



# Planning Proposal – Boundary realignments

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



## **FILE NUMBERS**

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**Council:** PSC2015 - 01491  
**Department:** To be provided at Gateway Determination.

## **SUMMARY**

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**Subject land:** Port Stephens Local Government Area  
**Proponent:** Port Stephens Council

## **BACKGROUND**

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The 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 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 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 (Cluse 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 realignments 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 realignments 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.

## **PLANNING PROPOSAL – boundary realignments**

**Local Government area:** Port Stephens Council

**Address:** The Planning Proposal applies to land within certain zones in the Port Stephens Local Government Area.

### **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 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.

## **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. R5 Large Lot Residential,
- v. E2 Environmental Conservation,
- vi. E3 Environmental Management or
- vii. 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 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 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:

**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. R5 Large Lot Residential,
  - v. E2 Environmental Conservation,
  - vi. E3 Environmental Management or
  - vii. 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.

## **PART 3 – Justification for the Planning Proposal**

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### **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

The proposal is consistent with Council's Integrated Strategic Plan (Port Stephens 2022) as it will provide a practical solution for the assessment of development applications, which will assist in achieving the performance measures outlined in Strategic Direction 3.7 'Provide development and building assessment and compliance services'.

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 PSPS 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**

<b>SEPP</b>	<b>Relevance</b>	<b>Consistency and Implications</b>
<b>SEPP (Rural Lands) 2008</b>	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.

<p><b>SEPP (exempt and complying development codes) 2008</b></p>	<p>This Policy aims to provide streamlined assessment processes for development by identifying types of exempt and complying development that have minimal impact.</p>	<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>
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*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:

<b>Ministerial Direction</b>	<b>Aim of Direction</b>	<b>Consistency and Implications</b>
<b>1. EMPLOYMENT AND RESOURCES</b>		
<b>1.2 Rural Zones</b>	The objective of this direction is to protect the agricultural production value of rural land.	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

		<p>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>
<b>1.5 Rural Lands</b>	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.
<b>2. ENVIRONMENT AND HERITAGE</b>		
<b>2.1 Environmental Protection Zones</b>	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>
<b>2.2 Coastal Protection</b>	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.
<b>2.3 Heritage Conservation</b>	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.
<b>3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT</b>		
<b>3.1 Residential Zones</b>	Encourage a variety and choice of housing types to	The proposed exemptions do not apply to residential

	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.	land.
<b>4. HAZARD AND RISK</b>		
<b>4.4 Planning for Bushfire Protection</b>	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.
<b>5. REGIONAL PLANNING</b>		
<b>5.1 Implementation of Regional Strategies</b>	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.
<b>6. LOCAL PLAN MAKING</b>		
<b>6.2 Reserving Land for Public Purposes</b>	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>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>

## **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 not allowing exempt development on environmentally sensitive 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.

*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?*

Government agency consultation will be undertaken following a gateway determination.

It is anticipated that consultation will be undertaken with the Department of Primary Industries (Agriculture) due to the potential implications relating to the proposed boundary realignment provisions for rural land.

## **Part 4 – Mapping**

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

## **Part 5 – Community Consultation**

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Community Consultation will be undertaken in accordance with the Gateway Determination.

## **Part 6 – Project Timeline**

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

	<b>Task Description</b>	<b>Estimated Timeline</b>
1.	Gateway Determination	November 2015
2.	Completion of required technical information	December 2015
3.	Government agency consultation	December 2015
4.	Public exhibition period	February 2015
5.	Consideration of submissions	February 2015
6.	Report to Council	March 2015
7.	Submission to Department to finalise the LEP	March 2015
8.	Parliamentary Counsel	April 2015

## **ATTACHMENT TWO**

**NOTICE OF MOTION – 10 FEBRUARY 2015**

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

# 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

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### 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.

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**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.