

**Port Stephens Local Environmental Plan 2013 Amendment 16 Remove Flood Mapping**

Proposal Title : **Port Stephens Local Environmental Plan 2013 Amendment 16 Remove Flood Mapping**

Proposal Summary : **The Planning Proposal seeks to amend the Port Stephens Local Environmental Plan 2013 by removing "Flood Planning Mapping" and subsequent amendments.**

PP Number : **PP\_2016\_PORTS\_001\_00**      Dop File No : **16/07594**

**Proposal Details**

|                                   |                      |                      |                               |
|-----------------------------------|----------------------|----------------------|-------------------------------|
| Date Planning Proposal Received : | <b>03-Jun-2016</b>   | LGA covered :        | <b>Port Stephens</b>          |
| Region :                          | <b>Hunter</b>        | RPA :                | <b>Port Stephens Council</b>  |
| State Electorate :                | <b>PORT STEPHENS</b> | Section of the Act : | <b>55 - Planning Proposal</b> |
| LEP Type :                        | <b>Policy</b>        |                      |                               |

**Location Details**

Street :  
Suburb :      City :      Postcode :  
Land Parcel : **This Planning Proposal affects all land mapped as flood affected in the Port Stephens Local Environmental Plan 2013.**

**DoP Planning Officer Contact Details**

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**Land Release Data**

|                                    |                                       |                            |            |
|------------------------------------|---------------------------------------|----------------------------|------------|
| Growth Centre :                    |                                       | Release Area Name :        |            |
| Regional / Sub Regional Strategy : | <b>Lower Hunter Regional Strategy</b> | Consistent with Strategy : | <b>Yes</b> |

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MDP Number :

Date of Release :

Area of Release (Ha)

Type of Release (eg  
Residential /  
Employment land) :

No. of Lots : 0

No. of Dwellings : 0  
(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

### Supporting notes

Internal Supporting Notes :

#### BACKGROUND

Council advise that the Planning Proposal seeks to amend the Port Stephens Local Environmental Plan 2013 by removing reference to "Flood Planning Map" in Clause 7.3 Flood Planning, removing the Flood planning Maps from the set of LEP maps and deleting the definition of 'Flood Planning Map' in the dictionary.

On March 8 2016, Council adopted a Floodplain Risk Management Policy ad Flood Hazard Map. It states that the Policy and maps have been prepared in accordance with the State Governments Floodplain Development Manual 2005 and were developed using data from a number of flood studies, including:

- Medowie Drainage and Flood Study (2012)
- Paterson River Flood Study (1997)
- Paterson River Floodplain Risk Management Study and Plan (2001)
- Port Stephens Design Flood Levels – Climate Change Review (2010)
- Williams River Flood Study (2009)
- Williamstown Salt Ash Flood Study (2005)
- Williamstown Salt Ash Flood Study Climate Change Review (2012)
- Port Stephens Foreshore (Floodplain) Management Plan (2002)

Council also notes that the Flood Hazard Maps will soon be updated to incorporate the:

- Medowie Floodplain Risk Management Study and Plan (2016); and
- Williamstown Salt Ash Floodplain Risk management Study and plan (2016)

The PP advises that maps are under constant review and necessary amendments will be made when new information is available. Further, that the Flood Hazard Map more accurately reflects the flood planning level than the current 'Flood Planning Map' in the Port Stephens Local Environmental Plan 2013. Council asserts that by removing the flood maps from the LEP, the flood hazard maps which show the most up-to-date information will be relied upon. Further, that as the maps would reside outside the LEP, there would be no need to undertake the LEP amendment process each time the Flood Hazard Maps are updated. Clause 7.3 would continue to apply to land at or below the flood planning level, ensuring flood impacts are adequately assessed.

The Department notes that Cessnock City Council and Wyong have adopted a similar

approach ie they do not include flood planning maps in their LEPs.

**DOCUMENTATION RECEIVED**

Initial assessment of the PP by the Department noted that sections of the PP were incomplete. A revised Planning Proposal was submitted on 3 June 2016 which addressed the omissions. This revised version of the PP is the version included on the LEP tracking system.

External Supporting  
Notes :

**Adequacy Assessment**

**Statement of the objectives - s55(2)(a)**

Is a statement of the objectives provided? **Yes**

Comment : Council have outlined the objective of the Planning Proposal is to achieve the following amendments to the Port Stephens Local Environmental Plan 2013:

- Remove reference to the "Flood Planning Map";
- Delete the Flood Planning map from the LEP maps; and
- Delete the definition of Flood Planning Mapping

**Explanation of provisions provided - s55(2)(b)**

Is an explanation of provisions provided? **Yes**

Comment : The Planning Proposal states that the intended outcome will be achieved by the following amendments to the Port Stephens Local Environmental Plan 2013:

a)Amending Clause 7.3(2) from:

2)This clause applies to:

- a)land identified as "Flood planning Area" on the Flood Planning map, and
- b)other land at or below the flood Planning Level.

To

2)This clause applies to land at or below the flood planning level

b) Deleting the following maps:

- FLD\_000 6400\_COM\_FLD\_001\_080\_20131210
- FLD\_002 6400\_COM\_FLD\_002\_080\_20131210
- FLD\_003 6400\_COM\_FLD\_003\_080\_20131128
- FLD\_004 6400\_COM\_FLD\_004\_080\_20131128
- FLD\_005 6400\_COM\_FLD\_005\_080\_20131128

c)Deleting the definition of Flood planning Map contained in the Dictionary

**Justification - s55 (2)(c)**

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA : **4.3 Flood Prone Land**

\* May need the Director General's agreement

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

e) List any other matters that need to be considered :

**4.3 Flood Prone Lands – Council advises that the Floodplain Risk Management Policy and Flood Hazard Maps, adopted by Council, were prepared in accordance with the Floodplain Development Manual 2005. It states that adequate provisions remain in the LEP for consideration of development below the flood planning level.**

**The Flood Hazard Maps indicate both the flood planning level (consistent with NSW Guidelines) and flood hazard. The maps are available on Council's website and are triggered by Council's development control plan and the LEP clause.**

**The Department notes that the model flood planning clause allows councils to apply the clause but not include flood planning maps. Cessnock and Wyong councils are examples in the region which use this approach. Notwithstanding, Council proposes to consult with OEH and SES to confirm consistency with the s117 direction and the Floodplain Risk Management Policy. Consistency with this direction can be determined following that consultation.**

Have inconsistencies with items a), b) and d) being adequately justified? **Unknown**

If No, explain : **OEH and SES consultation should occur to determine consistency with s117 direction 4.3.**

#### **Mapping Provided - s55(2)(d)**

Is mapping provided? **Yes**

Comment : **The PP contains an LGA wide hazard map however smaller scale maps are available on Council's website. It is considered appropriate to request that Council update the Planning Proposal to include the complete set of Hazard Mapping in the Planning Proposal, before exhibition, in the conditions of the Gateway determination.**

#### **Community consultation - s55(2)(e)**

Has community consultation been proposed? **Yes**

Comment : **Council have advised that they intend to make the proposal available for public comment in the local newspaper, The Examiner. The Planning Proposal will be on display at the following locations:**

- Council's Administration Building
- Raymond terrace Library
- Tomaree Library

**Council do not propose a length of time for the public exhibition period in the Planning Proposal. It is however considered appropriate for this Planning Proposal to be on exhibition for a minimum of 14 days as the Flood Risk Management Policy and Flood Hazard Maps are already being used by Council for development assessment. Given this, the Planning Proposal would not result in any significant changes to current planning processes and so a 14 day period is suitable.**

#### **Additional Director General's requirements**

Are there any additional Director General's requirements? **Yes**

If Yes, reasons : **DELEGATION**

**Council has requested that plan-making delegation be given for this proposal. Given the proposal would not change the underlying assessment of flood planning in Port Stephens (ie LEP clause 7.3 Flood Planning would still apply to affected lands), delegation may be given.**

**TIMEFRAME**

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Council's project timeline indicates that the PP would be completed by a December 2016 based on a May determination (ie 8 months). Given it is now June and the proposed eight month timeframe would extend over Christmas/ new years, a nine month completion timeframe is proposed (February 2017).

### Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment : Council provided a revised Planning Proposal on 3 June 2016 to include consideration of the economic, environment and social implications of the Proposal. It is now adequate for consideration by the Gateway.

### Proposal Assessment

#### Principal LEP:

Due Date : December 2013

Comments in relation to Principal LEP : The Port Stephens LEP 2013 commenced in February 2014.

#### Assessment Criteria

Need for planning proposal : The Planning Proposal seeks to amend the Port Stephens Local Environmental Plan 2013 by removing reference to "Flood planning map" in Clause 7.3 Flood Planning, removing the Flood planning Maps from the set of LEP maps and deleting the definition of 'Flood Planning Map' in the dictionary.

Council identify that the need of the Planning Proposal is to ensure reliance on the most up to date and accurate flood mapping, without the need to undertake the LEP amendment process each time the Flood Hazard Maps are updated.

Council advises that the hazard maps are currently used as part of Council's assessment of flooding impacts. This assessment includes consideration of the LEP clause, Council's Floodplain Risk Management Policy and DCP (which is being updated to better align with the policy).

Given Council's flood assessment framework, even though the flood planning maps would no longer be in the LEP, the Department is satisfied that flooding issues relating to the development of land would be adequately considered. Further, not including flood planning maps is allowed by the model flood planning clause and has been used by other councils in the region. On this basis, progression of the PP is supported.

Council advises that 239 parcels were picked up by the LEP Flood Planning Map that are located above the flood planning level and are therefore should not be mapped and have not been identified as affected by the flood planning level in the Flood Hazard Maps.

838 parcels previously weren't picked up in the LEP Flood Planning Map, broadly including:

- 167 public land parcels (council land, crown land, national parks etc)
- almost 100 parcels at Tomago (inadvertently removed during preparation of the SI LEP)
- areas where the flood extent was truncated on the LEP Flood Planning Map, eg
  - ☐ 43 bushland parcels near Karuah, Swan Bay and Medowie,
  - ☐ 112 parcels in Raymond Terrace and
  - ☐ 73 foreshore parcels in Nelson Bay and Shoal Bay.

Consistency with strategic planning framework :

#### **LOWER HUNTER REGIONAL STRATEGY**

The strategy outlines that appropriate planning provisions will be incorporated in LEP's consistent with the Floodplain development manual and Council's risk management plan to minimise the risk from flooding. The Planning Proposal seeks to streamline the flood management policy and mapping by ensuring up-to-date information is available and using that information as part of the development application process. The Planning Proposal is considered consistent with the natural hazard objectives of the regional plan.

#### **DRAFT HUNTER REGIONAL PLAN**

Direction 4.3 of the draft Plan aims to build the region's resilience to natural hazards. Action 4.3.1 to investigate opportunities to improve the quality and consistency of hazard data within the region and Action 4.3.2 integrate risk-management frameworks for coastal, floodplain and other hazards into local strategies and planning controls, prioritising areas identified to support regional growth, apply to the Planning Proposal.

The Planning Proposal is considered to be consistent with this Direction as it will ensure the most up-to-date flooding information is accessible to the community and used in planning decisions, in line with the aims outlined in the draft Regional Plan.

#### **PORT STEPHENS PLANNING STRATEGY**

Council notes that the Planning Strategy recognises that large parts of the LGA are subject to flooding, and that this PP would ensure the community and planners are not relying on out-dated maps.

The Department notes that the Strategy does not contain substantial guidance regarding the management of floodplains that would inform this PP.

#### **FLOODPLAIN RISK MANAGEMENT POLICY**

Council has adopted a floodplain risk management policy. Council advises that the policy takes an integrated risk management approach using the best available information that classifies land in terms of flood risk so that decisions take into account flood risk while recognising the social, economic and environmental values of flood prone land.

This policy guides Council's actions regarding planning of land affected by flooding. Council has advised that it is considered when assessing development applications. It places emphasis on the importance of using up-to-date information (including regularly updating the flood hazard maps) when making decisions regarding development of the floodplain. Removing the flood planning maps from the LEP and relying instead on flood hazard maps is consistent with this policy.

Environmental social economic impacts :

In a revised Planning Proposal provided on 3 June 2016 Council considered the Environmental, Social and Economic implications of the proposal. Council identify that the proposal will ensure the consideration of flooding behaviour in the assessment of DA's. There are no further known environmental impacts. It considers that as the PP would ensure the most up-to-date flooding information is considered, economic and social benefits would result due to the inappropriate development of flood affected land being avoided.

The amendment will ensure that the most accurate and up to date mapping is readily accessible and used in the assessment and development applications. Council have advised that the current LEP map is no longer used due to inaccuracies. Council is currently amending the DCP to include the new Policy and ensure considerable impact assessment of flooding on life and property in the planning and assessment of development on flood prone land.

### Assessment Process

Proposal type : **Consistent** Community Consultation Period : **14 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Office of Environment and Heritage  
State Emergency Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

### Documents

| Document File Name                                    | DocumentType Name               | Is Public  |
|-------------------------------------------------------|---------------------------------|------------|
| <b>Council Report and Minutes.pdf</b>                 | <b>Determination Document</b>   | <b>Yes</b> |
| <b>Council Request for Gateway Determination.pdf</b>  | <b>Proposal Covering Letter</b> | <b>Yes</b> |
| <b>Revised Planning Proposal - updated 030615.pdf</b> | <b>Proposal</b>                 | <b>Yes</b> |

### Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **4.3 Flood Prone Land**

Additional Information : **This planning proposal should proceed subject to the following conditions:**

**1. Council is to amend the Planning Proposal to include the complete set of Hazard Maps, available online, in the Planning Proposal before it is placed on exhibition.**

**2.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 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**

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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).

3.Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- Office of Environment and Heritage
- State Emergency Services

4.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).

5.The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

Plan-making delegation should be given to Council.

Supporting Reasons : Per report.

Signature:



Printed Name:

K O'Leary

Date:

17-6-16