

Planning Services

IRF18/5724

Gateway Determination Report

LGA	Shoalhaven
PPA	Shoalhaven City Council
NAME	Shoalhaven Coastal Hazard Review (0 dwellings, 0 jobs)
NUMBER	PP_2018_SHOAL_008_00
LEP TO BE AMENDED	Shoalhaven LEP 2014
ADDRESS	Various coastal addresses in the LGA
DESCRIPTION	Various lots and DPs in the LGA
RECEIVED	21 August 2018
FILE NO.	IRF18/33005
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

INTRODUCTION

Description of planning proposal

The planning proposal seeks to amend the Shoalhaven LEP 2014 (SLEP 2014) by removing the Coastal Risk Planning (CRP) Maps from the LEP and amend Clause 7.4 "Coastal risk planning" to apply to all land at risk of coastal hazards (not just mapped lands).

The PP seeks to facilitate a more streamlined and accurate approach to updating and providing coastal hazard data for planning and development assessment.

Site description

Shoalhaven's coastal zone extends 165 km along the NSW south coast, from Shoalhaven Heads in the north to North Durras in the south. It includes 109 beaches, bays and headlands, the Shoalhaven River estuary, 15 coastal lakes and numerous small coastal creeks. The planning proposal applies to any land within the Shoalhaven that is at risk from coastal hazards. A location map is provided at Figure 1.

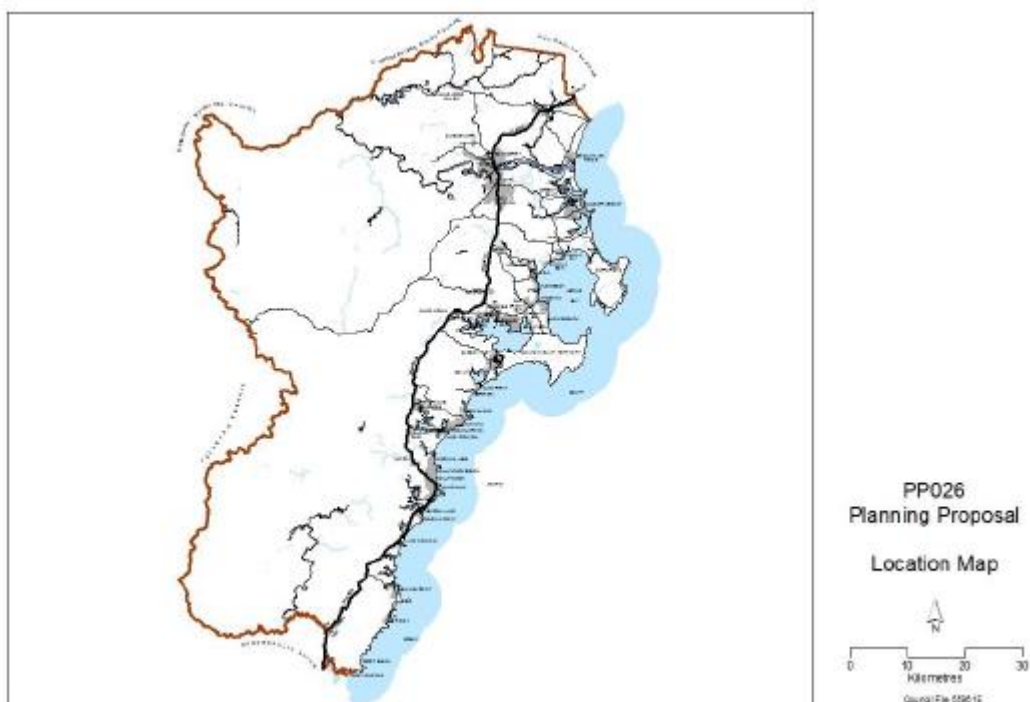


Figure 1 – Location Map (source: Shoalhaven City Council, Planning Proposal PP026 Shoalhaven Local Environmental Plan 2014 Coastal Hazards Review, August 2018).

Existing planning controls

Clause 7.4 “Coastal risk planning” in the Shoalhaven LEP 2014 applies to the areas identified in the current CRP Maps (refer to Table 1). The clause provides matters for consideration for Council when granting development consent to development applications located within land identified on the CRP Maps.

Table 1 – Localities covered by Shoalhaven LEPs Coastal Risk Planning Maps

Berrara	Culburra Beach
Manyana	Callala Beach
Narrawallee	Vincentia
Mollymook Beach	Hyams Beach
Ulladulla	Currarong
Shoalhaven Heads	

The subject areas are also identified under Schedule 5 “Land excluded from the Housing Code” under SEPP (Exempt and Complying Development) Codes 2008 (Codes SEPP).

Summary of recommendation

It is recommended that the planning proposal proceeds as submitted.

PROPOSAL

Objectives or intended outcomes

The intended outcome of the planning proposal is to remove the CRP maps from SLEP 2014 and amend Clause 7.4 “Coastal risk planning” to apply to all land at risk of coastal hazards. It is intended that the coastal risk mapping will be made available to the public via council’s online mapping system. This will enable SLEP 2014 to rely on the most up to date coastal hazard data that Council holds and avoid delays in updating coastal risk mapping via the planning proposal process.

Comment

It is considered that the intended outcomes provided in the PP are adequate. The Office of Environment and Heritage and the Department’s policy team has been consulted on the PP. The OEH has raised concern whether removal of the coastal hazard map in the LEP would compromise current development assessment processes and the intent of the Coastal Management Act 2016 and SEPP (Coastal Management) 2018. The Department’s policy team have advised that there is no valid reason to reject the planning proposal because:

- There is no requirement for councils to include maps in LEPs for coastal hazard areas.
- The removal of maps from LEPs would not be seen as against the intent of the Coastal Management Act and Coastal SEPP.

Explanation of provisions

Clause 7.4 Coastal risk planning is proposed to be amended to remove reference to the CRP Map and to amend subclause 2 to refer to all land at risk of coastal hazards as shown in track changes below:

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 as coastal risk are compatible with the risks presented by coastal hazards,*
- (c) to enable the evacuation of land identified as coastal risk in an emergency,*
- (d) to avoid development that increases the severity of coastal hazards.*

(2) This clause applies to the land identified as ~~“Coastal Risk Planning Area” on the Coastal Risk Planning Map~~ being at risk of coastal hazards.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) will avoid, minimise or mitigate exposure to coastal processes, and*
- (b) is not likely to cause detrimental increases in coastal risks to other development or properties, and*

- (c) is not 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) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, and*
 - (f) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and*
 - (g) has regard to the impacts of sea level rise.*
- (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:*
- coastal hazard has the same meaning as in the Coastal Protection Act 1979.*

Proposed amendment of the SEPP (Exempt and Complying Development Codes) 2016.

Additionally the planning proposal seeks to amend the Codes SEPP to remove the subject land from Schedule 5 “Land excluded from the Housing Code and Greenfield Housing Code” of the Codes SEPP because the maps are based on superseded coastal hazard data. This will require removal of eleven map sheets relating to coastal land in the Shoalhaven from the Schedule.

In Council’s view Clause 7.4 of SLEP 2014, Shoalhaven Development Control Plan 2014 (SDCP 2014) and the Shoalhaven Coastal Zone Management Plan (CZMP) 2018 can be relied on to exclude the use of the Codes SEPP for complying development in these areas as per Clause 1.19 of the Codes SEPP.

Comment:

It is considered that the explanation of the provisions provided in the PP are adequate. Clause 7.4 is a non-mandated clause under the Standard LEP Instrument Order. The removal of the CRP Maps from the LEP and proposed amendment to the clause 7.4 to refer to land identified being at risk of coastal hazards will improve the ability for Council to update the coastal hazards maps as additional data is made available without requiring an amendment to the Shoalhaven LEP.

Clause 7.4 refers to the *Coastal Protection Act 1979* which has been replaced by the *Coastal Management Act 2016*. It is recommended that Council update the explanation of the provisions in the PP to refer to the Coastal Management Act 2016.

Recommendation: That the explanation of the provisions of the PP are updated to refer to refer to the Coastal Management Act 2016.

In relation to the proposed amendments to the Code SEPP, clause 1.19 (1)(f) excludes land from complying development that is identified by an environmental planning instrument, a development control plan or a policy adopted by the council as being or affected by:

- (i) a coastline hazard, or
- (ii) a coastal hazard, or
- (iii) a coastal erosion hazard.

Council has prepared a draft Chapter G6: Coastal Management Areas of Shoalhaven DCP 2014 as well as the Shoalhaven Coastal Zone Management Plan (CZMP) 2018 which provides the most up to date coastal hazards mapping for the LGA. The Shoalhaven CZMP has been adopted by Council and was certified by the NSW Government Office of Environment and Heritage (OEH) in September 2018.

It is considered that coastal hazard area maps provided in the DCP and CZMP will enable exclusion of complying development from areas identified as subject to coastal hazards via clause 1.19 of the Codes SEPP. This will ensure that development of land identified as subject to coastal hazards continues to be undertaken via the development assessment process consistent with Council's and the Department's policy intent.

Council has proposed to remove 11 maps from schedule 5 of the Codes SEPP as these are based on superseded coastal hazard data. This is considered to be reasonable as the proposal will result in the most current data being available to the public and for the assessment of applications. As stated above, clause 1.19 of the SEPP will exclude those areas affected by coastal hazards.

Mapping

The PP provides a location map, example of a current CRP map and an example of a proposed online map. The current CRP maps are proposed to be removed from SLEP 2014. The PP does not seek to include any new LEP maps.

It is considered that the maps provided in the PP are adequate to describe the intent of the proposal.

It is not clear from the PP the difference in land affected by current CRP Maps in the SLEP 2014 and the new online maps. The PP states that Council intends to exhibit the draft DCP chapter G6 "Coastal Management Areas of Shoalhaven Development Control Plan 2014". It is considered important that Council exhibit the current versus proposed maps with the planning proposal so the community can clearly understand where planning controls are proposed to apply and what the maps are based on.

Recommendation: That Council clearly identifies the current and proposed planning controls on the consultation maps.

NEED FOR THE PLANNING PROPOSAL

The planning proposal has arisen as a result of Council's recently adopted Shoalhaven Coastal Hazard review that forms part of the Shoalhaven CZMP 2018. The hazard review has updated the data which underpins the CRP maps in the SLEP. As a result the CRP maps are now outdated.

Further the PP states that as the CRP maps form part of SLEP 2014, the only way of amending or removing it is via a PP. In order to provide the most up-to-date coastal hazard data, moving the coastal hazard mapping to sit outside the LEP is the only way to ensure that Council is not bound by the PP process in updating the mapping relied on by Clause 7.4 of the LEP.

Comment

It is considered that the planning proposal is needed to achieve Council's intended outcome to ensure that the SLEP 2014 refers to the most up-to-date coastal hazard mapping in the development assessment process. The planning proposal process is considered to be the appropriate mechanism to facilitate the removal of the Coastal Risk Planning Maps from SLEP 2014 and the amendment of the Coastal risk planning clause so that it refers to coastal hazard data provided in Council's DCP and CZMP.

The planning proposal is also the appropriate way to remove the superseded maps from the Codes SEPP.

STRATEGIC ASSESSMENT

Regional

The PP identifies that the proposal is consistent with the Illawarra Shoalhaven Regional Plan and in particular:

- Direction 5.2 'Build the Illawarra-Shoalhaven's resilience to natural hazards and climate change; and
- Action 5.2.1: Apply contemporary risk management to coastal and other hazards.'

The PP states that it is consistent with this Direction and Action because the proposal will prevent delays in incorporating the best available natural hazard and climate change information into the development assessment process by removing the need for PPs to be processed to amend SLEP 2014 mapping.

Comment:

Council's view that the PP is consistent with the Regional Plan is supported. It is considered that the planning proposal will facilitate provision of the best available, accurate coastal hazard information that does not rely on updating the Local Environmental Plan every time new information on coastal hazards becomes available.

Local

The PP states that the proposal is consistent with the relevant themes, actions and priorities of Council's Community Strategic Plan as it will help provide for sustainable, liveable environments (Theme 2) as well as provide responsible governance (Theme 4). The PP also states that the proposal is consistent with the strategies and actions of the Shoalhaven Coastal Zone Management Plan 2018 (CZMP).

Comment:

It is considered that the PP is consistent with Council's Community Strategic Plan as the proposal will facilitate provision of accurate, up-to-date and publicly available coastal hazard mapping which will improve community information, engagement, governance and development assessment processes.

It is considered that the PP is consistent with Council's CZMP as the proposal will:

- facilitate integration of Council's coastal zone risk management and protection activities by aligning Council's LEP and DCP with the CZMP.
- facilitate the efficient update of Council's coastal hazard data without the need to amend the Shoalhaven LEP via the planning proposal process to update the data.
- Improve the effectiveness of the development assessment process in relation to developments in coastal hazard areas.
- improve the accuracy and timeliness of Council's planning certificate information.

The OEH has raised concern that the proposal to remove the Coastal Risk Maps from the LEP is inconsistent with the action in the CZMP (Action c3.4) that requires mapping in the SLEP 2014 to be updated to reflect revised Risk Assessment Maps.

It is considered that the PP will facilitate the updating of the CRMs but that the maps will be transferred to Council's website rather than retained in the LEP. It is considered that this approach has merit because it will improve community access to the mapping and provide for more efficient and timely updating of the information for planning and development assessment purposes.

Council is pursuing a similar approach in relation to its Review of Flood Controls Planning Proposal which received a Gateway determination to proceed in June 2017. This PP seeks to remove the Flood Planning Area maps from the LEP and to provide this mapping on Council's website.

Section 9.1 Ministerial Directions

The PP states that the proposal is not inconsistent with any applicable s.9.1 Directions. Council identifies that the following Directions are particularly relevant to the PP.

2.1 Environment Protection Zones: This Direction applies to the planning proposal as it will affect land within an environment protection zone or land otherwise identified for environment protection purposes.

Council considers the proposal to be CONSISTENT with this Direction as it will facilitate a more responsive and technically accurate process in the consideration of development proposals for the management of sensitive environmental areas- in this instance coastal areas.

Comment: Council's view is supported. The proposal is considered to be CONSISTENT with this Direction.

2.2 Coastal Management: This Direction applies to the planning proposal as the subject land is within the coastal zone, as defined by the Coastal Management Act 2016.

The planning proposal in Council's view is not inconsistent with the Coastal Management SEPP, the NSW Coastal Management Manual, or the NSW Coastal Design Guidelines. The removal of the CRP mapping and the amendment of Clause 7.4 which will refer to the endorsed and updated coastal maps in the Coastal Zone Management Plan will ensure the accuracy of the Coastal Management Zone maps.

Comment: Council's view is supported. The proposal is considered to be CONSISTENT with this Direction.

State environmental planning policies (SEPPs)

The PP states that the proposal is consistent with the applicable SEPPs which are listed at Attachment C of the PP. The PP identifies that the SEPP (Coastal Management) 2018 is particularly relevant. Council has identified that the planning proposal is consistent with the SEPP as it will facilitate the use of the most current coastal hazard data to manage development in the coastal management areas identified within the coastal zone.

Comment: Council's view that the PP is consistent with the SEPP is supported.

The OEH has raised a number of concerns in relation to consistency of the PP with the SEPP and the Coastal Management Act 2016, namely:

- whether removal of the coastal hazard map in the LEP compromise current processes and intent of the new CMAct and SEPP?
- whether removal of the coastal map from the LEP triggers clause 15 of the SEPP?
- implications when CZMPs cease to have effect after Dec 2021 and the requirement for local councils located in the Coastal Zone to prepare Coastal Management Programs in accordance with the Coastal Management Act 2016.

The Department's Principal Policy Officer was asked to respond to OEH concerns. She has advised that there is no State government imposed requirement for councils to include maps in LEPs for coastal hazard areas (Council's clause 7.4 is an optional local clause and is not mandated). The removal of maps from LEPs would not be

seen as against the intent of the Coastal Management Act and SEPP (Coastal Management) 2018. It is considered that the removal of the maps from the LEP will not trigger the application of Clause 15 of the SEPP, which relates to the preparation of coastal management programs by local councils, as Clause 15 applies throughout the Coastal Zone regardless of having a coastal hazard clause or map in an LEP.

The Department expects that the implementation of the new coastal management program framework will occur over the next few years. The OEH has advised that Shoalhaven City Council has commenced preparation of a coastal management program with funding assistance provided by the Government. It is expected that this program will include modelling and mapping of coastal management areas, with actions relating to their management, as well as actions relating to updating the coastal vulnerability mapping in the SEPP via a planning proposal. It is not considered that the current PP will prevent Council from transitioning to a coastal management program into the future under the SEPP.

SEPP Exempt and Complying

Council has identified that the planning proposal is relevant to the (Exempt and Complying Development Codes) 2008 (Codes SEPP) as it will require the removal of 11 maps sheets in Schedule 5- Land excluded from the Housing Code and Greenfield Housing Code”.

As discussed previously, Council considers that clause 7.4 of SLEP 2014, Shoalhaven Development Control Plan 2014 (SDCP 2014) and the Shoalhaven Coastal Zone Management Plan (CZMP) 2018 can be relied on to exclude the use of the Codes SEPP for complying development in these areas as per Clause 1.19 of the Codes SEPP. This view is supported.

SITE-SPECIFIC ASSESSMENT

Social and Economic

The PP states that the proposal is likely to have positive social and economic effects as it will remove uncertainty resulting from the differences between the CRP Map and the adopted coastal hazard data.

Comment: Council’s view that the PP is likely to have positive social and economic effects is supported. It is considered that there will be greater confidence and efficiency in the information and decision making around development in coastal areas as a result of the removal of uncertainty based on the currency of data on coastal risk mapping and providing the information in an online format.

Environmental

The PP states that the proposal is very unlikely to impact on any critical habitat or threatened species, populations or ecological communities, or their habitats as it is seeking to facilitate provision of the most up-to-date mapping available which will assist the protection of coastal areas.

Comment: Council’s view that the PP is unlikely to have any negative environmental effects and may have a positive effect is supported. It is considered that the PP will

facilitate a more efficient process of updating the mapping data as new information becomes available. This will ensure that sensitive coastal areas are better managed via more streamlined, efficient and effective planning and development assessment processes.

CONSULTATION

Community

Council proposes to place the PP as well as the draft DCP chapter on exhibition for 28 days and to notify the exhibition in local newspapers, via Council's website and at its Council offices in Nowra and Ulladulla.

Comment: It is considered that Council's proposed community consultation program is adequate.

Agencies

Council proposes to consult with OEH as a minimum.

Recommendation: That Council consult with the OEH on the planning proposal.

TIME FRAME

Council has proposed an 8 month time frame to complete an LEP. Given there may be the need for additional discussions and negotiations with OEH, and the amendment will require a 12 month timeframe to complete an LEP may be more realistic.

Recommendation: That a 12 month timeframe is provided to complete an LEP.

LOCAL PLAN-MAKING AUTHORITY

Council has sought delegation to prepare and make the LEP. Council is not able to exercise its plan making delegations as the proposal will involve an amendment to the Codes SEPP.

Recommendation: That Council's request to exercise the Minister's plan making delegations is not supported.

CONCLUSION

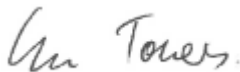
The planning proposal is supported to proceed as the proposal:

1. will facilitate the provision of accurate coastal hazard mapping in the Shoalhaven Local Government area which will improve the development assessment process as well as environmental, social and economic outcomes for coastal hazard areas.
2. is consistent with the requirements of the Illawarra Shoalhaven Regional Plan, Council's Community Strategic Plan and Coastal Zone Management Plan 2018 as well as relevant SEPPs and Ministerial Section 9.1 Directions concerning the management of coastal hazard areas.
3. will facilitate the updating of the SEPP (Exempt and Complying Development Codes) 2008 by removing superseded coastal hazard area maps applying to the Shoalhaven LGA.

RECOMMENDATION

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

1. The current Shoalhaven LEP 2014 Coastal Risk Planning Maps and proposed maps are required to be exhibited with the planning proposal so the community can clearly understand where planning controls are proposed to apply and what the maps are based on.
2. The explanation of the provisions of the planning proposal are updated to refer to the *Coastal Management Act 2016*.
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. Consultation is required with the following public authorities:
 - Office of Environment and Heritage
5. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.



23/10/2018

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24/10/2018

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