

ITEM NO. 3

**FILE NO: 23/253338
EDRMS NO: PSC2023-02759**

PLANNING PROPOSAL FOR COASTAL RISK PLANNING CLAUSE

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION
MANAGER
DIRECTORATE: COMMUNITY FUTURES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the planning proposal (**ATTACHMENT 1**) to amend the Port Stephens Local Environmental Plan 2013 to insert a coastal risk planning clause and accompanying coastal risk planning map.
 - 2) Forward the planning proposal to the NSW Department of Planning and Environment for a Gateway determination and request authority to make the plan.
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**ORDINARY COUNCIL MEETING - 14 NOVEMBER 2023
MOTION**

268	Councillor Jason Wells Councillor Leah Anderson It was resolved that Council: <ol style="list-style-type: none">1) Adopt the planning proposal (ATTACHMENT 1) to amend the Port Stephens Local Environmental Plan 2013 to insert a coastal risk planning clause and accompanying coastal risk planning map.2) Forward the planning proposal to the NSW Department of Planning and Environment for a Gateway determination and request authority to make the plan.
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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 Ryan Palmer, Crs Leah Anderson, Giacomo Arnott, Matthew Bailey, Glen Dunkley, Peter Francis, Peter Kafer, Steve Tucker and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

The purpose of this report is to seek Council's endorsement to adopt a planning proposal (**ATTACHMENT 1**) to amend the Port Stephens Local Environmental Plan 2013 (LEP) to insert a coastal risk planning clause and coastal risk planning map. The endorsement would allow for the forwarding of the planning proposal to the NSW Department of Planning and Environment (DPE) for a Gateway determination and request authority to make the plan.

The preparation of the planning proposal responds to a key aspect of the forthcoming Port Stephens Coastal Management Program (CMP). The intent of the proposal is to incorporate provisions to manage the risk to life and properties from coastal hazards in the LEP and Development Control Plan (DCP).

The planning proposal is based upon the technical investigations undertaken for the CMP, including hazard mapping identifying properties at risk of coastal inundation, tidal inundation, coastal erosion and dune transgression. The hazard mapping is publicly available and was subject to community consultation in April and May 2023.

The purpose of reporting the planning proposal prior to the CMP is to seek a Gateway determination from DPE. This would facilitate the intended concurrent public exhibition of the planning proposal with the CMP in 2024. It is noted that CMPs are not subject to the Gateway determination process.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Thriving and safe place to live	Program to develop and implement Council's key planning documents

FINANCIAL/RESOURCE IMPLICATIONS

There are no additional identified financial/resource implications identified for the preparation of the planning proposal.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The preparation of the planning proposal has some legal, policy and risk implications for Council.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council does not consider the impacts of coastal risk in the assessment of planning applications.	Medium	Accept the recommendation.	Yes
There is a risk that landowners and applicants do not support the insertion of the coastal risk planning clause and coastal risk planning map in the LEP.	Medium	Accept the recommendation.	Yes

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

The planning proposal is being processed in accordance with Part 3 of the EP&A Act. Should Council resolve to endorse the planning proposal, it will be forwarded to DPE for a Gateway determination, including a request for Council to be made the plan making authority.

NSW Ministerial Direction 4.2 Coastal Management

Preparing the planning proposal is consistent with NSW Ministerial Direction 4.2 Coastal Management issued under section 9.1 of the EP&A Act. The Direction applies when a planning proposal authority prepares a planning proposal that applies to land that is within the coastal zone. The Direction requires planning proposals to include provisions that give effect to and are consistent with, any relevant Coastal Management Program that has been certified by the Minister.

Port Stephens Local Environmental Plan 2013

The planning proposal is to amend the LEP by inserting a coastal risk planning clause and accompanying coastal risk planning map.

The objectives of the intended LEP clause are:

- To avoid significant adverse impacts from coastal hazards

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- To ensure uses of land identified as coastal risk are compatible with the risks presented by coastal hazards
- To enable the evacuation of land identified as coastal risk in an emergency
- To avoid development that increases the severity of coastal hazards.

The clause would apply to development on land identified on a coastal risk planning map comprised of the following map layers:

- Coastal inundation
- Tidal inundation
- Coastal erosion
- Dune transgression.

The above risks are mapped to the year 2120, with the exception of dune transgression, which is mapped to the year 2070. The coastal risk planning map is included in the planning proposal (**ATTACHMENT 1**).

The coastal risk planning map layers have been made publicly available during preliminary public consultation on the CMP. These map layers are available on the Council website, along with other information on the CMP.

Amending the LEP to introduce a coastal risk planning clause and inclusion of a coastal risk planning map is consistent with the approach undertaken by other NSW coastal councils and the NSW planning framework for managing coastal risk.

Port Stephens Development Control Plan 2014 (DCP)

The preliminary management option in the CMP is to prepare a planning proposal including a recommendation to incorporate provisions to manage the risk to life and properties from coastal hazards for inclusion in the DCP. Should the planning proposal progress, Council staff would prepare a draft amendment to the DCP to incorporate a new DCP chapter addressing coastal risk.

Port Stephens Local Strategic Planning Statement (LSPS)

The planning proposal would give effect to the following planning priority in the LSPS:

- Planning Priority 8: Improve resilience to hazards and climate change
- Action 8.3: Council will prepare and implement a Coastal Management Program to mitigate natural hazards and incorporate resilience measures that promote ecologically sustainable development.

Hunter Regional Plan 2041 (HRP)

The planning proposal is consistent with the HRP Objective 7 'Reach net zero and increase resilience and sustainable infrastructure'. The planning proposal achieves this by introducing a coastal risk planning clause to the LEP. This would increase the

resilience of future development and facilitate the creation of more sustainable infrastructure.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The planning proposal would have positive social, economic and environmental risk implications for Council through the consideration of coastal risks in the assessment of development applications, consistent with the approach taken by other NSW coastal councils and with the NSW planning framework for managing coastal risk.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Strategy and Environment Section. The objective of the consultation is to align with the intended outcomes of the CMP and LSPS.

Internal

Consultation has been undertaken with the CMP Working Group comprised of the Natural Systems, Strategic Planning, Development Planning, Building and Certification, and Flooding and Drainage teams.

External

Initial community consultation on the CMP including the hazard mapping has been undertaken. This consultation included a mail out to all affected landowners, community drop-in sessions and information on the Council website including coastal hazard mapping.

Referral of the planning proposal to public authorities may be required after the Gateway determination, as set out under section 9.1 of the EP&A Act. A Gateway condition may be imposed where a public authority has an interest in the proposal.

The planning proposal is intended to be publicly exhibited in concurrence with the CMP and in accordance with a Gateway determination.

OPTIONS

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

ATTACHMENTS

- 1) Planning Proposal - Coastal Risk Planning Clause.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.