



IRF23/3113

## Gateway determination report – PP-2023-2568

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Coastal Risk Planning Clause – Port Stephens LGA

February 24



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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 Reports and plans supporting the proposal**

### Relevant reports and plans

Coastal Risk Planning Clause Planning Proposal – Version 1 (dated 14 Nov 2023)

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

LGA	LGA name
PPA	Port Stephens Council
NAME	Coastal Risk Planning Clause
NUMBER	PP-2023-2568
LEP TO BE AMENDED	<i>Port Stephens Local Environmental Plan 2013</i>
ADDRESS	Whole of LGA coastline
DESCRIPTION	Whole of LGA coastline
RECEIVED	17/11/2023
FILE NO.	IRF23/3113
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 insert a coastal risk planning clause and associated mapping.

The objectives of the planning proposal are to:

- avoid significant adverse impacts from coastal hazards.
- ensure uses of land identified as coastal risk are compatible with the risks presented by coastal hazards.
- enable the evacuation of land identified as coastal risks in an emergency.
- avoid development that increase the severity of coastal hazards.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the *Port Stephens Local Environmental Plan 2013* by inserting a coastal risk planning clause to provide that development consent must not be granted to development on land to which the clause applies unless the consent authority is satisfied the development:

- is not likely to cause detrimental increases in coastal risks to other development or properties, and

- is not likely to alter coastal processes and the impacts of coastal risks to the detriment of the environment, and
- incorporates appropriate measures to manage risk to life from coastal risks, and
- is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal risks and hazards, particularly if the development is located seaward of the immediate hazard line, and
- provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and
- has regard to the impacts of sea level rise.

The clause would apply to land mapped as being affected by coastal risk, with the map being an amalgamation of coastal inundation, tidal inundation, coastal erosion, and dune transgression layers.

Discussions with the department's Coastal and Environment Policy team and Biodiversity Conversation Division identified concerns that the clause and mapping should clearly distinguish between what is coastal hazard as defined under the *Coastal Management Act 2016* (the CM Act) and what is a coastal process. This is to provide clarity for affected landowners and to align the local environmental plan provisions with the Coastal Management Plan (CMP) which treats these elements differently.

Coastal hazards include coastal inundation, tidal inundation, and coastal erosion. It does not include dune transgression, which is a coastal process. Under the CM Act, coastal protection works can only be undertaken to manage coastal hazards.

The explanation of provisions should therefore be updated to define dune transgression as a coastal process being a form of major sand drift as defined under the Coastal Management Glossary 2018. Dune transgression should be mapped separately to coastal hazards, recognising that land affected by either set of maps would be subject to the coastal risk planning provisions.

While council has based the clause on a similar clause in the *Great Lakes Local Environmental Plan 2014*, the inclusion of dune transgression as a contributor to coastal risk represents a new policy approach for an environmental planning instrument. Resolution of final clause wording and mapping will occur during the finalisation process with Parliamentary Counsel.

## 1.4 Site description and surrounding area

The planning proposal will apply to the coastal areas identified in the Coastal Management Program Hazard Mapping (Figures 3-12).

## 1.5 Mapping

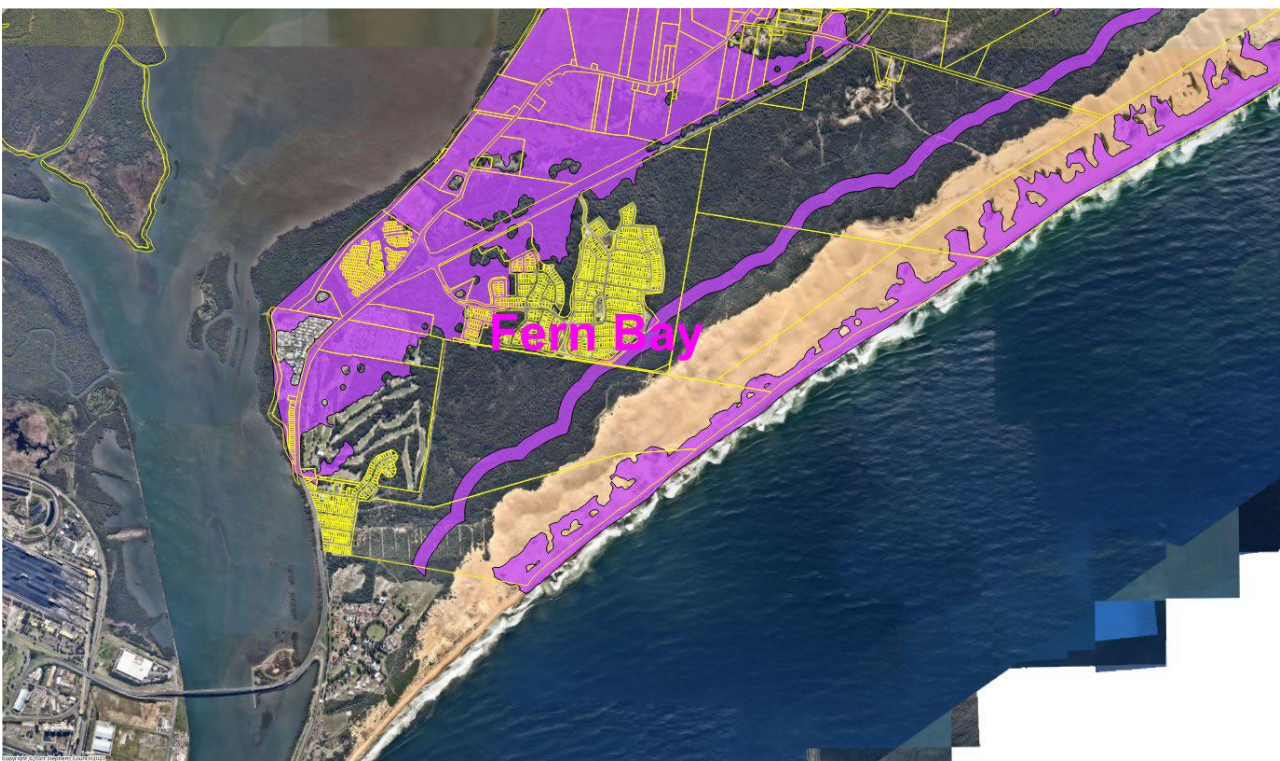
The planning proposal includes coastal risk planning mapping (Figures 3-12) which is an amalgamation of the different coastal hazard and dune transgression layers. These maps show the current (2020) situation to the planning horizon (2070 for dune transgression, 2120 for all others).

Following discussion with the department's Coastal Policy team and Department of Climate Change, Energy, the Environment and Water the following mapping amendments will be requested prior to public exhibition:

- mapping of the land affected by dune transgression should be amended to represent current and future areas of projected impact to the year 2070, and
- for statutory clarity, mapping of dune transgression should be separated out from the composite map currently containing the other coastal hazard layers.

Since submitting the planning proposal, council has also advised the following mapping amendments will be made prior to public exhibition:

- dune transgression will be extended seaward to ensure the central portion of the beach is incorporated in the area that would apply in the proposal. Noting this is not technically an area affected by the process of dune transgression, but is related to the process of dune transgression, and
- dune transgression landward extent will be reduced from that currently presented in the existing proposal to the 2070 dune transgression area (i.e. resulting in a reduction in landward change). The reason is the 2120 dune transgression horizon was inadvertently put in the planning proposal submitted to the department. The reasons for using the 2070 dune transgression planning horizon are outlined in the Coastal Management Plan, and
- a number of coastal inundation areas which are predominantly located along the rocky shorelines are not included in the existing proposal, which will now be inserted back into the updated planning map. These rocky shoreline inundation areas have been previously exhibited in the Coastal Management Plan with our community including on our Coastal Management Program webpage.



**Figure 1 Proposed coastal risk planning map (Fern Bay area)**



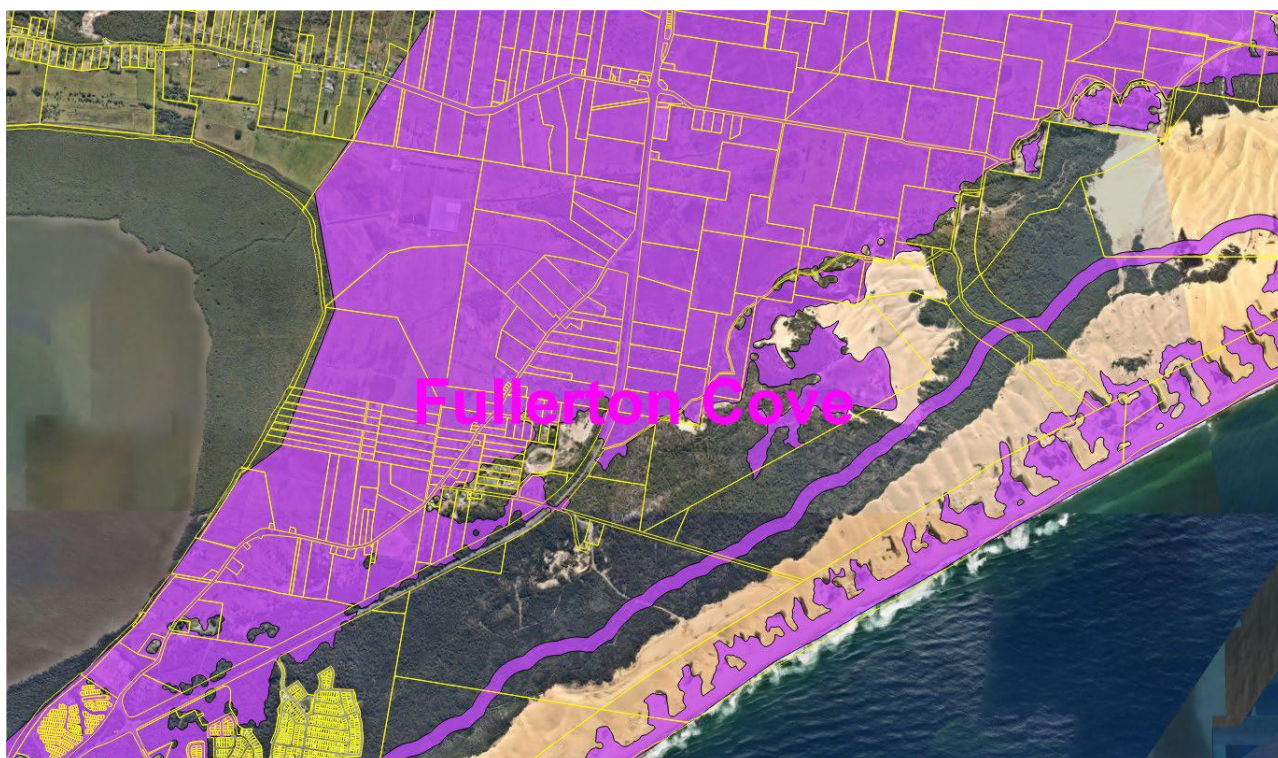


Figure 4 Coastal risk planning map (Fullerton Cove area)

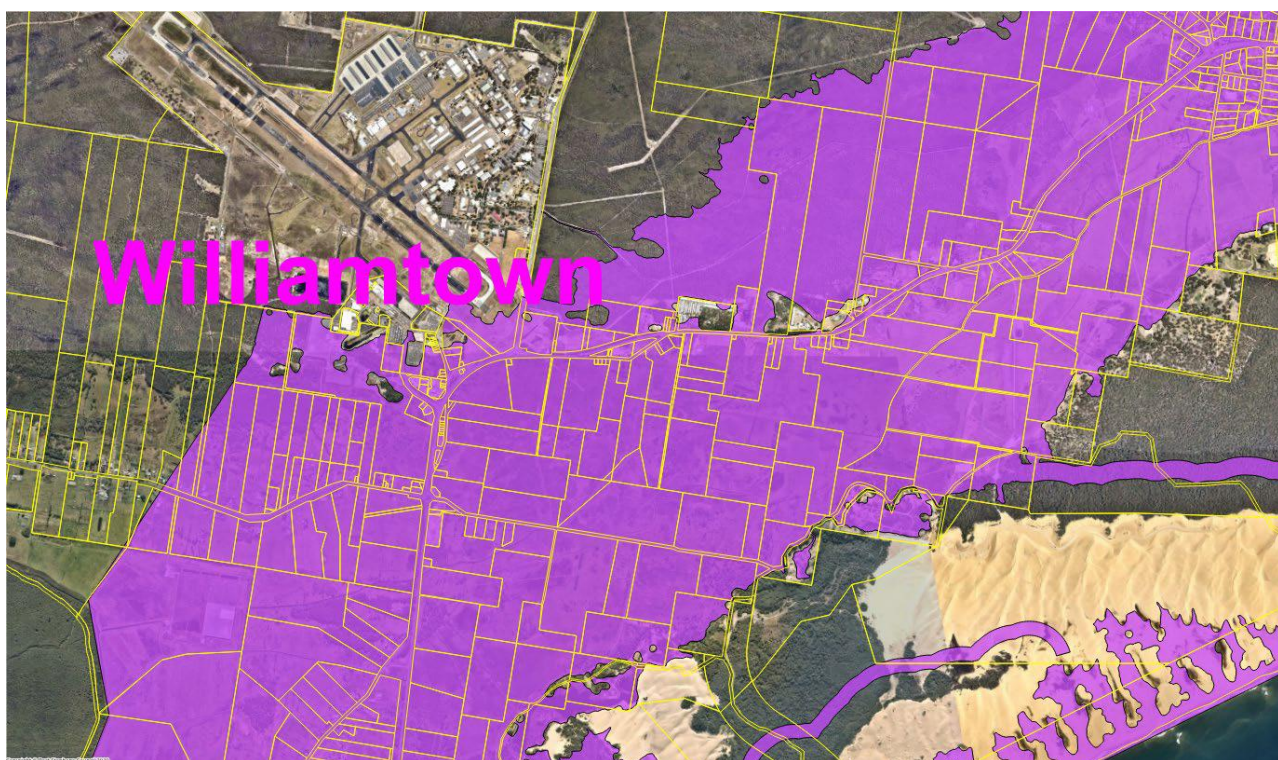
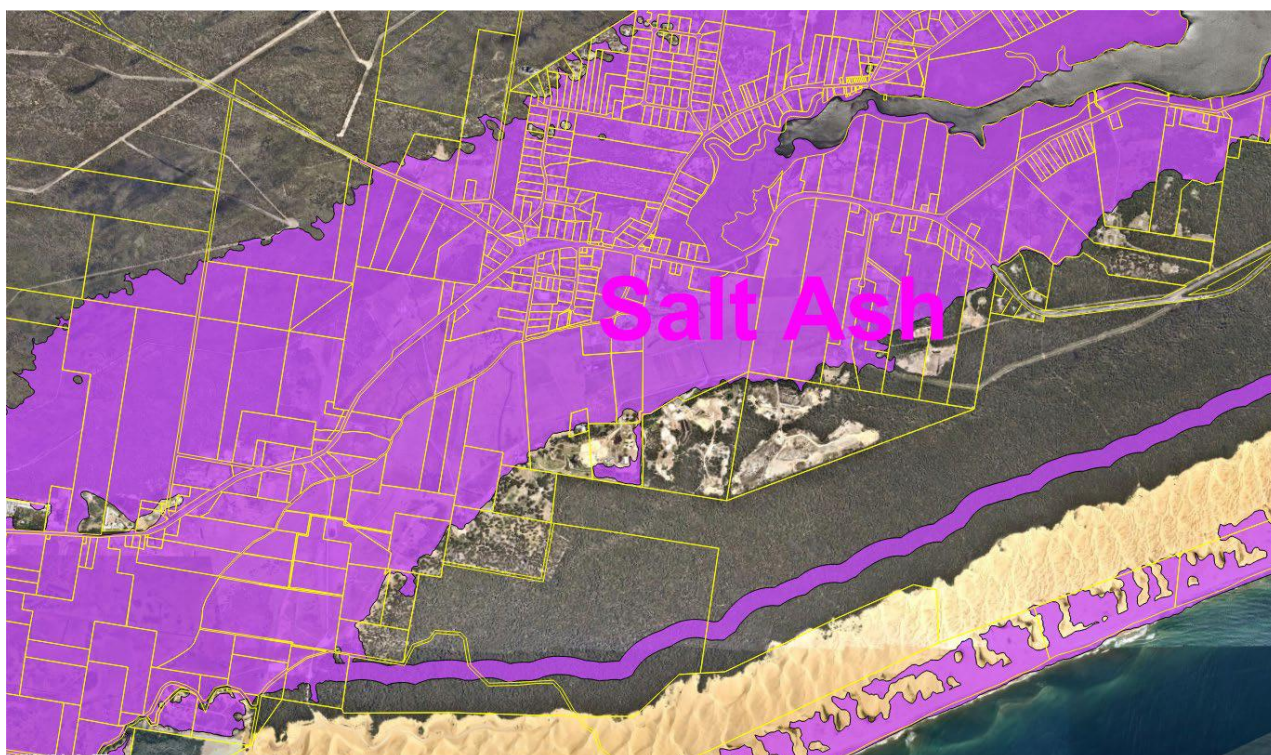
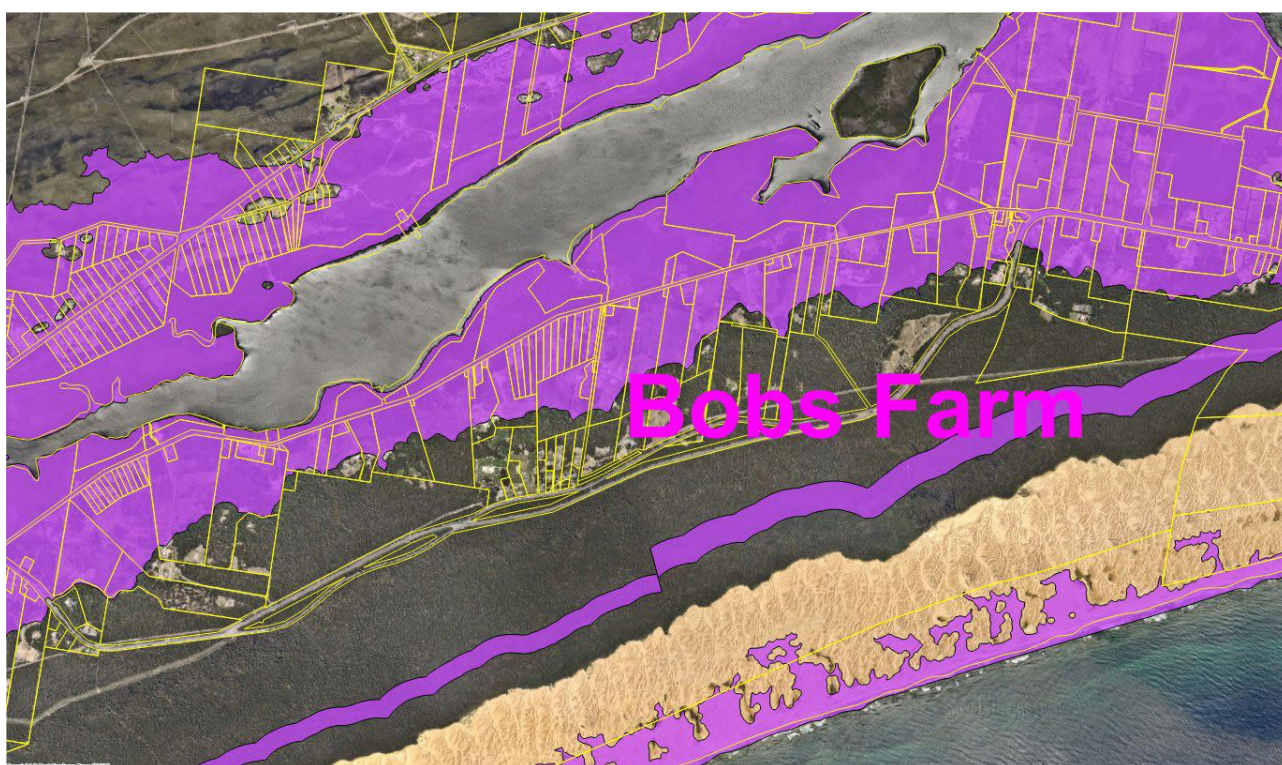


Figure 5 Proposed Coastal risk planning map (Williamtown area)





**Figure 6 Proposed Coastal risk planning map (Salt Ash area)**



**Figure 7 Proposed coastal risk planning map (Bobs Farm area)**





Figure 8 Proposed coastal risk planning map (Bobs Farm, Anna Bay, Taylors Beach areas)



Figure 9 Proposed coastal risk planning map (Anna Bay, One Mile areas)





Figure 10 Proposed coastal risk planning map (Soldiers Point, Salamander Bay, Corlette areas)

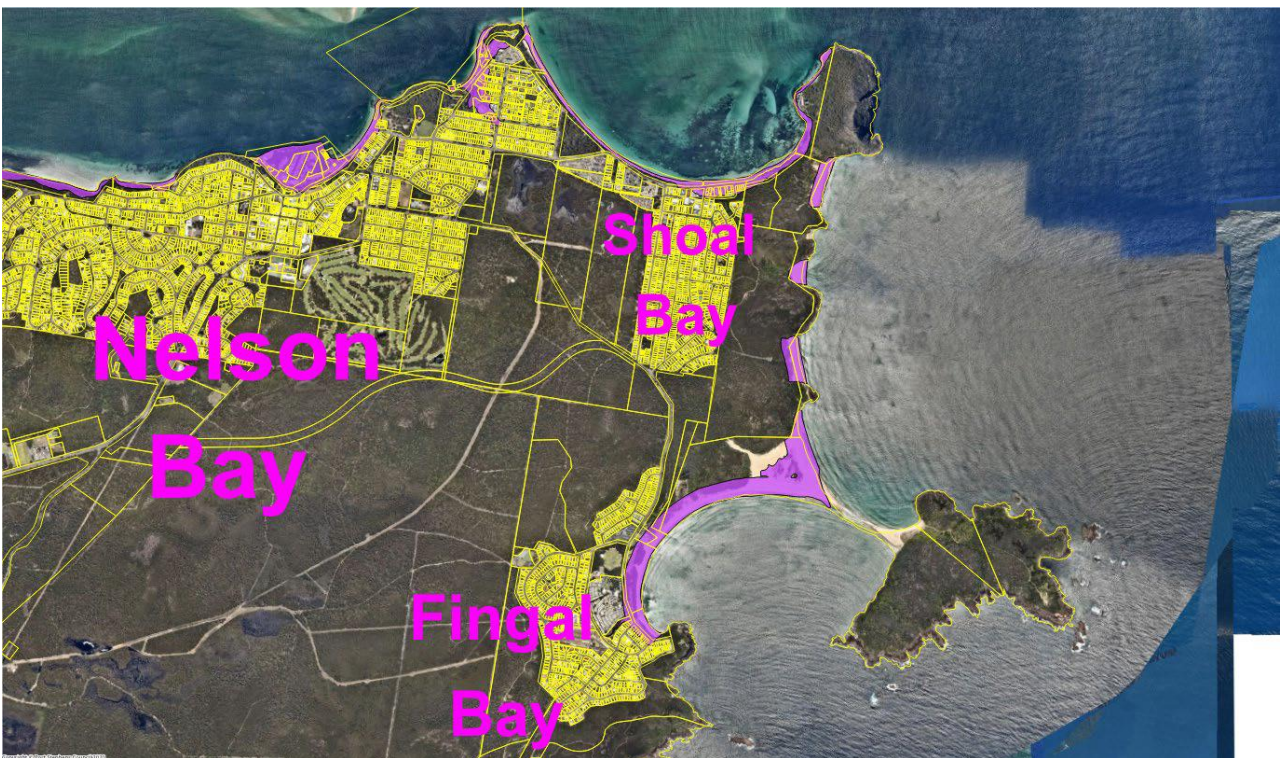
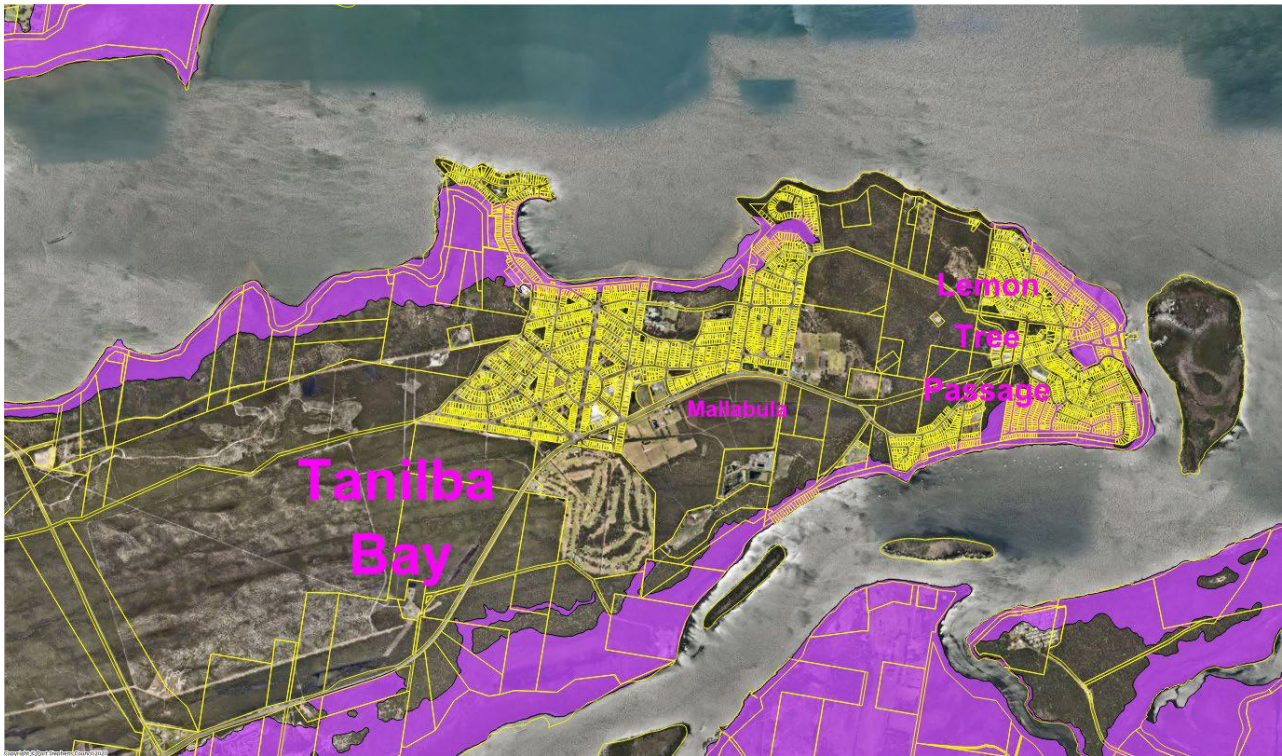


Figure 11 Proposed coastal risk planning map (Nelson Bay, Shoal Bay, Fingal Bay areas)





**Figure 12 Proposed coastal risk planning map (Tanilba Bay, Mallabula, Lemon Tree Passage areas)**

## 1.6 Background

In 2018, the NSW Government's new coastal management framework commenced with the aim of improving the way coastal development was planned and assessed with the purpose of protecting coastal and marine environmental assets and managing coastal hazards. Councils are required to prepare a Coastal Management Plan (CMP) in line with the CM Act.

The planning proposal is based upon technical investigations undertaken for the Port Stephens CMP, including hazard mapping identifying properties at risk of coastal inundation, tidal inundation, coastal erosion and dune transgression. The hazard mapping is publicly available and was subject to community consultation in April and May 2023.

Port Stephens Council at its Ordinary Meeting of 14 November 2023 resolved to initiate a planning proposal to amend the *Port Stephens Local Environmental Plan 2013* to insert a coastal risk planning clause and accompanying coastal risk planning map.

Council intends to undertake concurrent public exhibition of the planning proposal with the draft CMP and to prepare an update to its development control plan to address coastal risk should the proposal be finalised.

The clause and mapping only applies to those areas that are subject to the CMP. This CMP does not cover all areas affected by coastal hazards within the local government area, such as Tomago and Raymond Terrace that are subject to the Hunter Estuary CMP which is still being prepared and being led by Maitland City Council.

## 2 Need for the planning proposal

The planning proposal is the result of council's Local Strategic Planning Statement (LSPS) 2020 which includes an action for council to prepare and implement a CMP to mitigate natural hazards and incorporate resilience measures that promote ecologically sustainable development.



The planning proposal implements the land use assessment framework of the CMP. In doing so, coastal risk responses will be incorporated into development in affected areas over time, reducing potential impacts in the future. This is a positive outcome for the community.

As the CMP is in draft form and has not been certified, the planning proposal should not be finalised until after certification has occurred. This will ensure that the strategic work upon which the planning proposal is based is supported under the CM Act.

#### 2.1.1 State Environmental Planning Policy (Resilience and Hazards) 2021

The SEPP provides an alternative approach to managing coastal risks associated with coastal hazards. This approach involves mapping land affected by coastal hazards as a coastal vulnerability area under the SEPP requiring development applications to assess coastal risk.

This option has not been pursued by council because the SEPP would not allow dune transgression to be incorporated. While coastal hazards could be included in the SEPP and a local clause in the LEP apply to dune transgression, Council's preference is to include all the statutory coastal risk provisions in the one place, being the local environmental plan.

## 3 Strategic assessment

### 3.1 Hunter Regional Plan 2041

The following table provides an assessment of the planning proposal against relevant aspects of the *Hunter Regional Plan 2041*.

**Table 4 Hunter Regional Plan 2041 assessment**

Regional Plan Objectives	Justification
<p><b>Strategy 4.10:</b> Planning proposals will:</p> <ul style="list-style-type: none"> <li>Align with the growth of defence, aeronautics, aerospace, freight and logistics capacity at Williamstown and the Port of Newcastle, taking into consideration the Port of Newcastle Port Master Plan 2040</li> <li>maximise opportunities to increase capacity to manage freight through the ports/airports and provide access to new markets</li> <li>protect ports and airports via assessment of the impacts of development on the port/airport to avoid land limiting their future growth.</li> </ul>	<p>The planning proposal maps coastal hazards at Williamstown affecting the airport, RAAF base and associated and economic growth areas.</p> <p>Any future planning proposals or development applications will be required to consider (and mitigate when appropriate) coastal hazard impacts. It is not anticipated that this would hinder the growth of the airport.</p> <p>Williamstown being flood prone, new growth at the airport will need to manage environmental constraints.</p>

**Greater Newcastle District Planning**

**Priority 1:** Prioritise housing within 30min of Williamtown SAP.

Priority locations for future housing to service the SAP include Nelson Bay and Fern Bay.

The Williamtown Special Activation Precinct (SAP) was subject to the 2023 NSW Government's Strategic Infrastructure Review. Following consideration of the review's findings, the NSW Government has decided not proceed with the project.

Despite this, the Newcastle Airport, Williamtown RAAF and the Astra Aerolab is a nationally significant aviation and defence hub that provides significant employment in the region. Delivering housing within 30 minutes of the precinct remains a priority.

It is not anticipated that the planning proposal would significantly affect housing growth in these areas. Much of the land within 30 minutes of Williamtown is unaffected by coastal risks. For areas that are affected, the planning proposal does not prohibit development; it would require additional development assessment of coastal risks.

## 3.2 Greater Newcastle Metropolitan Plan 2036

The following table provides an assessment of the planning proposal against relevant aspects of the *Greater Newcastle Metropolitan Plan 2036*.

**Table 5 Greater Newcastle Metropolitan Plan 2036 assessment**

District Plan Priorities	Justification
<p><b>Strategy 14.1:</b> Greater Newcastle councils will apply the following principles to land use planning and development assessment decisions:</p> <ul style="list-style-type: none"> <li>• employ risk-responsive land use controls so that new development does not occur in high risk areas</li> <li>• ensure coastal dependent development mitigates natural hazards and incorporates resilience measures that have triple bottom line benefits</li> <li>• prevent intensive urban development in the Blue and Green Grid</li> <li>• ensure the planning for urban development adjoining or interfacing with Blue and Green Grid addresses the impact of extreme events.</li> </ul>	<p>The planning proposal introduces land use controls that will consider coastal hazard modelling up to the year 2120. Insertion of the clause and mapping in the local environmental plan ensures new development will not occur in high risk area and will avoid significant adverse impacts from coastal hazards and extreme events.</p>

### 3.3 Local Strategic Planning

The proposal states it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 6 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement	<p>The planning proposal is consistent with:</p> <ul style="list-style-type: none"> <li>Planning priority 8: Improve resilience to hazards and climate change</li> </ul> <p>Action 8.3 is to prepare and implement a Coastal Management Program to mitigate natural hazards and incorporate resilience measures that promote ecologically sustainable development.</p>

### 3.4 Section 9.1 Ministerial directions

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

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	The planning proposal is consistent with the Hunter Regional Plan.
4.2 Coastal Management	To be confirmed	<p>This direction applies as the land affected by the planning proposal is located within the coastal zone, as defined under the CM Act.</p> <p>Clause 1 of the direction is relevant, and the planning proposal is consistent with these requirements except for subclause 1(c) which requires Council to be consistent with the <i>NSW Coastal Design Guidelines 2023</i>.</p> <p>The planning proposal incorrectly refers to the <i>NSW Coastal Design Guidelines 2003</i>. The new guidelines require planning proposals to demonstrate how they address specific requirements for the coastal zone. This involves completing the Appendix 1 checklist included in the guide. Outcome E. Respond to coastal hazards is relevant to this planning proposal.</p> <p>Council should complete its assessment prior to exhibition and consult with the Department of Climate Change, Energy, the Environment and Water who work with councils on the preparation and certification of CMPs.</p>



## 3.5 State environmental planning policies (SEPPs)

**Table 8 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Resilience and Hazards 2021)	This SEPP contains planning provisions for land use planning within coastal zones and to manage hazardous development and minimise the risk of harm.	Yes	<p>The planning proposal is consistent with Chapter 2 – Coastal Management.</p> <p>The provisions of the SEPP including associated coastal mapping remain applicable to the coastal zones.</p> <p>The planning proposal introduces a new coastal risk map which triggers provisions of the local environmental plan. The new clause does not conflict with the SEPP and the SEPP provisions continue to apply.</p>

## 4 Site-specific assessment

The planning proposal will ensure development in Port Stephens is responsive to the risks associated with known and predicted coastal hazards. This will improve the resilience of the Port Stephens community. There is long-term benefit to this approach. By ensuring that development responds to these risks the potential adverse social, economic, and environmental impacts resulting from coastal hazards can be minimised over time.

While applicants in affected areas may need to do additional assessment to support development proposals, the planning proposal (and supporting development control plan to be prepared later) will provide a clear framework to guide that assessment. This will provide certainty to the community and applicants.

## 5 Consultation

### 5.1 Community

As the planning proposal introduces a new policy approach (dune transgression) in the local environmental plan, the planning proposal is categorised as complex under the LEP Making Guidelines. Accordingly, a community consultation period of 30 working days is recommended and this forms part of the conditions to the Gateway determination.

Council intends to exhibit the planning proposal at the same time at the Coastal Management Plan.

### 5.2 Agencies

It is recommended the Department of Climate Change, Energy, the Environment and Water be consulted on the planning proposal and given 30 working days to comment.

Discussion with this department through finalisation of this Gateway determination assessment suggests the department has no major issues with the draft CMP that is to be exhibited.

## 6 Timeframe

Council proposes an 11 month time frame to complete the local environmental plan.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as complex.

The department recommends a completion date of 18 February 2025 in line with its benchmark timeframes and commitment to reducing processing times. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal is categorised as complex the department recommends that council not be authorised to be the local plan-making authority for this proposal.

Additionally, finalisation of the planning proposal should not be completed until the Port Stephens Coastal Management Plan has been certified by the Minister for Environment.

## 8 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Ministerial direction 4.3 is unresolved and will require justification.

It is recommended the delegate of the Minister determine the planning proposal should proceed subject to conditions.

1. The planning proposal is to be updated prior to public exhibition to:
  - a) refer to the *Coastal Design Guideline 2023* and include a completed assessment per Appendix 1 of the guide;
  - b) amend the explanation of provisions to define dune transgression as a coastal process being a form of major sand drift as defined under the Coastal Management Glossary 2018;
  - c) include separate coastal risk planning maps for coastal hazards and for dune transgression, noting land affected by either map would be subject to the coastal risk planning provisions;
  - d) ensure the coastal risk planning map affected by dune transgression shows the current and future areas of projected impact to the year 2070;
  - e) extend seaward the dune transgression map to ensure that the central portion of the beach is incorporated;
  - f) reduce the dune transgression landward extent to show projected impact to the year 2070; and
  - g) insert areas of coastal inundation predominantly located along the rocky shorelines region.
2. Consultation is required with the Department of Climate Change, Energy, the Environment and Water.
3. The planning proposal should be made available for community consultation for a minimum of 30 working days, and consultation commence within two months of the determination.
4. Given the nature of the planning proposal, it is recommended that the Gateway not authorise council to be the local plan-making authority and that an LEP completion date of 18 February 2025 be specified.

Ben Holmes

21/02/2024

Ben Holmes

Manager, Central Coast and Hunter



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23 February 2024 (Date)

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