including with local species.

4. Any application to develop land that is subject to these clauses must demonstrate how these requirements are to be achieved by submitting evidence to show that the objective at 7.5.1 a-d would be achieved.

5. If these conditions are not met the application should be refused.”

With regard to the content of the clause the following amendments are proposed;

7.5 (2) This part of the current biodiversity clause states that it applies to the Natural Resource Sensitivity Biodiversity Map and the Water Map and land situated within **40 m** of the bank of a natural water body.

- **“a” and “b” and what should be “c” should be separated by “or” not “and.”**
- **The width should be 50 m from the bank to be consistent with the widths endorsed in the South Coast Regional Conservation Plan at 6.4. (see Riparian zone section.)**
- **The definition of “bank” in (2) should be clarified to ensure that clause is consistent with the “natural water body” definition, which covers lake, lagoon and estuary. At 7. (5) “bank” is defined as “the limit of the bed of a river.” (2) states that “land situated within 40 m of a bank of a natural water body,” is defined as bank of a river. Accordingly the clause may not apply to the bank of an estuary or coastal lake. Conversely as the definition of “natural water body” in the definitions section of the draft SLEP includes “lake, lagoon and estuary,” it is suggested that this clause be consistent with the definition.**

7. 5.5 (3) describes the HCV vegetation, species and habitat and habitat connectivity elements that must be considered in assessing the proposed application. These categories are “a native ecological community,” “regionally significant species of flora and fauna or habitat” and “habitat elements providing connectivity.”

This clause refers only to regionally significant flora, fauna or habitat.

This clause should be amended to apply to locally as well as regionally significant species of flora and fauna and habitat and habitat elements providing connectivity consistent with the Department of Environment and Climate Change “Threatened Species Assessment Guidelines, Assessment of Significance” under section 5 (a) of the Environment Planning and Assessment Act 1979. These guidelines involve assessment of local significance, as opposed to regional significance because of the

longterm cumulative loss of biodiversity at all levels arising mainly from the accumulation of losses and depletions of populations at a local level.

4. Crown and Community land categorised as Natural areas.

Issues.

- Crown and Community Land gazetted as “Natural Areas” do not appear to be adequately protected in the draft SLEP yet Council is required under the Local Government Act, to conserve biodiversity and maintain ecosystems of these areas.

Recommendation. Community Land gazetted as “Natural Areas” under the Local Government Act should be zoned E 2.

Community Land classified as a “Natural Area, ” bushland, wetland, escarpment, water course or foreshore” should be zoned E 2 consistent with the core objectives of Council’s Generic Community Land Plan of Management for these areas which include;

“to conserve biodiversity and maintain ecosystem function in respect of the land, or the feature or habitat in respect of which the land is categorised as a natural area,”

Other objectives seek to maintain, restore and regenerate the land, whilst providing for community use in a manner that would minimise and mitigate any disturbance caused by human intrusion. (“Generic Community Land Plan of Management. Natural Areas.” Shoalhaven City Council July 2001.)

Many of these Natural Areas appear to be zoned RE I. The objectives and permitted uses for this zone are not consistent with these objectives. The RE1 objectives are to enable land to be used for public open space or recreational purposes and to provide a range of recreational settings and activities and to protect and enhance the natural environment for recreational purposes.

This RE 1 objective is not consistent with conserving biodiversity and maintaining ecosystem function as per the Natural Areas objectives. Furthermore uses proposed in this zone, such as caravan parks, community facilities, entertainment facilities, function centres, helipads, recreation facilities (indoor) and major, restaurants, sewerage systems etc. would be permitted these sensitive areas.

It is of great concern that these uses would apply in foreshore areas where retention of coastal vegetation on dunes, rocky heads and estuaries is of vital importance in reducing coastal erosion, especially as a result of sea level rise and increased storminess.

RE 1 zoning for these areas is not ecologically sustainable and therefore not consistent with ESD principles. It is not consistent with the Coastal Policy and the SCRS and SCRCP for areas of high conservation value to be included in a zone, which does not aim to protect these values. If this zoning were to be retained in the Draft SLEP, these inconsistencies would need to be justified in advice to the Minister for Planning and Infrastructure regarding inconsistencies with the vision of the Strategy.

5. Riparian zones.

Issue

- Protection of riparian vegetation along water courses, estuaries and coastal lakes is critical to the maintenance of water quality, biodiversity, and habitat corridor values. Vegetation clearing and stock access result in erosion and contamination. Control of development and other uses in riparian zones is a critical issue in the Shoalhaven with so many rivers, estuaries and coastal lakes in the region unpolluted and in near natural condition.

- The widths of Riparian zones in the SLEP should be consistent with the widths endorsed in the South Coast Regional Conservation Plan at 6.4. that is, a total of 100 m for the Riparian Zone.

Recommendation. The width of the Riparian zones is increased up to 50 M Zone widths on each side of water courses.

The proposed width of 40 M in the Biodiversity Clause of the draft SLEP is not consistent with the South Coast Regional Conservation Plan and therefore with the South Coast Regional Strategy. The Plan draws on the Riparian Corridor Management Studies RCMSs), the principles of which are included in “Managing Stormwater: Soils and Construction” (Landcom 2004).

The recommended total Riparian zone widths for the Environmental Corridor is a Core Riparian Zone of 100 m, with lesser widths indicated for the terrestrial and aquatic habitat category and the Bank Stability and water quality category.

Recommendation. The Water Clause 7.6 provided by the Department of Planning and Infrastructure should be revised to ensure that the development application procedures applying to areas covered by the clause are rigorous and would maintain biodiversity values and ecosystem functions. The Clause should incorporate assessment criteria as follows, and the Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000 consistent with COAG decisions.

The Assessment criteria should include;

- **any substantial and measurable adverse change in the hydrological regime eg volume, timing, duration and frequency of ground and surface water flows.**
- **maintenance of the habitat and lifecycle of species dependent on the water body, including aquatic vegetation, and fauna such as birds, invertebrate fauna and fish species.**
- **substantial and measurable changes in the water quality ie level of salinity, pollutants, or nutrients or water temperature that may adversely impact on water body biodiversity, ecological integrity, social amenity or human health and the potential for invasive species.**

Recommendation. That the appropriateness of the proposed Water zones and associated uses as they have been applied to particular coastal lakes be reviewed.

The Clause objective is to “maintain the hydrological functions of riparian land, water ways and aquifers, including, water quality, natural flows, stability of bed and banks of water ways and ground water systems.”

Whilst the objective is acceptable the clauses do not provide a basis for qualitative and quantitative assessment, similar to the inadequacies of the Biodiversity clauses.

These clauses should be strengthened to ensure that the water quality of the region’s rivers, estuaries and coastal lakes is maintained.

The Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000 have been developed for such purposes, and endorsed by COAG and should be incorporated into the Clauses. These provide recommended trigger levels and where median levels exceed these values, the guidelines require that a detailed environmental study is required to assess the risk to environmental and use values and ecosystem health.

With regard to Ground Water, Clause 4 contains matters that the consent authority must consider, including potential for contamination and cumulative impacts.

Questions need to be addressed regarding the application of the Water zones and the proposed uses are questioned and it is considered necessary to review the proposals in the light of the South Coast Strategy/Coastal Lakes Inquiry decisions as well as Estuary Management Plans.

The SCRS identifies the Coastal Lakes Inquiry “Comprehensive Protection” and “Significant Protection” categories of Coastal Lakes on Map 2 “Biodiversity and Coastal Assets and in Appendix 4. The Strategy aims to maintain and improve the condition of these catchments through a range of constraints on planning controls and prohibition on expansion of residential and rural residential development.

The SCRS also states that, “Councils will consider the NSW Government-endorsed estuary management plans and coastal management plans and Coastal Lakes Sustainability Assessments in undertaking this task. It is not clear whether the Water zones and uses have their origin in these plans.

Swan Lake is an example. The Coastal Lakes Inquiry classified Swan Lake for “Significant Protection” and as having high sensitivity, given its mainly closed character and conservation value. It supports Threatened Species of plants and fauna, including the Green and Golden Bell Frog, Endangered Ecological Communities and SEPP 14 Wetlands.

Conjola National Park surrounds two-thirds of the Lake. This part of Swan Lake is zoned W 1, with the other third zoned W 2.

The W 2 zoning permits a range of developments and activities such as marinas and restaurants. These uses are not ecologically sustainable for such a sensitive, HCV Lake as Swan Lake. They would pollute the Lake, degrade the ecology and lead to a reduction in species including Threatened Species. These uses are not consistent with the South Coast Regional Strategy in its decisions regarding development in the catchments of sensitive coastal lakes. The W 2 zoning also allows power boating and water skiing, both of which are controversial uses incompatible with the conservation values of the Lake, but allowed in the Estuary Management Plan.

W 2 zoning for the estuarine channel from the Springs Rd Bridge to the entrance is of particular concern. This should be rezoned w 1 as it is only suitable for passive recreational use such as canoes and kayaks.

The relationship of the W zonings to the Maritime Controls on Boating also needs to be clarified.

The inconsistencies of the W 2 uses with the SCRS, if retained in the Draft SLEP, would need to be justified in advice to the Minister for Planning and Infrastructure regarding inconsistencies with the vision of the Strategy.

6. Coastal Zone Protection (5.5) and the SEPP 71 and Jervis Bay Regional Environment Plan (7.15) clauses.

Issue.

- It is an important for the SLEP to move to incorporate special provisions to protect the Coastal Zone and the Jervis Bay Region that currently apply, through SEPP 71, the Coastal SEPP and the Jervis Bay Regional Environment Plan.
- However the abolition of the Major Projects SEPP has resulted in the loss of clauses that are significant in protecting the foreshores of coastal lakes. These former requirements should also be incorporated into the SLEP.

Recommendation. That the proposed Coastal Zone Protection clause be retained in the SLEP together with the details and background information from the Jervis Bay Regional Environment Plan being included in the Generic Shoalhaven DCP.

Recommendation. That the SLEP include a clause to prohibit development in “Sensitive Coastal Locations” within 100 m of the bank of a Coastal Lake etc as defined in Schedule x of SEPP 71.

Comments.

The coastal zone in the Shoalhaven and the Jervis Region in particular, is of national significance in terms of high natural and cultural conservation values because it is relatively undisturbed. The Coastal Lakes Inquiry 2000-2002 found that the Lakes classified as least disturbed were located on the South Coast and thus they were the majority of the lakes classified in the Comprehensive and Significant Protection management categories. This finding was related to the extent of development and agricultural uses in Lake catchments in metropolitan areas and the north coast that impact on lake values.

It is important therefore that the provisions in the Coastal SEPP and the Jervis Bay Regional Environment Plan that control development are incorporated into the SLEP.

The Major Projects SEPP included clauses that applied to “Environmentally Sensitive areas of State Significance” and to “Sensitive Coastal Locations.” It is proposed that the SLEP contain a clause that would apply to the Environment Protection Zones. Such a Clause would be similar in concept to the “Sensitive Coastal Locations” clause that would prohibit development in “Sensitive Coastal Locations” as defined in Section 8N of the Environmental Planning and Assessment Regulations 2000 and SEPP 71 the Coastal Protection SEPP. Council’s website includes maps that show the “Sensitive Coastal Locations” under SEPP 71.

The foreshore and riparian zones of coastal lakes, especially intermittently closing and opening coastal lakes and lagoons (ICOLLs) are particularly fragile and would benefit from the prohibition of development within 100 m from the bank. In lakes like Lake Wollumboola and Swan Lake the foreshore and riparian areas are high biodiversity ecosystems, due to their changing water levels, periodic inundation and seepage of ground water. They provide breeding, basking and migratory habitat for the Green and Golden Bell Frog. They also provide breeding and feeding habitat for Endangered shorebirds such as the Little Tern and Hooded Plover and large populations of water birds. Endangered Ecological Communities Swamp Oak Flood Plain Forest, Coastal Salt Marsh and Bangalay Sand Forest occur in the foreshore and riparian zone and provide a buffer between the Lakes and surrounding developed areas.

Section 8N of the Environmental Planning and Assessment Regulations 2002 states that,

1. For the purposes of sections 75 J (3) and 75O (3) of the Act, approval for a project application may not be given under Part 3 A of the Act for any project or part of a project that:
 - a. is located within an environmentally sensitive area of State Significance or a sensitive coastal location, and
 - b. is prohibited by an environmental planning instrument that should not (because of section 75 R of the Act apply to the project if approved.....”
 - c.

“Sensitive Coastal Location” in Clause 1 of Schedule 2 states that a sensitive coastal location means:

any of the following, which occur in the coastal zone:

- (a) land within 100m above mean high water mark of the sea, a bay, or an estuary,
- (b) a coastal lake.
- (c) A declared Ramsar wetland within the meaning of the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth.
- (d) A declared World Heritage property within the meaning of the E P and BC Act. 1999 of the Commonwealth.
- (e) Land declared as an aquatic reserve under the Fisheries Management Act 1994.
- (f) Land declared as a marine park under the Marine Parks Act 1997.
- (g) Land within 100 m of any of the following:
 - I. The water’s edge of a coastal lake,
 - II. Land to which paragraph (c), (d), (e) or (f) applies,
 - III. Land reserved under the National Parks and Wildlife Act, 1974,
 - IV. Land to which State Environmental Planning Policy NO 14 Coastal Wetlands applies,

- V. Residential land (within the meaning of State Environmental planning Policy NO 26-Littoral Rain Forests) that is within a distance of 100m of the heavy black line on a series of maps held in the Department and marked “State Environmental Planning Policy No 26-Littoral Rainforests (Amendments No 2).”

Tree Preservation Clause. Clause 5.9

Issues

- Preservation of trees and other native vegetation is critical for maintaining biodiversity and landscape values of the South Coast. The city-wide coverage of the existing Tree Preservation Order must be maintained.
- Large areas of verified HCV native vegetation will be destroyed if existing controls on clearing are not maintained. The SCC Tree Preservation Order is particularly important at present as the only means of controlling clearing of trees and other native vegetation in rural-zoned paper estates, such as the Heritage Estates as well as in the Environment Protection zones and areas not covered by the Natural Areas, Significant Vegetation and Habitat Corridors overlay. The Optional Clause 5.9 as currently formulated would not maintain these controls, as it applies only to residential-zoned land.
- The Native Vegetation Act’s provisions allow substantial clearing that is not appropriate for high conservation value areas including E zones and the paper estates and other areas proposed to be zoned RU2 Rural Landscape. Accordingly additional measures are required.

Recommendation. That the same coverage to land use zones as the existing Shoalhaven City Council Tree Preservation Order is maintained in the SLEP, including consideration of the following options;

- a) adoption of the existing Tree Preservation Order, or**
- b) adoption of amendments to optional Clause 5.9 “Preservation of trees or vegetation” to ensure that it applies to all zones covered by the Tree Preservation Order, or**
- c) adoption of the optional Clause 5.9 “Preservation of trees or vegetation” with the addition of clause 5.9.9 included in the Standard Instrument version of 5.9 issued on 13th July 2011, together with inclusion of the RU 2 Rural Landscape zone.**

Option c. would mean that trees and other native vegetation would be preserved on land zoned R U 2, Rural Landscape, R 5 Large lot Residential, E 2 Environmental Conservation, E 3 Environmental Management and E 4 Environmental Living. All these except for R U 2 are included in clause 5.9.9 in the revised version.

Comment.

Council is encouraged to adopt a Tree Preservation Clause that will close the gap between the Clause proposed in the draft SLEP and the application of the Native Vegetation Act. Adoption of the Standard Tree Preservation Clause is not consistent with the current policy or with the objectives of the E 2 Environment Conservation and E 3 Environment Management Zones. These objectives should prevail.

The proposed RU 2 zoning proposals for HCV sites such as the Heritage Estates and the Lake Wollumboola catchment north of Culburra Rd are not consistent with these values. The zones should be changed to E 2 and these sites protected under the Tree Preservation Clause.

Whilst the Native Vegetation Act would apply to these zones, the degree of clearing allowed would negate the high conservation and habitat values of sites in these zones.

Otherwise Council will be unable to control the clearing of HCV areas. Clause 5.9 currently applies only to residential zones, whereas the Native Vegetation Act would apply to the Environment zones and RU 2 and 5.

The Native Vegetation Act allows substantial clearing through clearing for routine agricultural activities, RAMAs, construction of dwellings and sustainable grazing.

Crown Lands. Support E 1 and 2 zonings on sites identified in the South Coast Regional Conservation Plan. Map 17.

(Still to obtain these details)

Part 2. High conservation value sites of Regional significance.