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Reference: 014-21 JM

31 March 2021

NSW Environment Protection Authority

Re: Draft EPA Regulatory Strategy

To whom it may concern,

Thank you for the opportunity to comment on the draft EPA Regulatory Strategy (draft Strategy). I write on behalf of the Sydney Coastal Councils Group (SCCG) with comments on the draft Strategy.

SCCG's Strategic Context

The SCCG is a regional organisation of councils, established in 1989 to promote collaboration among member councils on environmental issues relating to the sustainable management of the urban coastal and estuarine environment. The group comprises nine councils adjacent to Sydney marine and estuarine environments and associated waterways and represents nearly 1.3 million Sydneysiders.

We are guided by the [SCCG's 2019-2029 Strategic Plan](#) which includes six goals, four of which are highly relevant to the draft Strategy:

- People and places adapt to a changing climate and future shocks and stressors
- Waterways and the foreshore are protected and healthier.
- Marine biodiversity is protected in the bioregion.
- There is a collaborative, effective and consistent approach to coastal and estuarine management.

The SCCG is also undertaking several projects which seek related environmental outcomes including the development of:

- the [Greater Sydney Harbour Catchment Management Program](#) which seeks to improve and sustain the health of the catchment's waterways and involves approximately 35 organisations including the EPA
- a [Regional Litter Prevention Strategy](#) (RLPS) for Greater Sydney Harbour which involves a pilot in three council areas and the development of a 'proof of concept' for wider adoption across the catchment. The target for the RLPS is to reduce marine debris by 50% by 2025, against a baseline of the annual volume of litter collected in Greater Sydney Harbour.

Comments on the draft Strategy

We note that the draft Strategy aims to improve environmental regulation now and for future generations by reflecting new and existing challenges in environmental regulation and the EPA's broader role beyond environmental compliance. The seven elements to the regulatory approach, including listen, influence, enable, monitor, enforce, act, require are commendable and demonstrate a more holistic approach to enforcement and facilitating compliance in a more collaborative way.



We further note the regulatory challenges facing the EPA including protecting human health, degradation of our environment, ecologically sustainable development, reducing waste, climate change and environmental crime.

Our comments on the regulatory challenges that are relevant to the SCCG's goals and project outcomes are presented in Attachment A.

We would appreciate the opportunity to discuss further these issues and recommendations with you. To organise a time, please contact me via email at executiveofficer@sydneycoastalcouncils.com.au

Yours sincerely,



Sarah Penny Joyce
Executive Officer



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Proposed EPA Action	SCCG Comments	SCCG Recommendation
Protecting human health		
Act early, in accordance with the precautionary principle, to changing and emerging scientific knowledge to use our regulatory powers to respond to potential risks	<ul style="list-style-type: none"> - The roles and responsibilities of each authority need further clarification to improve efficiency and create better environmental outcomes. Several of our member Councils had reported a considerable delay from EPA in attending and prosecuting pollution events in local areas. 	<ul style="list-style-type: none"> - Clarify and promote the EPA's role to the public for responding to minor pollution events. - Ensure process and contact information is clear and accessible in a way that supports councils and EPA prompt response. - EPA to take a stronger leadership role enforcing compliance for all pollution incidents.
Drive the research agenda – partnering with education and research organisations on priority human health issues	<ul style="list-style-type: none"> - Recent evidence indicates microplastics in the biosphere are currently of great environmental concern because of their potential impact on human health. Also, there has been growing fear of antibiotic resistant bacteria occurring in our waterways. 	<ul style="list-style-type: none"> - EPA to champion continuing research for understanding threats of microplastics on human health and to develop appropriate actions in consultation with Councils and research organisations.
Partner with others to monitor and identify emerging harmful substances	<ul style="list-style-type: none"> - The SCCG recognises EPA had a great example of monitoring in the inner Harbour through the PRCG; however, we believe EPA should monitor the outer Harbour as well in particular to identify emerging harmful substances. 	<ul style="list-style-type: none"> - EPA to identify emerging harmful substances and develop appropriate monitoring programs in consultation with Councils and research organisations.
Degradation of our environment		
Act early, in accordance with precautionary principle to changing and emerging scientific knowledge to use our regulatory powers to respond to potential risks	<ul style="list-style-type: none"> - The Strategy acknowledges the significant intersection between the role of the EPA and local councils in undertaking compliance and regulatory activities. - The roles and responsibilities of each authority need further clarification to improve efficiency and create better environmental outcomes. This clarification will also assist community members in identifying and appropriately reporting on major pollution incidents. - EPA is considered the most appropriate regulatory authority to respond to major pollution incidents. 	<ul style="list-style-type: none"> - Ensure clear EPA contact information is provided to councils and improve communication and collaboration with councils in compliance matters. - Define the respective roles of the EPA and councils in responding to pollution incidents. The proposal for a single EPA contact and triage approach is strongly supported. - Clarify and promote the EPA's role to the public for responding to major pollution events and



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Proposed EPA Action	SCCG Comments	SCCG Recommendation
		ensure contact information is clear and accessible, in a way that supports councils.
Drive the research agenda – partnering with government, universities, and other research organisations on priority environmental issues	- Recent evidence indicates microplastics in the biosphere are currently of great environmental concern because of their potential toxicity for aquatic biota. Also, as mentioned above, there has been growing fear of antibiotic resistant bacteria occurrence in our waterways.	- EPA to champion continuing research for understanding threats of microplastics on aquatic biota and to develop appropriate actions in consultation with Councils and research organisations.
Partner with others to monitor degradation of the environment and identify emerging issues	- There is currently limited monitoring of the impacts of microplastics on the environment, apart from the work being undertaken by AUSMAP. A consistent monitoring program needs to be developed to understand the sources and extent of microplastic contamination and other littered items in the environment.	- EPA to champion a monitoring framework for microplastics and other littered items that provides for a balanced and consistent assessment of threats across catchments and identification of priority areas for action.
Create and act on opportunities to restore and enhance the environment	- The SCCG and its members support the use of enforcement mechanisms such as Environmental Services orders which deliver tangible environmental benefits to communities and the environments affected by a breach.	- EPA to continue the use of Environmental Services orders to ensure not only clean-up but appropriate restoration of the environment.
Reducing waste		
Address the whole system from minimising waste generation through to helping create sustainable markets for recycled materials	<ul style="list-style-type: none"> - The Draft EPA Regulatory Strategy supports the reuse and proper disposal of waste to address the whole system and working with all levels of government and stakeholders. This Strategy aligns with the NSW 20-year Waste Strategy Issues Paper and Plastics Plan Discussion Paper which also proposes a whole-of-lifecycle approach (from production, through to disposal and management of waste) to tackle the challenge of plastic waste. - However, there are no specific actions within the EPA Regulatory Strategy on how this will be achieved nor link to any overarching policy that will drive this. 	- Ensure the final EPA Regulatory Strategy aligns with the final NSW 20-Year Waste Strategy and Plastics Plan with a clear statement of NSW Government policy for a whole-of-system approach to minimising waste and specific coordinated actions.
Work with all levels of government, industry, the community, research and science sectors to drive future waste management and resource recovery	- Strong alignment with the National Plastics Plan is necessary however the Draft EPA Regulatory Strategy was prepared and released for public comment, prior to the release of this important national guiding document and its policy context. The National	- Align the final EPA Regulatory Strategy with the National Plastics Plan to give policy context to the fundamental solution for plastic litter to be controlled at the source, through product



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	<p>Plastics Plan contains important initiatives at a national scale that need to be reflected in State Government policies and strategies.</p> <ul style="list-style-type: none"> - It is unclear why the NSW Government appears hesitant to commit to and facilitate action for achieving product stewardship when clearly this is occurring in other state jurisdictions such as South Australia. - Member councils would also benefit from more tangible support on recycling and education programs that support the circular economy and reduce landfill, for example. Community Recycling Centres (CRCs). This action supports the aims of the EPA Regulatory Strategy in influencing and advocating for the protection of the environment and human health to be properly considered by councils and their communities. 	<p>stewardship and use of biodegradable and/or fully recyclable packaging. This would better reflect EPA's broader role beyond environmental compliance.</p> <ul style="list-style-type: none"> - Follow the example of other state jurisdictions, including South Australia to ban the use of non-biodegradable and non-recyclable plastic packaging and communicate commitments and timeframes. - EPA to offer more tangible support for councils in relation to recycling and education programs.
Climate Change		
Participate in the NSW whole-of-government response to climate change	<ul style="list-style-type: none"> - Council plays an important role in adapting to a changing climate and promoting mitigation strategies to NSW communities. Our members are taking action to help reduce the future impacts of climate change; however, they need quick access to new climate data and risk modelling methods as soon as they are available. 	<ul style="list-style-type: none"> - EPA to work closely in partnership with councils to deliver the ambitious commitments and aspirations adopted in the Environment and Climate Change Strategy.
Partner with other government agencies, peak bodies and research organisations to find and progress solutions		
Monitor and enforce measures to reduce emissions that are within our regulatory control	<ul style="list-style-type: none"> - The SCCG and its members support the use of enforcement mechanisms to reduce emissions. 	<ul style="list-style-type: none"> - EPA to work closely in partnership with councils to be able to monitor and enforce the reduction of emissions.
Use the regulatory approaches and tools available to us to promote reduction of carbon emissions		
Environmental Crime		
Continuously improve our ability to detect crime, including empower the community to be involved, sharing information and cooperating with other	<ul style="list-style-type: none"> - The roles and responsibilities of each authority need further clarification to improve efficiency and create better environmental outcomes. Several of our member Councils had reported a 	<ul style="list-style-type: none"> - EPA to clarify roles and responsibilities of state and local government and expectations regarding response process and timeframes



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Proposed EPA Action	SCCG Comments	SCCG Recommendation
regulators, government departments, and law enforcement agencies	considerable delay from EPA in attending and prosecuting pollution events in local areas.	for EPA attending and prosecuting pollution events.
Invest in training, technology and operational tools to enhance our intelligence, surveillance and investigation capabilities	<ul style="list-style-type: none"> - There is limited resourcing of EPA enforcement officers on the ground, sufficient to support Local Government Environmental Health Officers where there are breaches of environmental legislation such as pollution and contamination. - The EPA used to provide good support to councils in the form of duty officers to provide advice on noise, contamination and legal issues, but recently state agencies are reluctant to do this as we understand, due to risk of liability. 	<ul style="list-style-type: none"> - EPA to increase its capacity to provide on-ground support to Local Government where there are breaches of environmental legislation in pollution incidents. - EPA to review its support for technical advice to Local Government, including compliance and enforcement advice.
Use and test the limits of our regulatory powers, including prosecution	<ul style="list-style-type: none"> - In relation to enforcement activities, a stricter approach is necessary where the offender is a public authority (including Sydney Water and Transport for NSW). - Also, there are significant and lengthy delays in prosecuting through the Land & Environment Court (LEC), which discourages councils from choosing to go to the LEC. Instead, councils prosecute pollution incidents through the Local Court where magistrates do not have the knowledge and expertise to appreciate the severity of environmental offences. - However, the benefit of prosecuting in the LEC with experts who appreciate the gravitas of environmental offences <i>does not</i> outweigh the time necessary for such matters, the significant legal expenses incurred and the extreme delays in prosecuting within the LEC regime, in particular the disclosure requirements of the <i>Criminal Procedure Act 1986</i>. 	<ul style="list-style-type: none"> - EPA to take a stronger leadership role enforcing compliance for pollution incidents, including for public authorities - Amend Division 2A of Part 5 of the <i>Criminal Procedure Act</i> to provide for greater simplification for environmental offences. This will act to further reduce delays in criminal proceedings in the LEC.



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