

Council Reference: 31157E (D16/403025)

NSW Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001
Attention: Director, Environment & Building Policy

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

Dear Sir/Madam

Submission - draft Coastal Management State Environmental Planning Policy 2016

Thank you for the opportunity to provide a submission on the draft Coastal Management State Environmental Planning Policy (CM SEPP), accompanying maps and draft section 117 Ministerial direction, given the large area of coast that Council manages and the importance of the coast to our community and visitors.

Council supports the NSW Government coastal reform initiatives and welcomes the introduction of a single state environmental planning policy to guide strategic land use planning for coastal development. There are, however, some areas of concern that should be addressed, prior to the finalisation and commencement of the CM SEPP.

Council also appreciates the extension granted to the timeframe for Council to make a submission, sent via email on 8 December 2016, to enable this important matter to be reported to Council. Council's Development Committee resolved (under delegation) on 23 January 2017 that:-

- 1. Council make the submission attached to this report to the NSW Department of Planning and Environment on the draft State Environmental Planning Policy 2016 (Coastal Management), accompanying maps and draft section 117 Ministerial direction by 31 January 2017.*
- 2. Council make representations to the State Government through our Local Members in regards to Council's concerns in this regard.*

3. *The General Manager seek as a matter of urgency a deputation to the NSW Planning Minister Hon Rob Stokes, the Member for the South Coast, Hon Shelley Hancock, The Member for Kiama, Hon Gareth Ward, the Upper House Member Hon Paul Green and the Upper House Green Member, Hon Justin Fields and that those representatives be given a thorough briefing prior to the deputation.*

This submission is broken into three key sections that address each document on public exhibition.

1. Draft Coastal Management SEPP 2016

Mapping

- The CM SEPP mapping data from NSW Department of Planning & Environment (DP&E) does not correctly align with Council's cadastre which has resulted in inconsistencies between the online mapping shown on DP&E's website compared to Council's website. Given that the development controls within the CM SEPP rely on the online mapping tool to identify affected properties, this is a key issue that must be addressed. The CM SEPP should not be made effective until this issue is fixed. Council has experienced similar issues with the mapping for the Shoalhaven Local Environmental Plan (LEP) 2014 and although this matter has previously been raised with DP&E, it has not yet been fixed. As DP&E uses a different cadastre to Council, DP&E mapping data shows differently on Council's cadastre, creating confusion for users. Council would like to view the final CM SEPP mapping before it is finalised and made effective.
- As Council's maps are used for issuing Section 149 Planning Certificates, given the number of mapping anomalies experienced when using the data from DP&E, this is a key matter that must be addressed prior to the CM SEPP being made effective. Examples of these mapping anomalies are provided as **Attachment 1** to this submission. A few examples are shown below:

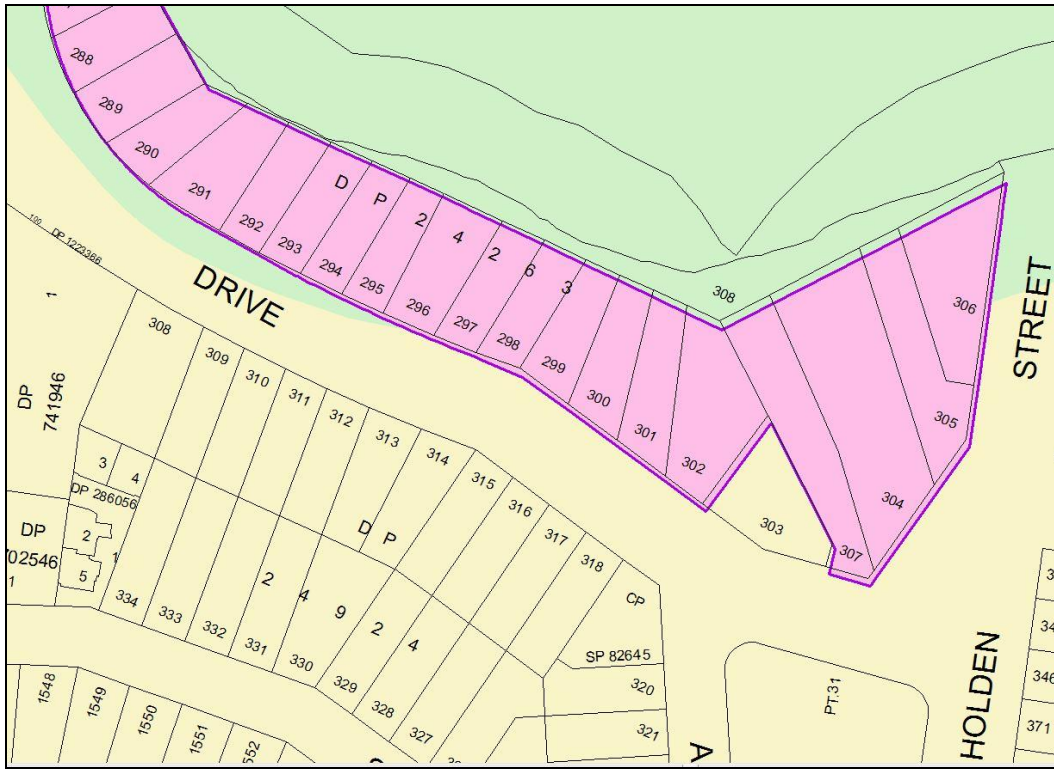


Figure 1: Elizabeth Drive, Vincentia

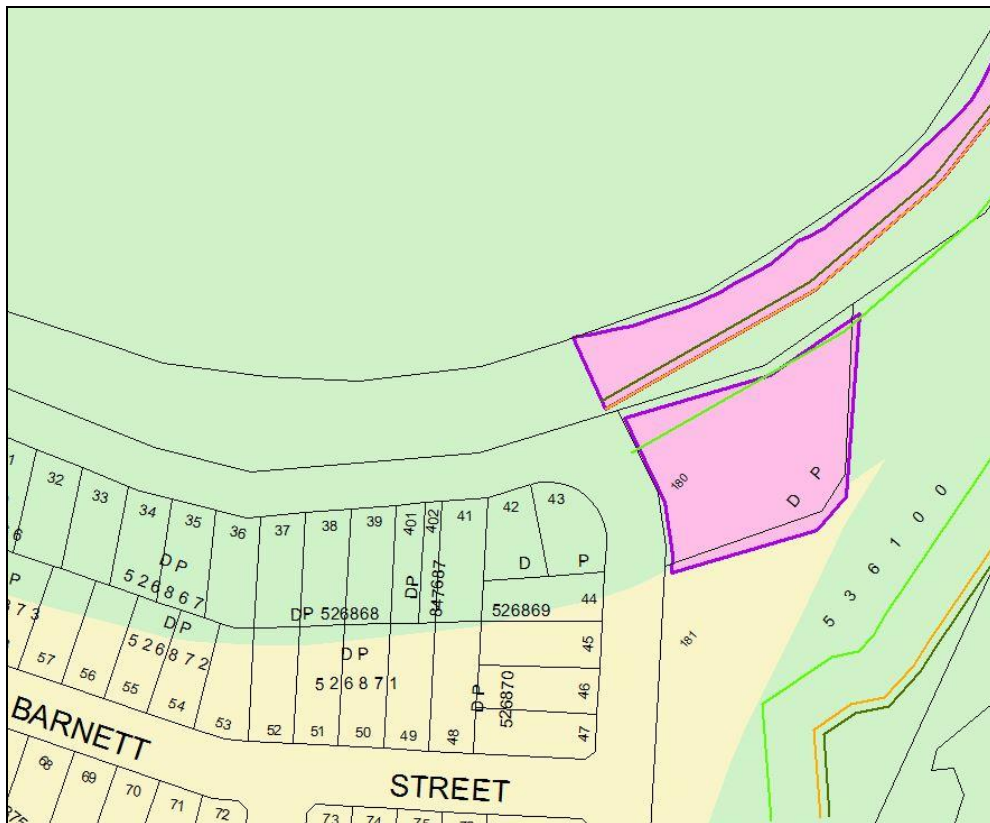


Figure 2: Plantation Point, Vincentia

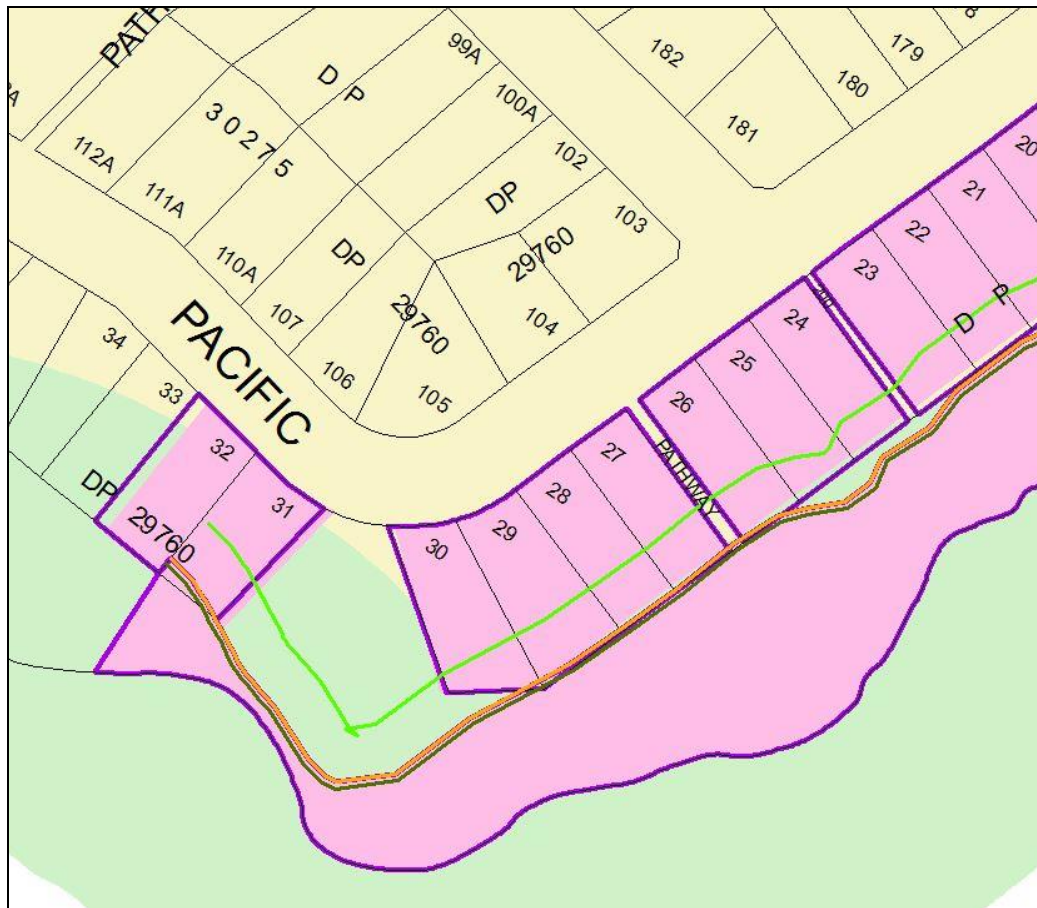


Figure 3: South Pacific Crescent, Ulladulla

- The process for Council to amend the CM SEPP mapping needs further clarification, which could be achieved by the release of a Planning System Circular. The opportunity for Councils to request changes to the CM SEPP mapping at the programmed reviews by DP&E at 12 months, and at five/ten years, remains unclear. It is understood that additional maps can be provided for inclusion in the CM SEPP at any time during the first twelve months of the operation of the CM SEPP. Written clarification about this matter and the process for amendment of CM SEPP mapping should be provided to Councils by DP&E as soon as possible. It should be clarified whether local updated mapping should be placed on public exhibition and adopted by Council prior to being submitted to DP&E if it has not gone through the Planning Proposal (PP) process.
- The requirement for Councils to submit a PP to amend the CM SEPP maps is onerous and requires significant staff resources. Endorsed studies to inform a CM SEPP mapping amendment should be forwarded directly to DP&E for inclusion, without triggering the need for a full PP process. DP&E should provide written clarification of the process for including Coastal Vulnerability mapping prior to the CM SEPP before being finalised and made effective.
- The mapping of the coastal environment (100 metres from the LGA administrative boundary) in many places does not capture the beach/dunes. The pictures below show examples at Bendalong and Sussex inlet:



Figure 4: Bendalong



Figure 5: Sussex Inlet

- Littoral rainforest identified in the Environment Protection and Biodiversity Conservation (EPBC) Act should be included in the CM SEPP mapping. The Coastal wetlands and littoral rainforest areas map should include the EPBC Littoral Rainforest and Coastal Vine Thickets of Eastern Australia. This will ensure consistency between State and Federal legislation and ensure there is one point of reference (i.e. the CM SEPP) for coastal communities to be able to refer to.
- The CM SEPP mapping for littoral rainforest needs to be amended to capture additional areas which have been subject to verification. Council will provide DP&E with this verified data electronically via the Planning Portal. Some examples of where the CM SEPP mapping is incorrect are shown in the pictures below. At Bannisters Head, the area identified is too large and in the other pictures, areas have been left out. Council also has some littoral rainforest mapped in Bawley Point, however this needs to be verified.

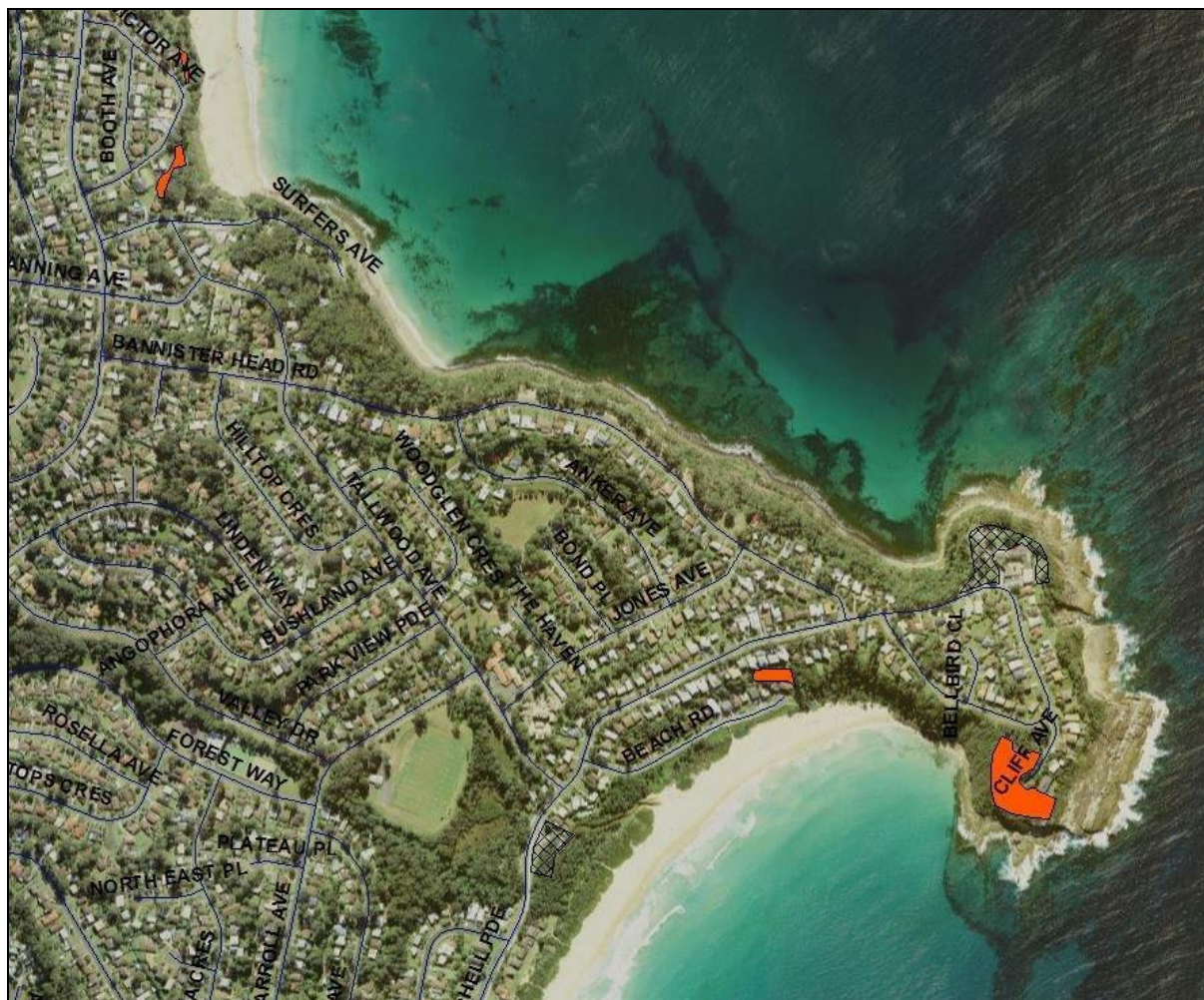


Figure 6: Bannister's Head - extent of littoral rainforest in verified data

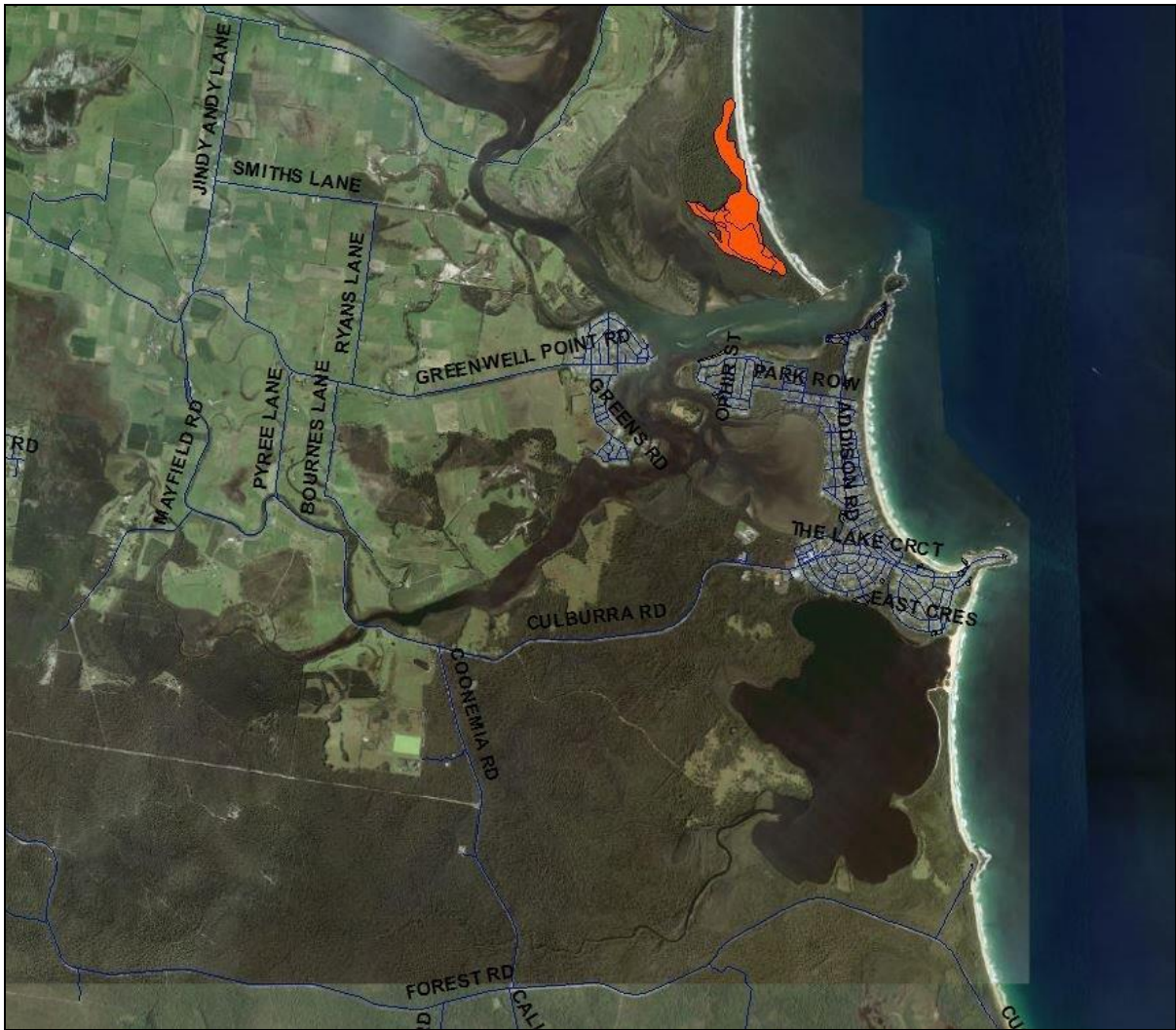


Figure 7: Comarong littoral rainforest – for inclusion



Figure 8: Currarong littoral rainforest – for inclusion

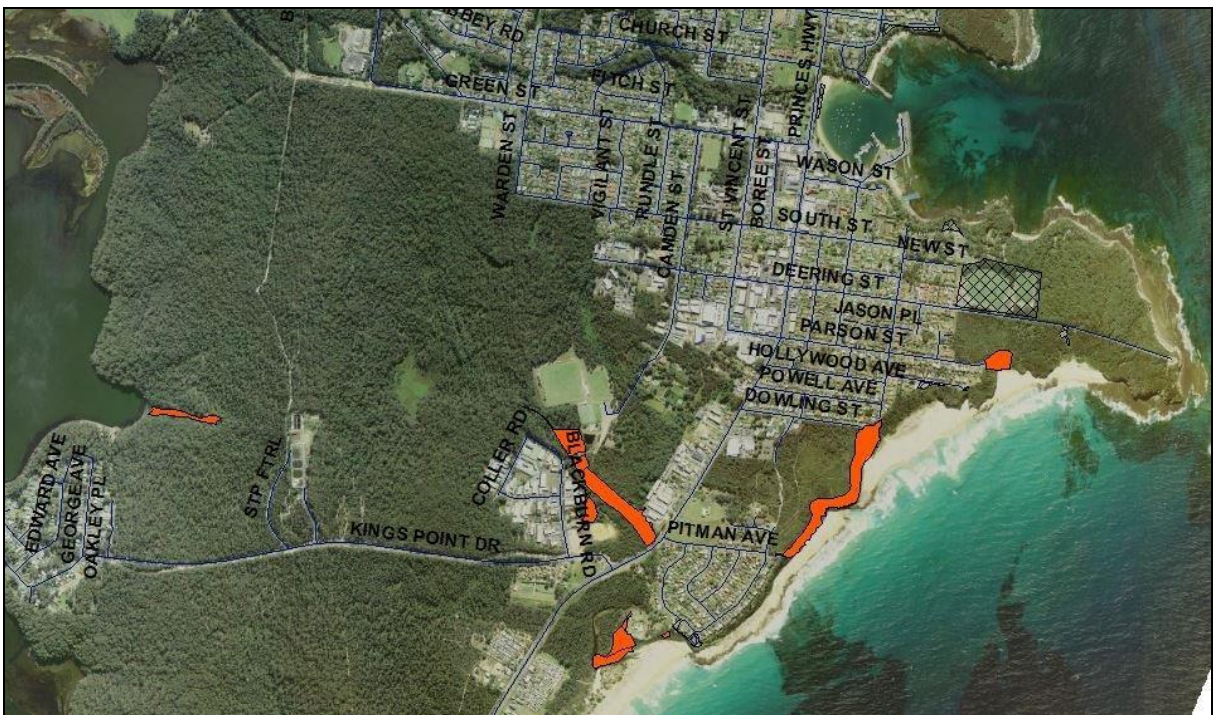


Figure 9: Ulladulla littoral rainforest – for inclusion

Definitions

- The definitions in the *Coastal Management Act 2016* (CMA) and CM SEPP need to be improved to be more comprehensive. The definitions of the coastal management areas in the CMA rely solely on the CM SEPP mapping. This is insufficient as the absence of descriptive definitions makes it difficult to propose amendments to the CM SEPP mapping in PP's.
- Comprehensive definitions should be provided for the following terms:
 - Coastal environment area;
 - Coastal use area
 - Coastal wetlands and littoral rainforests area
 - Coastal vulnerability area
 - Beach Nourishment

Clause 12 – Development on land in proximity to coastal wetlands or littoral rainforest land

- The improved mapping of coastal wetlands is supported.
- The mapping of the buffer for *Clause 12 Land in proximity to coastal wetlands or littoral rainforest land* should be revised. The exclusion of residential zoned land shows small parcels of non-residential zoned which are subject to Clause 12, whilst lands closer to the wetland are not. The mapping for the proximity area captures small parcels of non-residential zoned land close to or adjacent to wetlands which are not captured and therefore are not subject to the requirements of Clause 12.
- The purpose of Clause 12(2)(a) should be clarified. As these provisions do not apply to residential zoned land, areas immediately adjacent to wetlands may be developed without consideration of the CM SEPP. Residential development can have a detrimental impact on coastal wetlands and littoral rainforest and the controls in the CM SEPP should apply. It is acknowledged that it may be considered unreasonable to apply new controls to existing zoned and already developed areas. An example of this issue is shown in the following picture of Beach Street and Elizabeth Street in Vincentia:



Figure 10: Beach Street and Elizabeth Street, Vincentia

Clause 13 Development on certain land within the coastal vulnerability area

- The information in the exhibition package notes Council's LEP and Development Control Plan (DCP) controls are used to indicate hazard information. Council's LEP and DCP both provide controls. DCP controls are triggered through SMEC mapping and should be mapped. The draft Coastal Vulnerability CM SEPP mapping only identifies mapping from Shoalhaven LEP 2014. Additional data can be supplied to DP&E to reflect both the LEP and DCP controls as referred to in Council's email.

Coastal Protection Works

- Coastal protection works provisions should be amended to ensure more realistic timeframes. The draft SEPP (CM) proposes that certain coastal protection works undertaken by or on behalf of a public authority do not need development consent. For example, the placing of sandbags for not more than 90 days does not require development consent but a longer period would need consent. This implies that a solution needs to be developed, submitted to Council, approved, constructed and the sandbags removed all within the 90 day period. This is an unrealistic time period and it is recommended that this time period be increased to 6-12 months.

- Clause 21(2) suggests coastal protection works other than beach nourishment or routine maintenance will require development consent if not identified in a certified CZMP. This would apply to rock protection or sand bags that will stay in place for more than 90 days. At present, Council relies on the provision of the infrastructure SEPP and consideration by the coastal panel (for rock protection) when only a Part 5 Assessment is required.
- Emergency coastal protection works provisions (Clause 21 (3)) are also limiting the placement of sand bags to a period of 90 days (through Clause 21(4)). It is unreasonable to expect a development application could be prepared and determined within 90 days. This implies that the sand bags will need to be removed after 90 days, when a long term protection option may not yet have been approved. This would leave an unacceptable risk unmanaged. It is suggested that the ninety (90) days is increased to at least 180 days, preferably 12 months.
- Works without consent by a public authority and restrictions on development under Part 5 and development requiring consent with the Joint Regional Planning Panel (JRPP) being the determining authority is a complex issue that needs further clarification from DP&E.
- As discussed, the CM SEPP is focused partly on coastal vulnerability primarily regarding development controls and emergency provisions or new protection structures on the 8 high erosion risk beach compartments in the Shoalhaven. The Coastal Maintenance Program involves public access provisions on 40 managed beach compartments with 250 access points and the 30 existing Shoreline Protection Assets covered under Shoalhaven City Council's adopted Coastal and Estuary Asset Management Plan. Existing boat ramp provisions also have an adopted AMP along with unquantified erosion prone inland waterways access points and walking tracks that are works in progress for mapping and asset management plan development.
- In this regard, DP&E should clarify whether the CM SEPP prevails over the Infrastructure SEPP and negates Council's ability to undertake emergency Nature Assisted Beach Enhancement beach scraping and necessary repairs to or rationalisation of access provisions and shoreline protection upgrades without consent.
- It should also be clarified whether Council should submit these adopted planning documents to the Minister as part of the CZMP Gazettal process, along with any available EEC vegetation mapping, Emergency Estuary Entrance Intervention Policies, Road Stormwater Management System Remediation strategies developed under the Estuary Management Program affecting the Coastal Use area.

Clause 23 Flexible zone provisions

- It is understood that wherever the draft CM SEPP applies, LEP flexible zone provisions, for example the Shoalhaven LEP 2014 *Clause 5.3 Development Near Zone Boundaries*, will have no effect. It is understood that this is consistent with the standard instrument provisions; however, it is not clear why land to which this policy applies has been excluded from flexible zone provisions, when any development proposal would be subject to appropriate development approval processes.
- Council is concerned with this provision given a number of parcels of undeveloped land in coastal towns and villages in the Shoalhaven could be prevented from being appropriately developed, such as in the Culburra urban area.

In the Nowra CBD, a regional town centre, the coastal zone divides the town along one side of the street. In this regard, Clause 23 is considered unnecessary and should be revised accordingly. It is not considered appropriate to map the coastal zone through urban centres where flexible zone provisions are appropriate.

- The wording in Clause 23 'or a similar provision' in LEPs should be clarified, as to whether this relates to the Heritage Development or Height of Building incentive provisions in Shoalhaven LEP 2014. Council does not believe that the CM SEPP should prevent other incentive provisions in LEPs.

Review of Policy

- It is understood that additional maps can be provided for inclusion in the CM SEPP at any time during the first twelve months of the operation of the CM SEPP. Written clarification about this matter and the process for amendment of CM SEPP mapping should be provided to Councils by DP&E as soon as possible. The CM SEPP maps may need to be reviewed sooner than every five years, given the changing nature of the coast due to natural processes. An ongoing program for updating the maps over time is required to be outlined and this may avoid the need for Council's to submit PPs.

Schedules

- It appears that only a small subset of Sensitive Coastal Lakes in Shoalhaven have been included in Schedule 1. The rationale and source of information for the inclusion of certain lakes should be clarified. In this regard, Schedule 1 should be reviewed to ensure consistency with the Healthy Rivers Commission Inquiry into Coastal Lakes; the Illawarra Shoalhaven Regional Plan – 'Table 2: Sensitive Estuaries' and Appendix 4 of the now superseded South Coast Regional Strategy.
- Schedule 1 and 2 could be better formatted, similar to the South Coast Regional Strategy, by listing separately according to LGA and geographically listed from north to south.
- Whilst it is noted that Schedule 2 is referred to in *Schedule 3 Amendment of other instruments*, it should be referred to within the body of the CM SEPP instrument itself to clarify its purpose and function. The rationale behind the inclusion of certain lakes in this schedule also needs to be clarified.
- *Schedule 3 Amendment of other instruments* - the interrelationship between the draft CM SEPP and the Infrastructure SEPP is complex as one SEPP does not fully take precedence over the other. For example, the Amendments in Schedule 3 which are proposed to Clause 8 of the Infrastructure SEPP is complicated in relation to clauses 11 & 12 of the CM SEPP. A Planning Practice Note should be provided to clarify this issue given the potential for consistency or inconsistency with other legislation is also a concern.

2. Draft Local Planning Direction - Section 117 Ministerial Direction

- Council supports the strengthening of the Section 117 Direction to ensure PPs do not consider increased development or more intensive land uses in coastal wetlands, littoral rainforest areas or coastal vulnerability areas (identified in the CM SEPP and through a study by the Relevant Planning Authority (RPA)).
- Council also supports that a PP may amend the CM SEPP maps in line with a Coastal Management Program or a Coastal Zone Management Plan.

3. Standard Instrument LEPs Amendment Management Order 2016

- Council views the removal of Clause 5.5 from the Standard Instrument LEP as unnecessary as it currently provides clear controls for coastal Councils.

State Environmental Planning Policy (Exempt and Complying Development Codes) Issues

There is concern that exempt development prescribed in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) allows a number of 'minor development' types to be undertaken in environmentally sensitive areas such as wetlands and rainforest identified in SEPP 14 and SEPP 26, without the need for consent. This issue needs to be considered through the CM SEPP and the review of the Codes SEPP.

Thank you again for the opportunity to comment on the draft CM SEPP and related documents, prior to their finalisation. It is hoped that DP&E will fully consider the comments raised in this submission and amend the proposed draft CM SEPP and related documents accordingly.

In this regard, we would welcome the opportunity to review the finalised CM SEPP and accompanying mapping, prior to being made effective.

If you need further information about this matter, please contact Danielle Ratcliffe, Planning & Development Services Group on (02) 4429 3482. Please quote Council's reference 31157E (D16/403025).

Yours faithfully



Gordon Clark
Strategic Planning Manager
30 January 2017

Attachment 1 – Mapping Anomalies (D17/4065)

Draft Coastal Management SEPP 2016 Submission – Shoalhaven City Council
Attachment 1 - Mapping Anomalies

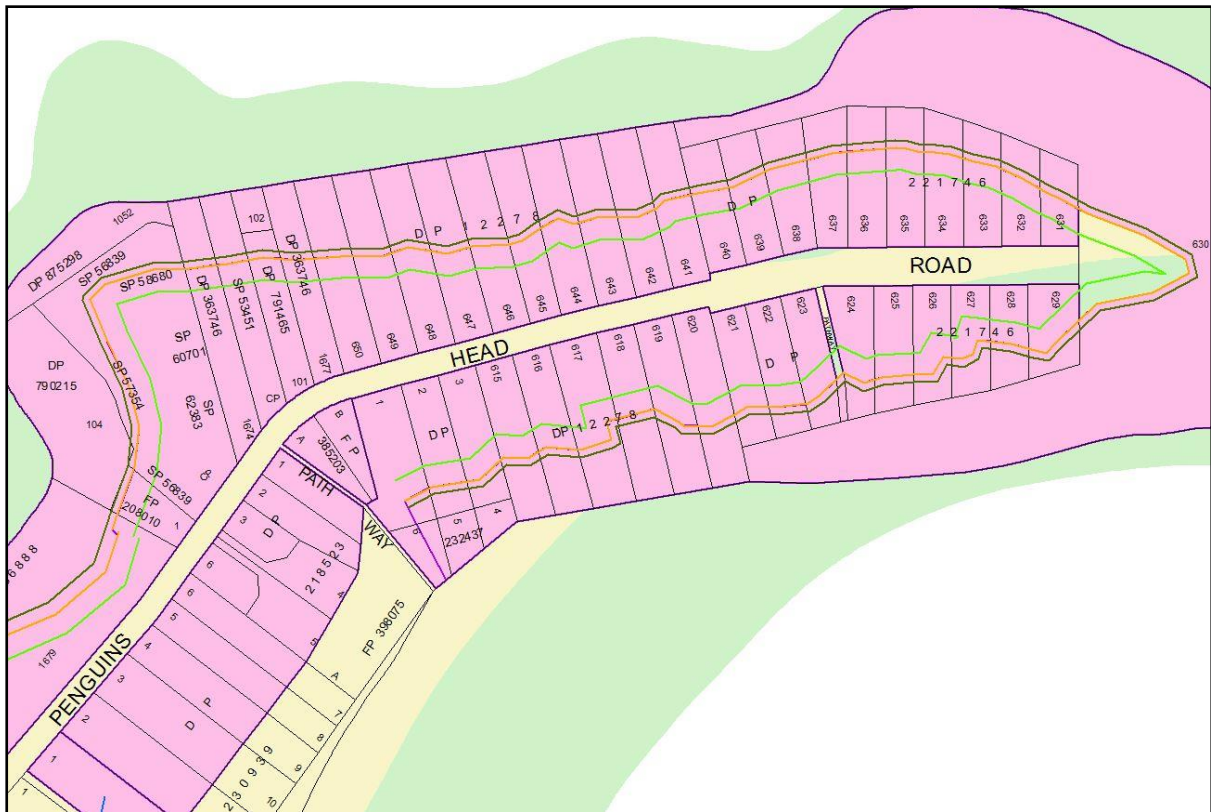


Figure 1 – Penguin Head Road & Eastbourne Avenue – Culburra Beach

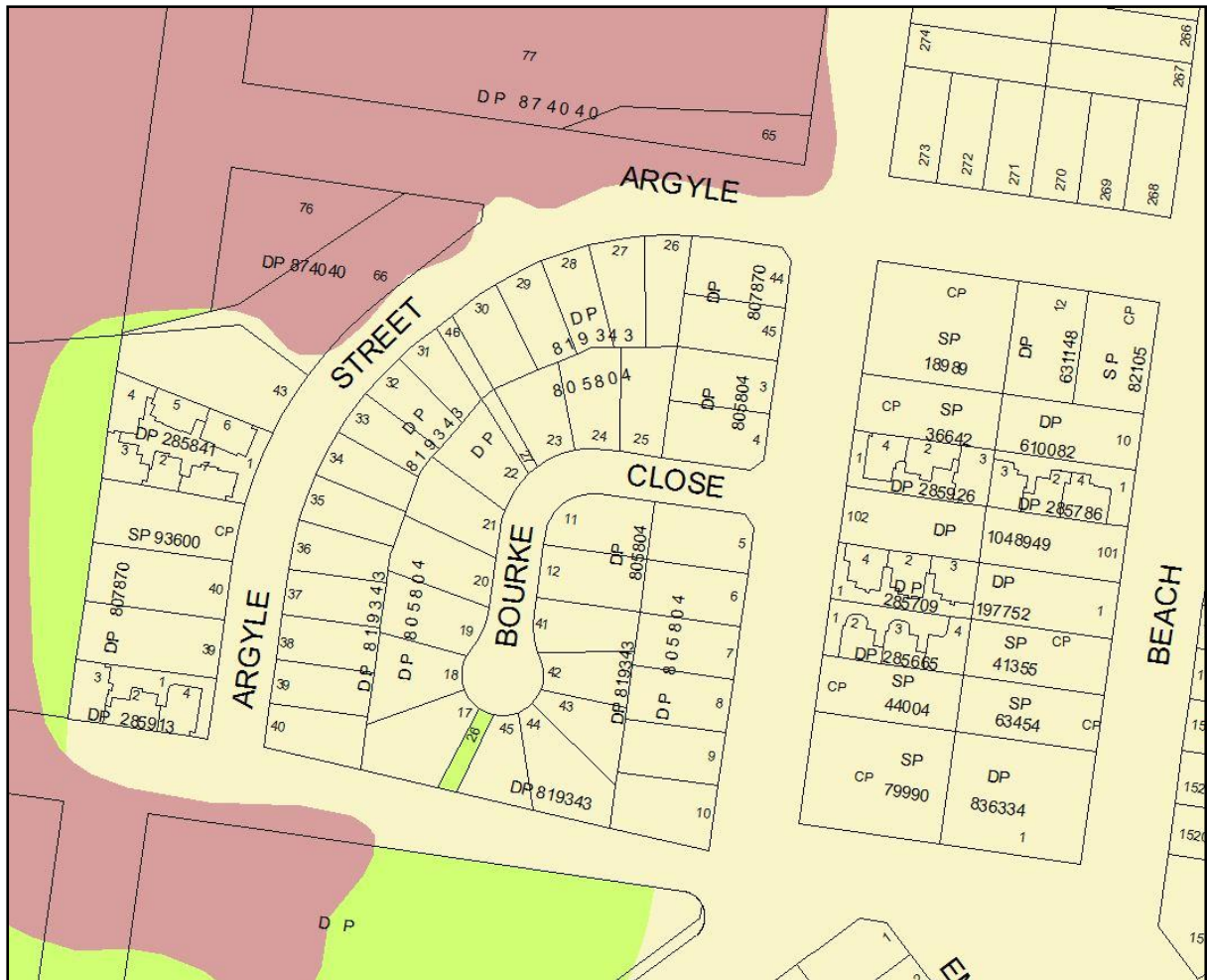


Figure 2 – Coastal Wetlands – Bourke Close – Vincentia

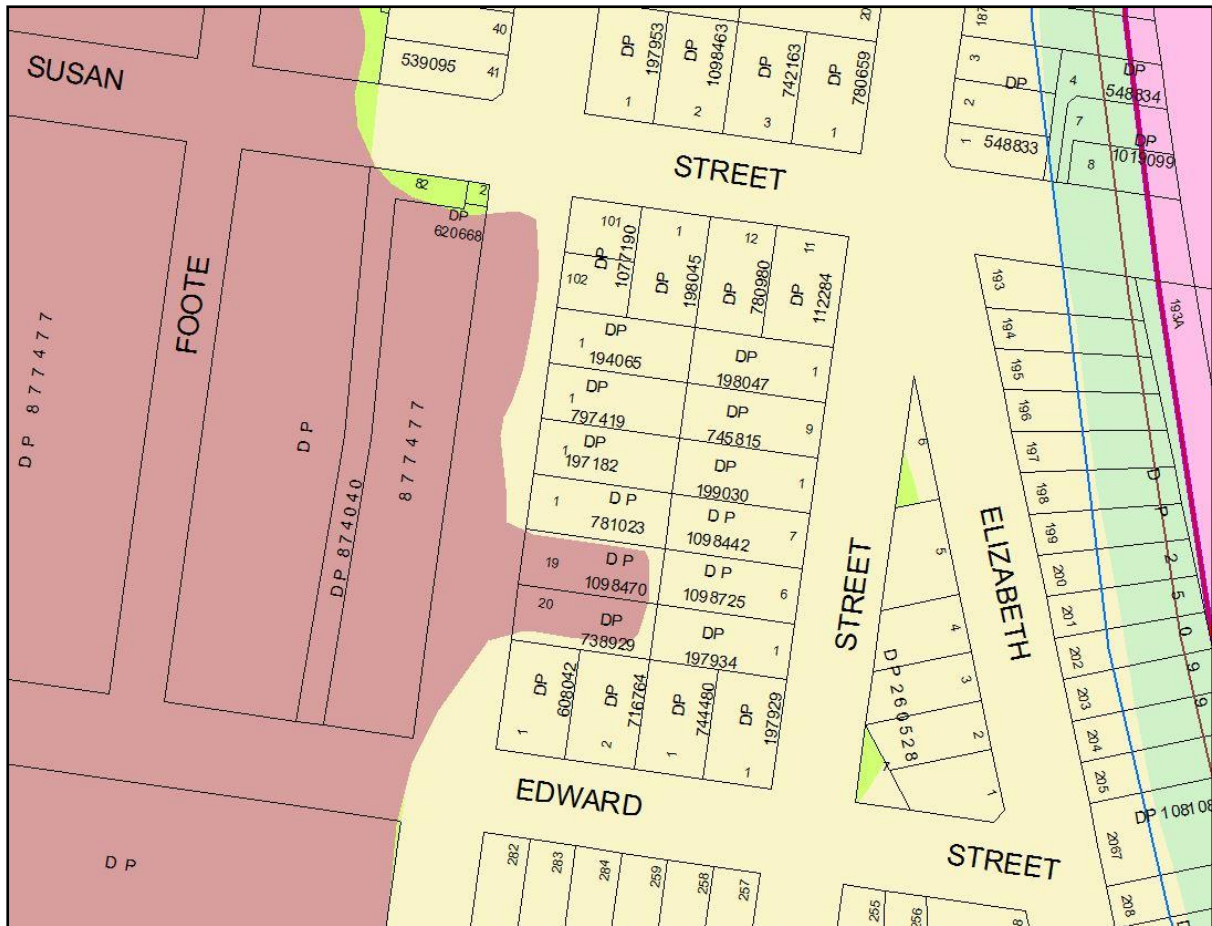


Figure 3 – Coastal Wetlands – Owen Street – Huskisson

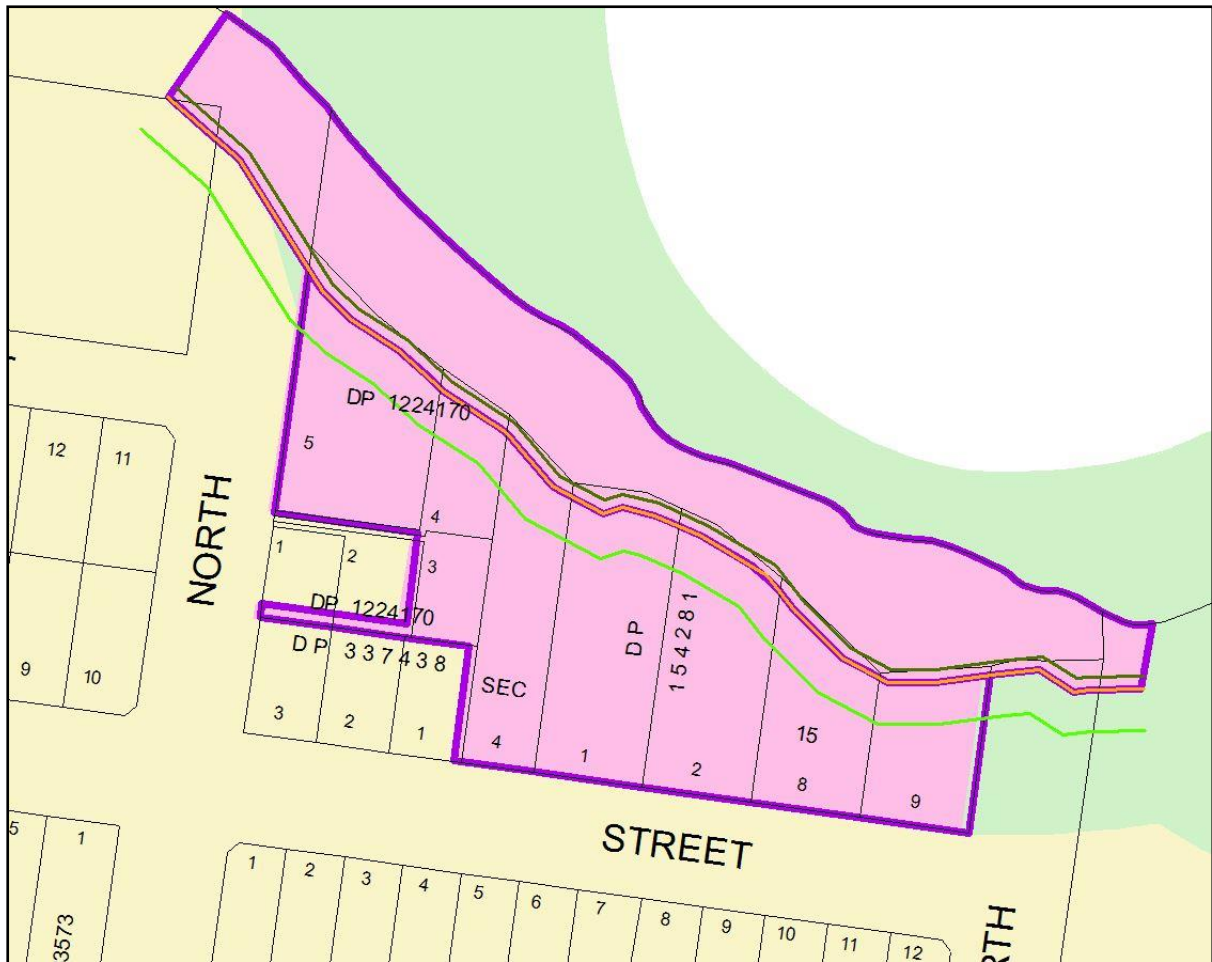
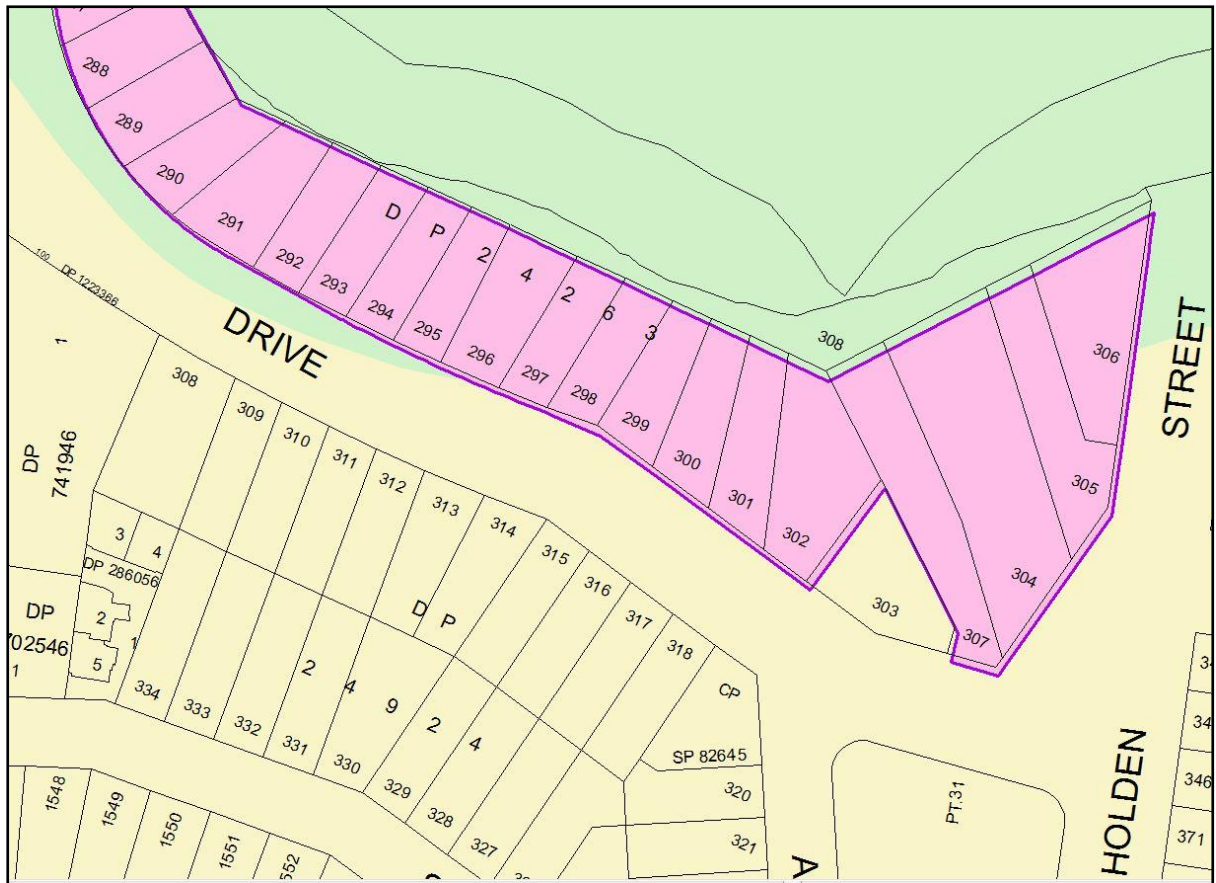


Figure 4 – Burrill Street North & Nurrawallee Street – Ulladulla



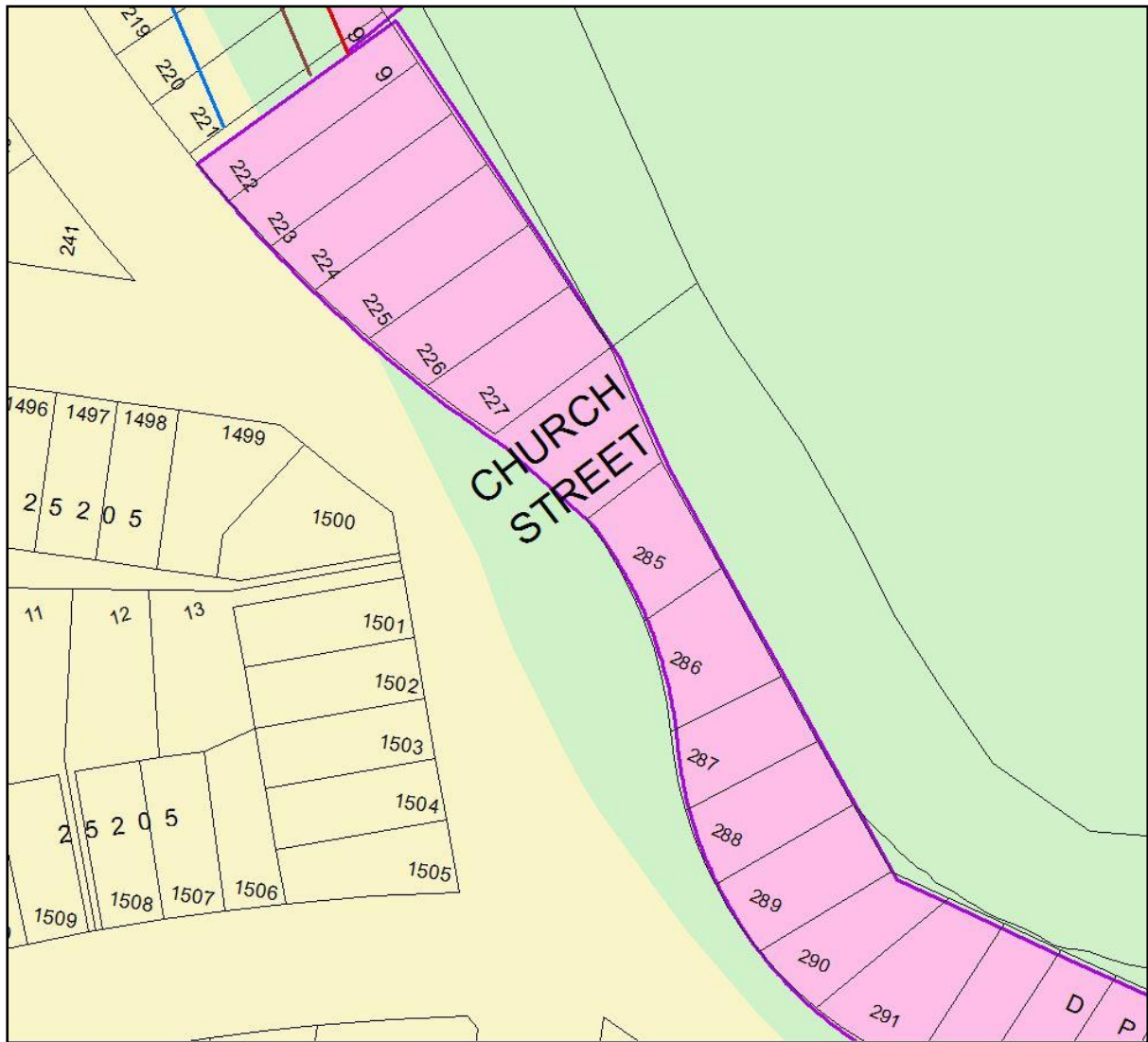


Figure 6 – Elizabeth Drive – Vincentia – Map 2

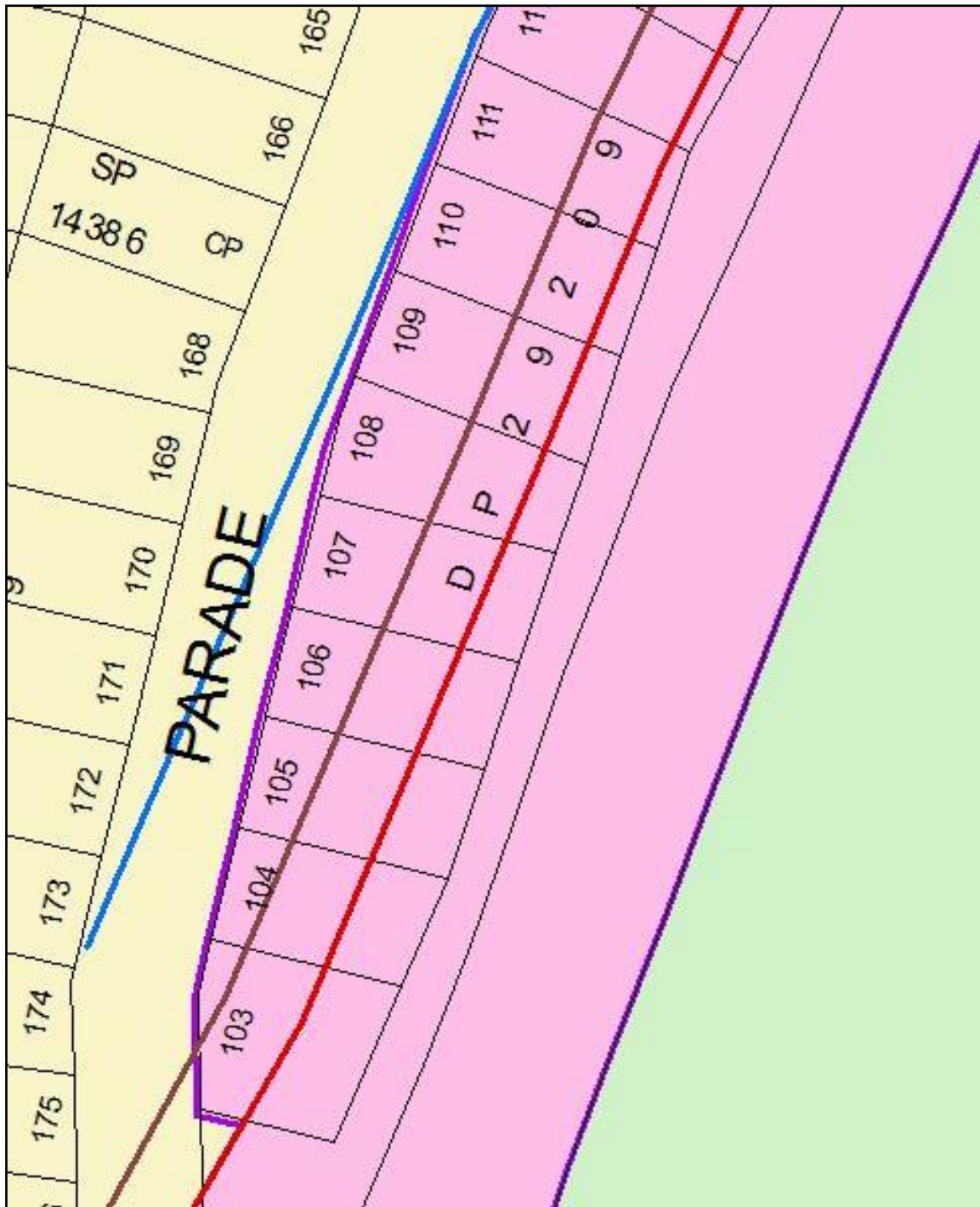


Figure 7 – Mitchell Parade – Mollymook Beach – Map 1

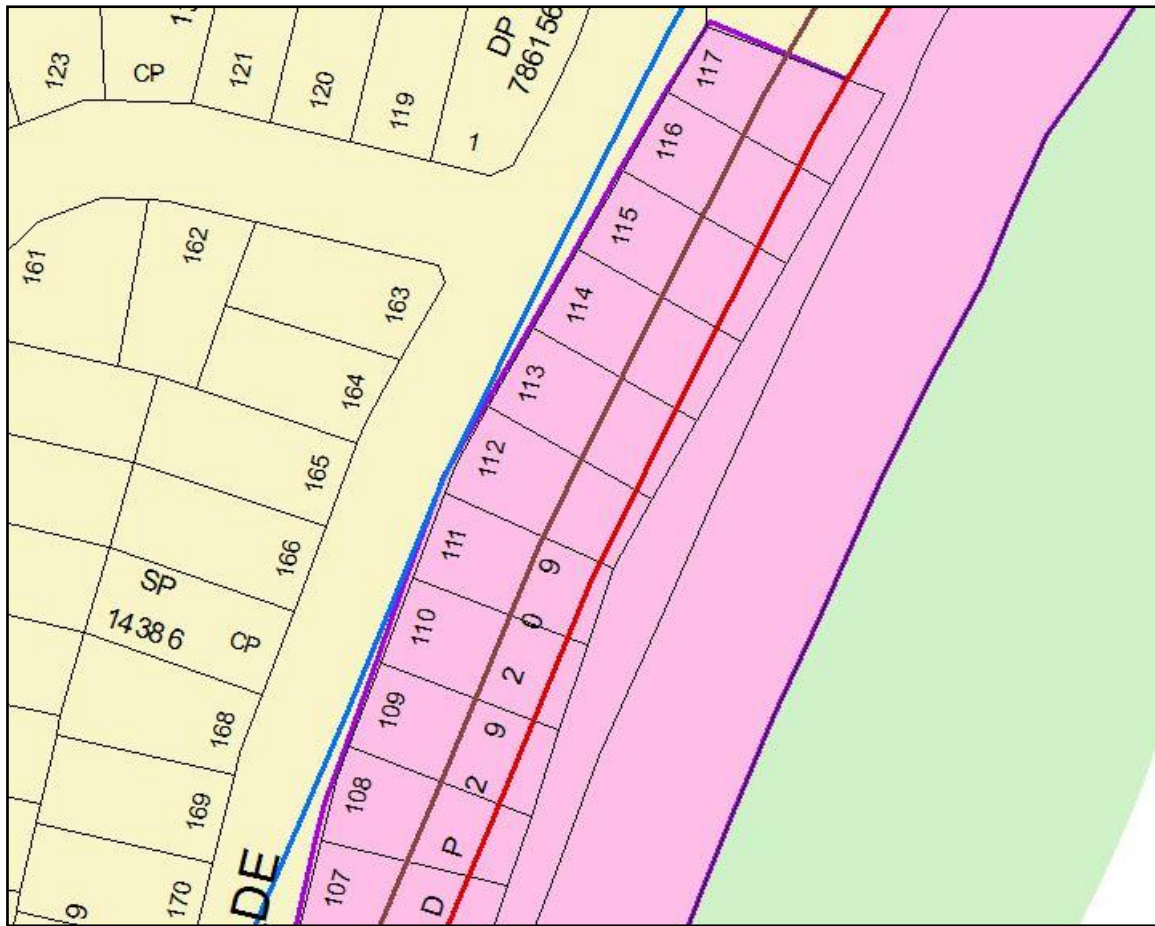


Figure 8 – Mitchell Parade – Mollymook Beach – Map 2

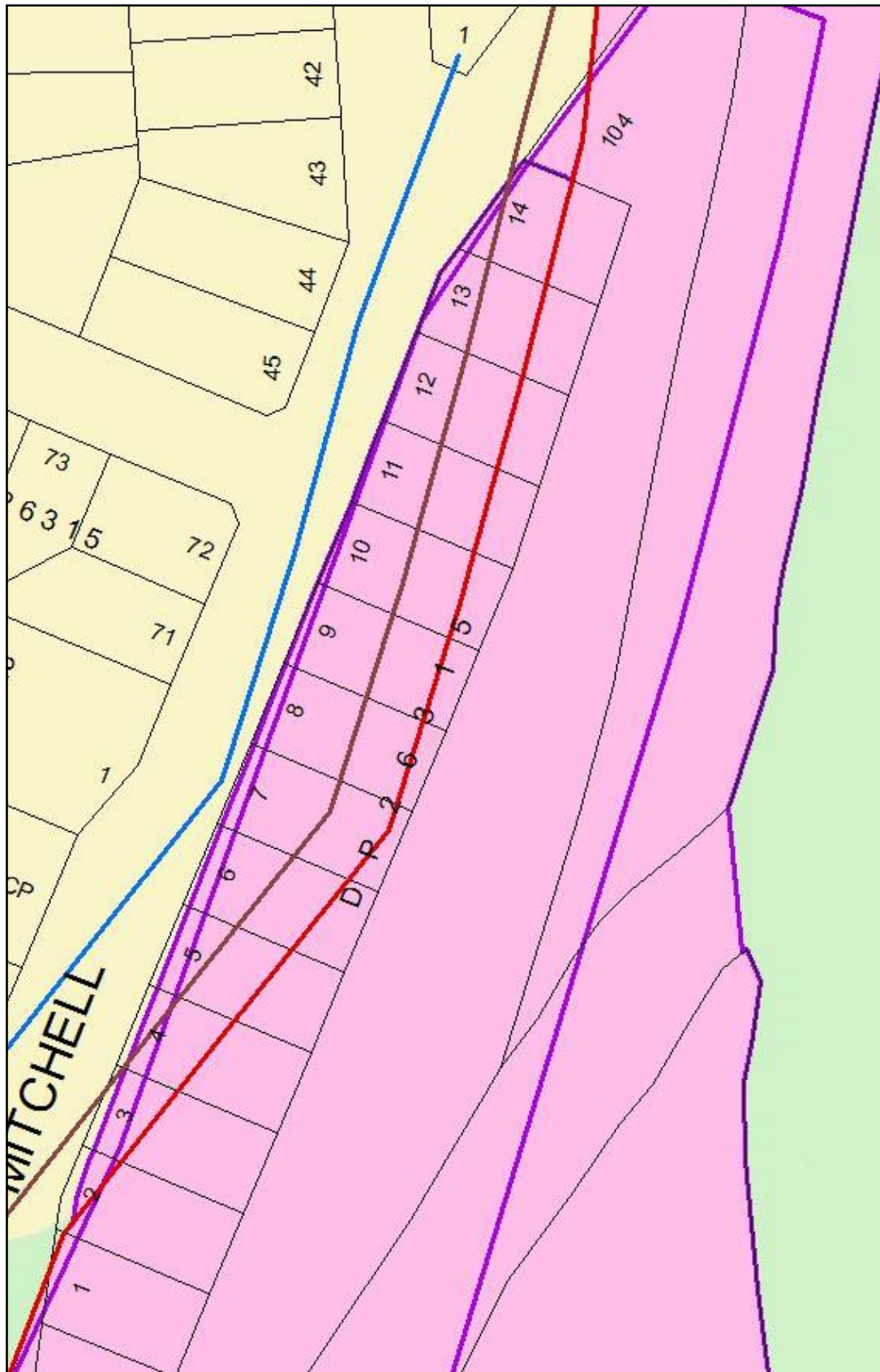


Figure 9 – Mitchell Parade – Mollymook Beach – Map 3

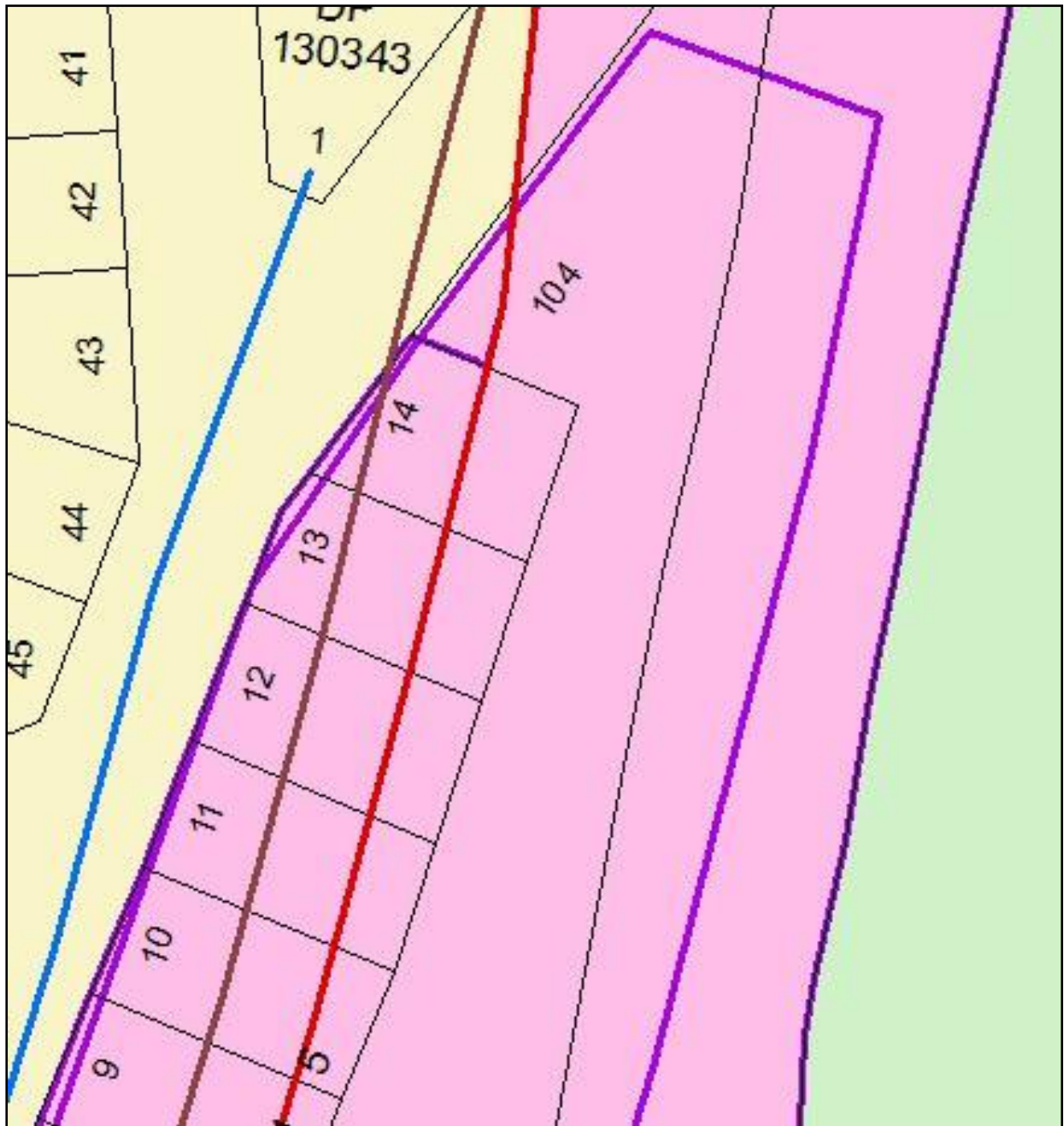


Figure 10 – Mitchell Parade – Mollymook Beach – Map 4

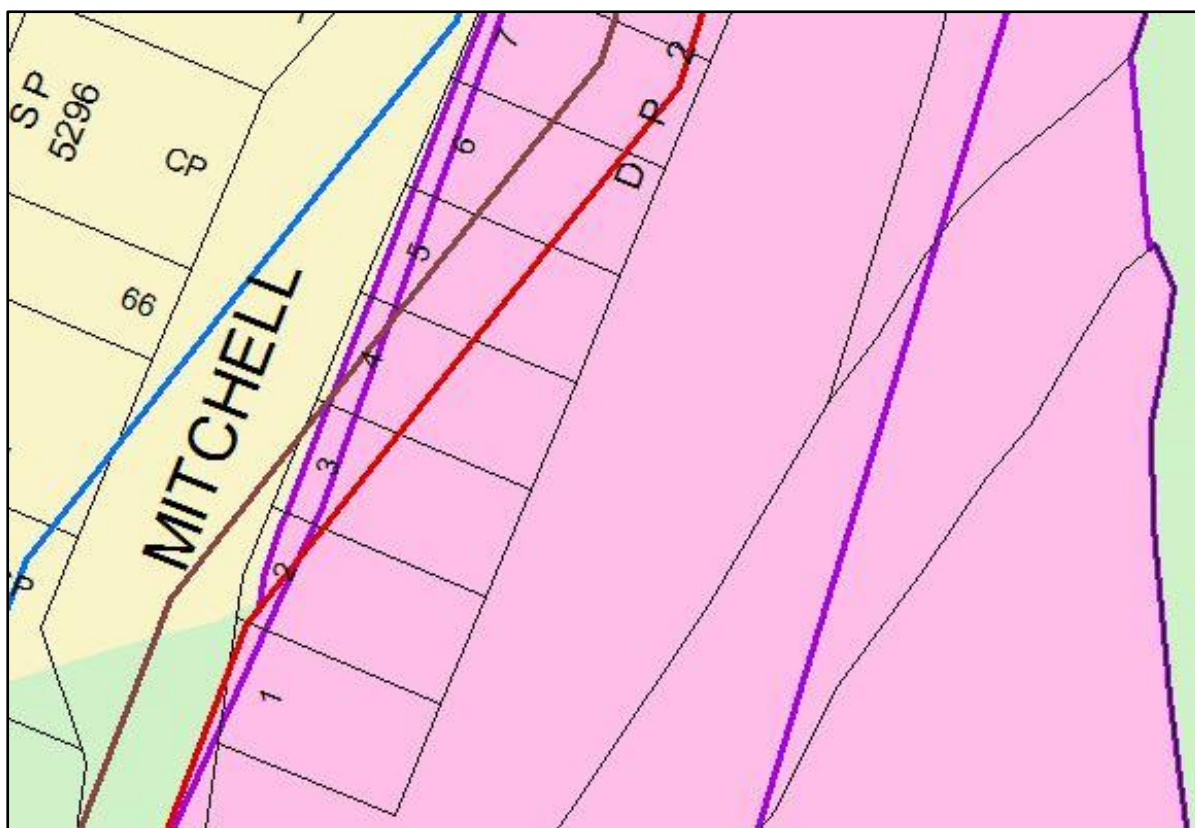


Figure 11 – Mitchell Parade – Mollymook Beach – Map 5

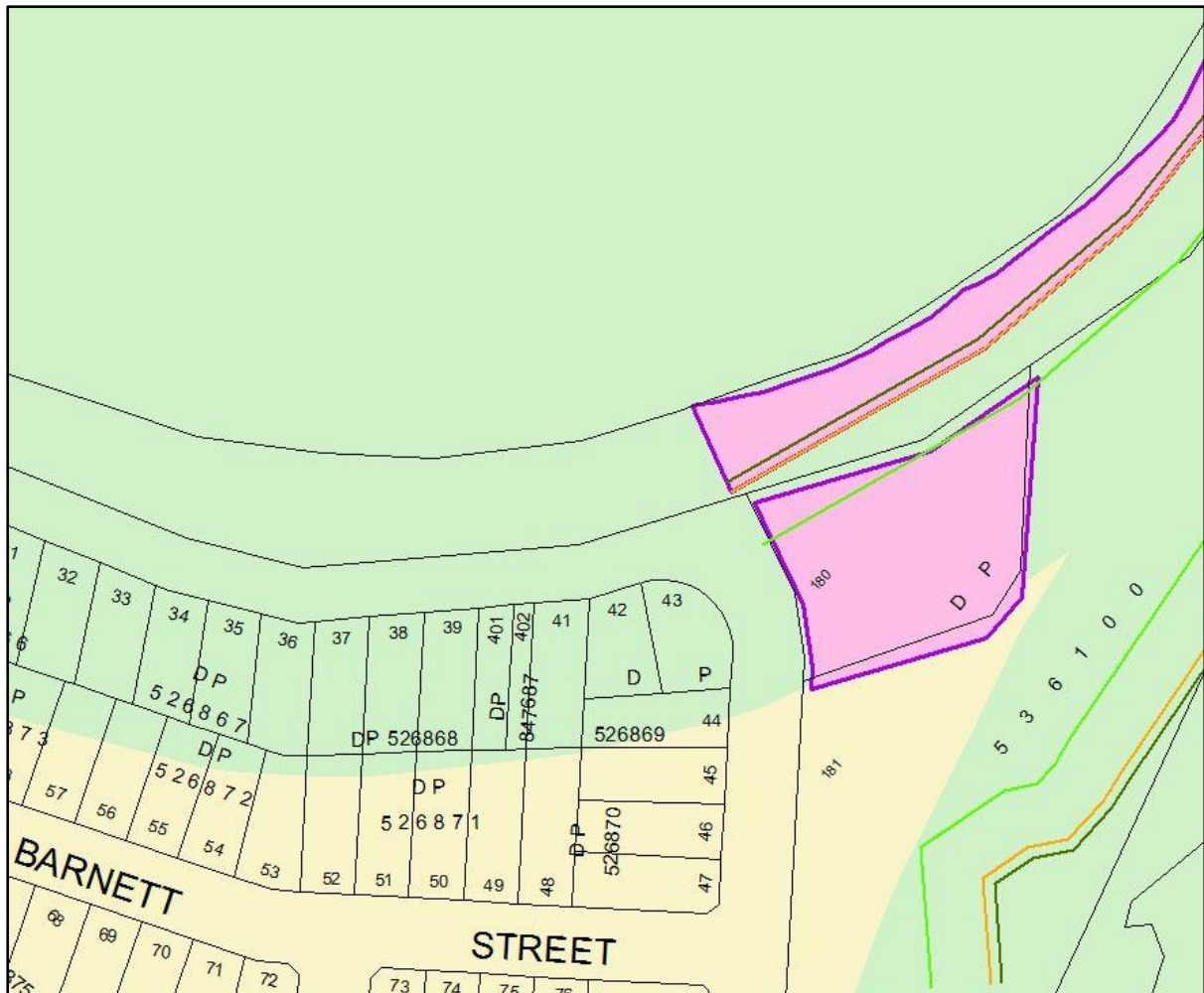


Figure 12 – Plantation Point Parade – Vincentia

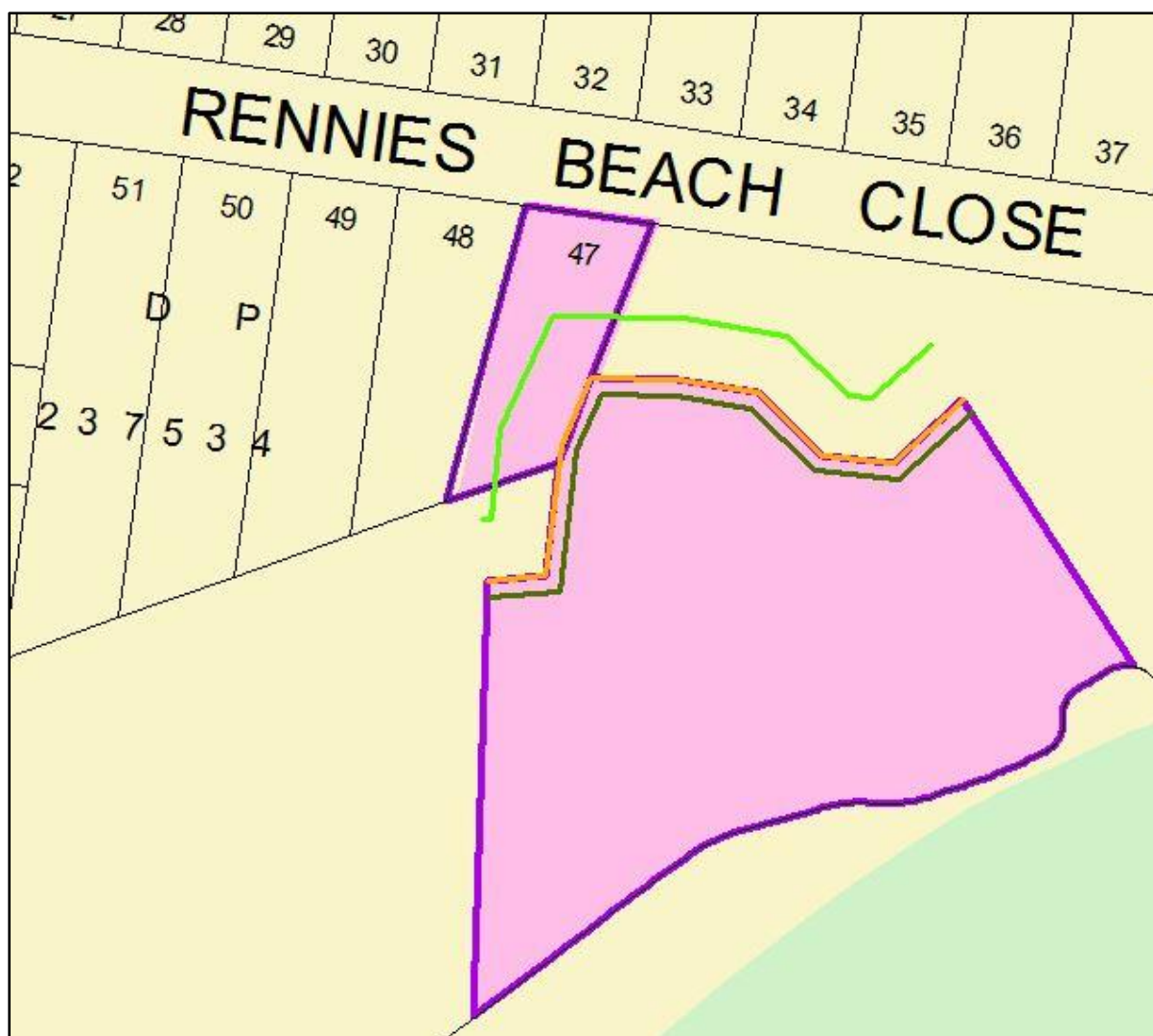


Figure 23 – Rennies Beach Close – Ulladulla

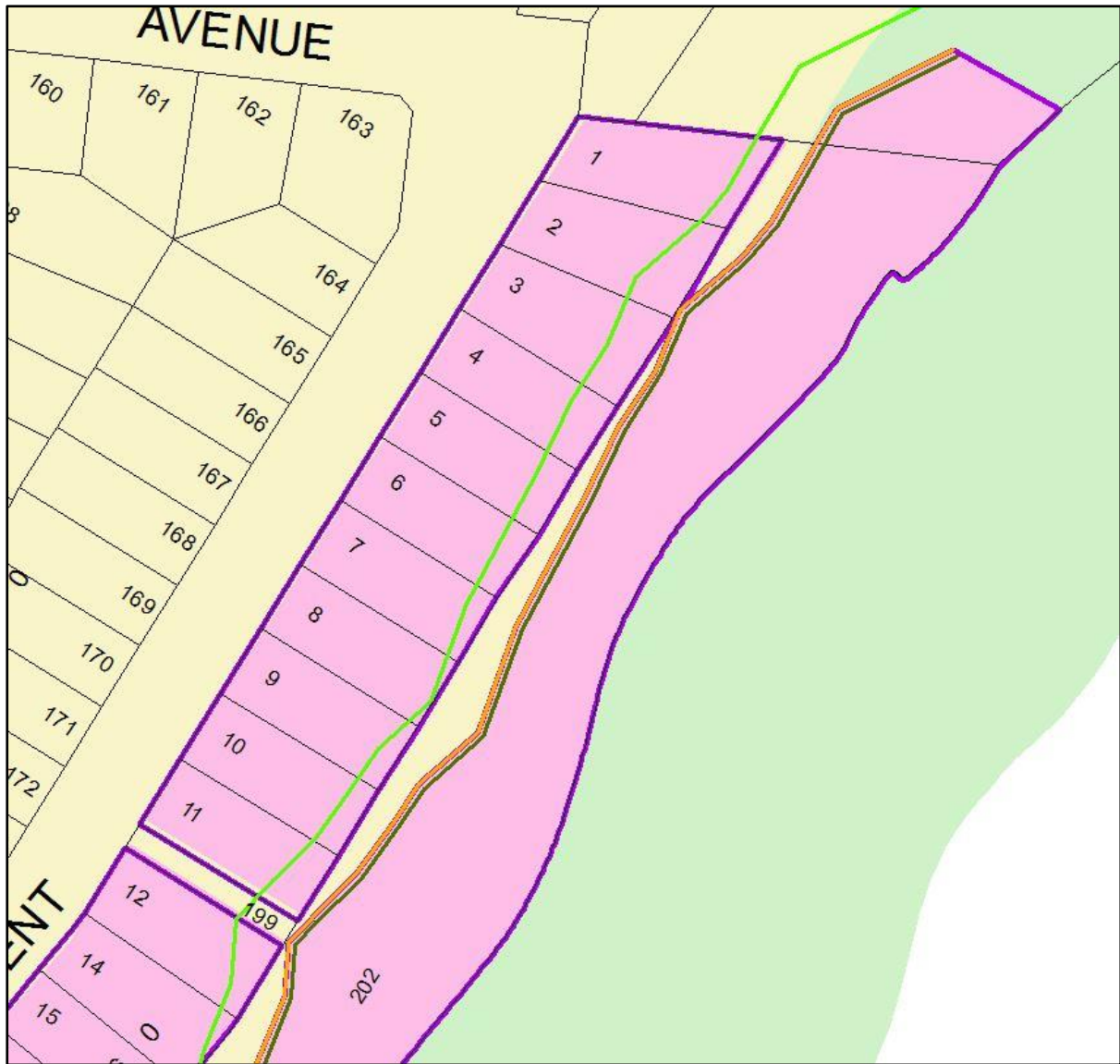


Figure 34 – South Pacific Crescent – Ulladulla – Map 1

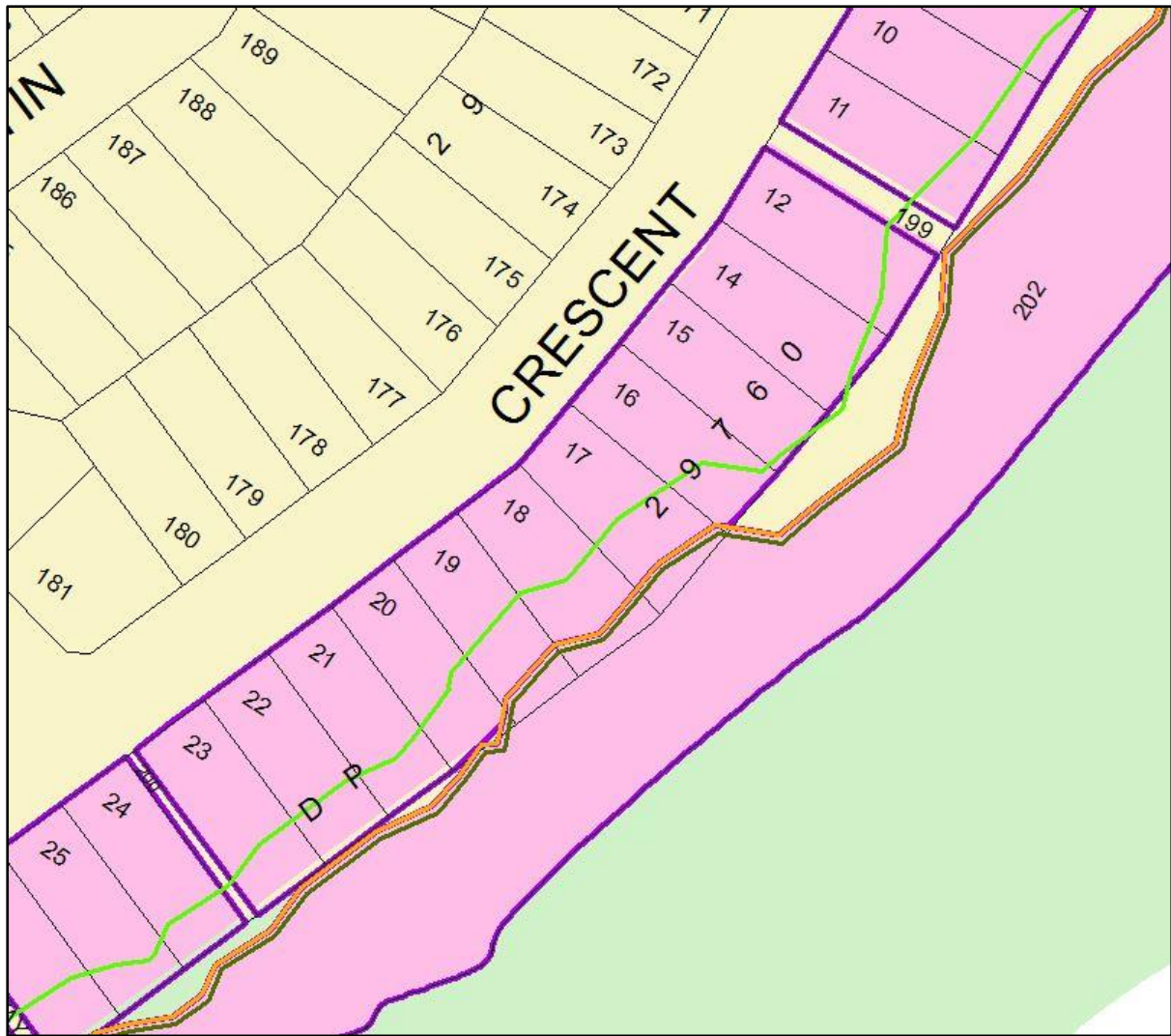


Figure 45 – South Pacific Crescent – Ulladulla – Map 2

