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Gateway determination report – PP-2021-3271

Shoalhaven Coastal Hazards Review Planning
Proposal

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
“Shoalhaven Coastal Zone Management Plan, Shoalhaven City Council, 2018”
“Coastal Hazard Review Planning Proposal (PP026) - Update and Next Steps. Shoalhaven City Council, Development and Environment Committee – 06 October 2020.”

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Shoalhaven
PPA	Shoalhaven City Council
NAME	Shoalhaven Coastal Hazards Review Planning Proposal (0 homes, 0 jobs)
NUMBER	PP-2021-3271
LEP TO BE AMENDED	Shoalhaven LEP 2014
ADDRESS	Various (refer planning proposal document)
DESCRIPTION	Various lots and DPs (refer planning proposal document)
RECEIVED	28/04/2021
FILE NO.	IRF21/5966
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal which is to:

- Amend the Coastal Risk Planning (CRP) maps provided in Shoalhaven LEP 2014 to specify the type of coastal risk associated with the land and to reflect the most up-to-date data available to Shoalhaven City Council.
- Remove eleven map sheets from Schedule 5 of SEPP (Exempt and Complying Development 2008 which are based on superseded coastal hazard data.
- Amend Shoalhaven Development Control Plan 2014 G6 Coastal Management Areas.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved. Namely, the planning proposal seeks to amend SEPP (Exempt and Complying Development Codes) 2008 per the changes below:

1. Removal of the following 11 map sheets in Schedule 5 “Excluded Land” of the SEPP:
 1. SEPP_ECD_6950_LCD_001_20101022
 2. SEPP_ECD_6950_LCD_002_20101022
 3. SEPP_ECD_6950_LCD_003_20101022
 4. SEPP_ECD_6950_LCD_004_20101022
 5. SEPP_ECD_6950_LCD_005_20101022
 6. SEPP_ECD_6950_LCD_006_20101022
 7. SEPP_ECD_6950_LCD_007_20101022
 8. SEPP_ECD_6950_LCD_008_20101022
 9. SEPP_ECD_6950_LCD_009_20101022
 10. SEPP_ECD_6950_LCD_010_20101022
 11. SEPP_ECD_6950_LCD_011_20101022
2. The planning proposal seeks to amend the Shoalhaven LEP 2014 by updating the following sixteen Coastal Risk Planning Maps which are currently in the LEP:
 - CRP_015D
 - CRP_015F
 - CRP_016C
 - CRP_016D
 - CRP_019F
 - CRP_019G
 - CRP_019I
 - CRP_019J
 - CRP_019K
 - CRP_020B
 - CRP_020C
 - CRP_020F
 - CRP_020G
 - CRP_020H
 - CRP_020J
 - CRP_020K

The explanation of the provisions of this planning proposal is clear and adequate.

1.4 Site description and surrounding area

The planning proposal applies to land within the Shoalhaven LGA that has been identified as being at risk from coastal hazards, either currently under the CRP Maps or based on current studies of at-risk areas provided in the certified Shoalhaven Coastal Zone Management Plan 2018 (CZMP), including nine beaches and several headlands. Location maps are provided in the planning proposal document.

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Coastal Risk Planning (CRP) maps, which are suitable for community consultation. The proposed maps identify properties affected by three categories of coastal risk: Beach Erosion Hazard, Cliff/Slope Instability

Hazard and Coastal Hazards Area. In some instances, certain large lots have been mapped on the CRP maps in their entirety even though the mapped coastal hazard may only affect a portion of the lot. Council has advised that this approach to the proposed CRP maps is to provide a trigger to land-owners that their lot, or parts of their lot, are affected by coastal hazards, that clause 7.4 of Shoalhaven LEP 2014 applies, and that certain considerations will need to be addressed in any proposed development of the land. Council's more detailed Coastal Hazard Mapping available in its DCP and online mapping system will provide more detailed information for the development assessment process.

It is recommended Council consult with the Department of Planning, Industry and Environment – Energy, Environment and Science Division – Estuaries, Coast and Floodplain Team concerning the proposed mapping.

1.6 Background

Shoalhaven City Council prepared a previous version of the planning proposal in 2018 which received a Gateway determination in October 2018. This planning proposal sought to remove the Coastal Risk Planning maps from the Shoalhaven LEP 2014 and amend the Coastal Risk Planning Clause 7.4 so that it referred to coastal risk mapping provided on Council's online mapping system.

Council exhibited the planning proposal from 6 February to 8 March 2019. Council resolved to finalise and adopt the planning proposal on 5 November 2019 and requested, in December 2019, that the Department arrange the preparation of an LEP.

The Department wrote to Council in June 2020 advising that an LEP is unable to be prepared to implement the planning proposal in its current form due to legal and policy concerns with Council's proposed amendment of the Coastal Risk Planning clause to refer to maps located outside of the LEP. The Department encouraged Council to consider other options to achieve a similar outcome. The Department and Council subsequently discussed potential alternative approaches.

Council resolved in October 2020 to prepare a revised planning proposal which seeks to update and retain the coastal risk planning maps in its LEP.

2 Need for the planning proposal

It is considered the planning proposal is needed to facilitate the update of the current Coastal Risk Planning maps provided in the Shoalhaven LEP 2014 based on the Shoalhaven Coastal Zone Management Plan which was certified by the NSW Government in 2018. The proposal is also needed to facilitate removal of superseded maps from Schedule 5 of the SEPP (Exempt and Complying Development Codes) 2008.

The planning proposal does not consider the option of amending the SEPP (Coastal Management) 2018 to include coastal vulnerability maps for the Shoalhaven LGA. Council has advised that it is currently preparing a Coastal Management Program, having completed Stage 1 which comprised a Citywide Scoping Study. Council intends to complete its CMP and submit it to the Minister for endorsement by mid-2022.

Depending on the outcome of the CMP process, Council has advised it may consider transitioning the coastal risk mapping from the LEP to the Coastal Management SEPP as coastal vulnerability maps, however, it is too early at this stage to provide any certainty or any timeframes.

Where a council has existing additional local controls in a local environmental plan or development control plan, such as coastal risk planning provisions, these can continue to apply. The Department encourages councils to identify and remove duplicated planning controls from local provisions where practical. The Coastal Management SEPP will prevail over any local provisions to the extent of any inconsistency. Otherwise, local environmental plan and SEPP provisions can both apply.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the current and draft Illawarra Shoalhaven Regional Plan.

Table 3 Illawarra Shoalhaven Regional Plan assessment

Regional Plan Objectives	Justification
<p><u>Draft Illawarra Shoalhaven Regional Plan 2041:</u></p> <p>Strategy 11.6: Align local plans with any certified Coastal Zone Management Plan or certified Coastal Management Program.</p> <p>Strategy 12.2: Reduce exposure to natural hazards in local strategic planning and local plans by locating development away from areas of high coastal erosion.</p> <p>Strategy 12.3 Take a risk-based approach to determining sea level rise in local strategic planning and local plans by using the best available science in consultation with the NSW Government.</p>	<p>The planning proposal is consistent with Strategies 11.6, 12.2 and 12.3 of the draft Illawarra Shoalhaven Regional Plan 2041 because it seeks to update the Coastal Risk Planning maps in the Shoalhaven LEP 2014 using data provided in the certified Shoalhaven Coastal Zone Management Plan 2018 to improve the accuracy of information used in development assessment.</p>
<p><u>Illawarra Shoalhaven Regional Plan 2036:</u></p> <p>Direction 5.2 Build the Illawarra-Shoalhaven's resilience to natural hazards and climate change.</p> <p>Action 5.2.1: Apply contemporary risk management to coastal and other hazards.</p>	<p>The planning proposal is consistent with the Illawarra Shoalhaven Regional Plan 2036 Direction 5.2 and Action 5.2.1 because the proposed amendments will incorporate up-to-date coastal hazard data and create consistency across Council's relevant documents with regard to coastal hazards and enable the best natural hazard and climate change information to be available for development assessment.</p>

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies as stated in the table below:

Table 4 Local strategic planning assessment

Local Strategies	Justification
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<p>Shoalhaven 2040 Local Strategic Planning Statement:</p> <ul style="list-style-type: none"> • Direction 2 – Natural and Built Environment and Lifestyles: <ul style="list-style-type: none"> • Planning Priority 10 Protecting the natural environment • Planning priority 11 Adapting to natural hazards through building resilience • Planning Priority 15 Scenic and cultural landscapes 	<p>The planning proposal is consistent with Direction 2 and Planning Priorities 10, 11 and 15 of Council's LSPS because the proposal will facilitate protection of the coastal environment, scenic and cultural landscapes by ensuring coastal hazards are addressed during the development assessment process.</p>
<p>Shoalhaven Community Strategic Plan:</p> <p>Theme 2 – Sustainable, liveable environments.</p> <ul style="list-style-type: none"> • Priority 2.2 Plan and manage appropriate and sustainable development • Priority 2.3 Protect and showcase the natural environment <p>Theme 4 – Responsible governance</p> <ul style="list-style-type: none"> • Priority 4.3: inform and engage the community about decisions that affect their lives. 	<p>The planning proposal is consistent with the identified themes and priorities of the Shoalhaven Community Strategic Plan because it will improve the accuracy of coastal hazards information for Council, landowners, developers and the community which will facilitate sustainable development and good governance.</p>
<p>Shoalhaven Coastal Zone Management Plan 2018:</p> <ul style="list-style-type: none"> • Strategy 1: Integrate management of the entire coastal zone. <ul style="list-style-type: none"> • C1.3: Work with all sections of Council to improve integration of coastal zone risk management and protection. • Strategy 3: Implement Planning System Controls: <ul style="list-style-type: none"> • Action C3.1: Update notation to section 19.7(5) certificates for properties affected by coastal hazards consistent with NSW Government legislation. • Action C3.2: Implement and maintain planning system controls in Shoalhaven LEP 2014 and Shoalhaven DCP 2014 G6 Coastal Management Areas, which requires specific information and assessment for proposed development in coastal hazard areas. • Action C3.4: Make necessary amendments to Shoalhaven LEP 2014 and DCP including: <ul style="list-style-type: none"> • All risk areas to be included in the appropriate locations in the LEP and/or DCP. • Mapping in the DCP and LEP (Coastal Risk Planning) to be updated to reflect the revised Risk Assessment Maps. • Strategy 7: Implement adaptive management procedures. 	<p>The planning proposal is consistent with the identified relevant Strategies and actions of the Shoalhaven CZMP as it will facilitate implementation of planning system controls in the Shoalhaven LEP 2014 and DCP and planning certificates using the most up to date coastal risk information.</p>

Shoalhaven Growth Management Strategy	The planning proposal is consistent with the Shoalhaven Growth Management Strategy because it will facilitate appropriate development in coastal risk areas and protect the coastal environment.
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3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 5 Section 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 2.1 Environmental Protection Zones	Yes	By updating the Coastal Risk Maps in the LEP based on more recent coastal hazards information, the planning proposal will facilitate better protection and conservation of environmentally sensitive areas at risk of coastal hazards within the coastal zone.
Direction 2.2 Coastal Management	Yes	The proposal will facilitate protection and management of coastal areas in the Shoalhaven LGA as identified in Council's endorsed Coastal Zone Management Plan (CZMP). The proposal is not inconsistent with the Coastal Management Act 2016 objectives, the NSW Coastal Management Manual and Toolkit or the NSW Coastal Design Guidelines 2003. As discussed in section 2 of this report, Council is currently preparing a Coastal Management Program which it expects to be completed mid-2022.
Direction 4.4 Planning for Bushfire Protection	No	Council has advised that the planning proposal will affect or is in proximity to land mapped as bushfire prone land. The Direction requires Council to consult with the NSW Rural Fire Service on the planning proposal following Gateway determination.
Direction 5.10	Yes	As discussed in section 3.1 of this report, the planning proposal is consistent with the draft Illawarra Shoalhaven Regional Plan 2041 and current Plan.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 6 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
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SEPP (Coastal Management) 2018	The SEPP requires mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016 based on a certified local coastal management program (CMP). The SEPP provides development controls for each coastal management area.	Yes	The planning proposal is consistent with the SEPP because, as discussed in section 2 of this report, it does not prevent Council from having coastal risk planning provisions in its LEP. Council has advised that it may consider transitioning the relevant coastal mapping from the LEP to the SEPP as part of the Coastal Management Program process which Council is currently preparing for finalising/certification in mid-2022. In the interim, the planning proposal will improve the accuracy of coastal hazard information for the LGA which will improve management of development in the coastal zone which is a key aim of the SEPP.
SEPP (Exempt and Complying Development Codes) 2008	Schedule 5 of the SEPP contains 11 Shoalhaven Map Sheets which exclude land from the application of complying development under Clause 1.19 Of the SEPP.	Yes	The eleven Shoalhaven map sheets were inserted in the SEPP several years ago and are now superseded. The planning proposal seeks to remove the maps from the SEPP and rely on clause 1.19(1)(f) of the SEPP which excludes complying development from land identified by an environmental planning instrument, a development control plan or a policy adopted by the council.

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 7 Environmental impact assessment

Environmental Impact	Assessment
Impact on critical habitat, threatened species, populations or ecological communities or their habitats in sensitive coastal areas.	The planning proposal is very unlikely to impact on critical habitat, threatened species, populations or ecological communities or their habitats. Rather it is likely to improve protection of critical habitat, threatened species and sensitive coastal areas by improving the accuracy of coastal hazards information in the LEP, Codes SEPP, Council's DCP, planning certificates and Council's online public mapping system.

4.2 Social and economic

The planning proposal is considered to have a positive social and economic impacts as it will improve the accuracy of coastal hazard mapping and information available to Council, landowners, developers and the community which will improve land-use decision-making processes in sensitive coastal areas of the Shoalhaven LGA.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate and forms a condition of the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies are consulted on the planning proposal and given 21 days to comment:

- NSW Rural Fire Service
- Department of Planning, Industry and Environment – Energy, Environment and Science Division – Estuaries, Coast and Floodplain Team

6 Timeframe

Council proposes a 9 month time frame to complete the LEP.

The Department recommends a time frame of 12 months to complete the LEP to allow for any unforeseen issues or delays.

7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority because the planning proposal seeks to amend the SEPP (Exempt and Complying Development Codes) 2008.

As planning proposal is seeking to amend a SEPP the Department recommends that Council not be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It will update and retain the current coastal risk planning maps in the Shoalhaven LEP 2014 which addresses concerns raised by the Department on a previous version of the planning proposal (PP_2018_SHOAL_008_01 (PP-2021-3271).
- It will remove superseded coastal maps from Schedule 5 “Excluded Land” in SEPP (Exempt and Complying Development Codes) 2008.
- It will not prevent Shoalhaven City Council transitioning its coastal hazard mapping from the LEP to the SEPP (Coastal Management) 2018 after Council has completed and considered the outcomes of its Coastal Management Program process which is due to be completed mid-2022.

- It is consistent with endorsed regional and local strategic planning including the draft and current Illawarra Shoalhaven Regional Plan, Shoalhaven Local Strategic Planning Statement and Shoalhaven Coastal Zone Management Plan 2018.

As discussed in the previous sections 4 and 5, the proposal does not require any updates prior to public consultation.

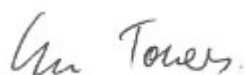
9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - Department of Planning, Industry and Environment – Energy, Environment and Science Division – Estuaries, Coast and Floodplain Team
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



25/5/21

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