NATURE CONSERVATION COUNCIL OF NSW Inc.

edo

Hon Craig Knowles MP
Minister for Infrastructure and Planning
Parliament House
Macquarie Street
Sydney NSW 2000

cc Phil Watson
By Fax: 02 4960 5055

4 June 2004

Dear Minister,

Re: Coastal Protection Regulation 2004

The Environmental Defender's Office (NSW) (EDO) and the Nature Conservation Council of NSW (NCC) welcome the opportunity to comment on the proposed *Coastal Protection Regulation 2004.*

We note that this regulation replaces the *Coastal Protection (Non-Local Government Areas) Regulation 1994* which is due to be repealed on 1 September 2004 pursuant to section 10(2) of the *Subordinate Legislation Act 1989.*

The EDO and NCC support the Regulation. It is essential that the State Government have a concurrence role regarding development in the sensitive coastal zone.

The main changes to the regulation are:
- Application of the regulation
- penalties

The 1994 Regulation, clause 5, provided that:

> **5 Application of Regulation**
> This Regulation applies to land within such part of the coastal zone:
> (a) as is not within a local government area, and
> (b) as is not subject to an environmental planning instrument within the meaning of the *Environmental Planning and Assessment Act 1979* , other than a State environmental planning policy.

The 2004 Regulation has amended this to provide that:

> **5 Application of Regulation**
> (1) This Regulation applies to such part of the coastal zone as is below the mean high water mark, excluding any estuary.
> (2) In this clause, ***estuary*** means:
> (a) any part of a river whose level is periodically or intermittently affected by coastal tides, or
> (b) any lake or other partially enclosed body of water that is periodically or intermittently open to the sea.

EDO and NCC support a broad application of the concurrence requirement to the coastal zone, rather than to non-local government areas where there is no environmental planning instrument. This change reflects amendments made by the *Coastal Protection Amendment Act 2002.*

We note that the intention of the Regulation is to address the offshore marine compartment, and that estuaries have been explicitly excluded from the application of the Regulation. As noted in the Regulatory Impact Statement (RIS), this exclusion aims to "reduce any duplication of consideration of developments, which, will automatically be dealt with under provisions of the *Water Management Act 2000* and the *Water Management Amendment Act 2002*." (p3). We note that provisions of the *Rivers and Foreshore Improvement Act 1948* and the *Fisheries Management Act 1994* may also be relevant to developments in estuaries. Activities such as dredging can have disastrous impacts on sensitive estuarine environments, and the exclusion of such areas from concurrence requirements does ring alarm bells for environment groups. However, if estuaries are sufficiently considered under other instruments, then clause5 of the Regulation is supported.

We note that the penalties for carrying out development in the coastal zone without concurrence (section 6), and granting of right or consent without concurrence to use, occupy, or carry out development on the coastal zone (section 7) have been increased from 2 penalty units under the 1994 regulation to 10 penalties under the 2004 regulation.

The level of penalty is determined by section 58 of the *Coastal Protection Act 1979* which provides that:

> (1) A person guilty of an offence against this Act for which a specific penalty is not provided shall be liable to a penalty not exceeding 100 penalty units.
>
> **(2) A person guilty of an offence against the regulations shall be liable to a penalty not exceeding 10 penalty units.**

EDO and NCC submit that these penalties are very low and accordingly are not an appropriate disincentive or punishment for unlawful development in sensitive coastal areas. As the Minister noted in a media release (14 May 2004):

> "Activities that have commonly been dealt with under the existing Coastal Protection (Non-Local Government Areas) Regulation *1994* have included the following:
>
> - off shore mining and exploration;
> - disposal of dredge and construction spoil;
> - disposal of vessels by sinking;
> - pipelines and cables crossing the seabed and nearshore areas;
> - marine based aquaculture projects;
> - sewerage ocean outfalls; and
> - maintenance dredging and supplementary artificial sand nourishment."

It is envisaged that the new Regulation will also apply to such activities. These activities could have a severe impact on sensitive coastal ecosystems, for example sea grass beds which are an important fish breeding ground. By cognate amendments to the Act, the penalties should be increased to 100 units. This recognises the potential serious impact of unlawful development in this environmentally significant and sensitive zone.

Thank you for the opportunity to comment on this Regulation. For further information, please contact Rachel Walmsley on 9262 6989 or rachel.walmsley@edo.org.au.

Yours sincerely,

Jeff Smith
Director
Environmental Defender's Office

Brooke Flanagan
Executive Officer
Nature Conservation