

DE20.104 Coastal Hazard Review Planning Proposal (PP026) - Update and Next Steps

HPERM Ref: D20/359154

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. Advice from the NSW Department of Planning, Environment and Industry - 30 June 2020

Reason for Report

- Detail the advice that has now been raised by the NSW Government which has stalled the finalisation of the Coastal Hazard Review amendment to Shoalhaven Local Environmental Plan (LEP) 2014.
- Obtain direction regarding how to proceed with the Coastal Hazard Review Planning Proposal (PP026).

Recommendation (Item to be determined under delegated authority)

That Council:

1. Amend the Coastal Hazards Review Planning Proposal (PP026) as per Option D in the body of this report.
2. Submit the revised PP026 to the NSW Department of Planning, Industry and Environment for a revised Gateway determination (if required) and, if favourable, proceed to formal public exhibition in accordance with the terms of the determination and legislative requirements.
3. Advise key stakeholders, including relevant Community Consultative Bodies and any directly affected landowners, of the resolution and public exhibition arrangements.
4. Receive a further report on PP026 following the conclusion of the public exhibition period.

Options

1. As recommended (Option D later in this report).

Implications: This is the preferred option as it enables the PP to continue, albeit with a different scope. The relevant State Environmental Planning Policy (SEPP) maps can be removed as per the original proposal, and although the LEP mapping would remain, it could be refined to align with the Shoalhaven Development Control Plan 2014 and eventual Section 10.7 Planning Certificate terminology. Although the intent of the PP is different, it allows a continuation and acknowledgement of the significant effort and community consultation undertaken through the current process.

2. Adopt an alternative recommendation.

Implications: This could include options A to C or E identified later in the report, or another option. The implications of each option are outlined in the report.

3. Not provide a direction regarding the PP.

Implications: This option is not preferred as the PP will remain in limbo and the Shoalhaven LEP 2014 and relevant SEPP will remain as existing.

Background

Some public and private properties along the coast are at risk from coastal hazards such as beach erosion, shoreline recession, coastal entrance instability, sand drift, coastal inundation, storm water erosion, and slope instability. Council's planning instruments assist to identify and manage this risk.

On 14 August 2018, Council's Development Committee resolved (MIN18.609) to endorse the preparation of a Planning Proposal (PP) to amend the current coastal hazard related controls in Shoalhaven LEP 2014 by:

- Removing the Coastal Risk Planning Maps from the LEP (Note: the mapping would be replaced with detailed coastal hazard mapping that is publicly available on [Council's website](#));
- Amend Clause 7.4 Coastal Risk Planning to apply to all land at risk of coastal hazards identified within the Shoalhaven Coastal Zone Management Plan, coastal management programs and/or supporting studies.

The PP also sought to amend State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (SEPP) to remove eleven (11) maps sheets in Schedule 5 'Land excluded from the Housing Code, Inland Code or Low Rise Housing Diversity Code', which are based on Council's superseded coastal hazard data.

The PP with the above intent was then submitted to the then NSW Department of Planning and Environment (DoPE) and received a favourable Gateway determination to proceed on 24 October 2018 (PP Gateway version can be viewed [here](#)). The PP was then publicly exhibited from 6 February to 8 March 2019 (inclusive) and a Community Information Session was held on 26 August 2019.

The Development & Environment Committee resolved on 5 November 2019 (MIN19.818) to adopt the PP as exhibited and forward to the NSW Department of Planning, Industry and Environment (DPIE) for finalisation.

On 30 June 2020, Council received formal advice from DPIE (see **Attachment 1**) that the Council endorsed amendment to the Shoalhaven LEP 2014 could not proceed. In summary, DPIE now considers that the proposed removal of the maps from the Shoalhaven LEP 2014 is inconsistent with their own policy position, despite issuing a Gateway determination in October 2018 to proceed with the amendment. This news is disappointing, not just due to the delay in this advice, but also the significant effort and community consultation undertaken through the process.

Based on the advice from DPIE, the PP cannot be finalised in its current form. Despite this, the matter needs to move forward in some way and five potential options are now presented below for Council's consideration. There may be adverse community reaction to whichever option is pursued as all options propose an alternative approach to the existing (and almost complete) process and intent. Option D is the preferred staff option, as reflected in the report recommendation.

Option A – Abandon the PP

This would mean the LEP coastal maps, maps in Schedule 5 of the SEPP and LEP clause 7.4 would all remain as existing. This option is not preferred for a number of reasons, including:

- LEP maps are inaccurate and will still need to be updated at some point in the future.
- SEPP maps remain inaccurate (they cover the same area as the LEP maps) and this duplication is not necessary. Coastal land based exclusions under the SEPP can be identified in a LEP, DCP or Policy adopted by Council.

Option B - Abandon the PP and resolve the LEP coastal map errors in the standard housekeeping process

This option would see the LEP coastal maps, maps in Schedule 5 of the SEPP and LEP clause 7.4 all remain as existing for the time being, with the SEPP and LEP maps amended as part of a separate housekeeping process. Whilst the ability to update the coastal maps annually as required is an advantage, this option is not preferred for a number of reasons, including:

- SEPP maps remain inaccurate for an undefined period of time. They cover the same area as the LEP maps and this duplication is not necessary.
- Continual need to update the LEP & SEPP as new or adjusted (properties removed) areas are identified.
- Delays in updating of LEP/SEPP maps due to housekeeping process timing.
- Issues associated with coastal risk may delay housekeeping PPs.

Option C - Continue the PP with an amended intent to address LEP map errors, remove SEPP mapping and retain LEP Clause 7.4 as existing

This option would see the:

- SEPP maps removed as initially intended.
- The LEP coastal maps updated to reflect current data.
- LEP clause 7.4 remain as existing.

There are some advantages associated with this option, notably that the LEP maps would be accurate (until new studies completed) and the duplication between the SEPP and LEP maps would be removed. Despite this, however, this option is not preferred for a number of reasons, most notably the continual need to update the LEP (probably housekeeping amendments) as new areas are identified (or properties removed).

Option D – As per Option C, however also specifically identify the different risks associated with the land

This option would see the:

- SEPP maps removed as initially intended.
- The LEP coastal maps updated to reflect current data, including specifying the type of coastal risk associated with the land.
- LEP clause 7.4 remain as existing.

There are a number of advantages associated with this option, notably that the:

- LEP maps would be updated and be accurate (until new studies completed).
- Duplication between the SEPP and LEP maps would be removed.
- Approach is more consistent with the Section 10.7 (Planning Certificate) process Council is working towards (specified by the NSW Government) which requires the type of risk to

be specifically identified. This creates consistency between the LEP, DCP and Planning Certificates.

This option will most likely require a revised Gateway determination and re-exhibition of the PP, and the LEP maps will need to be continually updated in the future (probably housekeeping amendments) as new areas are identified (or properties removed).

Option E - Continue with the PP and map the entire coastal zone in the LEP, remove SEPP mapping and potentially update LEP Clause 7.4

This option would see the:

- SEPP maps removed as initially intended.
- The current LEP coastal maps replaced with a map that identifies the entire coastal zone.
- LEP clause 7.4 remain as existing, possibly with minor amendments.

There are some advantages associated with this option, notably that Council would not need to constantly update the LEP as new areas are identified (or properties removed) and the SEPP maps could be removed. However, this option is not preferred for a number of reasons, including the fact that **substantially** more land would be unnecessarily captured by the LEP clause. This would result in a more rigorous, costly and unnecessary level of assessment requirements. This could also introduce room for error in the assessment process, and extended assessment timeframes.

Conclusion

Based on the recent advice from DPIE, the PP cannot be finalised in its current form as the coastal maps cannot be removed from the LEP. This report presents five options ranging from abandoning the PP to amending and progressing it with a different intent.

Option D is the preferred option as it enables the PP to continue, albeit with a different scope. The SEPP maps can be removed as per the original proposal, and although the LEP mapping would remain, it could be refined to align with the DCP and eventual Section 10.7 Planning Certificate terminology. Although the intent of the PP would be different, it allows a continuation and acknowledgement of the significant effort and community consultation undertaken through the current process.

Community Engagement

The PP process to date included a formal public exhibition between 6 February to 8 March 2019 (inclusive) and a Community Information Session held on 26 August 2019 (29 affected landowners and some Councillors attended).

Should Council proceed with an amended PP option, rather than abandon the current process, it is likely that a revised PP will need to be prepared and submitted to the NSW Government for a Gateway determination. If favourable, the revised PP would be exhibited for comment in accordance with the relevant legislative requirements.

Directly affected landowners will be advised of the resolution and exhibition arrangements in writing, as well as all Community Consultative Bodies.

Policy and Risk Implications

Council's original intent for the PP was to remove the coastal mapping from the Shoalhaven LEP 2014. Despite favourable advice and confirmation from DPIE throughout the process that this was possible, on 30 June 2020 Council received formal advice from DPIE

(**Attachment 1**) that the Council endorsed amendment to the Shoalhaven LEP 2014 could not proceed. It is noted that removing similar mapping (flood) from the LEP had occurred via PP in recent years.

Option D in the report presents an opportunity for Council to continue with the PP in an amended form. This includes updating the LEP coastal maps to reflect current data, including specifying the type of coastal risk associated with the land. This approach creates consistency between the LEP, DCP and Section 10.7 Planning Certificates. Whilst this is staff's preferred option, it will require ongoing future housekeeping updates to ensure the land mapped in the LEP aligns with Council's adopted coastal risk data.

Financial Implications

An amended PP would be resourced within the existing Strategic Planning budget.