

MINUTES ORDINARY COUNCIL - 24 MAY 2016

ITEM NO. 4

FILE NO: 16/292264
RM8 REF NO: PSC2016-00770

PLANNING PROPOSAL - FLOOD PLANNING

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION
MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal – Flood Planning (**ATTACHMENT 1**) to amend the *Port Stephens Local Environmental Plan 2013* by removing the "Flood Planning Map", together with consequential amendments.
- 2) Forward the planning proposal to the NSW Department of Planning and Environment under section 56 of the *Environmental Planning and Assessment Act 1979* with a request for a Gateway Determination.

Councillor Paul Le Mottee returned to the meeting at 06:44pm, prior to Item 4, in Committee of the Whole.

ORDINARY COUNCIL MEETING - 24 MAY 2016 COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Ken Jordan Councillor Steve Tucker That the recommendation be adopted.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, John Nell and Steve Tucker.

Those against the Motion: Nil.

ORDINARY COUNCIL MEETING - 24 MAY 2016 MOTION

135	Councillor Ken Jordan Councillor Steve Tucker It was resolved that Council: 1) Adopt the Planning Proposal – Flood Planning (ATTACHMENT 1) to amend the <i>Port Stephens Local Environmental Plan 2013</i> by
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	removing the "Flood Planning Map", together with consequential amendments.
2)	Forward the planning proposal to the NSW Department of Planning and Environment under section 56 of the <i>Environmental Planning and Assessment Act 1979</i> with a request for a Gateway Determination.

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, John Nell and Steve Tucker.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to obtain Council's endorsement of the Planning Proposal – Flood Planning (**ATTACHMENT 1**) to forward it to the Department of Planning & Environment requesting a gateway determination. The planning proposal seeks to amend the *Port Stephens Local Environmental Plan 2013 (PSLEP 2013)* by:

- Removing reference to the "Flood Planning Map" in Clause 7.3 Flood planning;
- Deleting the Flood Planning Map from the suite of LEP maps; and
- Deleting the Definition of Flood Planning Map from the LEP Dictionary.

On 8 March 2016, Council adopted the Floodplain Risk Management Policy and associated Flood Hazard Maps. The Policy and maps have been prepared in accordance with the State Government's Floodplain Development Manual 2005 and were developed using data from a number of flood studies undertaken throughout the LGA. The maps are under constant review and amendments will be made when any new information is available. The new Flood Hazard Map more accurately reflects the flood planning level than the current 'Flood Planning Map' contained in the *PSLEP 2013*.

Clause 7.3 Flood planning in *PSLEP 2013* currently 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.

The planning proposal seeks to remove the Flood Planning Map from the LEP, amend Clause 7.3(2) to remove reference to the 'Flood Planning Map'. In practice the amendment will mean Clause 7.3 will continue to apply to land at or below the flood planning level, which is identified on the Council endorsed Flood Hazard Map. This will avoid any potential inconsistency about the flood planning level between the LEP and Flood Hazard Map that may arise from updated flood mapping by providing a single reference point to identify flood prone land.

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Development on land at or below the flood planning level will still need to satisfy the provisions of Clause 7.3 Flood planning of the *PSLEP 2013*.

Removing the flooding map from the LEP will assist in the consistent use of the most up to date flood mapping, without the need for a lengthy LEP amendment process every time the Flood Hazard Maps are updated. Council will instead rely on the flood planning level identified by the Flood Hazard Maps to satisfy Clause 7.3, the Floodplain Risk Management Policy and Flood Hazard Maps.

The Flood Hazard Maps will be available for viewing by the community on Council's website, ensuring that the most accurate and up to date mapping is readily accessible and used in the assessment of development applications.

Future updates to the Flood Hazard Maps will be made through the adoption of a flood study/ floodplain risk management plan by Council (these are studies commissioned by Council and OEH) or annually to take into account submissions that have been made by owners/developers to amend the flood hazard data.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

The planning proposal has been progressed within Strategic Planning budget allocation.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		The planning proposal will be progressed under existing resources in accordance with Council's resolution.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Environmental Planning and Assessment Act 1979 (EP&A Act)

Council is the relevant planning authority for preparing the Planning Proposal under the *Environmental Planning and Assessment Act 1979* (NSW). If Council resolves to adopt the Planning Proposal it will be forwarded to the NSW Department of Planning and Environment for a Gateway Determination.

Port Stephens Local Environmental Plan 2013

The planning proposal seeks 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 suite of LEP maps; and
- Delete the Definition of Flood Planning Map.

Development on land at or below the flood planning level must satisfy the provisions of Clause 7.3 Flood planning of the *PSLEP 2013*. This clause will continue to be satisfied for development on land at or below the flood planning level.

Under Clause 7.3 of the *PSLEP 2013* Council must not approve development at or below the flood planning level unless consistent with the standards set within sections (a) to (e) of that Clause which state:

- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
- (a) *is compatible with the flood hazard of the land, and*
 - (b) *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) *incorporates appropriate measures to manage risk to life from flood, and*
 - (d) *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
 - (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Port Stephens Development Control Plan 2014

It is proposed to amend Chapter B5 Flooding of Development Control Plan 2014 to align with the new Floodplain Risk Management Policy and Flood and Flood Hazard Maps. This amendment is currently being prepared and will be reported to Council as a separate matter.

Floodplain Risk Management Policy and Flood Hazard Maps

On 8 March 2016, Council adopted the Floodplain Risk Management Policy and Flood Hazard Maps. The Policy and maps have been prepared in accordance with the State Government's Floodplain Development Manual 2005 and were developed using data from a number of flood studies undertaken throughout the LGA. The maps are under constant review and amendments will be made when new information is available. The Flood Hazard Map more accurately reflects the flood planning level than the current 'Flood Panning Map' contained in the *PSLEP 2013*. Removing the flood maps from the LEP will ensure reliance on most up to date flood mapping, without the need for a lengthy LEP amendment process every time the Flood Hazard Maps are updated.

Section 117 Direction No. 4.3 – Flood Prone Land

Section 117 Direction No. 4.3 aims to:

- (a) *to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005; and*
- (b) *to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.*

The Floodplain Risk Management Policy and Flood Hazard Maps, adopted by Council on 8 March 2016, were prepared in accordance with the Floodplain Development Manual 2005.

Development on land at or below the flood planning level must satisfy the provisions of Clause 7.3 Flood planning of the *PSLEP 2013*.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the <i>PSLEP 2013</i> is not consistent with the Floodplain Risk Management Policy and Flood Hazard Maps.	Low	Adopt recommendations to prepare the planning proposal to amend the <i>PSLEP 2013</i> .	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Floodplain Risk Management Policy aims to systematically reduce the impact of flooding and flood liability on individual owners and reduce the private and public

losses resulting from floods. It also recognises that flood prone land is a valuable resource to the community, land holders and the economy and these lands should not be sterilised by unnecessarily restricting its development.

The planning proposal will ensure that the *PSLEP 2013* is consistent with the Floodplain Risk Management Policy and Flood Hazard Maps, which will have positive social, economic and environmental implications.

MERGER PROPOSAL IMPLICATIONS

The Port Stephens Floodplain Risk Management Policy is consistent with the approach taken by Newcastle City Council and the State Government's Flood Prone Land Policy and Floodplain Development Manual 2005.

The *Newcastle Local Environmental Plan 2012* does not include a flood-related clause.

CONSULTATION

Internal

The planning proposal has been prepared by the Strategic Planning Team in collaboration with Council's Flooding Engineers.

External

External consultation on the planning proposal will be undertaken following the gateway determination. The gateway will specify the terms of the consultation.

Government Agency consultation

It is envisaged that the following Government agencies will be consulted with:

- Office of Environment and Heritage.
- NSW State Emergency Services.

Community consultation

Community consultation will be undertaken in accordance with the gateway determination. It is anticipated that the planning proposal will be exhibited for a period of 14 days as it is likely to be categorised as a 'low impact proposal'.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Planning Proposal - Flood Prone Land Map. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.