

## Minutes 20 March 2012



Minutes of Extra-Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 20 March 2012, commencing at 5.36 pm.

PRESENT: Councillors R. Westbury (Mayor); G. Dingle; S. Dover; G. Francis; K. Jordan (Deputy Mayor); B. MacKenzie; J. Nell; S. O'Brien; S. Tucker; F. Ward; General Manager; Corporate Services Group Manager; Facilities and Services Group Manager; Development Services Group Manager and Executive Officer.

033	<b>Councillor Geoff Dingle</b> <b>Councillor Shirley O'Brien</b>
	It was resolved that the apologies from Crs Peter Kafer and Caroline De Lyall be received and noted.

	No Declaration of Interests were received.
--	--

# INDEX

SUBJECT

PAGE NO

**GENERAL MANAGER'S REPORT..... 3**

1. DRAFT PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2012 ..... 4

# GENERAL MANAGER'S REPORT

PETER GESLING  
GENERAL MANAGER

ITEM NO. 1

FILE NO: 2009-06567

## DRAFT PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2012

REPORT OF: BRUCE PETERSEN - MANAGER COMMUNITY PLANNING AND ENVIRONMENTAL SERVICES

GROUP: DEVELOPMENT SERVICES

---

### RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal at **Attachment 1** (provided under separate cover) and the draft Port Stephens Local Environmental Plan 2012 (Instrument provided under separate cover) at **Attachments 2 and 3** (Maps provided under separate cover) to commence the process in accordance with the provisions of Section 55 of the Environmental Planning and Assessment Act, 1979 (as amended).
- 2) Refer the draft Planning Proposal and draft Port Stephens Local Environmental Plan 2012 to the Department of Planning and Infrastructure to issue a Gateway determination under Section 56 that would allow Council to proceed to public exhibition and formal government agency consultation.
- 3) Request the Department of Planning and Infrastructure to endorse both the Port Stephens Futures Strategy and Port Stephens Planning Strategy the Local Environmental Study to underpin the draft Port Stephens Local Environmental Plan 2012 under the Environmental Planning and Assessment Act, 1979 (as amended).
- 4) Seek the Director-General's opinion that inconsistencies between the draft Local Environmental Plan 2012 and certain Section 117 Ministerial Directions are justified either by an approved strategy or as being of minor significance.
- 5) Delegate to the General Manager authority to make any minor amendments to the adopted draft Local Environmental Plan 2012 that arise after the formal adoption of this Report or as conditions placed on the Gateway determination Authorisation from the Department of Planning and Infrastructure.
- 6) Note that a report will be resubmitted to Council if significant amendments are required by the Department of Planning and Infrastructure to the adopted draft Local Environmental Plan 2012.
- 7) Delegate to the General Manager the authority to incorporate any separate Planning Proposal running concurrently with the draft Local Environmental Plan 2012 at any stage in the plan making process where the separate proposal amends the current Port Stephens Local Environmental Plan 2000 or Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010.
- 8) Acknowledge that the Memorandum of Understanding between Council and the Department of Planning and Infrastructure for funding associated with the preparation of the draft Local Environmental Plan 2012 is contingent upon compliance with the agreed milestones explained in this report.

**MINUTES FOR EXTRA-ORDINARY MEETING – 20 MARCH 2012****EXTRA-ORDINARY COUNCIL MEETING – 20 MARCH 2012**

	<b>Councillor Frank Ward</b> <b>Councillor John Nell</b>
	That the recommendation be adopted.

<b>034</b>	<b>Councillor Bruce MacKenzie</b> <b>Councillor Steve Tucker</b>
	It was resolved that Council move into Committee of the Whole.

<b>035</b>	<b>Councillor Bruce MacKenzie</b> <b>Councillor Glenys Francis</b>
	It was resolved that Council move into Open Council.

The motion on being put was lost.

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

Those for the Motion: Cr Frank Ward.

Those against the Motion: Crs Bob Westbury, Glenys Francis, Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell and Sally Dover.

<b>036</b>	<b>Councillor Bruce MacKenzie</b> <b>Councillor Steve Tucker</b>
	It was resolved that Council defer consideration of the Draft Port Stephens Local Environmental Plan 2012 to allow Councillors meet on a Ward basis to discuss the Draft Plan, and that the matter be reported to Council at the next available opportunity.

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

Those for the Motion: Crs Bob Westbury, Glenys Francis, Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell and Sally Dover.

Those against the Motion: Cr Frank Ward.

## **BACKGROUND**

The purpose of this Report is to recommend Council formally resolve to commence the legal process for the draft Port Stephens Local Environmental Plan (LEP) 2012 under section 55 of the Environmental Planning and Assessment Act, 1979 (the Act).

As part of the NSW Planning Reform Agenda, all councils are required to prepare a new LEP to comply with the Standard Instrument (Local Environmental Plans) Order, 2006. The current Port Stephens LEP 2000 is now 12 years old and has undergone almost 40 amendments. Although Council is legally required to move to the Standard Template format it is also considered timely to review and update the planning instrument to ensure it remains current and flexible in the ever changing planning environment.

### **Existing Planning Position**

#### Lower Hunter Regional Strategy (2006)

In October 2006, the NSW State Government Cabinet endorsed the Lower Hunter Regional Strategy (LHRS). The Strategy identifies that Port Stephens will be required to accommodate a significant increase in population (by 2031). The Strategy provides that 60% of new dwellings will be provided in new release areas and 40% will be provided within the existing urban areas. The targets proposed by the Strategy for Port Stephens are 12,500 new dwellings and 6,100 additional jobs. The LHRS is currently under review by the Department of Planning and Infrastructure (DoPI).

#### Port Stephens Futures Strategy (2009)

The Futures Strategy engaged with the community - residents, businesses and stakeholders - to identify how they would like Port Stephens to look in the future. The development of the Strategy commenced in October 2008 with a series of workshops across the LGA, followed by a Forum in May 2009, which brought the community together to develop a set of values and a vision for the future. Council adopted the Strategy on the 13 December 2009. The Overarching Strategic Directions from this Strategy have been used to develop the Aims of the draft LEP 2012.

#### Port Stephens Planning Strategy (2011)

The primary purpose of the Port Stephens Planning Strategy (PSPS) is to guide land use planning and decision making for development and environmental outcomes. The PSPS provides the framework for the broad strategic base to manage growth and is supplemented by the development of sub-strategies to provide an additional level of detail for specific areas or issues. These sub-strategies facilitate the release of urban lands supported by timely infrastructure provision such as the new release areas of Kings Hill (North Raymond Terrace), Anna Bay and Medowie, the emerging Heatherbrae Enterprise Corridor and Defence and Airport Related Employment Zone Business Park, and the continued development of Raymond Terrace as the major regional centre.

Port Stephens Local Environmental Plan 2000

The current LEP has been in force since 29 December 2000. Over the years there have been almost 40 amendments to the document. The LEP 2000 has been translated across to the draft LEP 2012 where practicable and appropriate.

Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010

This LEP 2010 was published in the standard template format and has generally been translated across to the draft LEP 2012. There are currently three planning proposals submitted with Council to amend LEP 2010. They will be the subject of separate reports.

Port Stephens Development Control Plan 2007

Development Control Plan (DCP) 2007 was the result of consolidating Council's existing DCP's at the time into one single document and updating a range of provisions and controls. As this DCP references and supports the current practices and policies established in LEP 2000, several consequential amendments will need to occur to ensure the DCP is consistent with the draft LEP 2012. Also this review is a timely opportunity to consider how the document has operated over the last five years and consider feed back from the community on its application and quality of outcomes. Work on this project has already commenced with such amendments as the draft Single Dwelling and Dual Occupancy Chapter. The revised principal DCP will be exhibited with the draft LEP 2012 and will be the subject of a further Council report.

Port Stephens Sustainability Policy

The Port Stephens Sustainability Policy provides Council with a clear mandate to undertake all of its operations in a sustainable manner. This Policy is a major consideration in the preparation of all Council documents including LEP's. This Policy is currently under review; however, the principles are sound and will be used to inform the development of the Principal LEP.

**Supporting Studies**

Rural Lands Study and Rural Lands Strategy (2011)

The Rural Lands Study (RLS) reviewed the existing activities on rural zoned land, considered both the current and future role of the rural areas, identified contributory values of the rural landscape and developed an understating of the role of the rural areas in the local economy. This Study has informed the selection of appropriate zones from the Standard Instrument Template and relevant DCP provisions. A copy of the Study and Strategy are located at **Attachment 8**.

Commercial and Industrial Lands Study (2010)

The existing LEP 2000 only has one commercial zone. This does not provide a clear distinction between the roles performed by the commercial centres. The Standard

Instrument Template provides an opportunity to reinforce the commercial hierarchy to complement the hierarchy outlined in the LHRS and PSPS. The Commercial and Industrial Lands Study (CILS) was completed in 2010. Additional work was also undertaken by Leyshon Consulting to provide clear direction for the role and location of bulky goods retailing in the LGA. This review supported Heatherbrae as the preferred location in the short term and the draft LEP 2012 has reflected this direction by way of a B5 Business Development zone. A copy of the CILS and Review of Bulky Goods Floorspace Demand Leyshon Consulting 2011 are located at **Attachments 9** and **10** respectively.

#### Residential Density Review

The existing LEP 2000 has two residential zones – 2(a) Residential and 2(c) Residential. The main distinction between the two zones is that the 2(c) zone allows for increased density, height and additional activities such as tourist facilities. The PSPS identifies the need for greater diversity of housing located in and around commercial centres. As the LHRS identifies increased population for the area and the PSPS has established sound principles for growth, the next step is to implement a more strategic approach to the location of unit development in the LGA. The review has resulted in the recommended two zone approach with a medium density zone to be located either 400 or 800 metres around centres depending on their functions and constraints such as flood affect/aircraft noise/isolation and a low density zone for the remaining residential area. The Kings Hill Urban Release Area has a general residential zone that attempts to promote increased density through lot size controls, however, like the remainder of the LGA, there is no high density development anticipated.

#### **Consistency of Draft Local Environmental Plan with Plan Making Requirements.**

##### State Environmental Planning Policies (SEPPs)

In general, SEPPs prevail over LEPs regardless of what the sequencing of gazettal is. Therefore, drafting directions have instructed councils not to duplicate provisions already contained elsewhere in the planning system. This has implications for both the Land Use Tables and Exempt and Complying Development. The Land Use Tables in the draft LEP 2012 only contain those land uses where permissibility is not addressed elsewhere such as in a SEPP. As a result these tables can not be read as an exhaustive list of all permissible uses. Apparently this approach is to assist with the streamlining of the planning system, however, it actually creates increased confusion for the community as the tables appear incomplete. The Land Use Table Matrix does attempt to assist in clarifying this matter (Refer to **Attachment 4**).

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 came into force on 27 February 2009. Additional provisions relating to both exempt and complying development have been progressively included in the SEPP since it came into force. As a result, the Schedules in the draft LEP 2012 do not contain any items listed in the SEPP. The only matters listed in Schedule 2 relate to signage as this is not addressed in the SEPP.



Section 117 Ministerial Directions

All draft LEPs are required to be consistent with the various directions under Section 117(2) of the Act. Each Direction sets out how minor inconsistencies with the directions may be justified and where the Director-General's approval is required. As part of the appendix to the Planning Proposal, (**Attachment 1**) all Section 117 Directions have been addressed.

The draft LEP 2012 is considered to be inconsistent with the following directions:

- 1.1 Business and Industrial Zones;
- 1.2 Rural Zones;
- 2.1 Environmental Protection Zones;
- 2.3 Heritage Conservation;
- 2.4 Recreation vehicle Areas;
- 3.5 Development near licensed Aerodromes; and
- 4.3 Flood Prone Land.

Point 4 of the Recommendation of this Report requests Council's support to seek the Director-General's opinion that these inconsistencies are, for the reasons identified in the appendix to the Planning Proposal, either consistent with an approved strategy or of a minor significance.

LEP Practice Notes and Planning Circulars

As stated previously, there are several Practice Notes and Circulars produced by the DoPI to instruct councils on the preparation of a Principal LEP using the Standard Template. Where practical these instructions have been followed. However, it should be noted that some practices have now been superseded and changes reflected in recently published LEPs rather than the reissuing of practice notes.

**Overview of Provisions of draft LEP 2012**

The draft LEP consists of the written instrument and the associated map layers. In combination, they form the legal Environmental Planning Instrument. Once the LEP is finalised, both the written instrument and the map layers will be published on the NSW Legislation website.

Written instrument

The draft LEP has been prepared in accordance with the Standard Instrument Order. The instrument is a template of standard compulsory and optional clauses, with provision for the inclusion of additional specific local clauses where they reflect issues relevant to Port Stephens. The provisions of LEP 2000 and LEP 2010 (Kings Hill) have been translated into the draft LEP 2012. **Attachments 5** and **6** compare the relevant LEP and draft LEP 2012.

PART 1: PRELIMINARY

This Part contains the administrative clauses which are fairly straight forward. As a result, individual clauses have only been addressed below where supplementary information is relevant.

Clause 1.2 – Aims of Plan

This clause identifies nine specific aims which have been drawn from the overarching Strategic Principles developed by the community in the Futures Strategy.

Clause 1.3 – Land to which Plan applies

This clause clarifies that the LEP applies to all land identified on the Land Application Map. There are currently two LEPs applying to this local government area – LEP 2000 and LEP (Kings Hill, Raymond Terrace North) 2010. The land affected by both LEPs has been included on the Land Application Map.

PART 2: PERMITTED OR PROHIBITED DEVELOPMENT

This Part outlines what development types are permitted or prohibited in each zone.

**LAND USE ZONES**

The Standard Instrument includes a suite of land use zones. Council is not required to adopt all the zones, but cannot add any new zones. These zones also contain mandated zone objectives. Council may provide a limited number of additional objectives to tailor the zone to local circumstances provided they do not undermine the intent of the zone.

**Rural Zones**

The Standard Instrument provides for six (6) rural zones: RU1 Primary Production, RU2 Rural Landscape, RU3 Forestry, RU4 Primary Production Small Lots, RU5 Village and RU6 Transition. The draft plan does not propose to adopt the RU4 or RU6 zone.

**RU1 Primary Production**

Part land currently zoned 1(a) Rural Agriculture under LEP 2000.

This zone has been adopted for rural land that is classified primary agricultural land by the Department of Primary Industry. The zone proposes to permit the greatest range of agricultural uses. Currently subdivision is prohibited. A 40 hectare minimum lot size is now recommended.

**RU2 Rural Landscape**

Part land currently zoned 1(a) Rural Agriculture and 1(c1) Rural Small Holdings under LEP 2000.

This zone has been adopted for rural lands where land is generally fragmented and constrained by environmental matters such as flooding or vegetation that limit the ability of landowners to use the land for more intensive agricultural uses. This land also makes a significant contribution to the visual amenity of the area.

**RU3 Forestry**

Land currently zoned 1(a) Rural) under LEP 2000.

This zone has been adopted for all State Forests, regardless of their conservation values.

**RU5 Village**

Land currently zoned 1(c3) Rural Small Holdings (Hinton only).

This zone has been adopted for the village of Hinton. The boundary of the RU5 zone extends further than the boundary of the heritage conservation area. The complying development provisions relating to dwelling-houses in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* do not apply to the heritage area, however, will apply to the small number of properties outside of the boundary.

**Residential Zones**

The Standard Instrument provides for five (5) residential zones: R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential and R5 Large Lot Residential. The draft LEP does not propose to adopt the R4 zone.

**R1 General Residential**

Land currently zoned R1 General Residential under LEP 2010.

This zone is a direct translation of the area of R1 zone in LEP 2010. This zone has not been extended beyond the Kings Hill Urban Release Area.

**R2 Low Density Residential**

Part of land currently zoned 2(a) Residential, three areas in 3(a) Business General and part 5(g) Special Urban (Flood Affected) under LEP 2000.

## MINUTES FOR EXTRA-ORDINARY MEETING – 20 MARCH 2012

The majority of the LGA residential land is zoned 2(a) and has been translated across to the R2 Low Density Zone. Remaining 2(a) zoned land has moved across to the R3 Medium Density Residential zone. Land zoned 5(g), which has a prevailing residential character, has been moved to R2 Low Density Residential Zone. R3 Medium Density Residential Zone was not supported due to the constrained nature of the sites (ie flooding). Three areas (Mallabula, Tanilba Bay and Boat Harbour) in the LGA currently have small commercial areas zoned as 3(a) Business General. These areas have been moved across to R2 Low Density Residential Zone where neighbourhood shops are permissible with consent.

### **R3 Medium Density Residential**

Land currently zoned 2(c) Residential and small sections of 2(a) Residential around centres under LEP 2000.

This zone has been applied to the 2(c) zone in Nelson Bay and Shoal Bay. Also additional land has been added around centres such as Raymond Terrace and Tanilba Bay.

### **R5 Large Lot Residential**

Land currently zoned 1(c2) 1(c3) 1(c4) 1(c5) Rural Small Holdings and 1(a) Rural Agriculture at Brandy Hill and Seaham under LEP 2000.

This zone has been adopted to accommodate the various lot sizes of the current 1(c2) - 1(c5) zones which has created a very fragmented low density character often constrained by environmental factors such as flooding. Areas such as Brandy Hill were created under an enabling clause to allow the small lot subdivision but retained their 1(a) zoning. Moving this land across to a R5 zone simply reflects the large lot and non intensive agricultural nature of the area.

## **Business Zones**

The Standard Instrument provides for eight (8) business zones: B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park and B8 Metropolitan Centre. The draft LEP does not propose to adopt the B6 or B8 zones.

### **B1 Neighbourhood Centre**

Part land currently zoned 3(a) Business General under LEP 2000.

This zone is for small village centres such as Fern Bay, Lemon Tree Passage, Fingal Bay, Austral Street Nelson Bay, Lakeside Raymond Terrace and Soldiers Point.

### **B2 Town Centre**

Part land currently zoned 3(a) Business General under LEP 2000 and LEP 2010.

This zone is for town centres that provide more choice in services or provide for a broader catchment. This zone applies to Karuah, Medowie, Tanilba Bay and Nelson Bay. There is a small area of B2 in LEP 2010 that has moved across to the B2 zone.

### **B3 Commercial Core**

Part land currently zoned 3(a) Business General and 5(g) Special urban (Flood

## MINUTES FOR EXTRA-ORDINARY MEETING – 20 MARCH 2012

Affected) under LEP 2000.

This zone is for commercial areas that provide for a variety of either retail or commercial services. This zone applies to Raymond Terrace and Salamander Bay Shopping Centre. A small section of the 5(g) zone has moved to a B3 zone to reflect the prevailing uses.

### **B4 Mixed Use**

Land currently zoned B4 Mixed Use under LEP 2010.

The B4 zone has been used at Raymond Terrace North (Kings Hill) which has been translated across but not extended to other areas.

### **B5 Business Development**

Part land currently zoned 4(a) Industrial General under LEP 2000.

This zone includes land currently zoned for industrial purposes in Heatherbrae primarily along the Pacific Highway. This zone is responding to the repositioning of Heatherbrae as an Enterprise Corridor with a focus on bulky goods retailing.

### **B7 Business Park**

Land currently zoned SP1 Defence and Airport Related Employment Development Zone under LEP 2000.

This SP1 zone utilised the standard template number for the zone, however, did not use the SP1 zone objectives, uses or title. The intent of the zone is to produce a business park that has a character, which is a mix of light industrial, commercial/research facility uses. The B7 is considered a more appropriate zone with an additional zone objective included to relate specifically to its relationship to the RAAF Base Williamtown.

**Industrial Zones**

The Standard Instrument provides for four (4) industrial zones: IN1 General Industrial, IN2 Light Industrial, IN3 Heavy Industrial and IN4 Working Waterfront. The draft LEP does not propose to adopt the IN3 Heavy Industrial zone.

**IN1 General Industrial**

Part land currently zoned 1(a) Rural Agriculture and 4(a) Industrial General under LEP 2000.

This zone is to apply to the Tomago area only. This zone was selected to maintain consistency with the SEPP Major Development which prevails over the 1(a) zone under LEP 2000.

**IN2 Light Industrial**

Some land currently zoned 4(a) Industrial General and 5(g) Special Urban (Flood Affected) under LEP 2000.

This zone is proposed for more low scale industrial areas such as Taylors Beach, Medowie and Raymond Terrace. The area of 5(g) which has primarily light industrial activities has been moved across to the IN2 zone also.

**IN4 Working Waterfront**

Part land currently zoned 4(a) Industrial General under LEP 2000.

This zone has been applied to waterfront industrial areas which are predominantly related to the oyster industry. These sites are at Karuah, Oyster Cove, Salamander Bay and Lemon Tree Passage.

**Special Purpose Zones**

The Standard Instrument provides for two (2) special purpose zones: SP1 Special Activities and SP2 Infrastructure. The draft LEP proposes to adopt both the SP1 and SP2 zones.

**SP1 Special Activities**

Part land currently zoned 1(a) Rural Agriculture and 7(c) Environmental Protection (Water Catchment) under LEP 2000.

This zone is to apply only to land owned or operated by the Hunter Water Corporation (HWC). Unlike other infrastructure providers, HWC has large holdings of environmentally significant land such as sand beds and aquifers. The environmental values of much of this land are currently reflected in the 7(c) zone, which does not allow the HWC to access the provisions of the Infrastructure SEPP. It is also considered inappropriate to zone these lands SP2 Infrastructure. To address both issues, the zone of best fit is the SP1 zone, which recognises the unique nature of the activities, their environmental value and still allows the HWC to use the provision of the SEPP.

**SP2 Infrastructure**

Some land currently zoned 2(a) Residential, 1(a) Rural Agriculture, 5(a) Defence Purposes, 5(c) Proposed Road and 7(c) Environment Protection (Water Catchment) under LEP 2000.

State Environmental Planning Policy (Infrastructure) 2007 came into force on January 1, 2008. The planning provisions of this Policy are outlined in Planning Circular PS 08-001 and LEP Practice Note PN 10-001. The Policy was introduced to “facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency in that it provides a consistent planning regime under the Environmental Planning and Assessment Act 1979”. As a result of the SEPP the majority of the activities such as sub-stations, RAAF Base, land required for road widening, waste management facilities and council depots have been zoned SP2. Where an activity such as a school is permissible in the adjacent zone i.e. residential, then an SP2 zone is not applied. All cemeteries have been zone SP2.

**Recreation Zones**

The Standard Instrument provides for two (2) recreation zones: RE1 Public Recreation and RE2 Private Recreation. The draft LEP proposes to adopt both zones.

**RE1 Public Recreation**

Land currently zoned 6(a) General Recreation and 1(a) Rural Agriculture under LEP 2000.

This zone is to apply to land predominantly either owned or managed by Council as open space, parks, reserves or community facilities. Additional sites have been added including Medowie Sports Complex on Ferodale Road which is currently zoned 1(a) Rural Agriculture.

**RE2 Private Recreation**

Part land currently zoned 6(c) Special Recreation, 2(a) Residential and 1(a) Rural Agriculture under LEP 2000.

This zone is to apply to private recreation activities such as golf courses and caravan parks. Areas within the Pacific Dunes precinct which are currently subdivided for residential purposes have been converted to a residential zone.

**Environment Protection Zones**

The Standard Instrument provides for four (4) environment protection zones: E1 National Parks and Nature Reserves, E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living. The draft LEP proposes to adopt all four zones.

**E1 National Parks and Nature Reserves**

Land currently zoned 1(a) Rural Agriculture, under LEP 2000.

This zone is based on ownership. All land currently on the National Parks Estate have been zoned E1.

**E2 Environmental Conservation**

Some land currently zoned 7(a) Environmental Protection and 1(a) Rural Agriculture under LEP 2000 and E2 under LEP 2010.

This zone is proposed as a high order conservation zone. Specific sites in Anna Bay and adjacent to Tilligerry Creek zoned 1(a) have been transferred to reflect the high environmental values of the area such as SEPP 14 Wetlands. Although zoned 1(a) some areas of the sites have virtually no development potential due to other legislative requirements which protect the values (ie Native Vegetation Act, SEPP 14). All current E2 zoned land has been transferred across without change to the boundaries.

**E3 Environmental Management**

Some land currently zoned 1(a) Rural Agriculture and 7(f1) Environment Protection (coastal lands) under LEP 2000 and additional specific sites. Land zoned E3 in LEP 2010.

This zone has been adopted for private land that is currently zoned 1(a) which has environmental values but is appropriate to retain development potential such as Duns Creek. All current E3 zoned land have been transferred across with out change to the boundaries.

**E4 Environmental Living**

Land currently zoned 7(f3) Environment Protection (Urban Conservation) under LEP 2000.

This zone is the best fit for a residential activity in an area of high environmental value. The provisions are essentially the same between the current 7(f3) zone and the E4 zone. Dual occupancy development will now be a permissible use in the area known as Hill Tops at Nelson Bay due to there being no equivalent zone provisions, however, the land is generally developed and constrained.



**Waterways Zones**

The Standard Instrument provides for three (3) waterways zones: W1 Natural Waterways, W2 Recreational Waterways and W3 Working Waterways. The draft LEP does not propose to adopt the W3 zone.

**W1 Natural Waterways**

Land currently unzoned under LEP 2000.

This zone is to apply to the Williams River only due the high environmental values and the limited recreational access permitted on the River currently.

**W2 Recreational Waterways**

Land currently zoned 7(w) Environment Protection (Waterways) under LEP 2000.

This zone is to apply to Port Stephens which reflects the mix of uses currently being undertaken.

PART 3: EXEMPT AND COMPLYING DEVELOPMENT

This Part contains all the standard compulsory clauses relating to exempt and complying development. The types of development that are considered to be either exempt or complying development are then listed in Schedule 2 (exempt development) or Schedule 3 (complying development).

PART 4: PRINCIPAL DEVELOPMENT STANDARDS

This Part contains a number of clauses that relate to development standards, such as minimum lot sizes for subdivision and dwelling entitlements in rural and environmental protection zones.

Clause 4.1 - Minimum Lot Sizes

This clause is an optional standard clause for adoption where Council requires minimum lot sizes to be regulated by application of a development standard.

The development standard is indicated on the Lot Size Map, rather than written into the clause. This is a significant change in how development standards are applied, as this process eliminates the need to apply one minimum lot size to a land use zone. The Lot Size Map does identify different minimum lot sizes within various land use zones.

The Lot Size Map includes a minimum lot size for the following zones only:

- All adopted rural zones;
- All adopted residential zones;
- All adopted environmental zones excluding E1; and
- RE2 Private Recreation.

Where a minimum lot size has not been indicated on the Lot Size Map, then land can be subdivided with consent under the provisions of clause 2.6 in the draft LEP, subject to any other provisions of Council, such as the DCP. In this circumstance, greater flexibility is afforded to Council in determining an appropriate lot size for a particular development outcome such as in the commercial zones.

The current LEP 2000 prohibits subdivision in the 1(a) Rural Agriculture zone. With this zone being split (RU1 and RU2) two lots sizes are proposed - RU1 40 hectares and RU2 20 hectares. The 1(c2) has a minimum of 20 hectares. This zone has been moved to the RU2 zone with the same minimum lot size. All 1(c 3), 1(c 4) and 1(c 5) lot sizes have been translated across to the draft LEP 2012 under the R5 zone. E2 and E3 zones have been drawn from the 1(a) and 7(a) zones which prohibit subdivision. A 40 hectare minimum is now proposed.

Clause 4.1AA - Minimum Lot Sizes for community title schemes

This optional standard clause ensures that community title subdivision can not occur in RUI, RU2, RU5, R5, E2, E3 and E4 which would compromise the intent of the zone.

Clause 4.1B - Minimum Lot Sizes for dual occupancy, multi dwelling and residential flat buildings

This clause requires a minimum lot size for certain forms of residential development (expressed as a minimum site area per dwelling).

Clause 4.1C – Exceptions to Minimum Lot Sizes for certain residential developments

This clause functions with clause 4.1 to allow subdivision of certain lots below the minimum lot size identified on the Lot Size Map.

Clause 4.2 – Rural subdivision

This standard clause incorporates rural subdivision provisions introduced through *State Environmental Planning Policy (Rural Lands) 2008*. The clause permits subdivision below the minimum lot size for the purposes of primary production, without creating any additional dwelling entitlements.

Clause 4.2A – Lot size exceptions for certain rural and environmental zones

The clause proposes to retain current provisions from the 2000 LEP that permit subdivision of land below the minimum subdivision lot size for uses permitted in these zones (other than residential or tourist and visitor accommodation).

Clause 4.2B – Minimum subdivision of strata or community title subdivision in certain zones

This local provision clause supplements the provisions contained in clause 4.1. The clause proposes to prohibit the subdivision of land under a strata or community title

scheme which would create additional dwelling entitlements. This Clause applies to RU1, RU2, RU5, R5, E2, E3 and E4.

Clause 4.2C – Erection of dwelling houses on land in certain rural, residential and environmental protection zones

This clause links the erection of dwelling houses on certain land to a development standard and makes additional exceptions to these standards.

Clause 4.3 – Height of Buildings

This clause links to a map which identifies the height of buildings in the commercial areas and where the current 2(c) zone is in Nelson Bay and Shoal Bay.

Clause 4.6 – Exceptions to development standards

Variation of any development standard is controlled through clause 4.6 in this Part. As clause 4.6 reflects the provisions in SEPP 1 – Development Standards, clause 1.9 in the draft LEP states that SEPP 1 will no longer apply.

#### PART 5: MISCELLANEOUS PROVISIONS

This Part contains a collection of unrelated standard compulsory clauses. A brief discussion is provided below where necessary to explain the intention of the clause.

Clause 5.1 – Relevant acquisition authority

This clause identifies the relevant acquiring authority for any land that is intended to be purchased for a public purpose. The land identified is mapped on the Land Reservation Acquisition Map.

Clause 5.2 – Classification and reclassification of public land

This clause outlines the requirements for councils to classify or reclassify public land. Schedule 4 then lists the land so affected. It is not proposed to include any land classifications or reclassifications in the draft LEP, so Schedule 4 is left intentionally blank.

Clause 5.3 – Development near zone boundaries

LEP Practice PN 10-001 instructs councils to adopt this optional standard clause where the LEP adopts the SP2 Infrastructure zone, to allow flexibility across zone boundaries for unforeseen development.

Clause 5.4 – Controls relating to miscellaneous permissible uses

This clause enables Council to insert numerical standards for certain types of development to reflect local circumstances.

Clause 5.9 – Preservation of trees or vegetation

This compulsory standard clause will function in place of the Tree Preservation Order in association with a chapter in the DCP. The draft LEP does not propose to adopt the optional clause 5.9(9).

Clause 5.10 – Heritage conservation

This compulsory standard clause outlines the requirements for heritage conservation across the LGA. Schedule 5 lists the various heritage items, heritage conservation areas and archaeological sites that relate to this clause. The Heritage Map then identifies the properties affected.

Schedule 5 in the draft LEP has transferred the LEP 2000 across without adding any new items.

Clause 5.13 – Eco-tourist facilities

This clause is compulsory if the Land Use Tables permit eco-tourist facilities within any land use zone. As the draft LEP proposes to permit this development type within the RU1 Primary Production, RU2 Rural Landscape, RE1 Public Recreation, RE2 Private Recreation, E2 Environmental Conservation, E3 Environmental Management zones it has been included.

The clause includes additional matters for consideration that must be satisfied in order for consent to be granted for an eco-tourist facility.

PART 6: URBAN RELEASE AREAS

This Part relates only to significant land releases where satisfactory arrangements must be made with various state authorities for the provision of infrastructure to service the development. In order to trigger Part 6 clauses, the land must be identified on the Urban Release Area Map. The relevant sites included on this map layer in the draft LEP are the Kings Hill and Moxey's lands at Raymond Terrace North. The land in the B7 Business Park (DAREZ) has also been included.

PART 7: ADDITIONAL LOCAL PROVISIONS

This Part contains specific local clauses that relate to the Port Stephens LGA and do not logically belong in earlier parts in the written instrument.

Clause 7.1 Acid sulphate soils

This clause is similar to the LEP 2000 clause, however, the mapping now forms part of the draft LEP 2012.

Clause 7.2 Earthworks

This clause is a new local provision clause and provides greater clarity around the requirements for earthworks such as ensuring clean fill is required which is particularly important in this LGA due to the large drinking water catchment.

Clause 7.3 Flood planning

This clause adopts the model local provision clause issued by DoPI. The requirements will not change beyond what the current process is, however, the Flood Planning Map will now form part of the LEP.

Clause 7.4 Airspace Operations

This clause reflects the current provisions in the Kings Hill LEP 2010.

Clause 7.5 Development in areas subject of aircraft noise

This clause addresses the relevant *Section 117 Ministerial Direction 3.5: Development near Licensed Aerodomes* relating to the ANEF mapping produced by the Department of Defence and the associated restrictions it places on developments. This clause does not alter the way the ANEF maps are interpreted.

Clause 7.6 Essential services

This clause is required to comply with *Section 117 Ministerial Direction 3.1: Residential Zones* that directs councils to include provisions that residential development is not permitted unless land is adequately serviced (or satisfactory arrangements made to service the land). The provisions have been extended in this clause to relate to all land (other than land to which Part 6 applies) to retain existing provisions in the LEP 2000 at clauses 14B, 18 and 47.

Clause 7.7 Drinking Water Catchment

This clause is a new local provision clause adopted from the natural resource management clauses issued by DoPI. The clause includes specific heads of consideration when assessing any development within the catchment area. The Drinking Water Catchment Map identifies the hydrological catchment identified by the Hunter Water Corporation.

Clause 7.8 Wetlands

This clause is a new local provision clause adopted from the natural resource management clauses issued by DoPI and is supported by a map. This clause provides clarity around the additional considerations required when assessing development in or near these areas.

Clause 7.9 Williams River Catchment

This clause reflects the current provisions in LEP 2000 at clause 10(3)-(6) only.

Clause 7.10 Development within a designated buffer area

This clause addresses the deferred matter in the Kings Hill LEP due to unresolved issues of odour. As an interim, draft LEP 2012 includes a 1km buffer around the waste management facility adjacent to the Kings Hill Urban Release Area. This distance is the current policy position. However it should be noted that as part of a planning proposal for LEP 2010, the matter is being further considered with any changes to the buffer area being translated across to the draft LEP 2012.

Clause 7.11 Location of sex services premises

This clause is a new local provision clause adopted from the model local provision clauses issued by DoPI. It includes specific locational restrictions on where sex services premises can be located.

Clause 7.12 Serviced apartments

This clause is a new local provision clause that has been included to ensure the same provisions apply to the building design as residential flat buildings which requires a quality urban design outcome.

Clause 7.13 Restriction on retail premises in Zone B4 Mixed Use

This clause reflects the current provisions in the Kings Hill LEP 2010. The only change to the clause is that if applies to all B4 zones should any additional areas be added in the future.

Clause 7.14 Dual occupancy developments in certain rural and environmental zones

This clause reflects the current provisions in LEP 2000 (clause 14(4)) which establishes design requirements for dual occupancy development in rural or environmental areas.

Clause 7.15 Certain development at Salamander Way, Salamander Bay (Horizons)

This clause reflects the current provisions which allow subdivision for the purpose of dual occupancy only.

**Additional policy changes**

Subdivision in the RU1 and RU2 zones

The current 1(a) Rural Agriculture zone under LEP 2000 prohibits subdivision. As part of the Rural Lands Study and the need to map lot sizes it was determined that the traditional 40 hectare lot size for agriculture land would be used in the RU1 Primary Production. The 1(a) zoned land that is being moved across to the RU2 Rural Landscape zone is a mix of lot sizes currently and is generally constrained by environmental matters such as flooding or vegetation that limit the ability of landowners to use the land for more intensive agricultural purposes. These areas also play a significant role in the visual amenity of the LGA. The recommended lot size for this area is 20 hectares.

Environmental Review

When the LEP 2000 was prepared there was limited information regarding the environmental values of the area with the result of large sections of the LGA remaining in a 1(a) zone. Since this time, Council and other agencies have undertaken a range of studies and developed the Conservation Assessment Tool to assist in drawing all the available information together. Also more detailed environmental legislation is now in place such as the Native Vegetation Act which has significant impacts on the ability of land owners to clear land even for agricultural purposes. As a result there are three areas identified to transition to either an E2 Environmental Conservation or E3 Environmental Management zone. These areas are part of Duns Creek, land adjacent to Tilligerry Creek and a section of

sites at Anna Bay. **Attachment 7** identifies the general environmental values identified in each area and the legislation currently constraining development. As part of the consultation process the immediately affected property owners will be advised of the change. It should be noted that property owners may have additional or contrary information to that available to Council and will be encouraged to submit this during the exhibition process.

#### Neighbourhood shops

There are three areas in the LGA currently zoned 3(a) Business General. The sites would have been originally identified to provide small scale commercial functions for the surrounding residential area such as a general store. Common planning practice has always been to allow general stores in residential areas rather than identification of small lots due to the volatility of the market driving the economic viability and timing. At the time of the LEP 2000 the thinking was to zone the areas commercial and prohibit general stores. Unfortunately, this has resulted in issues of high vacancy rates and sites being commercially unviable. The draft LEP residential zones list neighbourhood shops as a permissible use with consent. As a result, the three small commercial areas at Mallabula, Tanilba Bay and Boat Harbour have been zoned R2 Low density residential.

#### **RELATIONSHIP OF DRAFT LEP WITH SEPARATE PLANNING PROPOSALS**

In preparing the draft LEP 2012, the approach was taken not to include current planning proposals to ensure they were not unwittingly delayed due to the complexities involved when preparing and finalising a Principal LEP.

Point 7 in the Recommendation seeks Council's support for the streamlining of separate Planning Proposals running concurrently with the draft LEP 2012 should they be published prior to the completion of the draft LEP 2012.

#### **FINANCIAL/RESOURCE IMPLICATIONS**

The development of a new Principal LEP is generally quite resource intensive in both financial and staff allocation terms. In previous budget cycles Council has committed funds to the preparation of background studies and development of community strategic plans such as the Futures Strategy. The Department of Planning and Infrastructure (DoPI) have also assisted with funding from a grant program serviced by a State Government levy imposed on development application fees. This money is then distributed to councils; although the returned amount is not equivalent to the amount levied from each LGA. Council recently received approval for funding of \$84,000 from the DoPI LEP Acceleration Fund. The funding is dependant on two milestones. Council can apply for the first half of the funding on referral of the draft LEP to the DoPI for a Gateway determination. The second milestone will be completion of the draft LEP. Should Council choose not to proceed with the draft LEP funding will not be received.

**LEGAL, POLICY AND RISK IMPLICATIONS**

Adoption of the recommendations of this Report will formally commence the process towards a new Principal LEP in accordance with the provisions of the Act. The legal framework around the preparation of LEPs is extensive. The Reform Agenda of the DoPI has further increased the requirements with the introduction of the Standard Instrument Template, additional Section 117 Directions, changes to the Act, new state environmental planning policies (SEPPs), practice notes and planning circulars all of which are undergoing constant additions and changes/clarification in interpretation. The Standard Instrument Template, in particular, controls the content and format of the Principal LEP.

The Template provides:

- Specific definitions - no additional definitions are to be added to the Dictionary;
- List of standard zones – no additional zones to be added;
- Zone objectives – each zone has a set of core objectives. Councils may provide a limited number of additional objectives to tailor the zone to the existing area;
- Permitted and prohibited uses – the land use table mandates specific prohibited and permitted land uses. Councils may add to this list of land uses providing they remain consistent with the zone objectives and are taken from the specified definitions in the Dictionary;
- Clauses – almost 40 clauses are mandated and listed as either compulsory or optional;
- Model clauses – optional clauses developed and approved by the DoPI;
- Local provisions – councils may address specific circumstances by adding local provisions as a new clause provided they do not undermine the intent of the mandated clauses;
- Principal Development standards – clauses which address such matters as minimum lot sizes and height of buildings;
- Schedules – there are currently five schedules e.g. Environmental Heritage.

A Local Environmental Study (LES) is required under the Act to support the development of the Principal LEP. As recommended, the DoPI will be requested to confirm that the Futures Strategy and Planning Strategy be endorsed as the LES, which is further supported by existing adopted Council documents such as the Karuah, Medowie and Anna Bay Strategies.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
Not proceed with the draft LEP. May result in Department of Planning and Infrastructure directing Council to finalise a Standard Instrument LEP.	High	Proceed with a draft LEP for exhibition for Council's further consideration.	No
Resolve to make changes to mandated	High	Ensure the draft LEP is consistent with the	Project delayed which moves



## MINUTES FOR EXTRA-ORDINARY MEETING – 20 MARCH 2012

clauses, including variation to the TPO Clause.		legislative requirements of the Act	resources from other projects identified on the work program
Resolve to rezone additional sites without relevant studies being prepared.	High	Additional sites proceed as separate planning proposals	No
Resolve to rezone land and prepare relevant studies at Councils cost	High	Supporting studies for potential financial gain (ie rezoning) to be paid for by developers	No
Resolve to exclude land for environmental zone.	High	Land of high conservation value appropriately zoned	No

### SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Principal LEP will be developed in accordance with the fundamental objective of developing/enhancing and supporting a sustainable Port Stephens community.

### CONSULTATION

In accordance with the Act exhibition and consultation is now determined by the DoPI and outlined in the Gateway determination (Section 56). Council can not seek public comment of the draft instrument until this Authorisation is given. However, the community engagement process for the development of the Futures Strategy, Planning Strategy and a review of the common issues raised through the development assessment process has provided information to inform the draft document. It should be noted that the document is draft and this is just the beginning of the planning proposal process.

#### Internal Consultation

Significant internal discussion has occurred with Council officers from various Groups for particular themes such as flooding, waste, roads, parks and in particular with area who utilise the current LEP. Information obtained from these discussions has informed the draft document.

### **External Consultation**

On receipt of Authorisation to exhibit a comprehensive community consultation process is proposed with community members, industry representatives, Residents Panel and specific interest groups such as the heritage committee. Consultation will take various forms such as workshops, presentations, informal and formal discussions, correspondence and attendance at events such as the Industry Forum. Frequently asked question sheets (FAQs) will be developed to assist in providing a plain English explanation of the document and its implications.

Discussions have also occurred with representatives of the Karuah and Worimi Land Councils who have large holdings in the LGA. Further comments will be sort during the exhibition process.

The exhibition period will be advertised in the local paper in accordance with the Act. Documents will be available at all libraries, Administration Building, Council website and venues such as a general store in areas with limited access to the other locations.

### **Government Agencies**

Informal discussions have occurred with several government agencies such as but not limited to, Roads and Maritime Services, Hunter Water Corporation, Office of Environment and Heritage, Lands and Property Management Authority, NSW Housing, Department of Primary Industry, Fisheries and DoPI. Formal consultation can only occur once the Gateway determination Authorisation is received.

### **Councillor Consultation**

In preparation of the draft LEP 2012, Councillors have been involved in 11 Two-Way Conversations, 12 Workshops, one full day workshop, and one full day bus trip. Further workshops will occur as comments are received from DoPI prior to the exhibition process and throughout the remainder of the process as issues are raised by the community.

### **OPTIONS**

- 1) Proceed with the draft Local Environmental Plan 2012 in accordance with the nine recommendations. This is the preferred option;
- 2) Make changes to the draft Local Environmental Plan 2012 resulting in noncompliance with the Standard Order. It should be noted that this would delay the progress toward finalising a new Principal LEP. This is not the recommended option;
- 3) Make changes to the draft Local Environmental Plan 2012. Depending on changes this would delay the progress toward finalising a new Principal LEP; or
- 4) Not proceed with the draft Local Environmental Plan 2012. Should this be Councils Resolution, DoPI have legislative authority to prepare and finalise a Principal LEP without Council. Council would no longer have access to LEP Acceleration Fund money.

**ATTACHMENTS** – all listed below are provided under separate cover

- 1) Planning Proposal;
- 2) Draft Port Stephens Local Environmental Plan 2012 (Written Instrument);
- 3) Draft Port Stephens Local Environmental Plan 2012 Maps;
- 4) Land Use Matrix;
- 5) Comparison Table – LEP 2000 and LEP 2012;
- 6) Comparison Table – LEP 2010 (Kings Hill) and LEP 2012;
- 7) Environmental summary of three key areas;
- 8) Rural Lands Strategy and Rural Lands Study;
- 9) Commercial and Industrial Lands Study; and
- 10) Review of Bulky Goods Floorspace Demand Leyshon Consulting 2011.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**

**PLANNING PROPOSAL**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 2**

**DRAFT PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2012  
(WRITTEN INSTRUMENT)**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 3**

**DRAFT PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2012 MAPS**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 4**

**LAND USE MATRIX**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 5**

**COMPARISON TABLE – LEP 2000 AND LEP 2012**

**PROVIDED UNDER SEPARATE COVER**



**ATTACHMENT 6**

**COMPARISON TABLE – LEP 2010 (KINGS HILL) AND LEP 2012**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 7**

**ENVIRONMENTAL SUMMARY OF THREE KEY AREAS**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 8**

**RURAL LANDS STRATEGY AND RURAL LANDS STUDY**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 9**

**COMMERCIAL AND INDUSTRIAL LANDS STUDY**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 10**

**REVIEW OF BULKY GOODS FLOORSACE DEMAND LEYSHON CONSULTING 2011**

**PROVIDED UNDER SEPARATE COVER**

There being no further business the meeting closed at 6.21pm.

*I certify that pages 1 to 37 of the Open Ordinary Minutes of Council 20 March 2012 confirmed by Council at its meeting held on 27 March 2012.*

.....  
**Cr Bob Westbury**  
**MAYOR**