



Planning Proposal – Boundary realignments

**Proposed amendment to Port Stephens Local
Environmental Plan 2013 – Boundary Realignments**



FILE NUMBERS

Council: PSC2015 - 01491
Department: 15/16521

SUMMARY

Subject land: Port Stephens Local Government Area
Proponent: Port Stephens Council
Address: The planning proposal applies to land within certain zones in the Port Stephens Local Government Area.

BACKGROUND

This planning proposal has been prepared by Port Stephens Council in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* and the relevant Department of Planning and Environment (DP&E) Guidelines, including *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals*.

The planning proposal outlines the effect of, and justification for proposed changes to the Port Stephens Local Environmental Plan (PSLEP 2013). The aim of the planning proposal is to:

- allow certain boundary realignments to occur without development consent; and
- to facilitate minor boundary realignments that do not satisfy exempt provisions on lots where one or more resultant lots do not meet the minimum lot size as shown on the Lot Size Map, where the objectives of the relevant zone can be achieved and does not result in the creation of any additional lots or dwelling entitlements.

The planning proposal seeks to implement a Notice of Motion (dated 10 February 2015) by amending the PSLEP 2013 by adding exempt development provisions for certain boundary realignments and amending Part 4 by adding exceptions to minimum lot sizes for boundary realignments.

The current restrictions imposed on boundary realignments results in illogical development outcomes in many instances, where boundaries on the map do not relate to topographical or physical features of the land.

Boundary realignments on undersized lots are not currently a permissible form of development under the PSLEP 2013. Certain boundary realignments that meet a number of conditions, are permitted under the State policy – SEPP (Exempt and Complying Codes) 2008 without the requirement for gaining a development consent.

However, under the SEPP a boundary realignment on a lot or lots that do not meet the minimum lot size must result in each undersized lot increasing in

size at the completion on the subdivision (Clause 2.75(b)(iii)) . The requirement for all undersized lots to increase in size is, in most circumstances, numerically impossible. For this reason, the SEPP is impractical and cannot be used for the logical boundary realignment of undersized lots.

As such, Council is seeking to include certain boundary realignments in Schedule 2 – Exempt Development to enable these boundary realignments to occur without development consent.

In addition to allowing certain boundary realignments to occur without consent, the planning proposal seeks to permit, with consent, certain boundary realignments that do not meet the minimum lot size as shown on the Lot Size Map. Currently, such boundary realignments are not permissible under Clause 4.1(3) of the PSLEP 2013. The proposed amendment will allow for a merits based assessment of logical boundary realignment for lots that do not meet the minimum lot size.

Council considers the key issue in approval of such boundary realignment subdivisions is not the size of the initial or resultant lots, and whether they are larger or smaller than the minimum lot size on the Lot Size Map, but the potential impacts of the boundary adjustment, regardless of what zone applies to the land.

There are a number of standard clauses which have been used by various Councils to address the ‘boundary realignment issue’ in their Standard Instrument Local Environmental Plans and Port Stephens, via this planning proposal, is seeking a similar clause that allows greater flexibility and the facilitation of more desirable planning outcomes.

PART 1 – Objective of the proposed Local Environmental Plan Amendment

The objectives of the planning proposal are:

- to allow certain boundary realignments to occur without development consent; and
- to facilitate minor boundary realignments that do not satisfy exempt provisions on lots where one or more resultant lots do not meet the minimum lot size as shown on the Lot Size Map, where the objectives of the relevant zone can be achieved and does not result in the creation of any additional lots or dwelling entitlements.

PART 2 – Explanation of the provisions to be included in proposed LEP

The planning proposal aims to amend the Port Stephens Local Environmental Plan 2013 as follows:

- Adding the following to Schedule 2 Exempt Development:

Realignment of Boundaries

The Realignment of Boundaries pursuant to this Clause:

- a) must be of minimal environmental impact, and
- b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994), and
- c) cannot be carried out in a wilderness area (identified under the Wilderness Act 1987), and
- d) cannot be carried on land on which a heritage item or draft heritage item is situated.

This Clause applies to land in the following zones:

- i. RU1 Primary Production,
- ii. RU2 Rural Landscape,
- iii. RU3 Forestry,
- iv. E2 Environmental Conservation,
- v. E3 Environmental Management or
- vi. E4 Environmental Living.

The subdivision of land, for the purpose only of any one or more of the following, is exempt development specified for this clause:

- a) widening a public road,
- b) a realignment of boundaries:
 - i. that will not create additional lots or the opportunity for additional dwellings,
 - ii. that will not create a resultant lot that is more than 15% different in area to any lot;
 - iii. that will not result in one or more lots that are smaller than the minimum size specified in an environmental planning instrument in relation to the land concerned (unless the original lot or lots are already smaller than the minimum size),
 - iv. will not alienate water resources or access to water for agriculture, and

- v. that will not adversely affect the provision of existing services on a lot, and that will not result in any increased bush fire risk to existing buildings,
- c) rectifying an encroachment on a lot,
 - d) creating a public reserve,
 - e) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.
- Adding to Part 4 Principal Development Standards:

Boundary adjustments in certain rural and environmental protection zones

- (1) The objective of this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size but the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in the following zones:
 - i. RU1 Primary Production;
 - ii. RU2 Rural Landscape;
 - iii. RU3 Forestry;
 - iv. R5 Large Lot Residential;
 - v. E2 Environmental Conservation;
 - vi. E3 Environmental Management; or
 - vii. E4 Environmental Living.
- (3) Despite clause 4.1(3), development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that:
 - a) The subdivision will not create additional lots or the opportunity for additional dwellings, and
 - b) The number of dwellings or opportunities for dwellings on each lot after subdivision will remain the same as before the subdivision, and
 - c) The potential for land use conflict will not be increased as a result of the subdivision, and
 - d) If the land is in Zone RU1 Primary Production, RU2 Rural Landscape or Zone R3 Forestry – the subdivision will not have a significant adverse effect on the agricultural viability of the land, and
 - e) If the land is in Zone E2 Environmental Conservation, Zone E3 Environmental Management or E4 Environmental Living – the subdivision will result in the continued protection and long-term maintenance of the land.

- (4) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following:
- a) The existing uses and approved uses of other land in the vicinity of the subdivision,
 - b) Whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - c) Whether or not the subdivision is likely to be incompatible with a land use on any adjoining land,
 - d) Whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land, and
 - e) Whether or not the subdivision will alienate water resources or access to water for agriculture,
 - f) Whether or not the subdivision is likely to have a significant adverse impact on the environmental values of the land.
- (5) This clause does not apply:
- a) In relation to the subdivision of individual lots in a strata plan or community title scheme, or
 - b) If the subdivision would create a lot or lots that could itself be subdivided in accordance with clause 4.1, unless the boundary realignment involves a lot or lots already capable of being subdivided in accordance with clause 4.1, in which case no additional lots shall be created capable of being subdivided in accordance with clause 4.1

PART 3 – Justification for the Planning Proposal

SECTION A – Need for the Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is the result of a Notice of Motion to Council on 10 February 2015, in which Council resolved to immediately prepare the planning proposal.

A copy of the Notice can be found at **ATTACHMENT 1**.

The planning proposal is not considered to be linked directly to any study or report. However, the need for flexibility in regards to undersized lots is consistent with the historic pattern of development within Port Stephens and has been occurring for many years under previous planning instruments.

By enabling greater flexibility in regards to boundary realignment, Council will be able to facilitate more desirable planning outcomes.

Currently, Council can consider certain boundary realignment applications under Clause 4.3 of PSLEP 2013 and "minor boundary realignments" under the *State Environmental Planning Policy Exempt & Complying Development*

2008 (Code SEPP). However, the provisions of Clause 4.3 and the Code SEPP are generally restricted to allotments that can satisfy the minimum lot size provisions in the specified zone.

Under Clause 4.6 of PSLEP 2013 consent cannot be granted to boundary realignments where more than one lot is less than the minimum standard or where any proposed lot is less than 90% of the standard (for example, where the minimum lot size is 40ha, a lot cannot be created that is less than 36ha). Clause 12 of Port Stephens LEP 2000 did allow boundary realignments on undersized lots, such as those described by the proposed clause.

Since PSLEP 2013 has come into effect, Council has encountered situations where reasonable variations to the lot size have been proposed but these cannot be approved because the variation is greater than that permitted.

The need for Council to enable boundary realignments under certain circumstances where one or both lots do not meet the minimum lot size is based on the need to facilitate sound planning outcomes. For example, in a rural zone a boundary alignment is sought to where one or both lots are undersized. The realignment may be sought for a variety of reasons such as improved access, compliance with recently surveyed lot boundaries indicating encroachment of house or garage onto adjoining allotment etc. Flexibility is sought in these types of scenarios to enable boundary realignments which have planning merit, but will not result in any additional lots or dwelling entitlements.

Importantly, the intent of the boundary realignment clause is not to permit any additional lots or dwelling entitlements other than those that already exist.

In addition to the proposed Part 4 amendment, the planning proposal seeks to include exempt provisions that will negate the need for a development application for minor boundary realignments that have minimal environmental impacts, such as where it will not create a resultant lot that is more than 15% different in area to at least one pre-existing lot, the widening a public road or rectifying an encroachment.

The proposed exempt provision will address the issues of the impracticable SEPP, while upholding its integrity and intentions. Such boundary realignments were exempt development under repealed provisions.

The planning proposal seeks to ensure that minor, exempt boundary adjustments can result in lots smaller than the initial lot, on the basis that it is the potential impact of such boundary realignments that is crucial, not the initial or resultant lot size.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Under PSLEP 2013 there is limited flexibility for undersized lots in certain zones, despite being permissible under previous planning instruments.

Council considers that the planning proposal is the most effective means of facilitating the objectives as identified in Part 1. Amendments to PSLEP 2013 in accordance with this planning proposal will enable Council to facilitate logical planning outcomes which have strategic merit.

It is noted that a number of other Standard Instrument LEPs contain similar provisions to address the issues outlined in this planning proposal.

SECTION B – Relationship to Strategic Planning Framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

The planning proposal will potentially reduce the number of development applications being considered by Council and will enable a merits based assessment for appropriate boundary realignments on rural land that do not meet minimum lot size requirements. This will support agricultural and environmental outcomes, and this is consistent with the Lower Hunter Regional Strategy.

4. Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

Community Strategic Plan 2023

The proposal is consistent with the Community Strategic Plan 2023 as it will provide a practical solution for the assessment of development applications.

Port Stephens Planning Strategy

Council's Port Stephens Planning Strategy recognises the importance of rural land in the LGA. It seeks to ensure that current and future agriculture is not compromised by the fragmentation of rural land. The PPS also recognises the significance of environmentally sensitive land within the LGA. The planning proposal will not compromise the integrity of rural or environmental land in the LGA as it provides strict parameters for the proposed exempt development and consideration of boundary realignments on lots that are below the minimum lot size.

5. Is the planning proposal consistent with applicable state environmental planning policies?

There are no existing or draft State Environmental Planning Policies that prohibit or restrict the proposed amendments as outlined in this planning proposal. An assessment of relevant State Environmental Planning Policies against the planning proposal is provided below.

Table A: Relevant State Environmental Planning Policies

SEPP	Relevance	Consistency and Implications
SEPP (Rural Lands) 2008	The SEPP aims to facilitate economic use and development of rural lands, reduce land use conflicts and provides development principles.	The planning proposal includes provision to ensure that exempt development can only be undertaken where it does not adversely impact on rural land or agricultural activities.
SEPP (exempt and complying development codes) 2008	This Policy aims to provide streamlined assessment processes for development by identifying types of exempt and complying development that have minimal impact.	<p>The planning proposal seeks to add exempt provisions to the LEP, which are in addition to the SEPP. It is considered that the SEPP is impractical for to use for land that is below the minimum lot size as a requirement that all lots increase in size at the completion of the subdivision.</p> <p>The proposed provisions ensure that exempt development would be of minimal impact.</p> <p>The planning proposal would result in the LEP being inconsistent with State Policy. Further consultation will be required with the Department of Planning on this matter.</p>

6. Is the planning proposal consistent with applicable Ministerial Directions?

The planning proposal is consistent with all applicable Ministerial Directions with the exception of Direction 4.3 Flood Prone Land. An assessment of the

Planning Proposal against the relevant s.117 Directions is provided in the following table:

Ministerial Direction	Aim of Direction	Consistency and Implications
1. EMPLOYMENT AND RESOURCES		
1.2 Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	<p>Subdivision of land below the minimum lot size will only be granted where no additional dwelling entitlement is created, the potential for land use conflict will not be increased and if the agricultural viability of the land will not be adversely affected.</p> <p>It is considered that the proposal is consistent with this direction as it will not adversely affect the agricultural production value of the land or create increased density.</p>
1.5 Rural Lands	The objective of this direction is to protect the agricultural production value of rural and facilitate the orderly and economic development of rural lands for rural and related purposes.	The planning proposal includes provisions to ensure that there is no increased dwelling density in rural zones.
2. ENVIRONMENT AND HERITAGE		
2.1 Environmental Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	<p>Development will only be exempt where there is minimal environmental impact and cannot be carried out in critical habitat of an endangered species, population or ecological community or in a wilderness area.</p> <p>The planning proposal is consistent with this direction.</p>

2.2 Coastal Protection	The objective of this direction is to implement the principles in the NSW Coastal Policy.	Development undertaken through the proposed provisions would be of minimal significance.
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	The proposed exemptions do not apply to land on which an item of heritage significance is located.
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT		
3.1 Residential Zones	Encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and minimise the impact of residential development on the environment and resource lands.	The proposed exemptions do not apply to residential land.
4. HAZARD AND RISK		
4.4 Planning for Bushfire Protection	The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.	Boundary realignment will only be exempt if it will not result in any increased bush fire risk to existing property.
5. REGIONAL PLANNING		
5.1 Implementation of Regional Strategies	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.	The planning proposal will support agricultural and environmental outcomes, and this is consistent with the Strategy.
6. LOCAL PLAN MAKING		

<p>6.2 Reserving Land for Public Purposes</p>	<p>The objectives of this direction are to facilitate the provision of public services and facilities by reserving land for public purposes, and facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.</p>	<p>The planning proposal includes a provision to allow boundary realignment to be exempt development where it widens a public road or creates a public reserve.</p> <p>The planning proposal will facilitate the provision of public services and facilities by reserving land for public purposes.</p>
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SECTION C – Environmental, Social and Economic Impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. The planning proposal includes provisions that minimise environmental impacts by including considerations regarding the environmental values, heritage significance and natural and physical constraints of the land.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No additional environmental effects are anticipated as a result of this amendment. The proposed clause ensures that environmental impacts are given due consideration.

9. Has the planning proposal adequately addressed any social and economic effects?

The planning proposal will have minimal social or economic impacts.

SECTION D – State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

The amendment does not warrant changes to the delivery of public infrastructure.

11. What are the views of the State and Commonwealth public authorities consulted in accordance with the gateway determination?

Agency consultation

In accordance with the Gateway determination dated 1 December 2015, consultation was required to be undertaken with the Office of Environment and Heritage and the Department of Primary Industries (Agriculture). In addition, Council received comments from the Department of Primary Industries (Water) and the Department of Industry – Resources & Energy.

Agency comments are outlined below. As detailed below, an amendment has been made to the planning proposal due to comments received from the DPI (Agriculture).

Office of Environment and Heritage

OEH have advised that while there are potential impacts from the proposal on biodiversity, Aboriginal cultural heritage, flooding and coastal processes, there are sufficient checks and balances to deal with these matters should they arise. OEH do not object to the planning proposal but note concern about its application.

A copy of OEH correspondence is located in the planning proposal at **ATTACHMENT 1**.

Comment: Noted.

Department of Primary Industries (Agriculture)

The DPI (Agriculture) advised that rural subdivision should be assessed in accordance with the DPI 'farm subdivision assessment guideline'. It was further recommended that the proposed amendment include a provision to ensure that the boundary realignment will not alienate water resources for agriculture.

A copy of DPI (Agriculture) correspondence is located in the planning proposal at **ATTACHMENT 3**.

Comment: the proposed provision ensures that the potential impacts are considered in the assessment of boundary realignments. The provision is consistent with the 'farm subdivision assessment guideline' as it requires thorough consideration of predominant and preferred land uses on and in the vicinity of the development.

It is considered that the inclusion of a provision regarding access to water resources for agriculture has merit. The proposal has therefore been amended to include an additional provision, in both Schedule 2 Exempt Development and Part 4 Principal development standards. The amended clause is detailed in **ATTACHMENT 4**.

Department of Primary Industries (Water)

DPI Water has no objections to the proposed amendment but provided the following comment for Council's consideration and information:

- If there are existing dams located on the lot where the boundary realignment is occurring and the lot size is reduced, the resultant lot may have dams that are greater than the Maximum Harvestable Right

Dam Capacity. The landowner may need to modify the dams or apply for a licence issued under the *Water Management Act 2000*.

A copy of DPI (Water) correspondence is located in the planning proposal at **ATTACHMENT 5**.

Comment: the landowner is responsible for ensuring compliance with the *Water Management Act 2000* and may need to undertake appropriate action, such as reducing the size of a dam, to ensure compliance with the Act.

Department of Industry – Resources & Energy

The Department of Industry has advised that the planning proposal is consistent with the Mining SEPP and *Section 117(2) Direction No. 1.3 – Mining, Petroleum and extractive Industries*. They further advise that when determining boundary adjustments, Council should refer to the Mineral Resource Audit to determine the location and nature of mines, quarries and significant mineral resources when considering developments 'in the vicinity' of the proposal.

A copy of the Department of Industry – Resources & Energy is located in the planning proposal at **ATTACHMENT 6**.

Comment: Noted. The Mineral Resource Audit will be used in the determination of future development applications for boundary realignments undertaken via the proposed clause.

Part 4 – Mapping

The planning proposal does not seek any amendments to the Port Stephens Local Environmental Plan 2013 mapping.

Part 5 – Community Consultation

In accordance with the Gateway determination, the planning proposal is classified as low impact and must be made publically available for a period of 14 days.

The planning proposal will be exhibited from the 11th of February to the 26th of February 2016.

Part 6 – Project Timeline

The project is expected to be completed within 12 months from Gateway Determination. The following timetable is proposed:

	Task Description	Estimated Timeline
1.	Report to Council	April 2016
2.	Legal drafting and making of the plan	April – May 2016

ATTACHMENT ONE
Notice of Motion – 10 FEBRUARY 2015

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217 &
PSC2009-06567

PLANNING PROPOSAL TO AMEND THE LEP – EXEMPT DEVELOPMENT – REALIGNMENT OF BOUNDARIES

MAYOR BRUCE MACKENZIE

THAT COUNCIL:

- 1) Resolve to immediately prepare a Planning Proposal to amend the LEP to include the following:

Add to Schedule 2 Exempt Development:

Realignment of Boundaries

The Realignment of Boundaries pursuant to this Clause:

- a) must be of minimal environmental impact, and
- b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994), and
- c) cannot be carried out in a wilderness area (identified under the Wilderness Act 1987).
- d) cannot be carried on land on which a heritage item or draft heritage item is situated.

This Clause applies to land in Zones:

- i. RU1 Primary Production,
- ii. RU2 Rural Landscape,
- iii. RU3 Forestry,
- iv. RU4 Primary Production Small Lots,
- v. RU6 Transition,
- vi. R5 Large Lot Residential,
- vii. E2 Environmental Conservation,

- viii. E3 Environmental Management or
- ix. E4 Environmental Living.

The subdivision of land, for the purpose only of any one or more of the following, is exempt development specified for this clause:

- a) widening a public road,
- b) a realignment of boundaries:
 - i. that will not create additional lots or the opportunity for additional dwellings, and
 - ii. that will not create a resultant lot that is more than 15% different in area to at least one pre-existing lot
 - iii. that will not result in one or more lots that are smaller than the minimum size specified in an environmental planning instrument in relation to the land concerned (unless the original lot or lots are already smaller than the minimum size), and
 - iv. that will not adversely affect the provision of existing services on a lot, and
 - v. that will not result in any increased bush fire risk to existing buildings,
- c) rectifying an encroachment on a lot,
- e) creating a public reserve,
- d) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.

Add to Part 4 Principal Development Standards

Exceptions to minimum subdivision lot size for lot boundary adjustments in certain Rural, Residential and Environmental Zones.

The objective of this clause is to facilitate boundary adjustments between lots if one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land and the objectives of the relevant zone can be achieved.

- 1) This clause applies to land in the following zones:

- i. RU1 Primary Production,
 - ii. RU2 Rural Landscape,
 - iii. RU3 Forestry,
 - iv. RU4 Primary Production Small Lots,
 - v. RU6 Transition,
 - vi. R5 Large Lot Residential,
 - vii. E2 Environmental Conservation,
 - viii. E3 Environmental Management or
 - ix. E4 Environmental Living.
- 2) Despite clause 4.1, development consent may be granted to subdivide land by adjusting the boundary between adjoining lots if one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, and the consent authority is satisfied that:
- a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - b) the number of dwellings or opportunities for dwellings on each lot after subdivision will be the same as before the subdivision, and
 - c) the potential for land use conflict will not be increased as a result of the subdivision, and
 - d) if the land is in a rural zone, the agricultural viability of the land will not be adversely affected as a result of the subdivision.

**BACKGROUND REPORT OF: MATTHEW BROWN – DEVELOPMENT ASSESSMENT
AND COMPLIANCE SECTION MANAGER, DEVELOPMENT SERVICES**

BACKGROUND

Boundary realignments are not currently a permissible form of development under the Port Stephens Local Environmental Plan 2013 (PSLEP 2013). Rather, boundary realignments are permitted under the State policy – SEPP (Exempt and Complying Codes) 2008. The State policy permits boundary realignments without the requirement for gaining a development consent, however only when a number of conditions can be met.

Changes to the State policy over time has seen a continued restriction on the scenarios where boundary realignments can be carried out, to the extent that proposals once considered to be straight-forward developments are no longer permissible.

The restrictions imposed on boundary alignments results in impractical development outcomes in many instances, where boundaries on the map do not relate to topographical or physical features of the land. Consequently, public confidence in the planning process can be negatively impacted.

To restore a practical outcome based solution, Council has the option to prepare a planning proposal to introduce permissibility for boundary realignments under the PSLEP 2013, such as described in the resolution above.

It is noted that the above resolution addresses those boundary realignments permissible without consent. In addition the above resolution also provides for Council to consider a planning proposal to address those boundary realignments that do not meet the above stated criteria, allowing a merits based assessment to be carried out via a development application.

The standard process for proposed amendments to the PSLEP 2013 is approval from the Department of Planning and Environment subject to the review of the Planning Proposal. At this stage it is unclear on the Department's position on the proposed amendment which will be established through consultation with the Department through the preparation of the Planning Proposal.

It is noted that in the planning framework there is generally a requirement for local environmental plans to maintain consistency with State policy. In this instance, the consistency between the State policy and the proposed amendments to the PSLEP 2013 would need to be established with the Department of Planning and Environment. This may require lobbying of the State Government to change the State policy to provide for consistency with the proposed amendment to the PSLEP 2013.

ATTACHMENT TWO

Gateway Determination – 1 DECEMBER 2015



Mr Wayne Wallace
General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Our ref: 15/16521
Your ref: PSC2015-01491

Attention : Ms Sarah Connell

Dear Mr Wallace

Planning Proposal to amend Port Stephens Local Environmental Plan 2013

I am writing in response to your Council's letter dated 28 October 2015 requesting a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to insert boundary realignment provisions to the Port Stephens Local Environmental Plan 2013.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

The amending local environmental plan is to be finalised within nine months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made to the Department at least six weeks prior to the projected publication date.

The Minister's plan making powers were delegated to council in October 2012. It is noted that Council has now accepted this delegation. I have considered the nature of Council's planning proposal and have decided not to issue an authorisation for Council to exercise delegation to make this plan in this instance.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any questions regarding this matter, I have arranged for Mr Ben Holmes from the Hunter office to assist you. Mr Holmes can be contacted on (02) 4904 2709.

Yours sincerely,

A black rectangular redaction box covering the signature of Ashley Albury.

1-12-2015

Ashley Albury
A/ General Manager, Hunter and Central Coast Region
Planning Services

Encl: Gateway determination



Gateway Determination

Planning Proposal (Department Ref: PP_2015_PORTS_009_00): to insert boundary realignment provisions into the Port Stephens LEP 2013.

I, the Acting General Manager, Hunter and Central Coast Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Port Stephens Local Environmental Plan (LEP) 2013 to insert boundary realignment provisions should proceed subject to the following conditions:

1. Council is to amend the exempt provision detailed in the Explanation of Provisions to:
 - (a) remove reference to the R5 Large Lot Residential zone; and
 - (b) change the requirement which specifies how the extent in variation is determined by deleting the reference to "at least one pre-existing lot" and replacing it with "any lot".
2. Council is to amend the explanation of provisions for the local clause to use the latest clause settled with Parliamentary Counsel and including the zones proposed by Council. A copy of this clause is attached.
3. Council is to update the planning proposal to refer to Council's Community Strategic Plan 2023.
4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs (Planning & Infrastructure 2013)* and must be made publicly available for a minimum of **14 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Planning & Infrastructure 2013)*.
5. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
 - Office of Environment and Heritage
 - Department of Primary Industries (Agriculture)

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal

6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
7. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

Dated *1st December 2015*



Ashley Albury
A/ General Manager, Hunter and
Central Coast Region
Planning Services
Department of Planning and
Environment

Delegate of the Minister for Planning

Boundary adjustments in certain rural and environmental protection zones

- (1) The objective of this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size but the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in the following zones;
Council to list relevant zones here
- (3) Despite clause 4.1 (3), development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that:
 - (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - (b) the number of dwellings or opportunities for dwellings on each lot after subdivision will remain the same as before the subdivision, and
 - (c) the potential for land use conflict will not be increased as a result of the subdivision, and
 - (d) if the land is in Zone RU1 Primary Production, RU2 Rural Landscape or Zone RU3 Forestry—the subdivision will not have a significant adverse effect on the agricultural viability of the land, and
 - (e) if the land is in Zone E2 Environmental Conservation, Zone E3 Environmental Management or E4 Environmental Living —the subdivision will result in the continued protection and long-term maintenance of the land.
- (4) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following:
 - (a) the existing uses and approved uses of other land in the vicinity of the subdivision,
 - (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the subdivision is likely to be incompatible with a land use on any adjoining land,
 - (d) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,
 - (e) whether or not the subdivision is likely to have a significant adverse impact on the environmental values of the land.
- (5) This clause does not apply:
 - (a) in relation to the subdivision of individual lots in a strata plan or community title scheme, or
 - (b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

ATTACHMENT THREE

Correspondence from Office of Environment & Heritage (18 December 2015)



Your reference: PSC2015-01491
Our reference: DOC15/491885-1
Contact: Ziggy Andersons, 4927 3151

Mr Wayne Wallis
General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Attention: Sarah Connell

Dear Mr Wallis

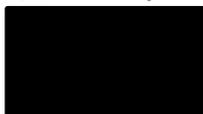
RE: PLANNING PROPOSAL - PROPOSED AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013 – BOUNDARY REALIGNMENTS

I refer to your email dated 3 December 2015 seeking advice from the Office of Environment and Heritage (OEH) under section 54(2)(d) of the *Environmental Planning and Assessment Act 1979* in regard to the above planning proposal. OEH has reviewed the planning proposal and provides the following comments.

OEH notes that there are potential impacts from this proposal to biodiversity, Aboriginal cultural heritage, flooding and coastal processes. The type and scope of these impacts has not been thoroughly explored in the planning document, however, there appear to be sufficient checks and balances to deal with these matters should they arise. As such, OEH has no objection to this proposal but has some reservations over how this proposed amendment may be applied and resulting impacts addressed.

If you have any enquiries concerning this advice, please contact Ziggy Andersons, Conservation Planning Officer, on 4927 3151.

Yours sincerely



18 DEC 2015

RICHARD BATH
Senior Team Leader Planning, Hunter Central Coast Region
Regional Operations

Locked Bag 1002 Dangar NSW 2309
Level 4/26 Honeysuckle Drive Newcastle NSW 2300
rog.hcc@environment.nsw.gov.au
ABN 30 841 387 271
www.environment.nsw.gov.au

ATTACHMENT FOUR
Correspondence from Department of Primary Industries – Agriculture
(29 January 2016)



**Department of
Primary Industries**

OUT16/3324

Sarah Connell
Strategic Planner
Port Stephens Council

29 January 2016

Dear Sarah,

**Proposed amendment to Port Stephens Local Environmental Plan 2013 –
Boundary Realignments - Comments**

Thank you for your email dated 2 December 2015 giving the NSW Department of Primary Industries (DPI) Agriculture an opportunity to provide comment on the Proposed Amendment to Port Stephens Local Environmental Plan 2013 – Boundary Realignments.

DPI Agriculture has reviewed the proposed amendment with the follow recommendations for inclusion:

- Boundary realignment will not alienate water resources or access for agriculture.
- Realignment on RU1 Primary Production and RU2 Rural Landscape Lots are in line with the guidelines for farm subdivision:
(http://www.dpi.nsw.gov.au/data/assets/pdf_file/0005/313565/farm-subdivision-assessment-guideline.pdf)

Please do not hesitate to contact DPI should you have any questions.

Kind Regards,



Helen Squires
Resource Management Officer

ATTACHMENT FIVE

Correspondence from Department of Primary Industries – Water (15 January 2016)



Department of
Primary Industries
Water

Contact Kerry Lee
Phone 02 4904 2666
Email Kerry.lee@dpi.nsw.gov.au

General Manager
Port Stephens Council
PO Box 42
Raymond Terrace, NSW 2337
Via email: council@portstephens.nsw.gov.au

Our ref V15/2812#73
Your ref PSC2015-01491

Attention: Sarah Connell

Dear Ms Connell

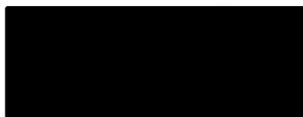
Planning Proposal – Amend Port Stephens LEP 2013 – Boundary Realignment

I refer to your email dated 2 December 2015 requesting comments on a planning proposal to amend the Port Stephens LEP 2013 to allow certain boundary realignments to occur without development consent. DPI Water has reviewed the planning proposal and has no objections to the proposed amendment but provides the following comment for Council's consideration and information:

- If there are existing dams located on the lot where the boundary realignment is occurring and the lot size is reduced, the resultant lot may have dams that are greater than the Maximum Harvestable Right Dam Capacity. The landowner may need to modify the dams or apply for a licence issued under the *Water Management Act 2000*.

If you require further information please contact Kerry Lee, Water Regulation Officer on (02) 4904 2666.

Yours sincerely



Alison Collaros
Senior Water Regulation Officer
15 January 2016

ATTACHMENT SIX

Correspondence from Department of Primary Industries – Resources & Energy (18 January 2016)



18th January 2016

Sarah Connell
Strategic Planner
Port Stephens Council
116 Adelaide Street
Raymond Terrace NSW 2324

Emailed: Sarah.Connell@portstephens.nsw.gov.au

Your Reference:PSC2015 - 01491
Our Reference (TRIM):OUT15/35224

Dear Ms Connell

Re: Planning Proposal to Amend Port Stephens LEP 2013 – Boundary Realignments

Thank you for the opportunity to provide advice on the above matter. This is a response from NSW Department of Industry – Geological Survey of New South Wales (GSNSW).

Specific Issues

GSNSW understands the Planning Proposal seeks to amend Schedule 2: Exempt Development of the Port Stephens Local Environmental Plan 2013 (PSLEP 2013) to allow certain boundary realignments to occur without development consent and to facilitate minor boundary realignments to existing lots in certain circumstances, which are less than the minimum lot size as shown on the Lot Size Map and that do not result in the creation of any additional lots or dwelling entitlements. The proposal relates to rural (RU1, RU2, RU3), environmental (E2, E3, E4) and residential (R5) zones.

Council has identified that the key issue in approving boundary alignments are the potential impacts, rather than the zoning or resultant lot sizes, and propose in Part 4 – Principal Development Standards: (4), to consider potential incompatibility with existing and approved land uses in the vicinity when determining boundary adjustments. GSNSW notes intensification of residential dwellings is not an outcome of this proposal.

The Port Stephens LGA has a diverse range of regionally significant extractive and industrial mineral deposits and operations. By virtue of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP), mining and extractive industries are permissible with development consent on land zoned for rural (and industrial) purposes. Additionally the Mining SEPP requires a compatibility test for proposed developments in the vicinity of significant mineral resources, quarries or mines. Though not identified in the proposal, the proposal is consistent with the Mining SEPP through Part 4 (4) a), b) and c).

NSW Department of Industry, Skills and Regional Development
RESOURCES & ENERGY DIVISION
PO Box 344 Hunter Region Mail Centre NSW 2310
Tel: 02 4931 6666 Fax: 02 4931 6726
ABN 51 734 124 190
www.industry.nsw.gov.au

Section 117(2) Direction 1.3 - Mining, Petroleum Production and Extractive Industries (s.117) applies when a planning authority prepares a planning proposal that would have the effect of restricting or prohibiting the development of State or regionally significant mineral resources through permitting incompatible developments. When determining boundary adjustments, Council should refer to the Mineral Resource Audit (MRA) – Port Stephens LGA, conducted under s.117 of the *Environmental Planning & Assessment Act 1979* and delivered updated to Council in July 2014. The MRA is a spatial planning tool describing the location and nature of mines, quarries and significant mineral resources of State or regional significance and can be used to consider developments “in the vicinity” when applying the Mining SEPP. Though not identified in Council’s proposal, the proposal is consistent with s.117 Direction 1.3 through consideration of potential land use issues via Part 4 (4) a), b) and c).

Geoscience Information Services

The GSNSW has a range of online data available on line through the following website address:

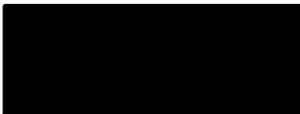
<http://www.resources.nsw.gov.au/geological/online-services>

This site hosts a range of data to enable research into exploration, land use and general geoscience topics. Additionally, the location of exploration and mining titles in NSW may be accessed by the general public using the following online utilities:

1. **MinView** allows on-line interactive display and query of exploration tenement information and geoscience data. It allows spatial selection, display and download of geological coverages, mineral deposits and mine locations, geophysical survey boundaries, drillhole locations, historical and current exploration title boundaries and other spatial datasets of New South Wales. This online service is available at:
<http://www.resources.nsw.gov.au/geological/online-services/minview>
2. **NSW Titles** enables the public to access and view frequently updated titles mapping information across NSW. This online service is available at:
<http://nswtitles.minerals.nsw.gov.au/nswtitles/>

Queries regarding the above information, and future requests for advice in relation to this matter, should be directed to the GSNSW Land Use team at landuse.minerals@industry.nsw.gov.au.

Yours sincerely



Cressida Gilmore
Team Leader - Land Use