



PLANNING PROPOSAL

Proposed amendment to Port Stephens Local Environmental Plan 2013

Planning Proposal – Amendment to Schedule 2 Exempt Development and
Part 4 Principal Development Standards (Water Storage Facilities and
Boundary Realignments)

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Contact
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FILE NUMBERS

Council: PSC2015 - 00703
Department: To be provided at Gateway Determination.

SUMMARY

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

BACKGROUND

The planning proposal seeks to implement two Notices of Motion (dated 10 February 2015) by amending the Port Stephens Local Environmental Plan 2013 by adding exempt development provisions for certain water storage facilities and boundary realignments and amending Part 4 by adding exceptions to minimum lot sizes for boundary adjustments.

Water Storage Facilities

Under the provisions of the Port Stephens Local Environmental Plan 2013 (PSLEP 2013) a farm dam is not currently considered as exempt development and as such requires a development application to be lodged with Council. The planning proposal seeks to remove the need for a development application to be lodged with Council for small dams by specifying this class of development as exempt, subject to meeting the criteria.

It is important to note that the construction of farm dams may trigger other requirements for development approval or licences separate to its development classification. In this regard, there are a number of provisions related to water licensing requirements as outlined in the NSW Farm Dams Policy. As such, the proposed amendment to the PSLEP 2013 has been drafted to reflect the need to adhere to the NSW Farm Dams Policy.

In addition, the PSLEP 2013 requires development consent for certain ground disturbance activities within areas of the LGA mapped as Acid Sulfate Soils (ASS). This can be addressed in the planning proposal through specifying exclusion from Class 1 to 4 ASS and reflecting the specific depth restrictions for land mapped as Class 5 ASS.

The planning proposal would result in those rural landowners in the north and western portions of the Local Government Area not being required to submit a development application for the construction of certain farm dams subject to meeting the criteria. The potential area of application of this planning proposal is shown on **ATTACHMENT 1**.

Boundary Realignments

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.

In addition to allowing certain boundary realignments to occur without consent, the planning proposal also seeks to address those boundary realignments that do not meet the minimum lot size as shown on the Lot Size Map, allowing a merits based assessment to be carried out via a development application.

PLANNING PROPOSAL – Water storage facilities and 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 Water Storage Facilities to be built without development consent within certain land in the Port Stephens LGA;
- to allow certain boundary realignments to occur without development consent; and
- provide Council with an option to consider applications for boundary realignments that do not meet the minimum lot size.

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:

Water Storage Facilities

- a) Must only be constructed on land zoned RU1 Primary Production or RU2 Rural Landscape;
- b) Must be less than 1 Megalitre if the subdivision was approved before 1 January 1999 with harvestable water rights or be built on minor streams that capture a maximum of 10 per cent of the property's average regional rainfall run-off;
- c) Must not be on land mapped as Class 1, 2, 3 or 4 on the Acid Sulfate Soils Map;
- d) Maximum depth of 5 metres Australian Height Datum when within 500m of adjacent Class 1, 2, 3 or 4 Acid Sulfate Soil Land and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land;
- e) Minimum distance from any property boundary – 10m;
- f) Must not contain a spillway more than 1m in height;
- g) Must not involve works within 40m of the banks of a named watercourse.

Note: Farm dams must comply with the NSW Farm Dams Policy (Harvestable Dams Policy), a copy of which can be obtained from the NSW Office of Water or relevant State Government Authority

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 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 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. 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.

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 two Notices of Motion to Council on 10 February 2015, in which Council resolved to immediately prepare the planning proposal.

A copy of the Notices can be found at **Attachment 1** and **Attachment 2**

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

The Planning Proposal is the only means of achieving the desired outcome, as an amendment to the Port Stephens Local Environmental Plan is required.

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 adjustments on rural land that do not meet minimum lot size requirements. This will support agricultural and environmental outcomes, and this is consistent with the 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 subdivision 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. However, further discussion on SEPP 14 – Coastal Wetlands should be undertaken. 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 14 – Coastal Wetlands	This SEPP places restrictions on development on land to which the plan applies and seeks to ensure that the coastal wetlands are preserved and protected in the environmental and economic interests of the State.	The proposal includes a provision that excludes dams within 40m of a named stream from being exempt. In order to reduce potential implications on SEPP 14 wetlands, the amendment could include the following: g) Must not involve works within 40m of the banks of a named watercourse or SEPP 14 Wetland Further consultation with the Department is required on this direction.

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.	The planning proposal seeks to add exempt provisions to the LEP, which are in addition to the SEPP. The proposed provisions ensure that exempt development would be of minimal impact. 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.

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.	The realignment of boundaries will only be exempt where the lots created are not less than the minimum lot size and do not create an additional dwelling entitlement. 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. 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.
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.	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. The planning proposal is consistent with this direction.
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		
4.1 Acid Sulfate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.	To avoid any impacts from acid sulfate soils, the following provisions are proposed: a) Must not be on land mapped as Class 1, 2, 3 or 4 on the Acid Sulfate Soils Map; b) Maximum depth of 5 metres Australian Height Datum when within 500m of adjacent Class 1, 2, 3 or 4 Acid Sulfate Soil Land and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land; The planning proposal is consistent with the direction.
4.3 Flood Prone Land	The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> , and that the provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts both on and off the subject land.	This Direction states that a planning proposal must not contain provisions that apply to the flood planning areas which: permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development. The planning proposal is not consistent with this direction as it proposes to allow certain water storage facilities (dams) to be exempt. Further consultation with the Department will be required on this inconsistency.
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	Boundary realignment will only be exempt if it will not result in any increased bush fire risk to existing property.

	establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.	
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		
6.2 Reserving Land for Public Purposes	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.	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. The planning proposal will facilitate the provision of public services and facilities by reserving land for public purposes.

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?

The Department of Planning's position on the planning proposal will be established through the Gateway process, in particular, the consistency between the proposed exempt development provisions and State policy.

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.

The Department of Primary Industries (Office of Water) will be consulted regarding the proposed exempt provisions for Water Storage Facilities as they are the licencing body for dams in NSW.

Part 4 – Mapping

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

Part 5 – Community Consultation

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

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.	Gateway Determination	May 2015
2.	Completion of required technical information	June 2015
3.	Government agency consultation	July 2015
4.	Public exhibition period	August - September 2015
5.	Consideration of submissions	October 2015
	Report to Council	December 2015
6.	Submission to Department to finalise the LEP	December 2015
7.	Parliamentary Counsel	January 2016

ATTACHMENT ONE

NOTICE OF MOTION – 10 FEBRUARY 2015

**PLANNING PROPOSAL TO AMEND THE LEP – EXEMPT DEVELOPMENT –
WATER STORAGE FACILITIES**

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217 &
PSC2009-06567

PLANNING PROPOSAL TO AMEND THE LEP – EXEMPT DEVELOPMENT – WATER STORAGE FACILITIES

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:

Water Storage Facilities

- a) Must only be constructed on land zoned RU1 Primary Production or RU2 Rural Landscape;
- b) Must be less than 1 Megalitre if the subdivision was approved before 1 January 1999 with harvestable water rights or be built on minor streams that capture a maximum of 10 per cent of the property's average regional rainfall run-off;
- c) Must not be on land mapped as Class 1, 2, 3 or 4 on the Acid Sulfate Soils Map;
- d) Maximum depth of 5 metres Australian Height Datum when within 500m of adjacent Class 1, 2, 3 or 4 Acid Sulfate Soil Land and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land;
- e) Minimum distance from any property boundary – 10m;
- f) Must not contain a spillway more than 1m in height;
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Note: Farm dams must comply with the NSW Farm Dams Policy (Harvestable Dams Policy), a copy of which can be obtained from the NSW Office of Water or relevant State Government Authority
