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Director Environment and Building Policy
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

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16 December 2016

Dear Sir/Madam

DRAFT COASTAL MANAGEMENT SEPP

Thank you for the opportunity to comment on the Draft Coastal Management SEPP and associated documents that are currently on public exhibition. I enclose a submission from Wollongong City Council, which was endorsed at the Council meeting of 12 December 2016.

If you require further information on this submission, please contact Renee Campbell, Manager Environmental Strategy and Planning (Phone 4227 7111; email rcampbell@wollongong.nsw.gov.au).

Yours faithfully



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Submission on the Draft Coastal Management SEPP

From

Wollongong City Council

Introduction

The NSW Department of Planning is exhibiting the draft State Environment Planning Policy (Coastal Management) 2016 for public feedback. Comments are also invited on the mapping of the four coastal management areas making up the coastal zone, where the new SEPP would apply, and on two other associated documents. These are the draft Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016, and the draft Local Planning Direction – Coastal Management. Wollongong City Council has reviewed all these items in providing this submission. The submission starts with some general comments on Council's perception of the intent of the coastal reform framework and the significance of the proposed SEPP within it. More specific comments relating to each of the items currently on exhibition are then provided.

General Comments

Council acknowledges that the coastal zone is not homogenous and the management requirements can differ across this area. Therefore, defining this zone in terms of different management areas with their own management objectives appears to be a pragmatic reform. The question still remains, however, whether the four management areas adequately represent all the values and threats associated with the coastal zone.

Council understands that the composition of the coastal zone as being made up of four management areas is no longer open for discussion, as this was done under the Coastal Management Act, which has now been finalised. How well these management areas can be identified and their management considerations applied are now the next big challenges. The Coastal Management SEPP and the Coastal Management Manual are meant to address some of these challenges, but judging from the progress made with preparing these two items so far, the reforms are not ready to be introduced at any time soon.

The draft SEPP placed on exhibition integrates various coastal management SEPPs into a single SEPP, as intended, but it has not made much progress into tackling one of the main challenges of coastal management currently, which is the issues faced by councils in managing the coastal hazards area. This area remains largely unmapped in the draft SEPP, and the responsibility for mapping it is now being shifted to local councils, as and when they prepare their coastal management programs over the coming years. This is a significant departure from the approach that was previously communicated, whereby the SEPP would set the direction and the mapping for use by councils. It now appears that the work of local councils is required to further develop the SEPP mapping over time. The issues around managing the coastal hazards area therefore will remain unresolved for some time yet.

The Coastal Management Manual was meant to provide guidance to councils on how coastal management programs are to be prepared, including how the provisions of the Coastal Management SEPP are to be implemented in assessing development proposals. Since its exhibition in early 2016, no updated versions of the manual have been made available. Without knowledge of what guidance is now included in the manual in relation to implementing the proposed SEPP, commenting on the viability of the proposed development controls in it is not easy. If the manual were to be changed again in a significant way to align with the proposed SEPP, which appears likely, then further consultation with councils should be undertaken. This also means that the coastal reforms are not ready to be introduced yet.

Comments on the Draft State Environment Planning Policy (Coastal Management) 2016

The draft SEPP identifies and maps the four coastal management areas making up the coastal zone as defined in the Coastal Management Act, proposes development controls for these areas, and outlines the approval pathways for the installation of coastal protection works. The comments provided below relate largely to the mapping and development controls for the four coastal management areas.

Coastal wetlands and littoral rainforests area

Mapping

The draft SEPP identifies the coastal wetlands and littoral rainforests area as consisting of the areas mapped as “coastal wetlands”, “littoral rainforests”, the “proximity area for coastal wetlands,” and the “proximity area for littoral rainforests” in the accompanying maps. The factsheet that the NSW Department of Planning has provided for this management area describes the information that was used to map “coastal wetlands”, but no such information is included for “littoral rainforests”. Therefore, whether vegetation communities beyond those recorded in SEPP26 have been considered for the mapping is not known. Council raised several concerns relating to the definition and mapping of the coastal wetlands and littoral rainforests area in the submission it provided on the coastal reforms in February 2016.

In March 2016, Council officers provided additional information to the Department of Planning for the mapping of coastal wetlands and littoral rainforests in the Wollongong LGA. This information indicated that the mapping of littoral rainforests needs to consider other mapping units (MU5 Littoral Windshear Thicket and MU6 Hind-dune Littoral Rainforests) that occur in our LGA and are considered littoral rainforests in the Native Vegetation of the Illawarra Escarpment and Coastal Plain by NPWS (2002). The mapping exhibited for littoral rainforests has still not included all of these areas. **Council requests that the mapping be reviewed to include all vegetation communities recognised as littoral rainforests in the Wollongong LGA.**

Several new areas beyond those occurring in SEPP 14 have been mapped as coastal wetlands in the Wollongong LGA. Council is concerned with the way the proximity areas for coastal wetlands have been mapped. The rationale behind excluding some land zonings (R1, R2, R3, R4, R5 and RU5) from this map is not clear, as these land zonings are likely to have as much an impact, if not more, than other land zonings that are included. Figures 1 and 2 show examples from the mapping where

residential areas in the immediate edges of the wetlands are proposed to be exempt from the development controls for this area, whereas other less intensive landuse zonings (such as E4 – Environmental Living and SP3 – Tourist) in the proximity are not exempt. In another example shown in Figure 3, the removal of residential zonings from the proximity area has resulted in loss of connectivity between the wetland and its proximity area, which defeats the purpose of having a proximity area to buffer the wetlands.

Land within 100 m of coastal wetlands and littoral rainforests, regardless of the zoning, is considered to be a **sensitive coastal location** and subject to various development control requirements under current legislative provisions. These provisions are being diluted in the proposed SEPP by exempting any such land with residential and certain rural zonings from the development controls that would apply to other land within 100 m of the coastal wetlands and littoral rainforests. **Council does not wish to see loss of any current protections with the proposed reforms and recommends that proximity areas for coastal wetlands and littoral rainforests are mapped uniformly without consideration of the type of land zoning in the area.**

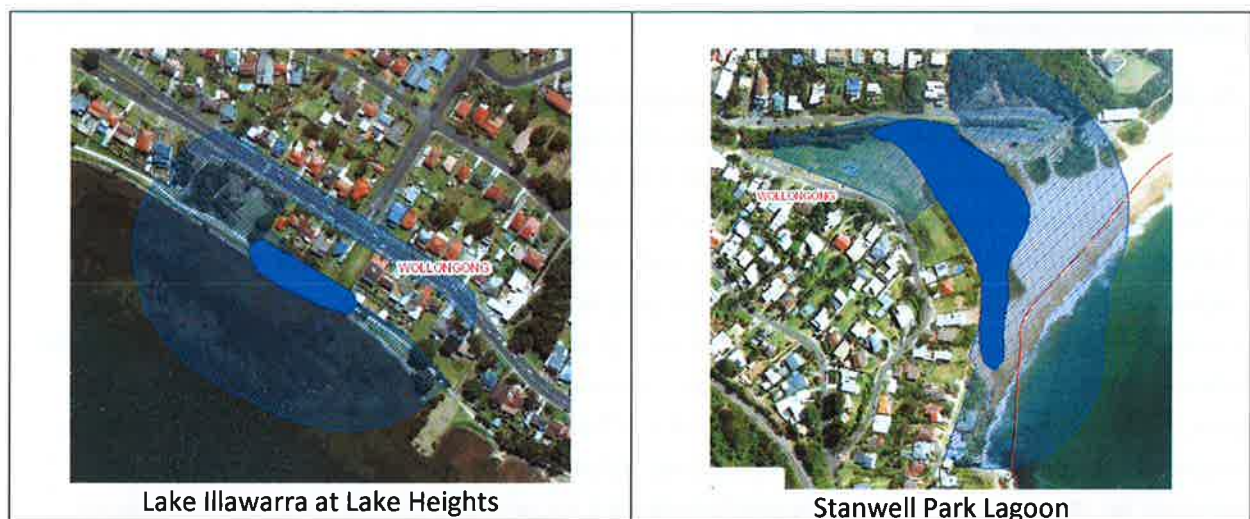


Figure 1 Examples where exclusion of the residential zoning has resulted in significant areas in the proximity of coastal wetlands being exempt from the development controls applying elsewhere within this area

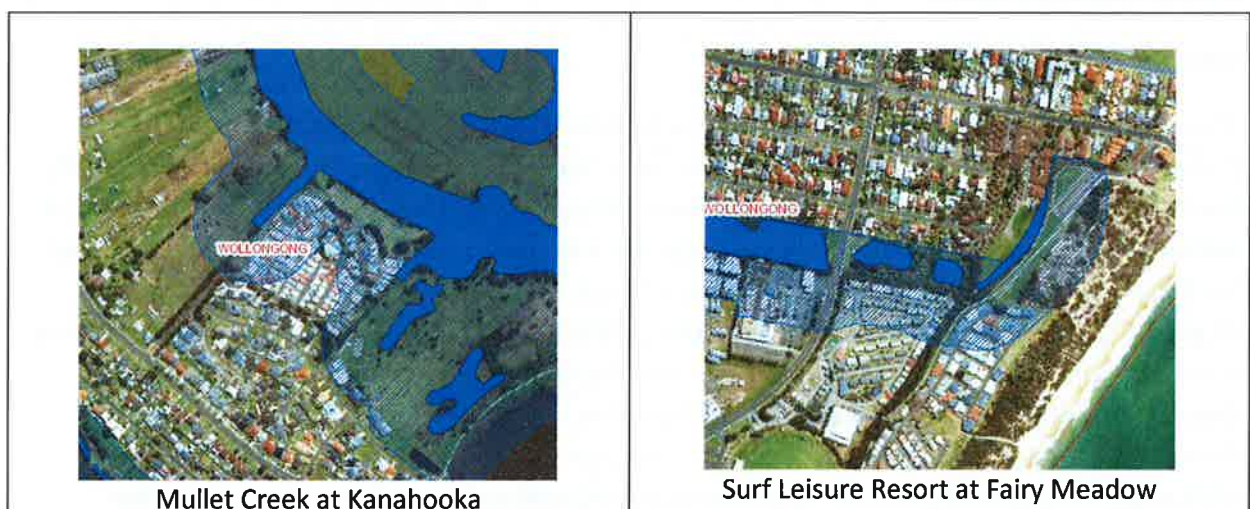


Figure 2 Examples showing the inclusion of land zonings with potentially less impact than the residential zoning being included in the proximity area for coastal wetlands while land with residential zoning is excluded

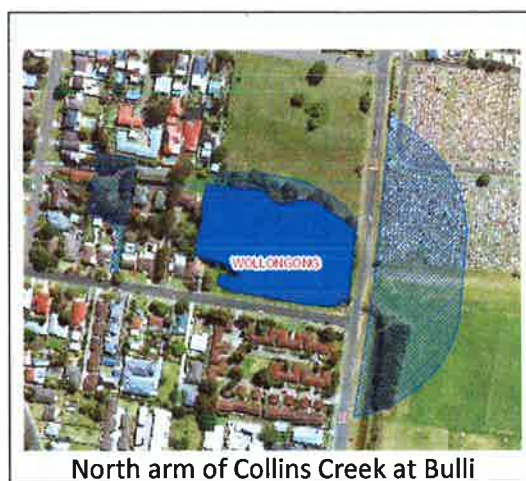


Figure 3 Example showing where exclusion of the residential zoning has resulted in the loss of connectivity between the wetland and the proximity areas where development controls would apply

Development Controls

Development controls are proposed for the mapped coastal wetlands and littoral rainforests areas as well as their proximity areas to ensure no adverse impacts on the biophysical, hydrological and ecological integrity of the coastal wetlands and littoral rainforests. The success of these controls in achieving this outcome will depend on how well any proposed development can be assessed for these potential impacts. Biophysical, hydrological and ecological integrity is open to very broad interpretation, and guidance material should be provided as to how consent authorities should interpret these concepts and undertake development assessment in a rigorous manner. The Coastal Management Manual is meant to provide such guidance, but since its public exhibition earlier this year, no updated version has been made available for councils to determine whether the guidance required has been provided and will be adequate. **Council recommends that the development controls for the coastal wetlands and rainforests area be accompanied by detailed guidance on their implementation by consent authorities, and the coastal reforms are not introduced until this guidance is made available.**

Coastal Vulnerability area

Mapping

The coastal vulnerability area is identified in the draft SEPP as land mapped in the Coastal Vulnerability Area Map and in the Local Government Coastal Hazard Map. The Coastal Vulnerability Area Map currently does not show coastal vulnerability areas anywhere in the State, while the Local Government Coastal Hazard map shows their presence in some council LGAs. Development controls for the coastal vulnerability area are given under Clause 13 of the draft SEPP. However, they are proposed to apply only to areas identified in the Coastal Vulnerability Area Map, which currently has no mapped areas, and not to any of the areas identified in the Local Government Coastal Hazard Map, where only local controls would apply. Therefore, the purpose of including the Local Government Coastal Hazard Map in the SEPP is not clear, especially when Clause 16 of the draft SEPP requires consideration of the risks from coastal hazards to be considered throughout the coastal zone. There is also the question of whether a consistent approach was used by the various

councils in mapping these hazards to merit their inclusion in a State-wide SEPP. **Council recommends that the benefits of including the Local Government Coastal Hazard Map in the SEPP be further explored before it is finalised.**

The absence of any State derived mapping of the coastal vulnerability area in the SEPP is a surprise, particularly as earlier consultation on the reforms suggested that this mapping would be included and required to be used by councils when preparing their coastal management programs. In most instances, no additional mapping effort from councils was anticipated. Now, the State Government intends to get local councils to undertake this mapping when preparing their coastal management programs, and have these feed into the SEPP. This is an unusual process for the development of a SEPP and represents a significant change in the approach that was previously proposed. It also means that the draft Coastal Management Manual that was previously exhibited would now need to be changed to reflect these new arrangements for preparing coastal management programs. This level of change warrants further consultation with councils. **Council recommends that before the draft Coastal Management Manual is finalised, further opportunity be provided to councils to comment on any significant changes made to the approach required of them when preparing coastal management programs.**

The factsheet for the coastal vulnerability area indicates that local councils are expected to undertake further mapping of their coastal hazard areas or update their existing maps to conform to the new management framework over the next five years. As a result, the Coastal Vulnerability Area Map layer is expected to be populated by December 2021, when the requirement to consider the risks from coastal hazards across the entire coastal zone will no longer be necessary. This may be an ambitious target given that local councils are not required to prepare coastal management programs unless directed to by the Minister under the provisions of the Coastal Management Act. Does this imply that all coastal councils will be directed to prepare coastal management programs within the next five years? If this is the case, then it will also conflict with the transitional provisions for coastal zone management plans that are certified before the enactment of the new Act, which do not require the preparation of coastal management programs until December 2021. **Council recommends the expectations around local councils contributing to the development of the coastal vulnerability area mapping by December 2021 be clarified.**

Development Controls

The proposed development controls for the coastal vulnerability area are quite generic and they will need to be applied differently depending on the coastal hazard under consideration. Therefore, specific guidance on how these controls are to be assessed and applied for each of the seven coastal hazards is necessary. Without full knowledge of the guidance that is to be provided in the Coastal Management Manual on this matter, commenting on how well the proposed development controls will serve to achieve the management objectives for this area is difficult. **Council recommends that the development controls for the coastal vulnerability area be accompanied by detailed guidance on their implementation by consent authorities, and the coastal reforms are not introduced until this guidance is made available.**

Coastal environment area

Mapping

The coastal environment area is meant to include land containing coastal features such as coastal waters of the State, estuaries, coastal lakes, coastal lagoons and land adjoining those features, including headlands and rock platforms, but the mapping provided at this stage does not include all such areas, and in particular no inclusion of headlands or rock platforms. The State Government has indicated its intention to update this mapping as better information becomes available on areas, including on headlands and rock platforms, considered worthy of protection. Headlands and rock platforms are valuable features of the coastal environment and should be included in this coastal management area from the outset, regardless of their status. **Council recommends that headlands and rock platforms are included in the mapping of the coastal environment area before the draft SEPP is finalised.**

The current mapping has used fixed distances to identify areas around features such as State waters, estuaries, coastal lakes and coastal lagoons to be included as the coastal environment area. More flexibility is necessary as the use of fixed distances has resulted in some unusual situations. Figure 4 shows locations in the Wollongong LGA where pockets of the dunes have been left out of the mapping while other surrounding land has been included. The management objectives for the coastal environment area mention a number of coastal features that are worthy of protection, and this includes dunes. Figure 5 shows examples where parts of the beach have not been mapped while areas on top of a cliff have been included as the coastal environment area. **Council recommends that the ruleset for mapping the coastal environment area be reconsidered to address the anomalies identified for this area in the Wollongong LGA.**

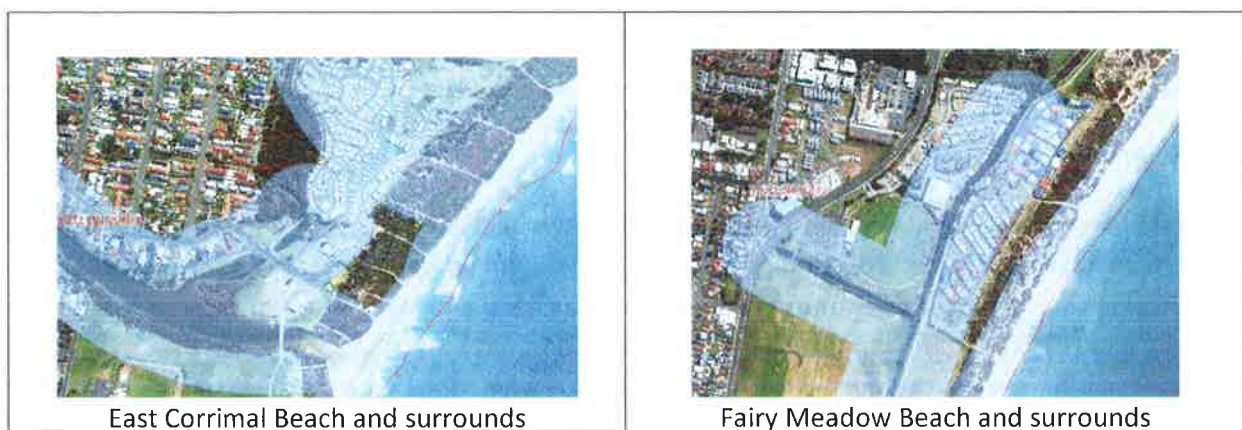


Figure 4 Examples showing pockets of dune areas being excluded from the coastal environment area while other surrounding areas are included

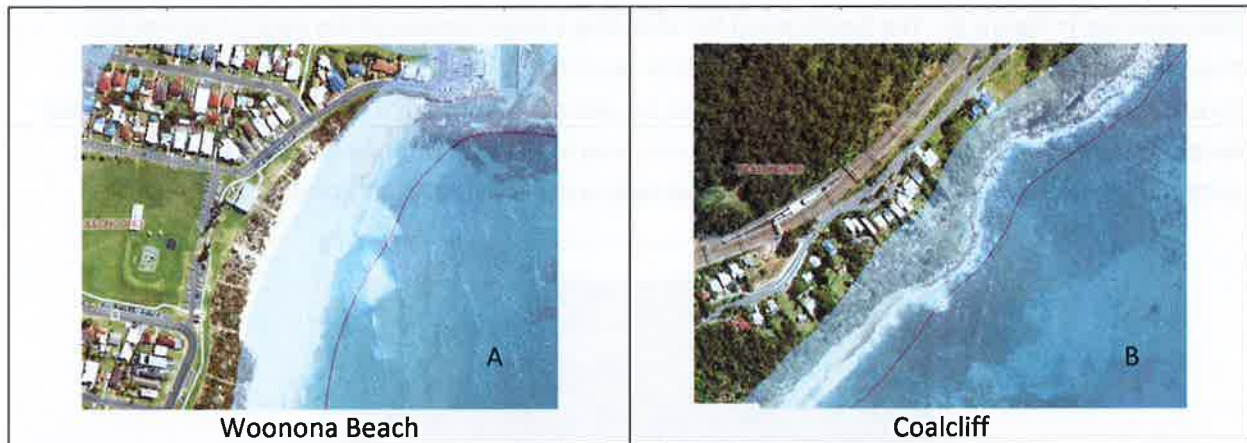


Figure 5 Examples showing exclusion of parts of the beach from the coastal environment area (A) while cliff tops are included (B)

Development Controls

As for the development controls for other management areas, these controls will also need to rely on additional guidance being provided to ensure that the desired management objectives for this area are being achieved. If for example, the proposed controls are to include statements like “not likely to cause **adverse impacts**”, then adverse impacts need some sort of definition or regulation. A definition around what constitutes an adverse impact has been an issue brought before the federal court. Reference is made to cases such as those against the Queensland Environment Minister regarding application of the Environmental Protection and Biodiversity Conservation Act (1999) in the Nathan Dam Case (2004). This case prompted further policy work to define (in a convoluted manner) ‘impact’ in the EPBC Act 1999, Section 527E. **Council recommends that the development controls for the coastal environment area be accompanied by detailed guidance on their implementation by consent authorities, and the proposed SEPP is not introduced until this guidance is made available.**

The controls relating to coastal lakes and lagoons could also be improved to include considering climate change and impacts such as *sea level rise* and *eutrophication*, as coastal lakes may experience more exacerbated impacts around these factors. It appears that the only coastal management area considering ‘future’ scenarios is the coastal vulnerability area. Another control that should be included for this area is that the development does not reduce public access, amenity and use of beaches, foreshores, headlands and rock platforms, as recreational amenity is one of the significant community values associated with this area.

Coastal use area

Mapping

The mapping of the coastal use area is similar to the mapping of the coastal zone in SEPP 71, which identifies this area as being 1 km landward of coastal waters, estuaries and coastal lakes in most areas of the State. While this approach is generally satisfactory, further assessment is required in some areas. In the Wollongong LGA, for example, a considerable section of the escarpment has been mapped as the coastal zone, while in the adjacent LGA, the area mapped is much narrower

(see example in Figure 6). The justification for including a large section of the escarpment as the coastal use area in the Wollongong LGA should be reconsidered before this SEPP is finalised, and should not have to be put off for a later stage to be addressed through a planning proposal. **Council recommends that the mapping of the coastal use area in the Wollongong LGA where it overlaps with the Illawarra escarpment be reconsidered before the draft SEPP is finalised.**



Figure 6 Discrepancy in the mapping of coastal use area along two adjacent local government areas

Development Controls

The development controls for the coastal use area emphasise requirements relating to the built environment, aesthetics and recreational use, and not on the ecological values of this or adjacent areas. Therefore, unless this area overlaps with the coastal environment area, any adverse impact of developments on the ecological values of this area or adjacent sensitive areas could be overlooked. Under current legislation, effluent, stormwater, and cumulative impacts are required to be considered throughout the coastal zone in an integrated manner while the proposed reforms can result in the exemption of the coastal use area from these considerations. **Council recommends that the controls relating to water sensitive design, including consideration of effluent and stormwater management, that are included for the coastal environment area, are also included for the coastal use area.**

Current provisions under SEPP 71 and Clause 5.5 of the Standard Instrument – Principal Local Environment Plan contain additional provisions that do not appear to have been retained in the proposed reforms. The requirement to identify opportunities for new public access to the foreshore is missing from the public access provisions, as is the need for conservation of items of heritage, archaeological or historical significance. **Council recommends that opportunities to create new public access to the foreshore and the need to conserve items of heritage, archaeological or historic significance be included in the development controls for the coastal use area.**

Comments on the Draft Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016

This order seeks to remove Clause 5.5 from Standard Instrument Local Environment Plans, as its provisions are deemed to have been incorporated into the development controls of the new proposed SEPP. However, as already noted, provisions relating to cumulative impacts of development, and potential off-site impacts of effluent and stormwater management that are present in Clause 5.5 have not been adequately captured in the proposed reforms. **Council requests that there is no loss of the protection provisions currently applying under Clause 5.5 when it is repealed with the proposed reforms.**

Comments on the Draft Local Planning Direction – Coastal Management

Under this planning direction, the coastal management area maps can only be amended through a planning proposal. Given that the maps currently exhibited are work in progress, and the State Government seeks to have these maps (in particular the coastal vulnerability area map) updated with the help of councils, there should be a transitional provision to defer the requirement for a planning proposal to change the maps until all map layers are fully populated. **Council recommends that a transitional arrangement be considered for the requirement to alter maps through a planning proposal.**

