

Emma Vlatko

From: Peter Ashley <[REDACTED]>
Sent: Monday, 16 January 2017 2:32 PM
To: DPE PS coastal Mailbox
Subject: Draft Coastal Management SEPP and map submission
Attachments: Ashley draft Coastal Management SEPP submission.pdf; 1 Lot 4 DP836941 RVC GIS.pdf; 2 Lot 4 DP836941 Department GIS.pdf; 3 Iron Gates Drive RVC GIS.pdf; 4 Iron Gates Drive Department GIS.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear Coastal Team,

Please find submission attached together with four map attachments.

Regards,

Dr Peter Ashley
[REDACTED]
Evans Head NSW 2473
[REDACTED]

University of Tasmania Electronic Communications Policy (December, 2014).

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9 Sunderland Street
Evans Head NSW 2473

16 January 2017

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

By email: coastal@planning.nsw.gov.au

Dear Director,

**Submission: Public consultation draft: State Environmental Planning Policy
(Coastal Management) 2016 and draft maps**

Herewith comments on the abovementioned drafts.

1. DRAFT SEPP

1.1 Wetlands definition

The draft State Environmental Planning Policy (Coastal Management) 2016 (draft SEPP) does not define the coastal wetlands and littoral rainforests area, this being left to the *Coastal Management Act 2016* (the Act). While the clause 4 Definitions section of the Act is silent on meanings of any of the four coastal areas, clause 6 states that the coastal wetlands and littoral rainforests area is:

land which displays the hydrological and floristic characteristics of coastal wetlands or littoral rainforests and land adjoining those features.

This is a very loose definition, leaving operational application and interpretation 'flexible' to say the least. Exactly what hydrological and floristic characteristics apply? How can this definition determine wetland suitability for inclusion in, or exclusion from, the draft SEPP with confidence? (after Winning, 1991 ¹).

If the Department is serious about operationalising "the NSW Government's commitment to improving the way we manage the coastal zone, with its unique environmental ... values" ², a far more adequate and rigorous statutory definition of what constitutes a

¹ Winning, G. 1991. Some problems in determining the boundaries of SEPP 14 wetlands. *Wetlands (Australia)* 11(1): 10-20.

² Department of Planning and Environment. 2016. Draft Coastal Management State Environmental Planning Policy, Community factsheet, p. 1.

wetland is required. With wetland boundaries being determined by both definition and delineation (Winning, 1991³), the NSW Wetlands Policy⁴ points the way:

Wetlands are areas of land that are wet by surface water or groundwater, or both, for long enough periods that the plants and animals in them are adapted to, and depend on, moist conditions for at least part of their lifecycle. They include areas that are inundated cyclically, intermittently or permanently with fresh, brackish or saline water, which is generally still or slow moving except in distributary channels such as tidal creeks which may have higher peak flows. Examples of wetlands include lakes, lagoons, estuaries, rivers, floodplains, swamps, bogs, billabongs, marshes, coral reefs and seagrass beds.

Many wetlands are ephemeral, that is, they are not always wet. As a result, the temporary absence of water will not necessarily be used to exclude particular areas of land from the definition of 'wetland' under this policy.

Why cannot this existing and comprehensive NSW Government definition be used for wetlands?

1.2 Wetlands: proximity area definition

The wetlands (and littoral rainforests) proximity areas are not defined in the Act or the draft SEPP. They should be. Using the more universally accepted term of 'buffer', the NSW Wetlands Policy⁵ states that a buffer strip is:

an area of land that provides a transition into the natural habitat of the wetland. Often this buffer consists of a vegetated strip of land that slows water flows, thereby absorbing or trapping sediment and nutrients.

1.3 Wetlands and littoral rainforests proximity areas

Development controls for proximity areas for wetlands and rainforests – 'Development on land in proximity to coastal wetlands or littoral rainforest land' – should be the same as for 'Development of coastal wetlands or littoral rainforest land'. That is, there should be no distinction, otherwise what is the point of having proximity areas if it is not to buffer wetlands and rainforests? So why should the standards be different? And the simple test of a consent authority needing only to be "satisfied" regarding development in the proximity areas, is weak indeed. Planning decisions are commonly at the whim of local councils who do not always possess sufficient resources and expertise to make informed and rigorous decisions, independent of developer and other persuading influences.

1.4 SEPP 71 master plans

The elimination of the need for SEPP 71 master plans and the non-involvement of the Department significantly downgrades the ability to maintain and improve the environmental integrity of the coast. In the interests of due process and for the coast, particularly in the case of large subdivisions such as the controversial Iron Gates development at Evans Head, the requirement for master plans should remain. Therefore the coastal environment area development controls should include the requirement for

³ Winning, G. 1991. Some problems in determining the boundaries of SEPP 14 wetlands. *Wetlands (Australia)* 11(1): 10-20.

⁴ Department of Environment, Climate Change and Water NSW. 2010. *NSW Wetlands Policy*, Department of Environment, Climate Change and Water NSW, Sydney, p. 2.

⁵ Ibid. p, 33.

master plans in certain situations. It is suggested that a master plan threshold trigger based on lot numbers / size be effected.

1.5 Departmental concurrence removal

Currently the concurrence of the Secretary of the Department is required before SEPP 14 – Coastal Wetlands can be filled, drained, cleared or have a levee constructed, and before SEPP 26 – Littoral Rainforests can be subdivided, developed or otherwise disturbed.

The elimination of such concurrence in the draft SEPP removes independent oversight and potentially puts at risk environmentally sensitive coastal areas to inappropriate development. It is indeed questionable whether local government such as Richmond Valley Council where I live has the competence and independence to make assessments unlike the Department. This devolution of authority detracts from responsible environmental management of the coastal precinct. It is therefore strongly recommended that the concurrence of the Secretary of the Department remain and written into the draft SEPP in the same form as SEPPs 14 and 26 currently.

1.6 SEPP review period

That a review of the SEPP is signalled after only 12 months is indicative of a high degree of uncertainty in how the coastal reforms will translate into practice. A cogent example is the coastal environment area, where the mapping criteria “is a starting point and can be refined over time”⁶, indicative of a high degree of fluidity and indecision in the process.

Due to the magnitude of the changes envisaged and the dependence of the SEPP on the mapping, the first review of the SEPP should occur at one year from commencement rather than the vague “as soon as practicable after the first anniversary” (emphasis added). The whole thing is all too important to just let it slip out time wise.

2. MAPPING

2.1 Methodology: coastal wetlands and littoral rainforests

Foundational to the maps are their provenance – the methodology that produced them. This benchmark information for coastal wetlands and littoral rainforests should have been publicly released otherwise the efficacy of the maps is questionable, particularly when local councils can muck around with them in the future. The Act and the draft SEPP are silent on the issue. All that I can find is this in the Department’s coastal wetlands and littoral rainforests area factsheet (2016, p. 2):

The maps reflect our improved knowledge of coastal wetlands and include information from recent studies by the Department of Planning and Environment, University of NSW, Office of Environment and Heritage, and NSW Department of Primary Industries (Fisheries).

This statement raises many questions, such as: What improved knowledge? What recent studies? How was this improved knowledge and recent information applied? Are the recent studies desktop reviews only? Is ground truthing planned regardless? What data were relied upon for littoral rainforests taken that they are not mentioned at all?

⁶ Department of Planning and Environment. 2016. Draft Coastal Management State Environmental Planning Policy, Coastal Environment Area factsheet. p. 2.

Of import here is the pioneering wetland survey and mapping of Adam *et al.* (1985)⁷. This work and the resultant report to the Coastal Council of NSW, mapped seven wetland types, namely mangroves, saltmarshes, *Melaleuca* forests, *Casuarina* forests, sedgeland, brackish and freshwater swamps, and wet meadows. The wetland criteria applied, as well as exclusion criteria, were included in the report. By the way, the subject report was on the desk of a member of the Department's Coastal Team at the time of my making a telephone enquiry recently, so it must still possess some currency despite its age and perceived weaknesses.

While the Adam *et al.* (1985)⁸ mapping may have suffered from limited ground truthing and errors (Winning, 1991)⁹, it does point to the vital need for an accurate definition of what constitutes a wetland (see above) and the need for precision when deciding on selection criteria. With Winning (1991)¹⁰ suggesting that the accuracy of mapped wetland boundaries¹¹ is proportional to the extent of ground truthing undertaken, again I ask: What are the Department's intentions to ground truth wetlands and their boundaries?

And an overriding question is this: What part, if any, did the Adam *et al.* (1985) mapping play in the current draft maps?

2.2 Factsheets

The Act and the draft SEPP are silent on the technical constituents of the maps. This is left to the factsheets, an informal set of documents with no legal standing. If the NSW Government is serious about "improving the way we manage the coastal zone"¹², and protecting and enhancing "natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience"¹³, then it needs to do better.

Technical aspects of the mapping, such as the 100m proximity area for wetlands and littoral rainforests, the landward area and upstream limit of the coastal environment area, and the landward area of the coastal use area, would be better placed in the SEPP, a statutory instrument, unlike the factsheets. If they are not, there is the risk that these vital statistics, these essential parameters, could be changed at whim without the scrutiny of due process.

2.3 Future map availability

Clause 8, section 3 of the draft SEPP states:

... maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.

⁷ Adam, P., Urwin, N., Weiner, P. & Sim, I. 1985. *Coastal Wetlands of New South Wales: A survey and report prepared for the Coastal Council of New South Wales*. Coastal Council of New South Wales, Sydney.

⁸ Ibid.

⁹ Winning, G. 1991. Some problems in determining the boundaries of SEPP 14 wetlands. *Wetlands (Australia)* 11(1): 10-20.

¹⁰ Ibid.

¹¹ For a discussion on the importance of wetland boundaries and case study, see: Winning, G., King, J-P., & Bailey, S. 2000. How wide is a wetland boundary? *Wetlands (Australia)* 18(2): 64-71.

¹² Department of Planning and Environment. 2016. Draft Coastal Management State Environmental Planning Policy, Community factsheet. p. 1.

¹³ *Coastal Management Act 2016*, Clause 3 (a) 'Objects of the Act'.

What sort of arrangements? Will future maps be available in the form of the current draft map *i.e.* GIS-based and interactive, or something different? Will print and export / save functions still be available?

2.4 Future map versions: periodicity

It is unclear because it has not been disclosed, of just how many versions of the map are to be produced into the future, such as in the all-important first year. When will new versions of the map be produced? What will be the triggers? Will the public be told when new versions are about to be issued and what will be the public input / feedback mechanisms?

2.5 Future map versions: technical

While the current print and export / save functions are appreciated, the maps so produced lack some standard mapping protocols, which if added, would improve credibility and usefulness of the maps from both a Departmental and public standpoint.

The TOSSLAD parameters – title, orientation, source, scale, legend, author and date – familiar to university students taking units involving mapping, should be considered as automatically generated (by the GIS software) additions to future map versions in print and export mode. Nuances here might also include the map version number and an internal locator reference *e.g.* URL, lat. long., for departmental reference purposes.

3. MAPPING INCONSISTENCIES: RICHMOND VALLEY COUNCIL EXAMPLES

There are inconsistencies in the SEPP 14 mapping of Richmond Valley Council (RVC) and the coastal wetland mapping of the Department. Two examples demonstrate this.

The first case involves Lot 4 DP836941, 765 Woodburn-Evans Head Road, Evans Head. Attachment 1 ('1 Lot 4 DP836941 RVC GIS.pdf') clearly shows RVC SEPP 14 mapping with a decided 'bulge' to the south. Attachment 2 ('2 Lot 4 DP836941 Department GIS.pdf') shows the Department's coastal wetland mapping for the subject lot (map centre left) severely truncated to the south, reducing the area of wetland.

The other case concerns Iron Gates Drive, Evans Head. The third attachment ('3 Iron Gates Drive RVC GIS.pdf') unmistakably shows the extent of RVC SEPP 14 mapping as spilling over Iron Gates Drive to the south, in the vicinity of Lot 547, DP48550. However the Department's coastal wetland mapping attached ('4 Iron Gates Drive Department GIS.pdf') is severely truncated where it meets Iron Gates Drive. Thus, there is no spill over of wetland to the south, to the other side of Iron Gates Drive, when in fact there is. RVC mapping shows the encroachment as does field validation.

That both these examples involve properties subject to controversial development proposals at Evans Head may be more than a coincidence? The wetland mapping situation with Iron Gates Drive is particularly pertinent here. Iron Gates Drive provides paper access to the Iron Gates development currently under consideration by the Department pursuant to a SEPP 71 master plan application. But RVC has never accepted Iron Gates Drive as providing legal access to the Iron Gates development at the end of the Drive. Now one of the issues the Department has raised with the draft master plan is site access. But Iron Gates Drive has not been approved due to numerous factors including its encroachment into SEPP 14 wetlands. Interesting? Is the Department favouring the proposed development by 'disappearing' the SEPP 14 wetland encroachment in its new mapping? An explanation from the Department is required and

would be appreciated by the writer. Otherwise one is led to believe that the Department is purposely subverting reality and due process for its own ends.

4. RECOMMENDATIONS

1. Develop a more scientifically robust definition of coastal wetlands consistent with the NSW Wetlands Policy and Ramsar.
2. Define coastal wetlands and littoral rainforests proximity areas.
3. Realign development controls for coastal wetlands and rainforests proximity areas consistent with the development controls for coastal wetlands and littoral rainforest areas.
4. Reinstate the requirement for master plans (SEPP 71) for the coastal environment area.
5. Retain the need for the concurrence of the Secretary of the Department for works in the coastal wetlands and littoral rainforests area in the same form as SEPPs 14 and 26 currently.
6. Release the methodology for mapping coastal wetlands and littoral rainforests so the quality of the mapping can be scientifically assessed, particularly the inclusion and exclusion of wetland categories such as mangroves, those dominated by Eucalypt spp., and wet heath.
7. Consider numbering wetlands with a unique identifying code as Adam *et al.* (1985)¹⁴ did.
8. Confirm that field validation and ground truthing is to be undertaken and when, to enable full and proper accuracy assessment.
9. Include nominated quantitative determinants for proximity areas, landward areas, upstream limits and suchlike, in the new the SEPP rather than in the factsheets.
10. Specify what the arrangements will be for future public access to the maps.
11. More strongly ensure environmental planning instruments to amend maps are publicly advertised in the local area concerned to allow for public input and feedback.
12. Incorporate TOSSLAD into print and export versions of future public releases of the maps.
13. Explain the wetland mapping inconsistencies between Richmond Valley Council and the Department evidenced.
14. Ensure Richmond Valley Council undertake littoral rainforest and coastal hazard mapping as a matter of urgency. (This council has told me that littoral rainforest mapping has not been done due to a lack of resources).

¹⁴ Adam, P., Urwin, N., Weiner, P. & Sim, I. 1985. *Coastal Wetlands of New South Wales: A survey and report prepared for the Coastal Council of New South Wales*. Coastal Council of New South Wales, Sydney.

5. CONCLUDING REMARKS

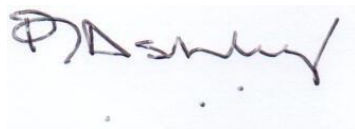
There has been no substantive evidence, scientific or otherwise, provided by the Department to support the amalgamation of SEPPs 14, 26 and 71. The proposal to replace three with one is fraught in my opinion. As a result I think that the coastal reforms (so called) are very much underdone. The Department needs to take more time – it is trying to do too much too quickly.

Besides, and regardless of the 'spin', the coastal reforms are but one the NSW Government's brazen attempts to water down 'green tape'. The cost will be borne by the environment as is usual in these cases. The real drivers of the NSW Government's coastal reforms appear to me to be:

1. Administrative expediency rather than a resolve to increase protection of the vulnerable coastal environment.
2. Development and developer pressure in pursuit of the government's 'open for business' policy and a concomitant reduction in 'green tape'.
3. Devolution of responsibility and decision-making to lower levels with the resultant risk of a diminution in standards regardless of aspirational intentions.
4. A shifting of the administrative and cost burden from the NSW State government to local government to save money.

Thank you for the opportunity to make a submission. Please acknowledge receipt.

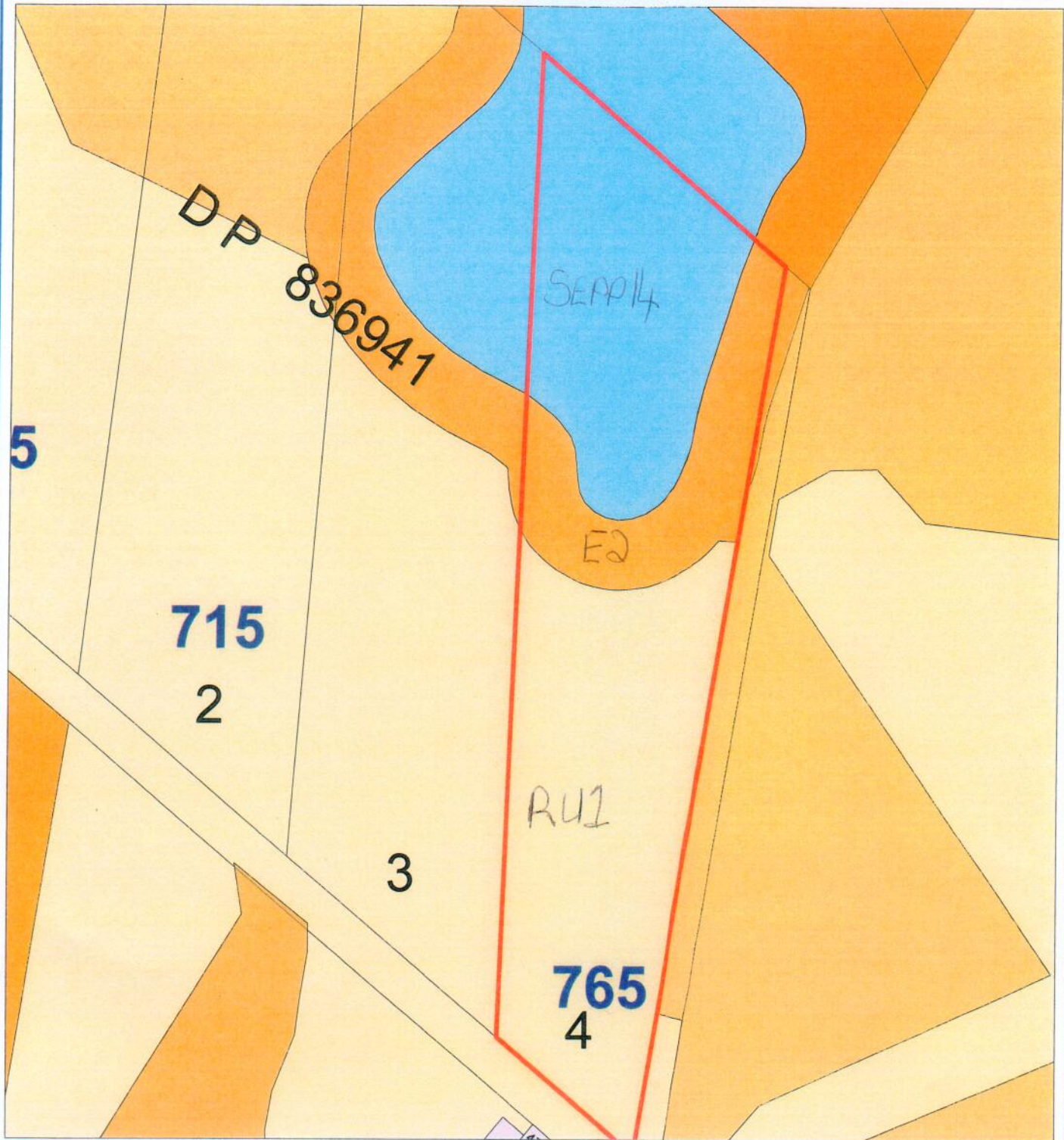
Yours faithfully,

A handwritten signature in dark ink, appearing to read 'P Ashley', on a light blue background.

Dr Peter Ashley

Attachments:

- 1 Lot 4 DP836941 RVC GIS.pdf
- 2 Lot 4 DP836941 Department GIS.pdf
- 3 Iron Gates Drive RVC GIS.pdf
- 4 Iron Gates Drive Department GIS.pdf







NORTH

Scale 1:4,121
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Printed - 20/8/2015

LEGEND

 Subject Land	 Railway Corridor
 Cadastral Boundary	 Easement
 Parks / Reserves	 Main Roads
 River/Creek	 Sealed Road
 National park	 Unsealed Road
 State Forest	 Unformed Road
 LGA Boundary	

765 Woodburn Evans Head Road



Richmond Valley Council
Cnr Graham Pl & Walker St CASINO NSW 2470
Ph: (02) 6660 0300 Fax: (02) 6660 1300
Email: council@richmondvalley.nsw.gov.au



This map was produced on the GEOCENTRIC DATUM OF AUSTRALIA 1994 (GDA94), which has superseded the Australian Geographic Datum of 1984 (AGD66/84). Heights are referenced to the Australia Height Datum (AHD) heights. For most practical purposes GDA94 coordinates and satellite derived (GPS) coordinates based on the World Geodetic Datum 1984 (WGS84) are the same.

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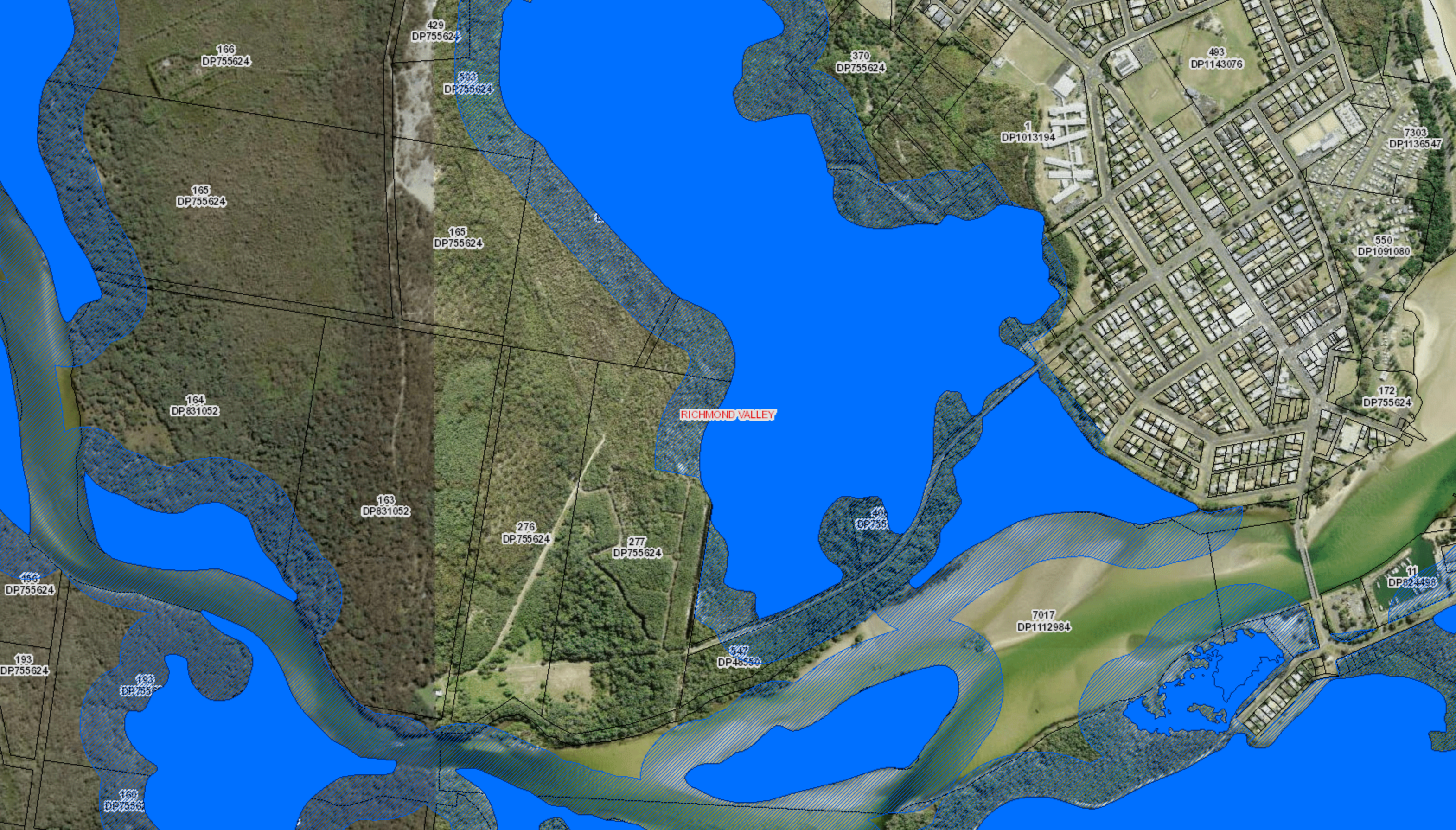
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RICHMOND VALLEY

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