

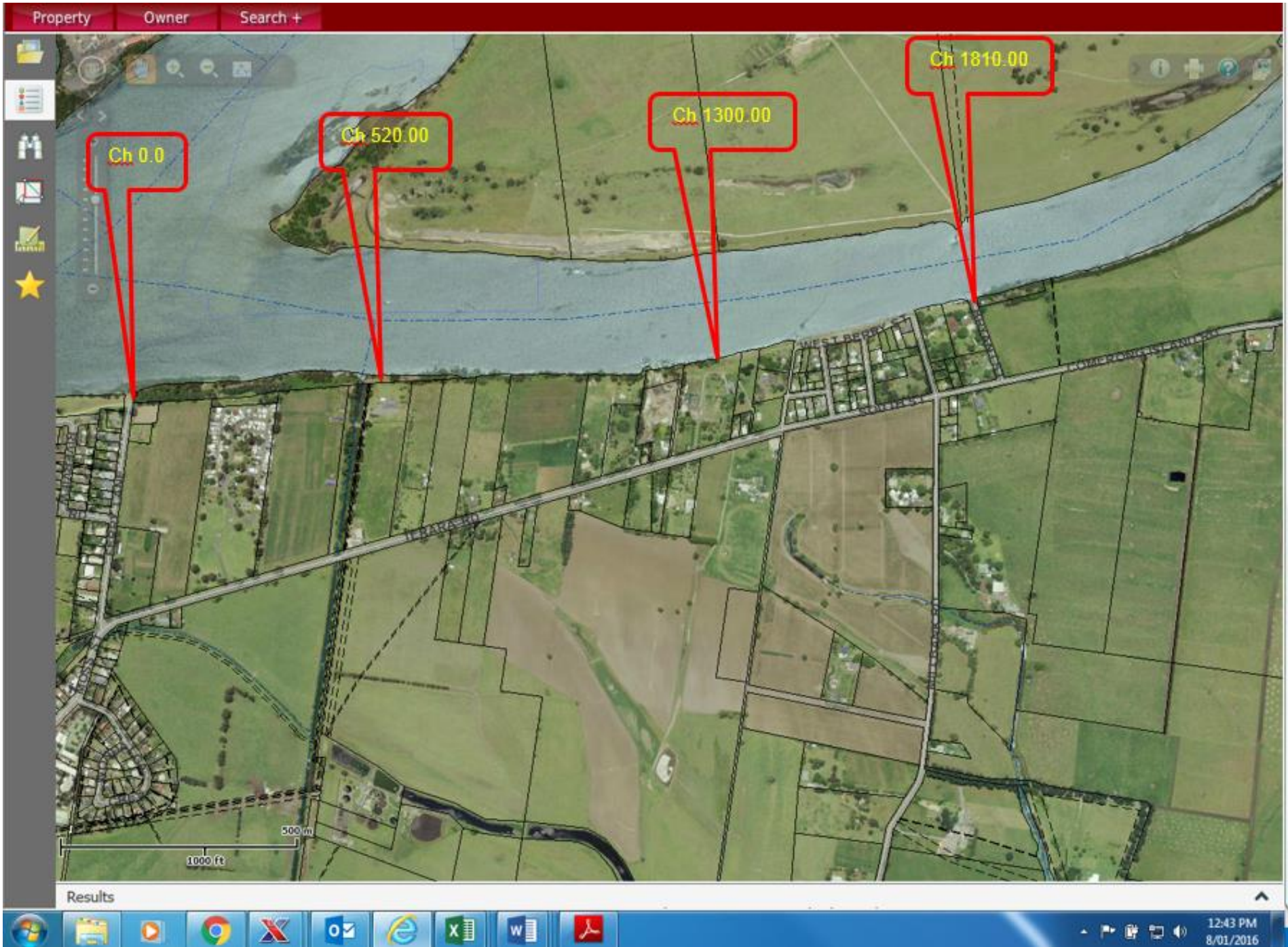
ADOPTED AT COUNCIL MEETING HELD ON TUESDAY 27 OCTOBER 2015

662. Natural Disaster Funding Requirements

File 51860E

That Council:

- a) Receive the report for information;
- b) Allocate \$271,000 from the capital works program budget, through a reduction in scope of works, to operational budgets to cover un-claimable costs associated with the emergency response;
- c) Advance the restoration program for essential assets ahead of claim approval to ensure these assets are returned to pre-disaster condition as soon as possible;
- d) Staff provide a further report following further development of the restoration program and discussion with agencies administering the NDRRA to provide further recommendations on restoring non-eligible assets; and
- e) Make representations to the State & Federal Governments expressing concerns that changes to Natural Disaster Relief and Recovery Arrangements (NDRRA) have reduced Council's capacity to effectively respond to natural disasters.



Council Reference: 3245E (D16/25456)  
Your Reference:

Office of Environment & Heritage - Sydney South  
PO Box A290  
SYDNEY SOUTH NSW 1232

By email: [coastal.reforms@environment.nsw.gov.au](mailto:coastal.reforms@environment.nsw.gov.au)

Attention: Coastal Reforms Team

Dear Sir/Madam

### **Submission – NSW coastal management reforms**

Council welcomes the opportunity to provide a submission to NSW coastal management reforms consultation given the large area of coast that Council manages, and the importance of the coast to the our community and visitors.

#### **General Comments**

The coastal management reforms package is currently incomplete. The extent of the information, its staged release and the timeframe associated with consultation, is such that it does not permit an adequate review by Council to evaluate implications thoroughly. For example, there seems to be a strong reliance on emergency actions and there will be a need to develop Coastal Emergency Action Subplan (CEAS) in identified coastal vulnerability areas. This is expected to be the case in the Shoalhaven, the draft manual states that more specific data of how to prepare CEAS is provided in the toolkit but this information seems to be missing. However, the overall shift from a coastal protection focus to a broader integrated coastal management is supported as it reflects the principles of ecologically sustainable development. The effects of the reforms on the wider land use planning system need to be addressed and available for consideration, for example the draft SEPP that is part of the package was not available, only a statement of intended effects.

In the local government context, the reforms will require amendment of Council's Geographic Information System (GIS) and data systems required to generate s.149 Planning Certificates and undertake development assessment, as well as undertaking a lengthy verification process to check mapping data.

The proposed coastal management reforms should span the entire planning process and include the following components:

- Mapping data for the Coastal Management State Environmental Planning Policy (SEPP) – full version of data files;
- Coastal Management SEPP – full text version;



- Replacement s.117(2) direction on plan making to update/replace *Direction 2.2 Coastal protection* - full text version;
- Updated/replacement Planning Circular PS 14-003 '*Coastal hazard notations on section 149 planning certificates*';
- Proposed amendments to the *Environmental Planning and Assessment (EP&A) Regulation 2000* regarding information to be shown on s.149 Planning Certificates;
- Updated/replacement LEP Practice Note to provide guidance on updated Local Environmental Plan (LEP) mapping and GIS data requirements for LEPs; and
- Detail on any implications for the NSW Integrated Planning and Reporting Framework (IPR) for Councils.

#### *Availability of SEPP maps of the coastal management areas*

Council needs to be consulted and have input into the mapping for the Coastal Management SEPP. Mapping data should be made available as soon as possible to allow review of both the overall impacts of these changes on staff resources, systems and processes. The Department should ensure that appropriate resources are allocated to ensure online mapping and e-planning is frequently updated. Council does not currently use e-planning as it is frequently out of date and identified errors have not yet been corrected.

The consultation documentation indicates that both the vulnerability mapping by State Government and local coastal hazard mapping by Councils should be considered when developing coastal management programs. There is a risk of confusing communities with too many maps. There should be an integration of local council studies into State vulnerability mapping so there is only one set of mapping.

#### *Ability of Councils to propose adjustments to map boundaries*

The proposed requirement for a Planning Proposal (PP) to refine, amend or revise maps in the Coastal Management SEPP in accordance with Clause 10(1) '*LEPs may amend SEPPs to identify coastal management areas*' of the draft NSW Coastal Management Bill 2015, should be removed. Council does not agree with the requirement for a PP process to enable changes to the maps to occur. The requirement for a PP is impractical and onerous, as it will require extensive staff resources to provide analysis of the characteristics of the coastal management areas, public consultation process and preparation of the PP documents.

Councils should instead be required to consult with the Department of Environment and Planning (DP&E) on proposed mapping changes and then request DP&E to amend the Coastal SEPP accordingly. For example, if the boundaries of SEPP 14 wetlands change, amendments to LEP zoning maps should be viewed as an administrative change under section 73A '*Expedited amendments of environmental planning instruments*' of the *Environmental Planning & Assessment Act 1979* (EP&A Act), rather than requiring a full PP process.

#### *Replacement of Clause 5.5 in Standard Instrument LEP and local Coastal Erosion Clauses*

Council prefers the continuation of appropriate coastal management development controls in LEPs. Council does not agree with the replacement of *Clause 5.5 Development within the coastal zone* and local coastal risk clauses and associated mapping in SILEPs by the Coastal Management SEPP. The heads of consideration contained within the SEPP are likely to be higher level matters that are inadequate controls for development. Council's preferred approach would be for the State Government to mandate an updated State wide replacement of SILEP Clause 5.5 and for Council to have the ability to retain local coastal risk/hazard clauses and associated mapping for coastal LGAs, especially considering the aims of the recent NSW planning system reforms was to establish State wide planning controls through LEPs.

The removal of Clause 5.5 and local coastal erosion clauses from SILEPs removes the development standards and mapping from Council's control and adds another layer of complexity for people want to develop land in the coastal zone.

#### *Resources and responsibilities*

The level of details prescribed by the draft NSW coastal management manual for studies of the four management areas is extensive and will require additional resources and financial commitment from Council.

The integration of the coastal management programs with the Integrated Planning and Reporting framework is a positive as it should ensure the implementation of the developed programs. However, there is a lack of commitment by the government to provide additional funding to support the new requirements of the coastal reform, leaving the burden of implementation to Council and its ratepayers.

The provision of a comprehensive toolkit is a positive and will be a great resource for local government and consultants. However, the extent of work set out in this toolkit for Council's is very extensive and will require significant resources and funding.

The requirement to consider coastal sediment compartments is positive, however this information should not be required from Councils but be provided by the State Government. Coastal sediment compartments extend well beyond the local government boundaries and include marine waters that local government have hardly any knowledge of nor management responsibilities.

#### *Changes to notations on s149 Planning Certificates*

As part of the current coastal management reforms, the Department should release proposed changes to the EP&A Regulation regarding information required on s.149 Planning Certificates as well as an updated *Planning Circular 'Coastal hazard notations on section 149 planning certificates'* detailing how s.149 Planning Certificates will be affected.

To enable the notations on s.149 planning certificates to align with the information contained in the Coastal Management SEPP and mapping, at the time of issue, significant staff resources will be required to review, analyse, update and make needed changes to Council GIS and data systems. A new planning Circular and the actual Coastal Management SEPP maps should be released as soon as possible.

### *Coastal Management Areas – Hierarchy*

Despite the clear distinction between the four coastal management areas and the hierarchy provided identifying priority of management objectives, it is unclear how competing values or management actions will be addressed between management areas and how they can be integrated.

### *Preparing a coastal management program*

To ensure that Council does not have to repeat the coastal studies it has already completed as part of developing its draft coastal zone management plan (CZMP) or complete a range of new studies to prepare a coastal management program (CMP), Council seeks to fast track to stage 4 of the proposed coastal management program outlined in the draft manual. This will mean that Council could finalise a draft CMP using the detailed coastal studies and information it has already gathered as well as results from the 'Our Coast Our Lifestyle' community consultation program which it is about to commence and seek certification of the CMP from the Minister. The 'Our Coast Our Lifestyle' community consultation program is jointly funded by OEH and Council.

A clear pathway needs to be provided for those Councils that are currently developing a CZMP or already have a draft CZMP. To ensure that Councils do not potentially have to start the process again.

### *Changes to section 733 of the Local Government Act*

The proposed amendments to the language in section 733 of the Local Government Act as part of the draft Coastal Management Bill to require Council's actions to be 'in accordance with' rather than 'substantially in accordance with' may have unintended consequences for Councils. This is because Councils may only be able to 'substantially' comply with the proposed manual due to resource and financial constraints.

### **Explanation of Intended Effect (EIE) - Coastal Management SEPP**

The full version of the draft SEPP should be released for comment prior to commencement. The EIE version of the Coastal Management SEPP does not provide enough detail or the actual wording to enable the full impacts to be considered. The actual Coastal SEPP should be placed on exhibition, prior to commencement, to enable consultation with Councils and to allow review of the impacts of the proposed wording being used. This will provide the opportunity for Councils to comment on the practical operation of the SEPP itself.

*Question 1: Should councils be able to propose changes to the maps for all or some of the coastal management areas?*

Councils should be able to propose changes to the maps for all of the coastal management areas, provided there is sufficient justification or when councils have access to better quality or more up to date information. Councils should be able to propose changes to the maps directly to the Department, without the need for a PP process. Ideally, the Department should maintain and administer the Coastal Management SEPP mapping and councils should directly consult with the Department to request this mapping

to be changed. The mapping data should be able to be imported and integrated into Council GIS systems and processes.

If councils are to rely on e-planning, the State Government should better resource their e-planning system to ensure it is more regularly updated. Council does not use e-planning as it is often out of date and incorrect. Cadastral changes like subdivisions and boundary adjustments should be included as soon as possible, for example, there are lots at South Nowra which were registered in early November 2015 that are not currently showing in e-planning. Council has received enquiries from landowners asking why their lot is not coming up in e-planning.

Clarification is required as to whether the zoning of land within the mapped coastal management areas will be required to be changed if the zoning is considered to be inconsistent with the objectives of the particular coastal management area. For example, rural zoned cleared land may be considered to have an inconsistent zoning within coastal management areas 1, 2 or 3. If this is the case, it is likely to be of concern to Council.

Further clarification is also required on how the Coastal Management SEPP mapping will be separated into current and future hazard/risk together with an explanation of how this will function. Council currently has projected coastal hazard lines incorporating projections for sea level rise at 2025, 2050 and 2100 resulting from consultant studies commissioned by Council.

*Question 2: Should the development controls be included in the proposed Coastal Management SEPP or as a mandatory clause in council LEPs?*

Council's preference is for the development controls to be included as a mandatory clause in council LEPs. The proposed requirement for a PP process to amend or revise maps should be removed. Retaining development controls in Council LEPs would reinforce the State Government's SILEP State wide planning approach and would be a simpler process requiring fewer staff resources.

*Question 3: Do the proposed development controls for mapped coastal wetlands and littoral rainforests remain appropriate for that land?*

The proposed provision that the development controls will not apply to land that is zoned for residential use, or land that is also identified as a littoral rainforest within the perimeter area should be removed. The development controls should apply to land zoned for residential use or identified as littoral rainforest regardless. However introducing these controls should not mean that basic development applications are needlessly held-up.

*Question 4: Do you support the inclusion of a new 100m perimeter area around the mapped wetlands, including the application of additional development controls?*

Council agrees with the inclusion of a new 100m perimeter area around mapped wetlands and the application of additional controls providing further protection of wetlands. However, Council should be able to update and revise this mapping without the need for a full PP process and the additional controls should not relate to minor development. If the SEPP14 mapping is proposed to be changed, Council would like to be consulted on



the new boundaries proposed. However introducing these controls should not mean that basic development applications are needlessly held-up.

*Question 5: Are the proposed development controls for mapped coastal vulnerability areas appropriate for that land?*

The development controls do not refer specifically to areas exposed to current risk. The SEPP should recognise that land that is at current risk from coastal hazards (ie within the immediate hazard zone) is unsuitable for future developments. This is in line with the NSW coastal planning guideline: adapting to SLR and LEP standard template.

*Question 6: Are the proposed development controls for coastal environment areas appropriate for that land?*

Generally they are. However, the list of controls is silent on protecting sand dunes. Sand dunes can go beyond the proposed 100m buffer. It is recommended that a control specific to protecting sand dunes be included. Such control will support Clause 7.2.f.i of the draft Bill which requires in coastal vulnerability areas to adopt coastal management strategies that reduce exposure to coastal hazards, in the first instance and wherever possible, by restoring or enhancing natural defences including coastal dunes, vegetation and wetlands. However introducing these controls should not mean that basic development applications are needlessly held-up.

The proposed development controls include the requirement that development consent must not be granted within the Coastal Use Area unless the consent authority considers the extent to which development “does not exceed the scale and size of the existing buildings and the visual impact on the surrounding area”. This control should be amended or removed to allow for flexibility where a development has solid justification based on a proper strategic planning process that has been undertaken in consultation with the community. The proposed approvals could be used to sterilise redevelopment areas within the coastal zone.

*Question 7: Is the inclusion of the catchments of the 15 sensitive lakes (listed in Schedule 1) within the coastal environment area appropriate?*

The coastal lakes listed that are wholly or partly within the Shoalhaven LGA are Durras, Meroo, Termeil and Lake Wollumboola.

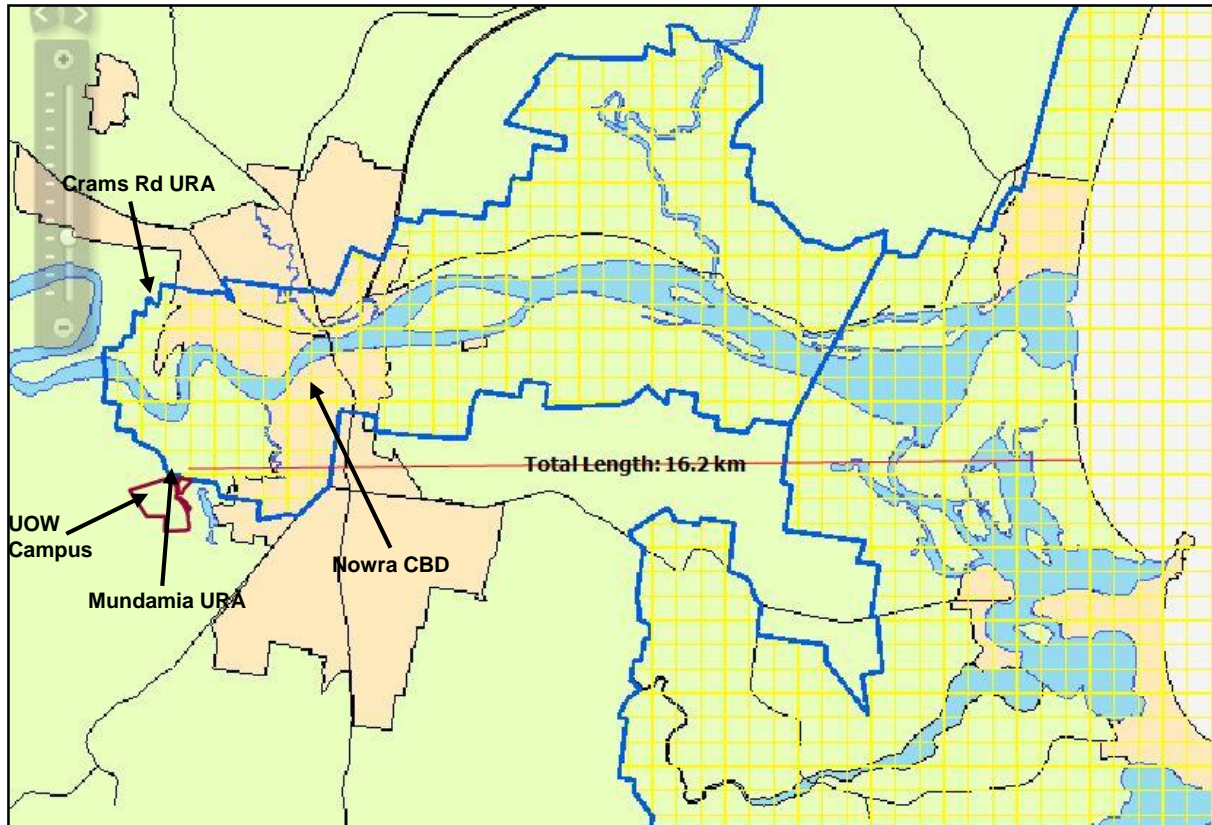
The list is based on the lakes that were identified for Comprehensive Protection by the Independent Public Inquiry into Coastal Lakes: Final report 2002. The list seems appropriate as it reflects the findings of the extensive enquiry.

*Question 8: Which is the best option for mapping the coastal use area? Is the proposed approach to mapping of the coastal use area for the Sydney metropolitan area appropriate?*

Council would prefer an option for mapping the coastal use area that allows for flexibility and the opportunity for merit-based assessment in determining the extent of the coastal zone. The EIE mapping principle for the Sydney metropolitan area should be applied more widely to allow for the inclusion of other established urban township areas such as

Nowra-Bomaderry where a boundary representing “*land affected by or affecting coastal processes (generally between 50 metres and 200 metres)*” or an “*easily recognisable physical boundary*” would be more appropriate.

In the Shoalhaven, for example, the coastal zone extends a significant distance up the Shoalhaven River as shown in Picture 1. This creates an additional layer of development controls, on what is essentially urban land and is unlikely to be identified as ecologically sensitive land. As shown in Picture 1, a number of urban release areas and the Nowra township itself are captured within the coastal zone, despite being located up to 16 kilometres from the coast.



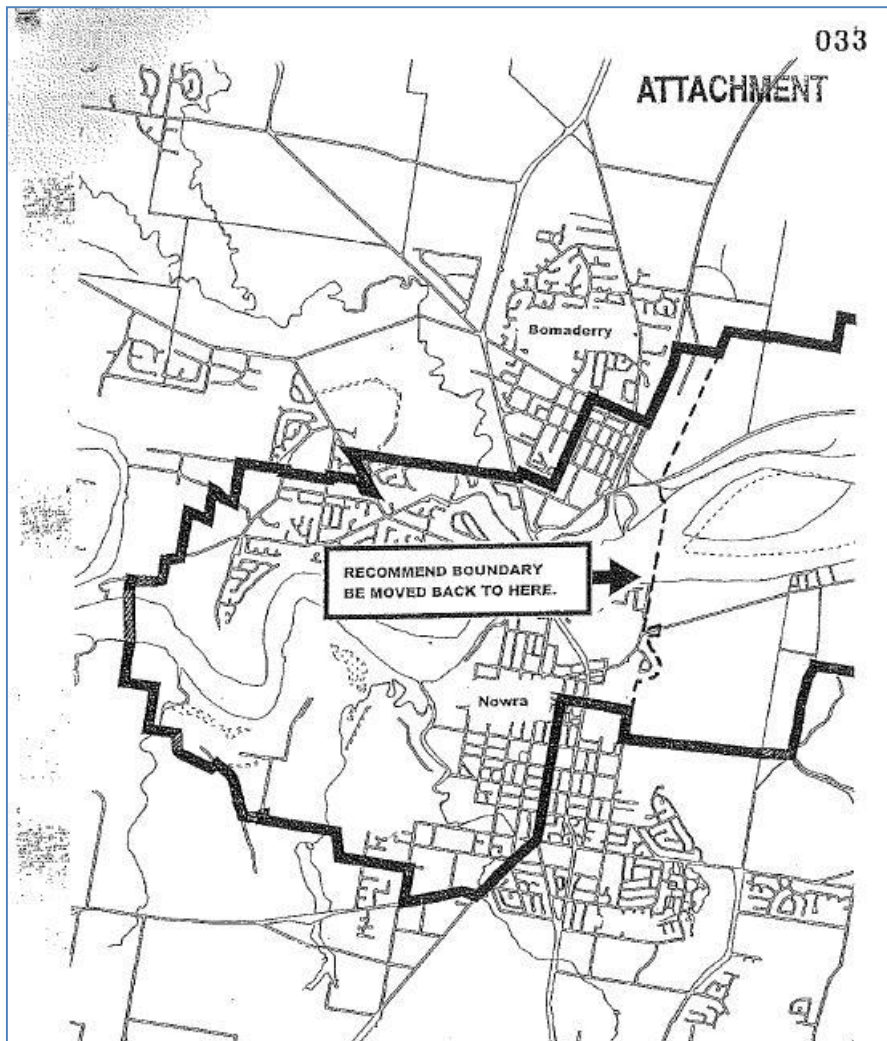
**Picture 1: Coastal Zone along Shoalhaven River, Nowra**

Council’s concerns with the logic of the extent of the coastal zone in relation to Nowra-Bomaderry has been expressed in previous representations to the then NSW Department of Urban Affairs and Planning on 2 February 1998, including the map shown in Picture 2, and the Coastal Council of NSW on 14 April 1998. These representations related to the introduction of the *NSW Coastal Policy* in 1997 which set new boundaries for land affected which essentially covered all land within one kilometre of the ocean, water bodies and tidal rivers. This was far more extensive coverage than the previous Coastal Policy, which only related to one kilometre from the coastline. Whilst Council agreed with the logic of the majority of the boundaries set at that time, changes were sought at Nowra-Bomaderry and the Sussex Inlet area.

Council queried the logic of the extent of the coastal zone in relation to Nowra-Bomaderry and inconsistencies that were created, for example, one side of Kinghorn Street Nowra is in the coastal zone and the other side is not. Council requested that the proposed boundaries be amended to exclude land within the township areas and that the boundary

of the coastal zone be moved to the eastern boundary of the town, as shown in Picture 2, based on the following reasons:

- The boundary includes half of North Nowra, Bomaderry and Nowra and excludes the remaining parts of those towns, which is illogical;
- One side of the main street in Nowra (Kinghorn Street) is within the coastal zone, but not the other, this creates inconsistencies within the Nowra urban area; and
- The townships of Nowra-Bomaderry are quite a distance from the coastline, approximately 16 kilometres from the coast.



**Picture 2: Amendment to Coastal Zone Mapping previously requested**

Council considers the boundary of the coastal zone in the Nowra urban area to be illogical, inconsistent and the result of an extremely literal definition of the coastal zone. These issues highlight the need for flexibility in the mapping the coastal use area based on solid justification and merit-based assessment.

Council's representations also requested that detailed guidelines and examples be provided by the State Government, to assist with the implementation of the changes and to identify resources required to carry out the work, which is reiterated in this submission.

*Question 9: Should councils be able to propose variations to the Coastal Use Area maps over time to take into account local characteristics and circumstances?*

Councils should be able to propose variations to the Coastal Use Area maps over time based on a solid justification with updated or additional data. The changes proposed should protect and enhance, rather than reduce conservation measures.

*Question 10: Are the proposed development controls for mapped coastal use areas appropriate for that land?*

The proposed development controls include the requirement that development consent must not be granted within the Coastal Use Area unless the consent authority considers the extent to which development “*does not exceed the scale and size of the existing buildings and the visual impact on the surrounding area*”. This control should be amended or removed to allow for flexibility where a development has solid justification based on a proper strategic planning process that has been undertaken in consultation with the community. For example, a specific town centre plan may address building height, setbacks and urban design considerations i.e. the Shoalhaven Development Control Plan 2014 Chapter N18 relating to Huskisson Town Centre contains detailed development controls and is the result of a rigorous planning process. Flexibility is also needed in the proposed development controls to allow the desired future character of a town centre to be considered. If controls are purely based on the existing situation, this will cause problems as centres potentially grow and develop e.g. Nowra CBD, Huskisson and Ulladulla Town Centres.

*Question 11: Should the current exempt development and complying development provisions be retained for coastal management areas?*

Depending on the extent and criteria for the mapping of the coastal vulnerability area, allowing the Exempt and Complying SEPP to apply may potentially be inappropriate, other than for protection or emergency works. Exempt and complying development should not be carried out on land identified as littoral rainforest or SEPP 14 wetland. Council has mapped excluded areas based on coastal hazard mapping.

*Question 12: Should consideration be given to applying other controls for these areas? For example, what types of exempt and complying development might be appropriate in coastal wetlands and littoral rainforests or in the catchments of sensitive coastal lakes and lagoons?*

In coastal wetlands or littoral rainforests no exempt and complying is appropriate other than environmental protection or emergency works.

In the catchments of sensitive coastal lakes and lagoons, Council has excluded land based on coastal risk and terrestrial biodiversity. If the catchments are already developed the controls need to be considered differently to those for undeveloped areas and for the differences between various catchments. For example, Culburra Beach township is located on the shores of Lake Wollumboola. Certain forms of exempt and complying development would be acceptable in the urban area, but not in the remainder of the catchment.

*Question 13: Should any provisions be retained to allow the use of emergency coastal protection works in emergency situations? What limitations should be put on such works being undertaken by private individuals or public authorities?*

It is understood that there are already provisions for Coastal Emergency Action Subplan (CEAS) to be developed by Council to allow emergency coastal protection works in particular areas and circumstances and limitations to be outlined in the plan. Notwithstanding this, in the absence of a CEAS, the State government reform invites property owners in imminent hazard areas to plan for the long term instead of adopting a reactive approach, this is commendable. However if a property owner can demonstrate that he/she has started the process of planning for long term protection works (ie lodged a DA) then there could be provisions to allow for emergency works within the limitations of previous controls (is works limited to sand bags on private lands only).

If you need further information about this matter, please contact Kelie Lowe, Planning & Development Services Group on (02) 4429 3501. Please quote Council's reference 3245E (D16/25456).

Yours faithfully

**Kelie Lowe**  
**Environmental Services Manager**

30 January 2016