

21 March 2018

The General Manager
Port Stephens Council
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PLANNING DEVELOPMENT PROPERTY

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Dear Sir/Madam,

RE: Further consideration of s9.1 (s117) Direction 4.3 Flood Prone Land – 2 Lavis Lane, Williamtown NSW 2318

This letter has been prepared by KDC Pty Ltd (KDC) on behalf of Knightsbridge Estate Group Pty Ltd for Port Stephens Council (Council). It is prepared in response to Council's request for further consideration of s9.1 (previously s117) Direction 4.3 Flood Prone Land as part of the Planning Proposal lodged in 2016 for the rezoning of 2 Lavis Lane, Williamtown NSW.

1 Site Description

The site is located at 2 Lavis Lane, Williamtown and is legally known as Lot 21 DP 628819 and Lot 1 DP 1173212 (hereafter referred to as "the site".) The site is located on Nelson Bay Road, adjoining a new McDonald's establishment, on the roundabout at Lavis Lane/Cabbage Tree Road and Nelson Bay Road. The site is mapped inside a Flood Planning zone as per the Port Stephens Local Environmental Plan 2013 (LEP) Flood Planning Maps (refer to Figure 1).

Figure 1 – Port Stephens LEP Map Extract: Flood Planning Map (FLD_004)

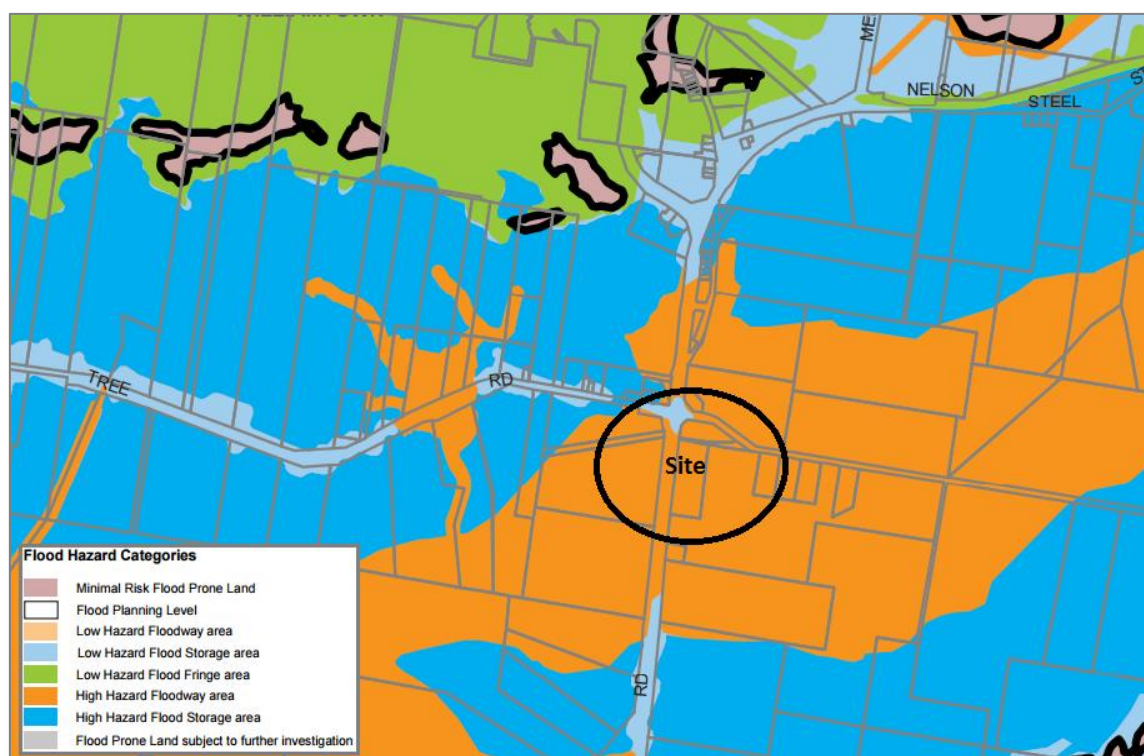


2 Background

In January 2016, on behalf of Knightsbridge Estate Group Pty Ltd, KDC lodged a formal submission in relation to the Draft Port Stephens Floodplain Risk Management Policy and Flood Hazard Maps, particularly the Flood Hazard Maps Part 1 – 5. The submission raised concern over the integration of the policy into environmental planning legislation, the mapping categories used, the impact of the policy on development assessment in the area and more specifically and the impact the policy would have on the future development of the site. A copy of the submission is attached at Enclosure A.

Under the Draft Port Stephens Flood Hazard Maps, the site was categorized as High Hazard Floodway Area (refer to Figure 2).

Figure 2 - Port Stephens Flood Hazard Map



It was considered that this categorisation was unwarranted due to site specifics such as the raised nature of the site and existing active approvals onsite.

The site has been provided with a Development Consent that permits 3 fast food restaurants, a carwash, a booking office, a tavern and 50 room motel. In addition to the approved developments listed above, a further development lot to the south of the land that the approved developments are on has approval for filling to be above the current flood planning level. It was considered that if the land was provided a High Hazard Floodway categorisation, the development potential of this site will be greatly affected.

It was also noted that the land that currently contains the new McDonald's building (north of the site) has been raised due to potential flooding impacts. A section of road adjoining the McDonald's building to the North West was given a Low Hazard Flood Storage categorisation. The McDonald's site and land to the south will be raised to a similar height as the Low Hazard Flood Storage land, and as such it was suggested that the subject site should be provided a similar Low Hazard Flood Storage categorisation.

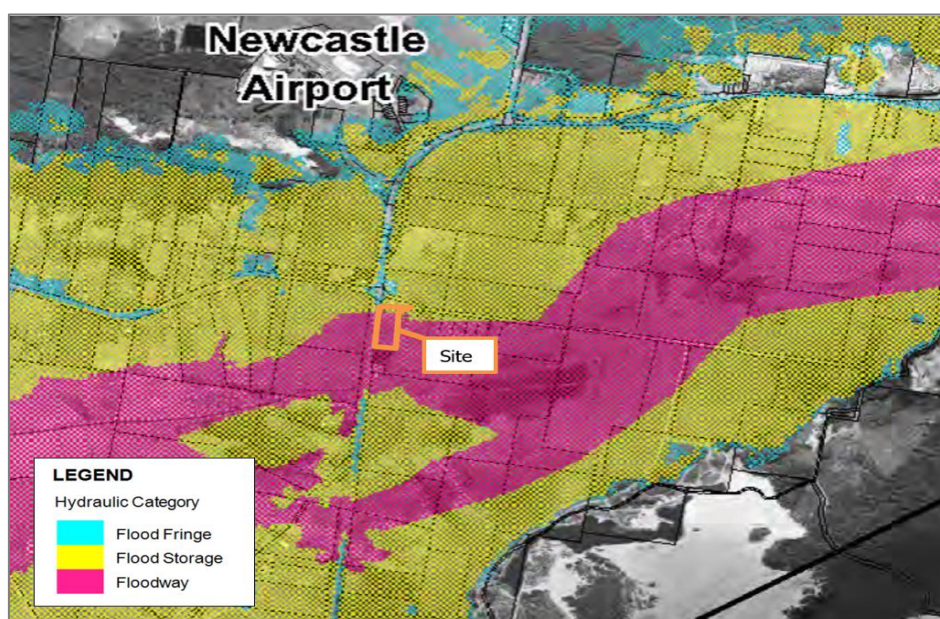
Given the approved developments on the subject site were underway and there was a raised McDonald's site already in existence in the area, it was suggested that the flood hazard mapping had not taken into account site specifics, current development and recently completed development.

The submission concluded that even if the category of the site was not changed, the proposed Policy and associated mapping should continue to facilitate development in high risk zones, particularly given the flood mitigation strategies that are available through appropriate site planning and development alternatives.

3 Williamtown Salt Ash Floodplain Risk Management Study and Plan

The Williamtown Salt Ash Floodplain Risk Management Study and Plan (the Plan) was adopted by Port Stephens Council on 12 December 2017 (refer to Figure 3). Under the Plan, the site is categorized as Floodway (pink) and Flood Storage (yellow).

Figure 3 – 1% AEP Design Event – Hydraulic Categories (Figure A – 7)



Once again, it is considered that site specifics were not taken into account in the production of the Flood Hazard Maps under the Plan. High level modelling has been utilized and has therefore incorrectly categorized the site as primarily Floodway. Notwithstanding, it is still considered that the ministerial directions are able to be adequately satisfied, as outlined below.

4 Ministerial Directions

The Environmental Planning and Assessment Act 1979 (EP&A Act) section 9.2(2) (previously section 117) contains a list of Directions issued by the Minister for Planning to relevant planning authorities. *Section 4.3* pertains to Flood Prone Land.

4.1 Section 4.3 Flood Prone Land

Where this direction applies

(2) This direction applies to all relevant planning authorities that are responsible for flood prone land within their LGA.

When this direction applies

(3) This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

As stated above, the site is classified as flood prone land under the Port Stephens LEP and Williamtown Salt Ash Floodplain Risk Management Study and Plan. A Planning Proposal has been lodged to amend the Port

Stephens LEP to permit the use of a “service station” at the site. This will enable employment generating commercial activity to occur on a site that is accessible, well suited to non-residential land use and will provide a much needed service to the area in the future. As such, the provisions of Section 4.3 are applicable to the site and will be assessed below.

Objectives

(1) *The objectives of this direction are:*

(a) to ensure that development of flood prone land is consistent with the NSW Government’s Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and

(b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

What a relevant planning authority must do if this direction applies

Provision	Comment	Compliant
A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).	It is proposed that a site specific flood study (“Local Flood Study”) be undertaken post Gateway determination. This Study will specifically assess the existing and approved raised levels of surrounding ground levels in determining the Flood Hazard of the site. The scope of the Study will be to demonstrate that the planning proposal is consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005.	Y
A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.	The planning proposal seeks to allow the use of a service station in RU2 Rural Landscape and is therefore compliant with this provision.	Y
A planning proposal must not contain provisions that apply to the flood planning areas which: (a) permit development in floodway areas,	It is noted that existing and currently approved future ground levels are significantly higher than the levels that have been modelled. As such a Local Flood Study will be undertaken to provide further detail on the flood categorisation of the site. The Local Flood Study will provide detail on the impacts of the	Y

<p>(b) permit development that will result in significant flood impacts to other properties,</p> <p>(c) permit a significant increase in the development of that land,</p> <p>(d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services,</p> <p>(e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.</p>	<p>Planning Proposal on the surrounding area.</p> <p>The planning proposal does not propose a significant, unreasonable increase in the development of the site.</p> <p>The proposed use of the site as a service station will be privately funded and not require substantial government spending. The Local Flood Study will also be able to provide evidence of this through identifying any offsite impacts.</p> <p>Development of the service station will not be carried out without development consent.</p>	
<p>A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p>	<p>The planning proposal is not in regard to residential land.</p>	<p>N/A</p>
<p>For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p>	<p>The Local Flood Study to be undertaken post Gateway determination will demonstrate that the planning proposal is consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005.</p>	<p>N/A</p>

As stated above, it is proposed to undertake a Local Flood Study for the site once Gateway determination has been obtained. Due to the ground levels of the site, it is anticipated that the Study will recategorize the site. The flood category of the site will comply with the s177 directions outlined above and will demonstrate that the proposal is suitable for the site.

5 Conclusion

In conclusion, it is considered that the Williamstown Salt Ash Floodplain Risk Management Study and Plan has incorrectly categorised the site as within a Floodway due to utilizing outdated and high-level flood modelling. Notwithstanding this, it is considered that section 117 of the EP & A Act 1979 (Ministerial Directions) can be adequately satisfied through the undertaking of an updated site specific Local Flood Study post Gateway determination. It is anticipated that the Study will appropriately recategorise the site. It is therefore requested that Council resolve to support this Planning Proposal and forward it to the Department of Planning and Environment for Gateway Determination.

Yours Sincerely



Patrick Quinlan
Senior Planner
KDC Pty Ltd

Enclosures:

Enclosure A - Submission to Draft Port Stephens Floodplain Risk Management Policy and Flood Hazard Maps

Enclosure A – Submission to Draft Port Stephens Floodplain Risk Management Policy and Flood Hazard Maps

KDC Pty Ltd

29th January 2016

The General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Dear Sir/Madam,



RE: Submission to Draft Port Stephens Floodplain Risk Management Policy and Flood Hazard Maps

We wish to make a formal submission to Council on behalf of our client Knightsbridge Estate Group Pty Ltd, in relation to the Draft Port Stephens Floodplain Risk Management Policy and Flood Hazard Maps. The submission below is reliant on the information provided with public notification which is identified as:

- Flood Hazard Maps Part 1-5; and
- Floodplain Risk Management Policy.

Floodplain risk planning approach across each statutory planning layer

Prior to finalising a legislative structure and ultimately the policy detail, there needs to be a clear understanding of the floodplain risk management planning outcomes expected from each layer of statutory plans.

The approach should reflect the aims of the Floodplain Development Manual and best practice floodplain risk management. This requires an assessment of risks to property and persons across a range of potential flood events within the whole floodplain as defined by the Manual. This would ideally be the outcome of a floodplain risk management study and plan (that deal with management strategies beyond planning) as required by the Manual. However, where not available and the severity of the planning issues permits, there may need to be less extensive studies to underpin each statutory planning layer. These matters need to be clearly resolved to avoid significant issues.

Integration of the Port Stephens Floodplain Risk Management Policy into Environmental Planning Legislation

The intended Policy should provide clear direction to Port Stephens Council as what is required to be achieved within subordinate statutory plans, when floodplain risk management plans are required, the level of detail expected when preparing such plans, and what to do when flood risk information is not available. This should be achieved by outlining basic policies within the proposed NSW Planning Policy supported with technical guidelines. The technical guidelines need to be clear when providing direction for development assessment issues and the preparation of supporting documents.

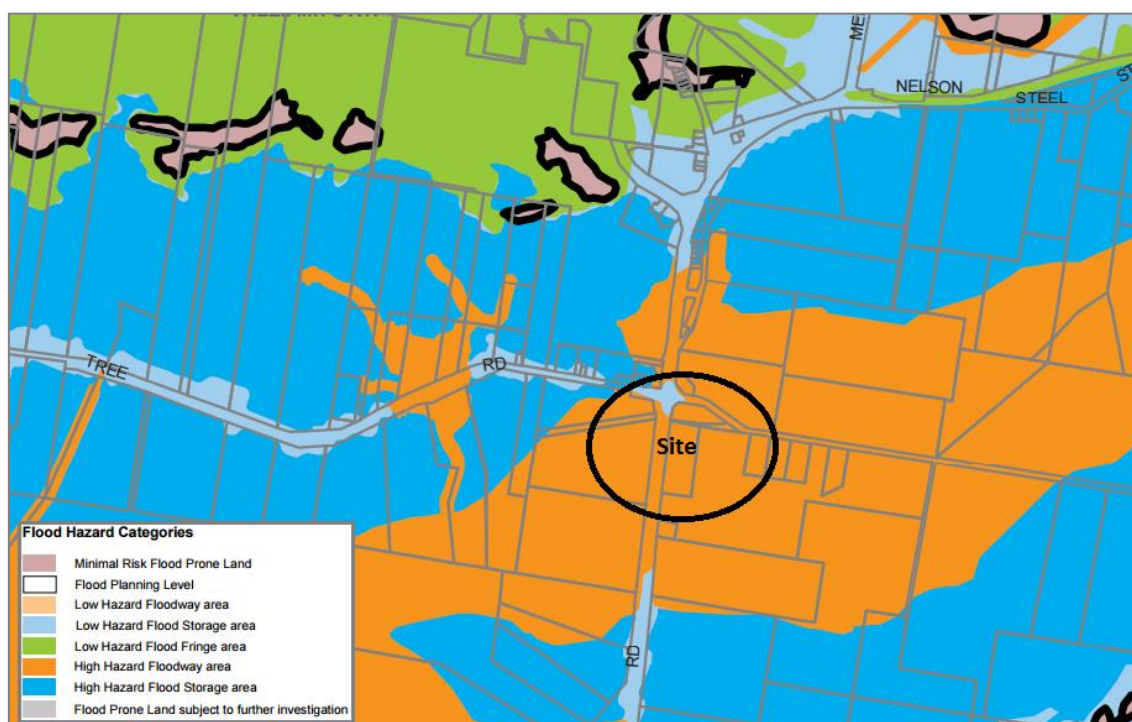
Mapping of Flood Areas

The range of flood maps could be simplified to one that shows the three flood risk zones for main riverine flooding, with an application of the above approach. To avoid delays to the planning process other lands that are shown by way of preliminary assessment as potentially flood liable could be shown as flood investigation areas. Flood mapping could also include lands subject to known overland flow flooding, being included within the definition of flooding within the Floodplain Development Manual.

Future Development Potential – 2 Lavis Lane, Williamtown

We represent our client Knightsbridge Estate Group Pty Ltd who owns Lot 21 DP 628819 and Lot 1 DP 1173212 (closed road portion of Lavis Lane), No. 2 Lavis Lane, Williamtown, hereafter referred to as “the site”. We wish to raise concerns regarding the proposed flood categorisation of the site and land in the vicinity of the site, as proposed in Port Stephens Draft Floodplain Risk Management Policy, which is currently on public exhibition (refer to the figure below).

Figure 1 – Subject Area



The site is located on Nelson Bay Road, adjoining a new McDonald’s establishment, on the roundabout at Lavis Lane/Cabbage Tree Road and Nelson Bay Road. The site is identified within a High Hazard Floodway area in the proposed flood hazard maps. Given the categorisation of the land and surrounding properties during the initial flood study, greater consideration should be given to low risk developments in high hazard flood zones, particularly for commercial and industrial developments, as opposed to simplified maps indicating flood risk zones. This would facilitate appropriate development, while also ensuring public safety.

The site is located near the intersection of Nelson Bay Road and Lavis Lane, in close proximity to Newcastle Airport. This is a strategic location at the junction of key links from the F3 Freeway and from Newcastle. Newcastle Airport is the 12th busiest airport in Australia accommodating over 1.2 million passengers a year.

Most people travelling to and from Newcastle Airport do so by private vehicle, taxi/hire car service, or bus service. The majority of people utilising the airport will travel through the precinct identified on the attached plan. The opportunity to provide service and tourist related facilities within this precinct will bring with it significant economic benefits to the LGA. Future development should reflect its identity as a gateway to Newcastle, Port Stephens, and the Hunter Valley.

Land in the vicinity of the RAAF Base Williamtown and Newcastle Airport has been identified as having the potential for regionally significant employment generating development to meet the demands of the expected population growth forecast by the Lower Hunter Regional Strategy. The Defence and Airport Related Employment Zone (DAREZ) at Williamtown was subsequently identified through a Land Use and Development Strategy (2007) which provides for the staged development of the DAREZ Business Park over the next 10-25 years.

The DAREZ Business Park will provide opportunities for development in the commercial, industrial and technological fields in close proximity to, and having strong supportive synergies with, the existing RAAF Base and Airport facilities (DAREZ Strategy, GHD 2007).

The large majority of employees and visitors to the area for either business related trips or recreation will pass through this precinct to access Newcastle or the Hunter Valley. It is also envisaged that transient workers will be required within the DAREZ Business Park from time to time, in addition to those workers who already provide unique services to the RAAF Base. This land provides the opportunity for accommodation and facilities to service their needs in close proximity to the RAAF Base and Newcastle Airport. Development upon this land is not intended to compete with the facilities to be provided within the DAREZ Business Park, rather it would provide complementary support services.

The site is located to the south east of the DAREZ study area and is strategically located close to key road links to Newcastle and the F3 Freeway. This strip along Nelson Bay Road, south of Newcastle Airport and RAAF Base Williamstown, provides a unique opportunity for development to provide support services and facilities for visitors to the Region and workers associated with the DAREZ Business Park. Food outlets, taverns, accommodation facilities and other service and hospitality related activities are compatible with the environmental limitations of the land and the adjoining employment generating development lands. The proposed Floodplain Policy will restrict development opportunities due to a high risk flood categorisation imposed on the area. The proposed Flood Policy and associated maps should be changed to reflect a more supportive approach to development within this area, rather than by sterilising this precinct.

It is noted that the land that currently contains the new McDonald's building has been raised due to potential flooding impacts. It is further noted that the development consent issued for the subject site permits for ground levels to be raised and compacted, which is currently underway. A section of road adjoining the McDonald's building to the North West has been given a Low Hazard Flood Storage categorisation. It is suggested that the McDonald's site and land to the south that will be raised to a similar height as the Low Hazard Flood Storage land, and as such the subject site should be provided a similar Low Hazard Flood Storage categorisation.

The site has been provided with a Development Consent that permits 3 fast food restaurants, a carwash, a booking office, a tavern and 50 room motel. The Development Consent provides for a flood level that the proposed flood policy will not have an impact upon and as such will impact on the relevance of the flood hazard mapping. Further to the approved developments listed above a further development lot to the south of the land that the approved developments are on has approval for filling to be above the current flood planning level. If the land is provided a High Hazard Floodway categorisation the development potential of this site will be greatly affected. Given the approved developments on the subject site are underway and there is a raised McDonald's site already in existence in the area, it would suggest that the flood hazard mapping has not taken into account current development and recently completed development within the Floodplain Risk Management Policy.

We propose the above mentioned development considerations for the site and surrounding area be taken into account as part of the Draft Port Stephens Floodplain Risk Management Policy.

Impact on Development Assessment

While we understand that this Policy is necessary and well overdue, considering the flood risk to residents of the Port Stephens LGA, the Policy should not have adverse impacts on the process and length of development assessment. A policy structure that allows for the application of different flood planning levels for different elements of a development to achieve positive planning outcomes should be implemented. Accordingly, the Policy should still facilitate development, particularly surrounding commercial land uses.

The study maps highlight which properties are expected to be affected by flooding. Even if a small portion of the property is affected, the whole property area will be classified as affected. Development controls are applied to a whole property and cannot be split, regardless of flood extent, however application of the control depends on where on the property the proposed development is located, and what type it is.

We note, Councils have a responsibility for identifying and then managing the risk to life and property from flooding, and have a duty of care to disclose this information to the community. Additionally, Council's catchment wide flood study represents significant advances on previous site based investigations, which all members of the community are able to access is significantly important. However, in the context of promoting good planning outcomes, it is important Council Development Assessment Officers consider reasonable forms of development on flood prone affected lands. Considering there are a range of risk management approaches to development, designed to ensure appropriate levels of risk to private property and public infrastructure, and risk to life issues, are managed as part of the planning process and the delivery of infrastructure. This should be noted particularly for land in the vicinity of the RAAF Base Williamstown and Newcastle Airport, as it has been identified as having the potential for regionally significant employment generating development to meet the demands of the expected population growth forecast by the Lower Hunter Regional Strategy.

Flood Mitigation

There are a number of development options which can be adopted to reduce flood constraints on development potential. On a small scale, these may include:

- Flood protection bunds around fields or communities;
- Road/rail culverts to convey minor streams and drains;
- Local land drainage and river diversion works, especially for water supply and abstraction purposes;
- Constructing buildings on raised ground;
- Constructing buildings on stilts (with storage underneath);
- Using flood resistant materials;
- On-site flood secure locations;
- Constructing buildings away from areas that are subject to erosion, for example river banks.
- Local flood storage areas, to store floodwater from local runoff;
- Build-up local embankments to a height above the last flood water level;
- Plant vegetation on the embankments to help stability and reduce erosion.

Conclusion

As previously stated, we understand the importance of this strategy in terms of public safety. Despite this, the categorisation applied to the subject site is firstly not considered to be warranted given the raised nature of the site and existing active approvals, and as such should be provided a Low Hazard Flood Storage category. Although in our opinion the risk category for the site should be altered, if the category being provided to the site is not changed, the proposed Port Stephens Floodplain Risk Management Policy and Flood Hazard Maps, should continue to facilitate development in high risk zones, particularly given the flood mitigation strategies are available through appropriate site planning and development alternatives. We ask these matters be taken into consideration when finalizing the proposed Flood Policy.

We also ask that the process for implementing the Port Stephens Floodplain Risk Management Policy and Flood Hazard Maps be undertaken in an efficient and timely manner, to achieve good planning outcomes in addition to managing the risk to life and property from flooding.

Yours Sincerely



Benjamin Young
Managing Director
KDC Pty Ltd