



**TOWER 2, LEVEL 23  
DARLING PARK, 201 SUSSEX ST  
SYDNEY NSW 2000**

URBIS.COM.AU  
Urbis Pty Ltd  
ABN 50 105 256 228

17 January 2017

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

To whom it may concern,

## **PLANNING SUBMISSION TO COASTAL REFORMS: 280-282 CAPTAIN COOK DRIVE, KURNELL**

This letter is a submission to the NSW coastal reforms, including the draft *Coastal Management State Environmental Planning Policy* ('Coastal SEPP') and draft *Coastal Management Act 2016* ('Coastal Act').

This submission has been prepared by Urbis Pty Ltd (Urbis) on behalf of Besmaw Pty Ltd ('Besmaw') who is the registered owner of Lot 2 in Deposited Plan 559922 ('Lot 2 South') and Lot 2 in Deposited Plan 1030269 ('Lot 2 North'), Nos. 251 and 280-282 Captain Cook Drive, Kurnell Peninsula ('the site'). The site is shown in Figure 1.

Besmaw in principle supports the Government's efforts to improve planning and management of the coast for the long-term benefit of the public. However, we have concerns about specific details of the proposed draft legislation and supporting materials. The coastal reforms are potentially far reaching and have the potential to impact the future development of land. In these circumstances it is considered that the proposed controls and restrictions should reflect the actual physical limitations and conditions of the land and must take account of current land use activity, current approvals and executed Deeds relating to the use of land including the site.

### **BACKGROUND**

Besmaw is a landholding company of the Holt family who have owned the site for more than 150 years. The site has an area of 176 hectares and is a site of State significance. It has been used for a variety of uses over the years predominantly being sand extraction and rehabilitation, horse stabling and recreation, and residential.

Following extensive consultation with the Department of Planning and Environment ('DPE'), we have requested that the Minister for Planning commence a Planning Proposal process to amend *State Environmental Planning Policy (Kurnell Peninsula) 1989* ('SEPP Kurnell Peninsula') as it applies to the site. The Planning Proposal would rezone the site to protect land uses that were approved by Sutherland Council in 1989 and which are permissible under clause 33(3) of SEPP Kurnell Peninsula. These land uses include large-scale tourism, recreation and residential accommodation development. The approved land uses include hotels, ecotourism accommodation, hospitals and allied health, retail, business park, entertainment, retail, recreation facilities and roads and infrastructure.

Figure 1 – The Besmaw Site



## COASTAL REFORMS

The current *Coastal Protection Act 1979* is proposed to be replaced with a new Coastal Management Act. A significant feature of the draft Coastal Management Act is a new definition of the 'coastal zone'. Under this definition the coastal zone will be divided into four coastal management areas:

- the coastal wetlands and littoral forest area;
- the coastal vulnerability area;
- the coastal environment area; and,
- the coastal use area.

The draft Coastal SEPP will be the single environmental planning instrument to control coastal development and will consolidate into one instrument the provisions of SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

## COASTAL MAPPING AND CONTROLS

The new maps accompanying the draft Coastal SEPP identify the following:

- Lot 2 North as containing Coastal Wetlands area.
- A 100m 'Proximity Area' mapped around the vegetated area in Lot 2 North.
- A 'Proximity Area' mapped around vegetation on the adjoining properties to the east and west that impact the subject site.
- Lot 2 North as containing a 100m Coastal Environmental area.
- Lot 2 South along the foreshore as a 100m Coastal Environmental area.
- Lot 2 North as containing a 100m Coastal Use area.
- Lot 2 South along the foreshore and further into the site as a 200m Coastal Use area.

The draft mapping in relation to the site is shown in Figure 2, Figure 3 and Figure 4.

Figure 2 – Coastal Wetlands Area





Figure 3 – Coastal Environment Area



Figure 4 – Coastal Use Area



## **COASTAL WETLANDS AND COASTAL ENVIRONMENT AREAS**

The draft Coastal SEPP states that development consent must not be granted to development on land wholly or partly identified as proximity area for coastal wetlands unless the consent authority is satisfied that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or the quantity and quality of surface and ground water flows.

The nominated areas of coastal wetlands area within the site appears to be larger than the wetland areas and surrounds present on site. Before these areas are incorporated into the final SEPP they should be checked by survey rather than what appears to be a conservative translation of a plan prepared in 1985 and included in SEPP No 14 Coastal Wetlands.

We consider that the proposed Proximity Areas and Coastal Environment Area Maps and controls place unreasonable restrictions on the land nominated without any significant of positive environmental outcomes being achieved.

The mapping appears inconsistent with physical characteristics of the land concerned. Besmaw proactively manages the site for the control of noxious weeds and in recent years Besmaw has undertaken their own environmental investigations. These investigations have informed a preliminary concept for the Planning Proposal (Figure 5) which is seeking to introduce standardised LEP provisions and facilitate the redevelopment of the land with the progressive rehabilitation of the site following a program of sand extraction and site rehabilitation.

There is no environmental investigation evidence available with the exhibited coastal reform package to support the proposed mapping. It is not possible to properly comment on the coastal reforms without understanding the investigations that have informed the mapping. We request copies of any investigations into the coastal areas around the site to be made available to Besmaw and generally so that the basis of the mapping proposals can be understood.

Notwithstanding this, it is submitted that the proposed mapping does not reflect the current site attributes, constraints and opportunities and will result in a diminution of development potential of land of Lot 2 North and Lot 2 South without delivering any quantifiable environmental benefit.

## **COASTAL USE AREAS**

The foreshore area in Lot 2 South, whilst privately owned, is presently reserved for future local and state open space purposes. The Deed executed by Besmaw (and referenced in clause 33 of SEPP Kurnell Peninsula) requires the land to be dedicated for public recreation areas as the site is progressively developed for tourist and recreational purposes, to ensure the natural attributes of this area are respected. The foreshore will be maintained for recreational activities that can be enjoyed by the public. The land to be dedicated along the Bate Bay Foreshore is 100m measured inland from mean high water mark. Besmaw is committed to the dedication of the land as required but it is submitted that there is no environmental outcome to be achieved within Lot 2 South to be achieved by imposing a 200m Coastal Use area restriction. This will be placed on land that is part of the current sand extraction program. The land is subject to rehabilitation programs through the placement of VENM which has the potential to achieve any finished design surface level that may be nominated by the Department. This rehabilitation work will result in a profile of the site that will deliver the protection



and the stability of the frontal dune system, enable construction of appropriate access pathways for pedestrian from Lot 2 South to the beach front and the management and recreational use of the dune and beach areas.

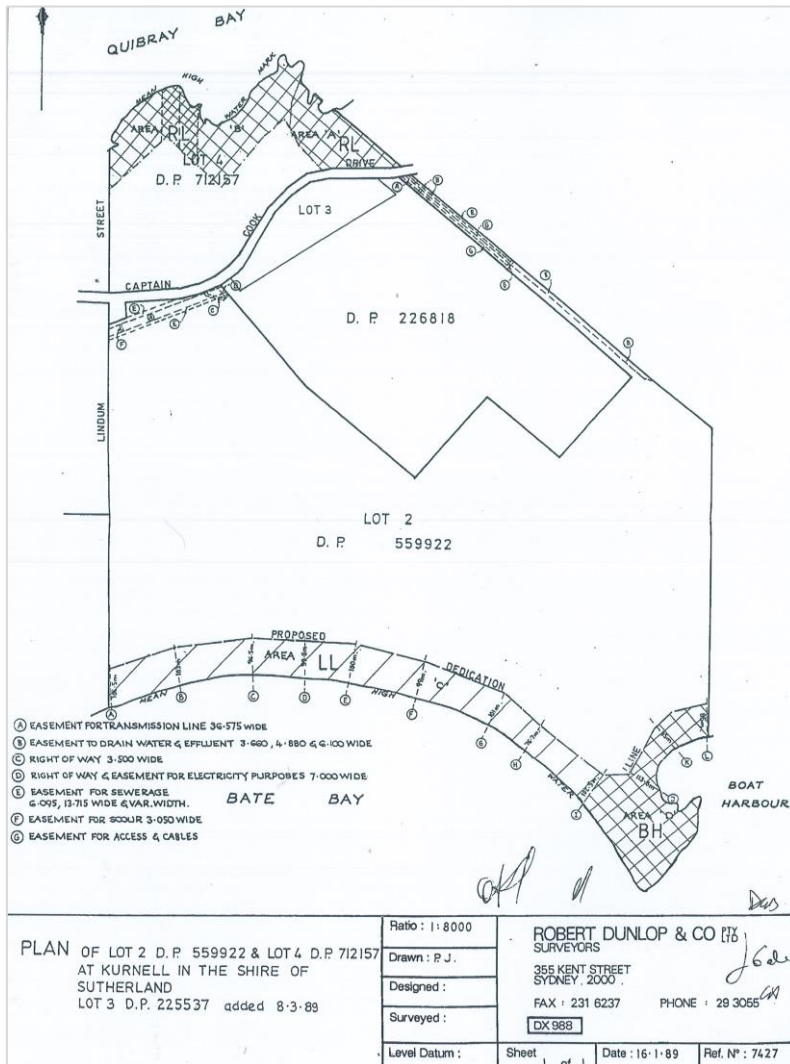
The dedication of the land is an integral component of the Deed executed with the Department and represents a contribution towards the provision, extension or augmentation of local regional public open space within the Southern District of Sydney arising from the future development of the Besmaw land.

We request that the Department remove reference to a 200m coastal use zone along the foreshore of Lot 2 South as an appropriate open space dedication will occur as part of future development to ensure public access to the coast.

Figure 5 – Preliminary Land Use Concept



Figure 6 – Land Dedication



## CONCLUSION

The coastal reform package includes draft mapping that appears to be based on dated data that does not represent the physical attributes of the land and would result in unreasonable restrictions on the development of the Besmaw site. There is no supporting documentation on exhibition to inform the proposed mapping and we request that any investigations undertaken be made publicly available and an opportunity be given to make comment on the material.

The coastal use mapping as it relates to Lot 2 South should be revised to 100m to reflect an agreement reached in the executed Deed for a 100m (approximate) land dedication. We request that



the Department remove reference to a 200m coastal use zone on Lot 2 South as an appropriate open space dedication will occur as part of future development to ensure public access to the coast.

Yours sincerely,

A handwritten signature in blue ink that reads "Alaine Roff". The signature is written in a cursive, flowing style.

Alaine Roff  
Associate Director