

Planning and Assessment

IRF19/4219

Plan finalisation report

Local government area: Midcoast

1. NAME OF DRAFT LEP

Great Lakes Local Environmental Plan 2014 (Amendment No.19)

2. SITE DESCRIPTION

The planning proposal applies to coastal areas in the former Great Lakes Local Government Area, including the following beaches:

- Nine Mile Beach (Tuncurry-Darawank);
- Main Beach and One Mile Beach (Forster);
- Seven Mile Beach (Tiona);
- Elizabeth Beach (Pacific Palms);
- Boomerang Beach (Pacific Palms);
- Bluey's Beach (Pacific Palms);
- Cellito Beach and Sandbar Beach (Smiths Lake);
- Number One Beach and Boat Beach (Seal Rocks); and
- Jimmys Beach (Hawks Nest–Winda Woppa);

The locations of these beaches are shown in Figure 1 below and further detailed maps are provided in **Attachment A**.

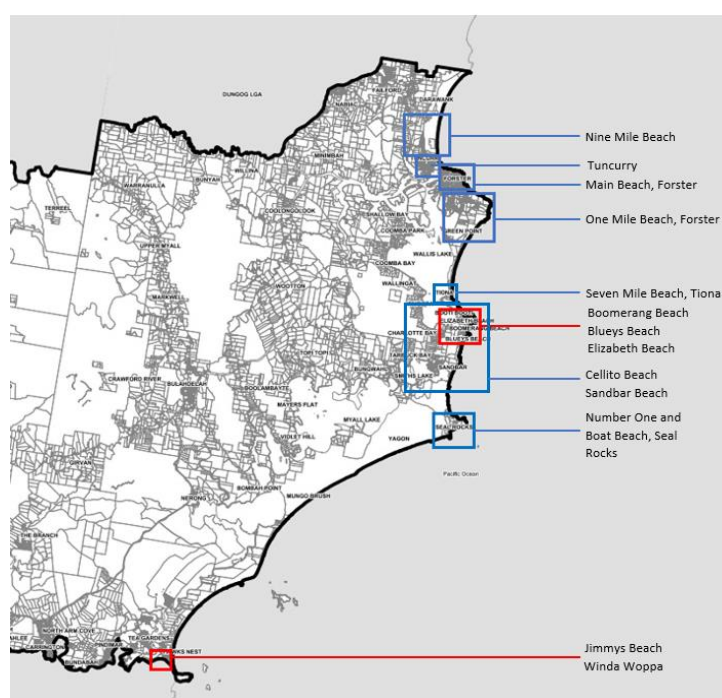


Figure 1: Site context map

3. PURPOSE OF PLAN

The planning proposal seeks to implement the recommendations of the *Great Lakes Coastal Hazard Study 2013* and the Great Lakes Coastal Zone Management Plan (CZMP). The CZMP was certified on 16 November 2017 by the Minister for the Environment (**Attachment Gazette**).

The proposed amendments to the *Great Lakes Local Environmental Plan 2014* include:

1. amending the existing coastal risk planning maps for the following beaches:
 - Boomerang Beach, Pacific Palms;
 - Bluey's Beach, Pacific Palms; and
 - Jimmy's Beach, Hawks Nest–Winda Woppa).
2. adding additional areas to the coastal risk planning maps, including the following beaches:
 - Nine Mile Beach, Tuncurry-Darawank;
 - Main Beach and One Mile Beach, Forster;
 - Seven Mile Beach, Tiona;
 - Elizabeth Beach, Pacific Palms;
 - Cellito Beach and Sandbar Beach, Smiths Lake; and
 - Number One Beach and Boat Beach, Seal Rocks.
3. removing the term 'risk' from clause 7.4 of the LEP (Coastal Risk Planning); and
4. repealing the Great Lakes Complying Development Land Map in Schedule 5 of the *State Environmental Policy (Exempt & Complying Development Codes) 2008*.

Proposed amendments 3 and 4 were not in the original Gateway determination. It is also recommended the *State Environmental Policy (Exempt & Complying Development Codes) 2008* be amended as a consequential amendment. The specific details are discussed further in Section 7 of this report. Amendment 3 (above) is not recommended to proceed and the justification for not proceeding is discussed in Section 7 of this report.

STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Myall Lakes electorate. Mr Stephen Bromhead MP is the State Member for Myall Lakes. Mr Bromhead MP made representations on behalf of his constituents, particularly the Boomerang & Blueys Beach Residents Group who objected to the Great Lakes CZMP and planning proposal.

Mr Bromhead MP met with Angus Gordon, Chair of the NSW Coastal Panel and the former General Manager Midcoast Council in 2017.

The Minister for the Environment wrote to Mr Bromhead MP on 16 November 2017 stating the NSW Coastal Panel had advised the CZMP was underpinned by expert assessment and advising of the certification of the CZMP.

The site falls within the Lyne federal electorate. David Gillespie MP is the Federal Member. The Department is not aware that Mr Gillespie MP has made any written representations regarding the planning proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

4. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 11 July 2014 determined the planning proposal should proceed subject to conditions (**Attachment B**).

The Gateway determination was altered on the following four instances to extend the time for completion:

- 13 March 2015 – extension of time to prepare the CZMP (**Attachment C1**);
- 29 January 2016 – extension of time for Office of Environment and Heritage advice on the CZMP (**Attachment C2**);
- 25 January 2017 – extension of time for certification of the CZMP and adoption of the coastal management reforms (**Attachment C3**); and
- 4 July 2019 – extension of time for Land & Environment Court proceedings (**Attachment C4**).

5. PUBLIC EXHIBITION

In accordance with the Gateway determination, public exhibition was carried out by Council from 2 April 2015 to 15 May 2015.

Council exhibited the proposal concurrently with a number of related draft documents including:

- Great Lakes CZMP;
- Jimmy's Beach (Winda Woppa) CZMP; and
- amendments to Great Lakes Development Control Plan (DCP).

No submissions were received on the planning proposal.

As three other documents were exhibited concurrently, many of the submissions received on the draft CZMPs and DCP speak to the intent of the planning proposal. The issues raised that relate to the planning proposal are discussed below.

The Department is satisfied with Council's response to submissions. A detailed response to the issues raised in the public exhibition is provided in the Submissions Report.

i. CZMPs to precede planning decisions and rely on evidence-based data

Council notes that the Great Lakes CZMP was certified on 16 November 2017 and therefore the CZMP precedes the finalisation of the planning proposal. This proposal seeks to implement the recommendations of the CZMP.

Submissions raised concerns about the evidence base of the CZMP. The methodology to consider coastal processes to inform coastal risk planning areas was overseen by the NSW Coastal Panel. Council confirmed that the appropriate guidelines and processes were followed as outlined in the NSW coastal management reforms. The NSW Coastal Panel also confirmed the CZMP was underpinned by expert assessment and supported by NSW Government agencies.

The CZMP is supported by technical investigations, including the *Great Lakes Coast Hazard Study 2013*. In response to submissions, additional ground penetrating radar investigations was carried out for Boomerang and Blueys beaches to inform the CZMP.

ii. Land identified at Blueys and Boomerang beaches

Concerns were raised relating to property values at Boomerang and Bluey Beaches in relation to requirements under clause 7.4(3)(f) of the *Great Lakes Local Environmental Plan*

2014. This clause states that consent must not be granted unless the consent authority has considered where the development provides for the relocation, modification or removal of development to adapt the impact of coastal processes, coastal hazards and sea level rise planning benchmarks. No change is proposed to this clause.

The planning considerations for any properties already identified in the coastal risk planning map remain unchanged.

iii. Low-lying land

Concerns were raised regarding the CZMP not capturing lower lying areas behind the beachfront. Council confirmed the updated data in the CZMP and flood modelling identified areas previously identified as coastal hazard are instead affected by localised flooding.

The *Great Lakes Local Environmental Plan 2014* flood planning maps identify areas below the flood planning level and this should not be confused with those areas mapped on the coastal risk planning map that defines areas of coastal erosion and recession hazard.

iv. CZMP and mapping methodology

The methodology of considering coastal processes to inform coastal risk planning areas is overseen by the NSW Coastal Panel. It is considered that this approach is appropriate.

v. Winda Woppa

Submissions raised concerns the hazard lines will sterilise development and prevent the expansion of Winda Woppa. The change to Winda Woppa is considered minor and only involves updating of the existing coastal risk planning area maps based on updated data in the CZMP.

There is no change proposed to the existing *Great Lakes Local Environmental Plan 2014* clause 7.18 regarding subdivision and minimum lot size for dwellings. No other amendments to planning controls in Winda Woppa are proposed.

vi. Alterations and additions of existing dwellings

Exempt and complying development of existing dwellings in hazard areas will be affected by adopting the coastal risk planning area maps. Council amended the Coastal Risk DCP provisions in March 2016 in response to submissions, including providing additional information on refurbishment that may occur under the *State Environmental Policy (Exempt & Complying Development Codes) 2008*. Improvements to the development controls include mechanisms to minimise or avoid risk to life or property.

6. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult with Biodiversity Conservation Division [formerly Office of Environment and Heritage] and the State Emergency Services (SES) in accordance with the Gateway determination. Council received submissions on the exhibited package from the following Government agencies in relation to the CZMP. Many of the comments indirectly relate to the planning proposal.

Biodiversity Conservation Division (formerly OEH)

The Biodiversity Conservation Division (BCD) was involved in preparing the CZMP and provided expert advice to the NSW Coastal Council. Part of the function of the NSW Coastal Council is to provide advice to the Minister on compliance by councils in preparing coastal management programs.

The BCD stated that the planning proposal did not require certification of the CZMP for the proposal to be finalised. The BCD recommended that the planning proposal be uncoupled from the CZMP as certification was a formality separate to the planning proposal process.

Council has also consulted with the Environment, Energy and Science Division in accordance with section 3.25 of the *Environmental Planning and Assessment Act 1979*, to confirm if the proposed environmental planning instruments will or may adversely affect critical habitat, threatened species, populations or ecological communities, or their habitats. This has been confirmed by the Division.

State Emergency Service (SES)

The SES was consulted formally as required the Gateway determination and participated in the preparation of the CZMP. The SES did not make a submission on the planning proposal.

Local Aboriginal Land Councils (LALC)

Council consulted with the relevant LALCs. Council did not receive a submission.

The CZMP requires that the existing plans of management for aboriginal cultural heritage management be augmented by Council through engagement with National Parks and Wildlife Service and the Worimi LALC.

Department of Primary Industries (DPI)

The DPI provided comments in relation to Port Stephens Great Lakes Marine Park and the CZMP. The DPI's comments were in relation to the ongoing governance and review of the CZMP and do not relate to the planning proposal.

Crown Lands

Crown Lands made a submission on aspects of the effect of the CZMP on Jimmys Beach CZMP. Crown Land's comments were on the management of Jimmys Beach through the CZMP and do not relate to the planning proposal.

7. POST-EXHIBITION CHANGES

In response to submissions received during exhibition, Council updated the proposal to include two additional amendments which were not in the original Gateway determination;

- remove the word 'risk' from clause 7.4 of the Great Lakes Local Environmental Plan 2014; and
- repeal the great lakes complying development land map in Schedule 5 of the *State Environmental Policy (Exempt & Complying Development Codes) 2008*.

The two post-exhibition changes are discussed below.

Amend clause 7.4 of the LEP by removing the term 'risk'

During exhibition Council received submissions regarding the language of environmental planning instruments. Council stated the *Great Lakes Local Environmental Plan 2014* reinforces unnecessarily emotive responses to coastal hazards by using the term 'risk'.

Council therefore updated the planning proposal with the recommendation that clause 7.4 of the *Great Lakes Local Environmental Plan 2014* be amended to remove the word risk as follows:

'7.4 Coastal-risk planning

(1) The objectives of this clause are as follows:

- (a) to avoid significant adverse impacts from coastal hazards,*
- (b) to ensure uses of land identified within coastal planning areas as coastal-risk are compatible with the risks presented by coastal hazards,*
- (c) to enable the evacuation of land identified within coastal planning areas as coastal-risk in an emergency.*

(2) *This clause applies to the land identified as “Coastal Risk Planning area” on the Coastal Risk Planning Map*

(3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered whether the development:*

- (a) is likely to be adversely affected by the impacts of coastal hazards, and*
- (b) is likely to cause detrimental increases in coastal risks to other development or properties, and*
- (c) is likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and*
- (d) incorporates appropriate measures to manage risk to life from coastal risks, and*
- (e) avoids or minimises potential adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the 2060 hazard line, and*
- (f) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes, coastal hazards and sea level rise planning benchmarks.*

(4) *A word or expression used in this clause has the same meaning as it has in the NSW Coastal Planning Guideline: Adapting to Sea Level Rise (ISBN 978-1-74263-035-9) published by the NSW Government in August 2010, unless it is otherwise defined in this clause.*

(5) *In this clause: 2060 hazard line means the landward extent of erosion, recession and stability hazards consistent with the projected 2060 sea level rise of 0.5 metres above the 1990 mean sea level. coastal hazard has the same meaning as in the Coastal Protection Act 1979.*

Department's response

The Department sought policy and legal advice to understand the potential implications of removing the word 'risk' from clause 7.4.

If the word 'risk' is removed, it will have implications for complying development, which is excluded from certain areas including those identified as a coastal risk or coastal hazard area. The Department is of the view that changing the wording of this clause, may result in ambiguity in relation to complying development in the coastal risk planning area maps.

The removal of the word 'risk' from clause 7.4 may not necessarily result in clause 1.19 of the *State Environmental Policy (Exempt & Complying Development Codes) 2008* not applying to land as the land would still be affected by a 'coastal hazard'.

However, the proposed change to the wording has the potential to cause uncertainty about whether complying development can occur on the land. The Department does not seek to create uncertainty particularly for areas subject to coastal risk and affected by coastal hazards due to the potential consequences.

The Department does not support the removal of the word 'risk' from clause 7.4. It is recommended that finalisation of the proposed amendment exclude this post-exhibition amendment.

Repeal the Great Lakes Complying Development Land map in Schedule 5 of the Codes SEPP

Parts of Blueys and Boomerang beaches affected by coastal risk are identified in Schedule 5 of the *State Environmental Policy (Exempt & Complying Development Codes) 2008*.

Figure 2 is the map included in Schedule 5 that applies to the *Great Lakes Local Environmental Plan 2014*.

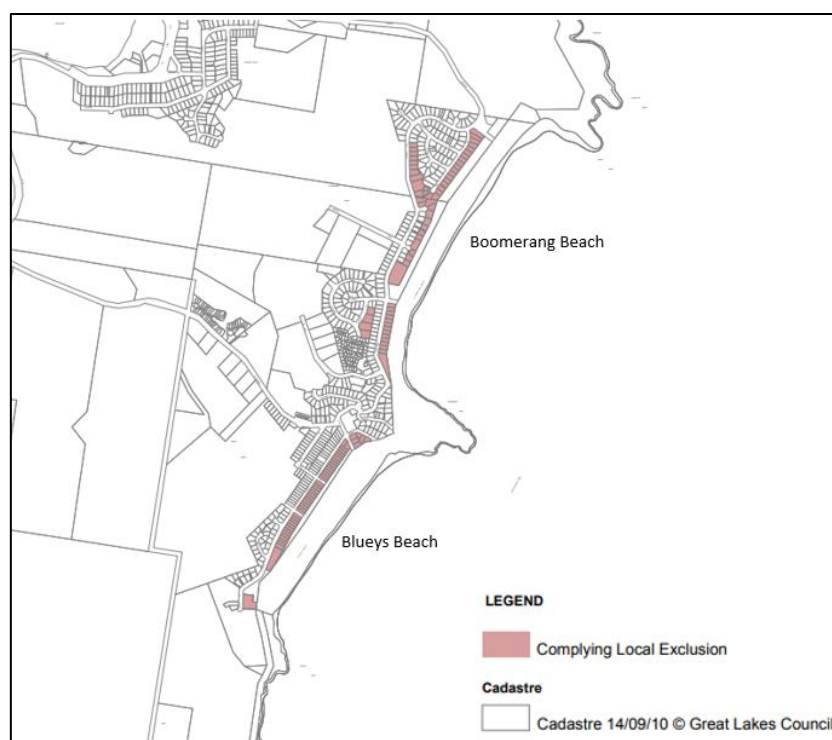


Figure 2: Great Lakes Complying Development Land Map (Source Codes SEPP)

Clause 1.19(2) of the *State Environmental Policy (Exempt & Complying Development Codes) 2008*, states that any item listed in Schedule 5 is excluded from the *State Environmental Policy (Exempt & Complying Development Codes) 2008* and therefore complying development is not permitted.

The proposal states that the map (LCD_001) in the *State Environmental Policy (Exempt & Complying Development Codes) 2008* incorrectly identifies properties at Boomerang Beach as being affected by coastal hazards. More accurate data and mapping prepared for the CZMP removes some of the properties identified in the *State Environmental Policy (Exempt & Complying Development Codes) 2008*. These properties are primarily affected by localised flooding rather than coastal hazards.

If the *State Environmental Policy (Exempt & Complying Development Codes) 2008* map (LCD_001) is not updated, it will prohibit complying development on properties that are confirmed not to be affected by coastal hazards. In addition, the *State Environmental Policy (Exempt & Complying Development Codes) 2008* does not map the remaining beaches identified in this proposal as being subject to coastal hazards.

Department's response

The Department supports repealing the Great Lakes map (LCD_001) from Schedule 5 of the *State Environmental Policy (Exempt & Complying Development Codes) 2008* as it does not reflect the revised coastal hazard mapping in the CZMP. Incorporating the maps in *Great Lakes Local Environmental Plan 2014*, rather than the *State Environmental Policy (Exempt & Complying Development Codes) 2008*, will have the same effect on complying development on the land identified. It is considered duplication to have the maps in both the LEP and *State Environmental Policy (Exempt & Complying Development Codes) 2008*.

A consequential amendment to the *State Environmental Policy (Exempt & Complying Development Codes) 2008* is recommended as part of this LEP amendment to omit map LCD_001 in Schedule 5.

8. ASSESSMENT

The planning proposal seeks to implement a framework for coastal land use planning by incorporating the most accurate and up to date information into the coastal risk planning area maps. The planning proposal implements the recommendations of both the *Great Lakes Coastal Hazard Study 2013* and the Great Lakes CZMP in accordance with section 65 of the *Coastal Protection Act 1979*.

Both these documents are consistent with the aims of the *State Environmental Planning Policy (Coastal Management) 2018* by establishing a framework for land use planning to guide decision-making in the coastal zone.

The planning proposal will result in additional coastal areas covered by the coastal risk planning area maps and minor amendments to the existing maps for Blueys Beach, Boomerang Beach and Jimmy's Beach. The new and amended coastal risk planning area maps will affect an additional 27 residential zoned properties. The amendments to the existing coastal risk planning area maps will reduce the overall number of affected properties in Winda Woppa, Blueys Beach and Boomerang Beach.

Ensuring areas are appropriately mapped to implement planning safeguards for coastal communities that may be more vulnerable to the threat of coastal erosion and hazards is essential to ensure appropriate measures are in place. For this reason, the Department supports the amendment and inclusion of new coastal risk planning area maps in the *Great Lakes Local Environmental Plan 2014*.

Land and Environment Court proceedings

In February 2018, the Boomerang and Blueys Residents Group Inc. commenced proceedings in the Land and Environment Court regarding the Great Lakes CZMP. The CZMP was challenged based on the decision to certify the CZMP by the Minister and Council and on procedural grounds of the CZMP.

The Land and Environment Court judgement was handed down on 23 December 2019. The case was dismissed, therefore the CZMP remains valid.

The residents' group has lodged on 17 January 2020 a notice to appeal the Court's decision.

It is recommended the *Great Lakes Local Environmental Plan 2014* be amended in accordance with the Gateway determination and the Department continue to work closely with Council and the Blueys and Boomerang community to further refine the understanding of coastal hazards in the area.

Section 9.1 Ministerial directions

There are no unresolved section 9.1 Ministerial directions as specified in the Gateway determination. An analysis is provided below on the two most relevant section 9.1 Ministerial directions.

Direction 2.2 Coastal Management

At Gateway, the planning proposal was assessed under the previous Direction 2.2. The new Direction 2.2 (issued 3 April 2018) aims to protect and manage coastal areas of NSW and supports councils where they are preparing strategic plans and planning proposals in coastal areas.

It also promotes local planning that is consistent with the *Coastal Management Act 2016* and Coastal Management SEPP. The planning proposal is consistent with the updated Direction 2.2 as it seeks to implement the findings of the CZMP.

Direction 5.10 Implementation of Regional Plans

Direction 5.10 – Implementation of Regional Strategies was revoked on 17 October 2017 and replaced by Direction 5.10 – Implementation of Regional Plans (issued 14 April 2016), which requires proposals to be consistent with the Regional Plan. The planning proposal is consistent with the *Hunter Regional Plan 2036* as indicated below and is therefore consistent with this Direction.

State environmental planning policies

Coastal Management SEPP

At the time of the exhibition and Council's consideration of the planning proposal, the *State Environmental Planning Policy (Coastal Management) 2018* was not finalised.

The *State Environmental Planning Policy (Coastal Management) 2018* contains scope for coastal vulnerability areas to be mapped and measures put in place to respond to coastal processes and hazards. The mapping of coastal vulnerability areas needs to be informed by local coastal hazard modelling and mapping undertaken when preparing Councils' CZMP. This is a similar scope to that found in clause 7.4 in *Great Lakes Local Environmental Plan 2014*.

At this point in time, no coastal vulnerability map has been adopted in the *State Environmental Planning Policy (Coastal Management) 2018* and therefore no coastal vulnerability area has been identified. Council is of the view that given the coastal risk planning area maps have been certified then it should eventually transition to the *State Environmental Planning Policy (Coastal Management) 2018*. This position has not been formalised as a request to the Department through Council resolution.

The Department is working on preparing guidelines on the process for mapping coastal vulnerability areas. Coastal vulnerability area maps can be updated by either the Department or by Council by preparing a planning proposal. The Department has committed to undertaking the process for amending the *State Environmental Planning Policy (Coastal Management) 2018* for the Great Lakes Local Environmental Plan 2014 and will consult with Council during this process.

State and regional plans

Hunter Regional Plan 2036

At the time of the Gateway determination, the planning proposal was subject to the Mid North Coast Regional Strategy. When the *Hunter Regional Plan 2036* was adopted in October 2016, Midcoast Local Government Area fell under Hunter Region.

The proposal is consistent with Direction 16 - Increase resilience to hazards and climate change as it seeks to:

- review and update CZMPs particularly where urban growth is being investigated; and
- incorporate new knowledge on regional climate projections and related cumulative impacts in local plans.

The planning proposal implements Direction 16 by incorporating into the planning system safeguards for coastal communities that are more vulnerable to the threat of coastal erosion. The updated maps improve the resilience of identified Great Lakes coastal areas. The proposal directly achieves the action to review coastal zone management plans in locations where urban development puts pressure on the coastal zone.

9. MAPPING

The *Great Lakes Local Environmental Plan 2014* will be amended through mapping amendments to the coastal risk planning areas maps. The planning proposal will update

two existing Coastal Risk Planning Maps and include an additional seven coastal risk planning area maps. Table 1 describes the existing Coastal Risk Planning Maps that will be revoked.

Table 1: LEP maps to be revoked

Map sheet	Map Identification Number
CRA_010D	3320_COM_CRA_010D_020_20140117
CRA_012A	3320_COM_CRA_012A_040_20140117

Table 2 lists the Coastal Risk Planning Maps that will be adopted:

Table 2: LEP maps to be adopted

Map sheet	Map Identification Number
CRA_010D	3320_COM_CRA_010D_020_20190514
CRA_011	3320_COM_CRA_011_080_20190514
CRA_011B	3320_COM_CRA_011B_020_20190514
CRA_011C	3320_COM_CRA_011C_010_20190514
CRA_011D	3320_COM_CRA_011D_010_20190514
CRA_011E	3320_COM_CRA_011E_020_20190514
CRA_012A	3320_COM_CRA_012A_040_20190514
CRA_012B	3320_COM_CRA_012B_010_20190514
CRA_013A	3320_COM_CRA_013A_010_20190514

The following map will be revoked from the Codes SEPP:

Table 3: Codes SEPP map to be revoked

Map sheet	Map Identification Number
LCD_001	SEPP_ECD_3400_LCD_001_20101022

The maps have been checked by the Department's ePlanning Team and Regional Team. The proposed maps are provided as **Attachment Maps**.

10. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment E**). Council confirmed on 28 May 2020 that it supported the draft and that the plan should be made (**Attachment F**).

11. PARLIAMENTARY COUNSEL OPINION

There were delays in finalising the proposal due to proceedings in the Land and Environment Court. Therefore, a revised Parliamentary Counsel Opinion was received 29 December 2019 as an Opinion only remains valid for 6 months.

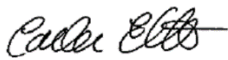
A subsequent revised Parliamentary Counsel Opinion was then requested and issued on 29 May 2020 incorporating the amendment to the *State Environmental Policy (Exempt & Complying Development Codes) 2008* and determined that the plan can be legally made. This Opinion is provided at (**Attachment PC**).

12. RECOMMENDATION

The proposal to amend and add additional coastal risk planning area maps into the *Great Lakes Local Environmental Plan 2014* to implement the recommendations of the *Great Lakes Coastal Hazard Study 2013* and the Great Lakes CZMP as well as the consequential amendment to the *State Environmental Policy (Exempt & Complying Development Codes) 2008* is supported because:

- the proposal implements the Great Lakes CZMP and will improve the identification of coastal risks areas with the most up to date data;
- the proposal is consistent with the *Coastal Management Act 2016* and NSW coastal management reforms;
- the proposal is consistent with the *Hunter Regional Plan 2036* and section 9.1 Ministerial directions;
- Submissions during did not relate to the planning proposal directly, but rather the CZMP package. However, relevant issues were adequately addressed by Council; and
- no submissions were received from agency objections.

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP.



Caitlin Elliott
Manager, Central Coast & Hunter



17/08/2020

Daniel Simpkins
Director, Central Coast & Hunter
Planning and Assessment

Assessment Officer: Paul Maher
Planning Officer, Central Coast & Hunter
Phone: 02 4904 2719