

**ITEM NO. 3**

**FILE NO: 24/134677  
EDRMS NO: PSC2023-02759**

**PLANNING PROPOSAL - COASTAL RISK PLANNING CLAUSE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the updated planning proposal (**ATTACHMENT 1**) to amend the Port Stephens Local Environmental Plan 2013 to insert a new clause and map to address the risk of dune transgression.
- 2) Receive and note the submissions received (**ATTACHMENT 2**) during public exhibition of the planning proposal.
- 3) Forward the planning proposal to the NSW Department of Planning, Housing and Infrastructure to request the amendment to the Port Stephens Local Environmental Plan 2013 is finalised.
- 4) Request the NSW Department of Planning, Housing and Infrastructure make an amendment to State Environmental Planning Policy (Resilience and Hazards) 2021 to map coastal risk areas identified in the Port Stephens Coastal Management Program as the Coastal Vulnerability Area, in accordance with the correspondence received on 24 April 2024 (**ATTACHMENT 3**).

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**ORDINARY COUNCIL MEETING - 25 JUNE 2024  
MOTION**

<b>140</b>	<p><b>Councillor Leah Anderson</b> <b>Councillor Glen Dunkley</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Endorse the updated planning proposal (<b>ATTACHMENT 1</b>) to amend the Port Stephens Local Environmental Plan 2013 to insert a new clause and map to address the risk of dune transgression.</li><li>2) Receive and note the submissions received (<b>ATTACHMENT 2</b>) during public exhibition of the planning proposal.</li><li>3) Forward the planning proposal to the NSW Department of Planning, Housing and Infrastructure to request the amendment to the Port Stephens Local Environmental Plan 2013 is finalised.</li><li>4) Request the NSW Department of Planning, Housing and Infrastructure make an amendment to State Environmental Planning Policy (Resilience and Hazards) 2021 to map coastal risk areas identified in</li></ol>
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## MINUTES ORDINARY COUNCIL - 25 JUNE 2024

	the Port Stephens Coastal Management Program as the Coastal Vulnerability Area, in accordance with the correspondence received on 24 April 2024 ( <b>ATTACHMENT 3</b> ).
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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 Kafer, Steve Tucker and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

### BACKGROUND

The purpose of this report is to advise Council of the outcome of the exhibition of the planning proposal to amend Port Stephens Local Environmental Plan 2013 (LEP) to insert a coastal risk planning clause (**ATTACHMENT 1**) and to note the submissions received (**ATTACHMENT 2**).

The preparation of the planning proposal gives effect to a key aspect of the Port Stephens Coastal Management Program (CMP). The intent of the planning proposal is to incorporate provisions to manage the risk to life and properties from dune transgression and coastal risks in the LEP and State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP).

The planning proposal is informed by the technical investigations undertaken for the CMP, including hazard mapping identifying properties at risk of coastal inundation, tidal inundation, coastal erosion and dune transgression. Port Stephens Council is one of the first councils in NSW to give legislative effect to CMP mapping and data.

At its meeting on 14 November 2023, Minute No. 268 (**ATTACHMENT 4**), Council resolved to adopt the planning proposal and forward it to the NSW Department of Planning, Housing and Industry (DPHI) to seek a Gateway determination and request delegated authority to make the plan.

The Gateway determination (**ATTACHMENT 5**) was issued by DPHI on 23 February 2024, allowing the planning proposal to proceed to exhibition subject to conditions and consultation requirements. For the reasons outlined in this report, the Gateway determination does not include delegated authority for Council to make the plan.

The planning proposal was placed on exhibition from 28 February 2024 to 11 April 2024, 1 community submission was received. In accordance with the Gateway determination the planning proposal was also referred to relevant public authorities and 1 response was received. All submissions are addressed within (**ATTACHMENT 2**).

In response to the submission from the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) (**ATTACHMENT 3**) the planning proposal has been updated to request an amendment to the SEPP to identify coastal risks (coastal inundation, tidal inundation and coastal erosion) on the SEPP Coastal Vulnerability Area (CVA) Map. A request was made for Council to include dune transgression as a separate coastal process which has been addressed and mapped in the LEP.

Should Council accept the recommendations, the planning proposal will be forwarded to DPHI to be finalised. Council has until 18 February 2025 to finalise the planning proposal, consistent with the timeframe set by the Gateway determination.

Given the forthcoming finalisation and endorsement of the CMP, Council has brought forward the finalisation of the Coastal Planning Risk Clause to align with the CMP. This will empower Council to consider coastal risk in the most timely manner.

### **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
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 endorsement of the planning proposal.

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

### **LEGAL, POLICY AND RISK IMPLICATIONS**

There are some legal, policy and risk implications identified for the endorsement of the planning proposal.

**MINUTES ORDINARY COUNCIL - 25 JUNE 2024**

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that Council does not consider the impacts of coastal risk and dune transgression in the assessment of planning applications.	Medium	Accept the recommendation.	Yes

**Environmental Planning and Assessment Act, 1979 (NSW) (EP&A Act)**

The planning proposal is being processed in accordance with Part 3 of the EP&A Act which provides the framework for amending a local environmental plan. DPHI issued a Gateway determination under section 3.34 of the EP&A Act specifying that the planning proposal should proceed to exhibition, subject to conditions and consultation requirements. These requirements included identifying dune transgression as a coastal process and undertaking consultation with DCCEEW.

The Gateway determination does not authorise Council to act as the plan making authority. The reasons provided in the Gateway determination are:

- The planning proposal will develop a new policy approach for how dune transgression is managed in local environmental plans.
- The planning proposal will need to be finalised following the certification of the CMP by the NSW Minister for Climate Change, Energy, the Environment and Water.

Should Council accept the recommendations, the planning proposal will be forwarded to DPHI to be finalised.

**State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP)**

The planning proposal has been updated to request an amendment to the SEPP to identify coastal risks (coastal inundation, tidal inundation and coastal erosion) within a “coastal vulnerability area” on the SEPP CVA Map instead of addressing these coastal risks by inserting a clause and map in the LEP. This approach responds to the submission received from the DCCEEW and accompanying advice from DPHI (**ATTACHMENT 3**).

The SEPP includes suitable development assessment provisions to manage development on land within the coastal vulnerability area on the SEPP CVA Map, in place of local provisions in the LEP.

#### Ministerial Direction 4.2 Coastal Management (Direction)

Preparing the planning proposal is consistent with this Direction, which is 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 within the coastal zone. The Direction requires planning proposals to include provisions that give effect to and are consistent with, any relevant CMP that has been certified by the Minister.

#### Port Stephens Local Environmental Plan 2013 (LEP)

The planning proposal was updated prior to exhibition to identify dune transgression as a separate LEP map to satisfy the requirements of the Gateway determination. Dune transgression is a coastal process (as opposed to a coastal risk or hazard) as defined under the NSW Coastal Management Glossary. The planning proposal will amend the LEP by inserting a clause to address the risk from dune transgression by reference to a dune transgression map.

In accordance with the advice from DCCEEW, development on land subject to coastal risks (coastal inundation, tidal inundation and coastal erosion) will be managed by the assessment provisions of the SEPP, including the CVA Map.

#### 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 proposing amendments to the SEPP and LEP, to include provisions for the assessment of development on land identified as being subject to coastal risks.

#### Local Strategic Planning Statement 2020 (LSPS)

The LSPS identifies the 20 year vision for land use in Port Stephens and sets out social, economic and environmental priorities for the future. The planning proposal is considered to be consistent with and 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 CMP to mitigate natural hazards and incorporate resilience measures that promote ecologically sustainable development.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The planning proposal will have positive social, economic and environmental risk implications for Council through the consideration of coastal risks in the assessment of development applications.

## **CONSULTATION**

### Internal

Consultation with key stakeholders has been undertaken by the Strategic Planning unit including;

- Coastal Management Program Project Control Group,
- Natural Systems unit,
- Development Assessment and Compliance Section, and
- Assets Section.

### External

DCCEEW was consulted on the planning proposal in accordance with the Gateway determination. The submission (**ATTACHMENT 3**) advises the best means of achieving the objectives of the planning proposal is to map coastal risk areas as “coastal vulnerability area” on a CVA Map in the SEPP. The submission includes supporting advice from DPHI that adoption of the mapping and development controls in the SEPP would provide a more robust and complete risk-based assessment framework.

In response to the submission, the planning proposal has been updated to request an amendment to the SEPP to introduce a CVA Map and to address the risk of dune transgression via a local clause in the LEP.

### Community

In accordance with the Gateway determination, the planning proposal was exhibited from 28 February 2024 to 11 April 2024. 1 submission was received from the Tomaree Residents and Ratepayers Association in support of the changes.

The submission summary and response table as at (**ATTACHMENT 2**).

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Coastal Risk Planning Clause Planning Proposal. (Provided under separate cover)
- 2) Submissions Table.
- 3) DCCEEW and DPHI Submission.
- 4) Minute No. 268 14 November 2023.
- 5) Gateway Determination.

**COUNCILLORS' ROOM/DASHBOARD**

1) Unredacted Submissions.

**TABLED DOCUMENTS**

Nil.

**ITEM 3 - ATTACHMENT 2 SUBMISSIONS TABLE.**
**Submission Table: Planning Proposal Coastal Risk Planning Clause**

No.	Author of submission	Comment	Council response
1	Tomaree Residents and Ratepayer Association (TRRA)	The submission welcomes the proposal, which will lead to important changes required by the State Government to support the CMP.	The support for the planning proposal is acknowledged.
		The submission supports Council on the proactive and consultative approach to strategic planning for coastal management noting there has been some difficulty to engage the community.	The support for the approach to community engagement undertaken by Council is acknowledged.
		The submission advises TRRA has commented separately on the draft CMP.	Noted. The CMP is the subject of a separate report to Council.
		The submission suggests a key to the colours used on each of the Coastal Risk Planning Maps to help explain how they will apply.	No change. The NSW State Environmental Planning Policy (Resilience and Hazard) 2021 Coastal Vulnerability Area Map adopts a standardised approach that does not show each coastal risk separately.  Further detail on each coastal risk will remain publicly available with the CMP. The ability to also make the mapping for each coastal risk publicly available on the Council online mapping portal is being reviewed.



**ITEM 3 - ATTACHMENT 2 SUBMISSIONS TABLE.**

No.	Author of submission	Comment	Council response
2	NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) Biodiversity and Conservation Division and NSW Department of Planning, Housing Industry and Infrastructure (DPHI) (combined submission)	DCCEEW considers that the justification for not mapping a CVA is inadequate.	The planning proposal has been updated to request amendment to the SEPP to identify coastal risks on the CVA Map consistent with the advice received by DCCEEW and DPHI.
		DCCEEW considers that the Coastal Risk Planning Map is unclear in portraying the specific coastal risks.	A map of each coastal risk will continue to be made available with the CMP.
		DCCEEW considers that the NSW coastal design guidelines checklist does not include detailed supporting evidence confirming compliance with the guidelines.	The NSW coastal design checklist has been updated to provide further detail.



Department of Climate Change, Energy, the Environment and Water

Your ref: PP-2023-2568  
Our ref: DOC24/166489-14

Matthew Borsato  
Senior Strategic Planner  
Port Stephens Council

By email: Matthew.Borsato@portstephens.nsw.gov.au

Dear Matthew,

**Request for advice – Planning Proposal PP-2023-2568 – Coastal Risk Planning Clause to the Port Stephens Local Environmental Plan 2013**

I refer to your email, dated 4<sup>th</sup> March 2024, requesting input from the Department of Climate Change, Energy, the Environment and Water (DCCEEW) into Planning Proposal (the Proposal) PP-2023-2568 for inserting a Coastal Risk Planning Clause and subsequent coastal risk mapping in the Port Stephens Local Environmental Plan 2013.

The DCCEEW Biodiversity and Conservation Division (BCD) has reviewed the planning proposal in relation to coastal management.

BCD's detailed comments are provided in **Attachment A**. BCD have no comments with respect to biodiversity or flooding. If you have any further questions about this issue, please contact Neil Kelleher, Senior Team Leader Water, Floodplains and Coast, at [huntercentralcoast@environment.nsw.gov.au](mailto:huntercentralcoast@environment.nsw.gov.au).

Yours sincerely



Joe Thompson  
**Director Hunter Central Coast Branch**  
**Biodiversity and Conservation Division**

24/4/24

Enclosure: Attachment A

**Attachment A****BCD's comments****Coastal Risk Planning Clause Port Stephens Council LEP**

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1. BCD considers that the justification for not mapping a Coastal Vulnerability Area (CVA) is inadequate.

As per the Coastal Management (CM) Act 2016, the best means of achieving the objects of this planning proposal amendment is to map the coastal risk areas identified in a Coastal Management Program (CMP) as the Coastal Vulnerability Area (CVA). This has not been stated in the response to Question 2: *"Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?"*

Recommendation 1

Amend response to Q2 to explain why the CVA mapping methodology was not adopted.

2. BCD considers that the Coastal Risk Planning Map is unclear in portraying the specific coastal risks.

The coastal risk planning maps currently combine coastal inundation, coastal erosion and tidal inundation into one mapped area (dune transgression is mapped separately). While the coastal risk planning clause will apply to all these risks, the practical response from a developer will be different for each coastal risk. Therefore, it is recommended to additionally include separate mapping of coastal inundation, coastal erosion, and tidal inundation to ensure clarity regarding the extent of risk exposure for any proposed development.

Recommendation 2

Provide separate mapping of coastal inundation, tidal inundation, and coastal erosion in addition to the overarching Coastal Risk Planning Map.

3. BCD considers that the NSW coastal design guidelines checklist does not include detailed supporting evidence confirming compliance with the guidelines.

The NSW Coastal Design guidelines are designed to improve decision-making, built outcomes and environmental performance in coastal places through strategic planning and urban design. The checklist is a new tool that can be used to support compliance with the guidelines. The completed checklist in this planning proposal (Attachment 2) does not provide any supporting evidence confirming compliance with the NSW coastal design guidelines.

Recommendation 3

Apply more rigour and provide more detail in the NSW Coastal Design guidelines checklist to demonstrate compliance with the guidance material.

**Draft Port Stephens Planning Proposal Exhibition Version V.1****Department of Planning, Housing and Infrastructure****Environment Policy (EP) team review of management actions - 17 April 2024**

We note that on 14 November 2023 Port Stephens Council resolved to adopt a planning proposal to amend the Port Stephens Local Environmental Plan 2013 to insert a coastal risk planning clause and accompanying coastal risk planning map. The Department subsequently issued a conditional Gateway Determination on 23 February 2024, and an amended Planning Proposal was placed on public exhibition with the Draft CMP on 28 February 2024.

The Planning Proposal states that it is consistent with State and regional strategies, including Chapter 2 Coastal Management of the Resilience and Hazards SEPP 2021 and relevant Local Planning Directions - *'The introduction of a clause into the LEP is the best means to implement the objectives for coastal risk planning in land use planning decisions. The clause will require the consideration of coastal risk in the assessment of development applications on land mapped as being at risk of coastal processes. The inclusion of an accompanying Coastal Risk Planning Map and Dune Transgression Map is the best means to identify land subject to the proposed LEP clause.'*

The comments provided below are intended to assist with finalising the Planning Proposal and are provided in support of Port Stephens Council establishing a clear, consistent, and robust planning assessment framework for the coastal hazards and coastal processes identified within the Draft PS CMP.

**General Comments**

1. The CMP includes extensive areas outside the existing coastal zone that are affected by current and future coastal hazards, particularly 'CH Threat 4 – Coastal Inundation' and 'CH Threat 5 – Tidal Inundation'. These areas have not been identified for mapping within the CVA of RH SEPP 2021 which would facilitate expansion of the coastal zone and appropriate consideration of the identified coastal hazards and risks, and vulnerability of the affected lands.

It is our recommendation that adoption of mapping and development controls for the Coastal Vulnerability Area within the RH SEPP, in conjunction with local provisions in the Port Stephens LEP and DCP would provide a more robust and complete risk-based assessment framework for the assessment of development applications within the extensive areas affected by current and future coastal hazards and coastal processes.

2. To support Council's CMP, IP&R and Strategic Planning obligations we have therefore, suggested to Port Stephens Council that the CMP (as exhibited) be updated to include a CMP Action to prepare a planning proposal for coastal hazards and coastal processes, to amend:
  - a. the RH SEPP to identify the future extent of coastal erosion, coastal inundation, and tidal inundation (2120 projections) in a Coastal Vulnerability Area and extend the existing coastal zone, to allow all actions within the CMP to be undertaken. The extent of the Coastal Risk Planning Map (2120 coastal hazard projections) within *Planning Proposal Exhibition Version V.1* would be suitable for identification as a Coastal Vulnerability Area in the RH SEPP.
  - b. the Port Stephens LEP 2013 to include a coastal risk area to identify the future extent of coastal erosion, coastal inundation, and tidal inundation (2070 projections).

**ITEM 3 - ATTACHMENT 3 DCCEEW AND DPHI SUBMISSION.**

- c. the Port Stephens LEP 2013 to identify the *coastal dune field* (as defined by the *EP&A Regulation 2021*) at 'Stockton Bight' and associated area of dune transgression (2070 projection).
  - d. the RH SEPP Coastal Environment Area, if the full extent of the 'Stockton Bight' *coastal dune field* is not currently identified.
  - e. the RH SEPP Coastal Wetland and Littoral Rainforest Area if the full extent of the Mambo Wetlands is not accurately identified, once the additional acquired land is included, and the ecological survey has been completed.
3. Maps in Appendix A provide a clear distinction between the different coastal hazards and coastal process of dune transgression, and the projected risk and vulnerability of their land now and in the future. These distinctions are not provided in the *Planning Proposal Exhibition Version V.1* maps exhibited concurrently with the Draft CMP.
- Planning controls in the RH SEPP, LEP and DCP should enable landowners to clearly identify:
- a. the vulnerability of their property to each coastal hazard or coastal process now and in the future, and
  - b. assessment requirements and design requirements that will assist them in avoiding, adapting, or mitigating the risk of these hazards and processes.
4. The planning proposal refers to "dune transgression" throughout. For consistency with existing legislation, any local clause drafted to address the coastal process of dune transgression, should acknowledge that this affects an existing *coastal dune field* as defined by the *EP&A Regulation 2021*.
5. While the CMP document referred to as a supporting document to the Planning Proposal, may be generally consistent with the NSW Coastal Management Framework process requirements, it does not adequately consider or implement the following objects of the *Coastal Management Act 2016* as they relate to the timely and effective implementation of land use planning provisions and controls:
- (e) *to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and*
  - (f) *to mitigate current and future risks from coastal hazards, considering the effects of climate change, and*
  - (h) *to promote integrated and co-ordinated coastal planning, management, and reporting, and*
  - (i) *to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and*
  - (j) *to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities,*
6. Table 1 – three RH SEPP coastal management areas apply to the Port Stephens LGA: *Coastal Wetlands and Littoral Rainforest Area, Coastal Environment Area, and Coastal Use Area*. The document should be amended to correct this. This section should also be amended to recognise dune transgression as a coastal process.
7. The information provided within the Coastal Design Guideline 2023 Checklist is considered insufficient and does not adequately reflect the detailed actions and proposed staged implementation of the CMP.

**MINUTES ORDINARY COUNCIL - 14 NOVEMBER 2023****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.

**ORDINARY COUNCIL MEETING - 14 NOVEMBER 2023  
MOTION**

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

Those against the Motion: Nil.

The motion was carried.

**MINUTES ORDINARY COUNCIL - 14 NOVEMBER 2023****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**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
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.

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

**MINUTES ORDINARY COUNCIL - 14 NOVEMBER 2023****LEGAL, POLICY AND RISK IMPLICATIONS**

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

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
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



**MINUTES ORDINARY COUNCIL - 14 NOVEMBER 2023**

- 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

**MINUTES ORDINARY COUNCIL - 14 NOVEMBER 2023**

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.

**MINUTES ORDINARY COUNCIL - 14 NOVEMBER 2023**

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



Department of Planning, Housing and Infrastructure

## Gateway Determination

**Planning proposal (Department Ref: PP-2023-2568):** insert coastal risk planning clause and maps

I, the Director, Central Coast and Hunter at the Department of Planning, Housing and Infrastructure, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Port Stephens Local Environmental Plan 2013* to insert a coastal risk planning clause and maps should proceed subject to the following conditions:

1. The planning proposal is to be updated prior to public exhibition to:
  - (a) refer to the Coastal Design Guideline 2023 and include a completed assessment per Appendix 1 of the guide;
  - (b) amend the explanation of provisions to define dune transgression as a coastal process being a form of major sand drift as defined under the Coastal Management Glossary 2018;
  - (c) include separate coastal risk planning maps for coastal hazards and for dune transgression, noting land affected by either map would be subject to the coastal risk planning provisions;
  - (d) ensure the coastal risk planning map affected by dune transgression shows the current and future areas of projected impact to the year 2070;
  - (e) extend seaward the dune transgression map to ensure the central portion of the beach is incorporated;
  - (f) reduce the dune transgression landward extent to show the projected impact to the year 2070; and
  - (g) insert areas of coastal inundation predominantly located along the rocky shorelines region.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
  - (a) the planning proposal is categorised as complex as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2023) and must be made publicly available for a minimum of 30 working days;
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2023); and
  - (c) exhibition must commence within two months following the date of the Gateway determination.

**ITEM 3 - ATTACHMENT 5      GATEWAY DETERMINATION.**

3. Consultation is required with the Department of Climate Change, Energy, the Environment and Water under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the Act.

The department is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 working days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public.
5. The local environmental plan should be completed prior to 18 February 2025.

Dated 23 day of February 2024.



**Dan Simpkins**  
**Director, Central Coast and Hunter**  
**Planning, Land Use, Strategy and Housing**  
**Department of Planning, Housing and**  
**Infrastructure**

**Delegate of the Minister for Planning and**  
**Public Spaces**

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