Minutes 30 MARCH 2010

Port Stephens
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... a community partnership

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 30 March 2010, commencing at 5.40pm.

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

092	**Councillor Steve Tucker** **Councillor Shirley O'Brien**	It was resolved that an apology from Cr Ken Jordan be received and noted.

Councillor Francis and Dingle were not present at the commencement of the meeting.

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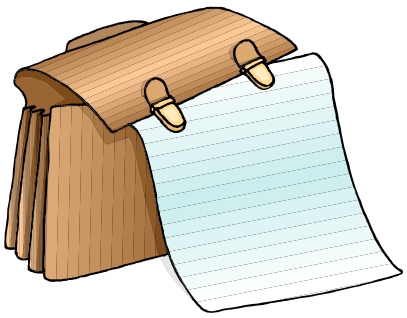
SUBJECT PAGE NO

COUNCIL REPORTS



Councillors Dingle and Francis entered the meeting at 5.45pm.

ITEM NO. 1 **FILE NO: PSC2006-2097**

DEVELOPMENT CONTROL PLAN - POLICIES FOR FLOOD MANAGEMENT PLANNING AND SEA LEVEL RISE

REPORT OF: DAVID BROYD – GROUP MANAGER SUSTAINABLE PLANNING
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

1) Endorse for public exhibition - for 28 days - the draft Development Control Plan Chapter B13 "Areas Affected by Flooding and/or Inundation" of the Port Stephens Development Control Plan 2007, including a Sea Level Rise component for residential habitable floor level (**Attachment 1**).
2) Repeal and replace Councils existing Flood Policy and include a Sea Level Rise component for residential habitable floor level.

ORDINARY COUNCIL MEETING – 30 MARCH 2010

093	**Councillor Bruce MacKenzie** **Councillor Sally Dover**	It was resolved that Council: 1) Defer endorsement of the public exhibition of the draft Development Control Plan amendment pending further advice from the Group Manager Sustainable Planning as to how this policy fits into the overall development assessment responsibilities of Council, ie. Of the other factors that Council must take into account for such development assessment. 2) That a Councillor's workshop be held on the issue.

Councillor Francis left the meeting at 5.52pm prior to voting.

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

Those for the Motion: Crs Bruce MacKenzie, Peter Kafer, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury and Sally Dover.

Those against the Motion: Nil.

BACKGROUND

Purposes

The purposes of this report are:

- to advise Council of the current Government Policy on Sea Level Rise;
- to update Council's previous resolution on Sea Level Rise;
- to give a policy context for determination of the Development Application for 149 Sandy Point Road; and
- to recommend the public exhibition a draft Development Control Plan Chapter B13 "Areas Affected by Flooding and/or Inundation" of the *Port Stephens Development Control Plan 2007*, to repeal and replace Councils existing Flood Policy and include a Sea Level Rise component to residential habitable floor levels.

Councils existing Flood Policy was adopted on 27 January 1998 and last amended on 16 December 2008. That Policy was introduced to manage the development on land within the Council area that is affected by flooding and/or inundation. The Policy has been amended on a number of occasions in accordance with changes to Government Policy. The Flood Policy did not specifically address Sea Level Rise. A copy of the existing Policy is included as Attachment 6.

Sea Level Rise

Council resolved at its meeting of 19 May 2009 (minute no 155) that:

1) Council adopt a planning benchmark for sea level rise of 0.91m for the year 2100 with an assumed linear increase from present day levels as the basis for Council staff to proceed with risk assessment, policy development, and planning and development decisions.

2) Review these figures on an as needs basis when new information becomes available such as the release of future Intergovernmental Panel on Climate Change assessment reports and guidelines being drafted by the NSW Departments of Planning and Environment and Climate Change.

3) Continue to investigate Climate Change impacts on both Council and the community to determine appropriate responses.

4) That Council continue to consult with the community using the Residents Panel and other forums and report back to Council following the consultation.

Following this resolution the NSW State Government adopted a Sea level Rise Policy Statement in October 2009 that includes the following:

"….Sea level rise is an incremental process and will have medium- to long-term impacts. The best national and international projections of sea level rise along the NSW coast are for a rise relative to 1990 mean sea levels of 40 cm by 2050 and 90 cm by 2100. However, the Intergovernmental Panel on Climate Change (IPCC) in 2007 also acknowledged that higher rates of sea level rise are possible.

….The NSW Government has an objective to see coastal communities adapt to rising sea levels in a manner that minimises the resulting social disruption, economic costs and environmental impacts. To assist in meeting this objective, the Government will support local councils and the community in adapting to sea level rise by:

1. *promoting an adaptive risk-based approach to managing the impacts of sea level rise*
2. *providing guidance to local councils to support their sea level rise adaptation planning*
3. *encouraging appropriate development on land projected to be at risk from sea level rise*
4. *continuing to provide emergency management support to coastal communities during times of floods and storms*
5. *continuing to provide up-to-date information to the public about sea level rise and its impacts."*

In addition the NSW Government has made a concerted effort to incorporate climate change into relevant planning policies, manuals, plans, strategies and directions including the following documents:

Coastline Management Manual (1990) and Floodplain Development Manual (2005) - require consideration of climate change in the preparation of coastal hazard and flood studies and management plans;

Standard Instrument: Principal Local Environmental Plan contains clause 5.5: development within the coastal zone which requires that all development within the NSW Coastal Zone consider the effect of coastal processes and coastal hazards and potential impacts, including sea level rise on the proposed development, and arising from the proposed development.

Coastal Design Guidelines for NSW (2003) - encourage development to be sited outside areas affected by coastal processes, coastal erosion and sea level rise.

State Environmental Planning Policy 71: Coastal Protection requires that councils consider the impact of coastal processes and coastal hazards when preparing LEPs and assessing development in the NSW Coastal Zone.

Section 117 Direction 2.2 – Coastal Protection - requires that planning proposals must include provisions that give effect to and are consistent with the NSW Coastal Policy, the Coastal Design Guidelines for NSW and the Coastline Management Manual.

Section 117 Direction 4.3 – Flood Prone Land - requires that planning proposals must include provisions that give effect to and are consistent with the Flood Prone Land Policy and the principles of the Floodplain Development Manual.

The Department of Planning exhibited a *Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise* during December 2009. The draft proposes that Councils, State agencies, planners and development proponents are to have regard to the Guideline when addressing sea level rise matters in land use planning and development assessment in coastal areas.

At the same time the Department of Environment, Climate Change and Water exhibited draft *Flood and Coastal Risk Management Guides* incorporating Sea level Rise. These guidelines provide that current Flood Planning Area and Levels be increased by a Sea Level Rise factor of 0.4 metre by 2050 and 0.9 metre by 2100 as indicated in **attachment 2**. The supporting documentation includes historical measurements over the last 140 years indicates a sea level rise of over 20 centimetres in that period (**attachment 3**).

FLOOD PLANNING LEVELS INCORPORATING SEA LEVEL RISE

Council has adopted the Port Stephens Foreshore (Floodplain) Management Study and the Port Stephens Foreshore (Floodplain) Management Plan on 22 March 2002. That Plan provided a Flood Planning Level of 2.5 metres AHD for development beyond 50 metres of Mean High Water, and a level of 2.5 metres or higher where the design wave run up level exceeded that level for development within 50 metres of Mean High Water.

A "*New Guideline on Development Controls on Low Risk Areas—Floodplain Development Manual (The Guideline)*" was issued by the Departments of Planning and Environment and Climate Change on 21 February 2007 to be read as part of the NSW Floodplain Development Manual. The Guideline provides that, unless there are exceptional circumstances, Councils should adopt the 100 year flood as the Flood Planning Level (FPL) for residential development plus an appropriate freeboard. This particular 1% flood event as determined by the Port Stephens Foreshore (Floodplain) Management Study is proposed to be used as a basis for determining FPL incorporating Sea Level Rise rather than the level of 2.5.

Development beyond 50 metres of Mean High Water

Attachment 4 graphs the current 1% flood levels (excluding wind waves and wave run up) around the Port Stephens foreshore for those areas and beyond 50 metres of Mean High Water. The Graph includes the current 2.5 metre AHD FPL, the year 2100 1% flood level and the proposed Flood Planning Level of RL 3.0 metre AHD.

Development within 50 metres of Mean High Water

Attachment 5 graphs the current 1% flood levels (including wind waves and wave run up) around the Port Stephens foreshore for those areas and within 50 metres of Mean High Water. The Graph includes the current FPL, the year 2100 1% flood level and the proposed Flood Planning Level.

FINANCIAL/RESOURCE IMPLICATIONS

The public exhibition of the Draft DCP will require Planning Staff time and resources to coordinate the exhibition process, review of submissions and subsequent report to Council.

Transferring the flood policy incorporating Sea Level Rise matters that are the subject of this report into the Port Stephens DCP 2007 will ensure greater awareness of land owners and development proponents of the issues and requirements for development in flood affected areas.

LEGAL, POLICY AND RISK IMPLICATIONS

The draft DCP Chapter integrates Councils existing Floor Policy and incorporates Sea Level Rise Policy adopted May 2009 and the ensuing State Government Policies on Sea Level Rise. By publicly exhibiting the Draft DCP Council is complying with State Government Policies and Legislation.

A number of Court cases and the general legal position is that sea level rise are clear that Councils must give full consideration to climate change and sea level rise in determining relevant development applications and could exposed to legal challenge and liability for not doing so. The State Government provides no indemnity in this regard. Sea level rise is however, one – albeit crucial - factor in determining relevant applications under section 79c of the Environmental Planning and Assessment Act. Other factors such as relative height of ground level with adjoining properties and the neighbourhood - and consequent effects on aesthetics, privacy and overlooking – are also essential factors. .

Council has significant exposure therefore to risk in deciding planning and development matters where sea level rise is an issue. By placing the Draft DCP on public exhibition and allowing land owners and the community to understand the issues and risks associated with SLR and allow Council to consider public submissions and allow an informed decision. In doing so, Council will be undertaking a risk management approach to this complex issue.

During the exhibition period, direct consultation with the Insurance Council of Australia will be undertaken to understand and ensure that Councils approach to this matter is consistent with the approach taken by the Industry.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Sea Level Rise and its potential impacts on the broader community have been identified by the Federal and State Governments as a significant risk management issue. It has been predicted that SLR will have economic, social and environmental impacts in low lying coastal and estuarine areas. The impacts on public infrastructure are potentially enormous but are outside the scope of the proposed draft DCP. The focus of the draft DCP is how to guide private development proposals and public planning decisions.

CONSULTATION

This draft DCP has been prepared following consultation with the relevant State Government Departments and other Coastal Councils within NSW that have dealt with these issues.

The public exhibition of the draft DCP is proposed to be for 28 days and will be placed on Councils website and will be made available at all Council Libraries and Administration Building in Raymond Terrace. The draft will also be provided to members of the Residents Panel.

OPTIONS

1) Retain the existing Flood Policy without amendments.
2) Place the draft DCP on exhibition as recommended.
3) Amend some of the content of the draft DCP prior to exhibition.

ATTACHMENTS

1) Draft DCP
2) Sea Level Rise Planning Benchmarks
3) Sea Level Rise Observations
4) Flood Levels beyond 50 metres from foreshore
5) Flood Levels within 50 metres from foreshore
6) Flood Policy

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

AREAS AFFECTED BY FLOODING AND/OR INUNDATION DEVELOPMENT CONTROL PLAN

B13. 1 Where this part applies

This DCP applies to development on any land affected by the likelihood of flooding and/or tidal inundation defined as flood prone land in Port Stephens LEP 2000.

This DCP is limited in its scope and relates only to flooding and sea level rise based on current predictions available to Council. It does not consider in any detail other related matters such as erosion, inundation of public infrastructure including roads.

B13. 2 Background

Council's original policy was introduced to manage the development on land within the Council area that is affected by flooding and/or inundation. The Policy was amended in December 2000 and October 2004 in accordance with changes to Government Policy, the NSW Floodplain Development Manual and available flooding information. This policy has been now been amended to incorporate the revised NSW Floodplain Development Manual 2005 and the provisions of draft and adopted Floodplain Management Plans prepared for land within the Port Stephens Local Government Area.

In May 2009 Council adopted a planning benchmark for sea level rise of 0.91m for the year 2100 with an assumed linear increase from present day levels as the basis for Council staff to proceed with risk assessment, policy development, and planning and development decisions.

In October 2009, the NSW Government adopted a Sea Level Rise Policy Statement that provides for Sea Level Rise as an incremental process and will have medium to long term impacts. The best National and International projections of Sea Level Rise along the NSW Coast are for a rise relative to 1990 mean sea levels of 40cm by 2050 and 90cm by 2100.

B13. 3 Objectives

B13.3.1 To manage the development of land subject to or affected by the likelihood of flooding and/or tidal inundation defined as flood prone land in the Port Stephens Local Environmental Plan 2000.

B13.3.2 To base the nature of the restriction applied to an affected site on the principles of the NSW Floodplain Development Manual 2005, the Port Stephens Foreshore (Floodplain) Management Study and Plan 2002, the Paterson River Floodplain Management Study and Plan 2001, the draft Lower Hunter Valley Floodplain Management Study 2001, the Williamtown Salt Ash Flood Study and any further flooding information available to Council at the time.

B13.3.3 To ensure that decisions in relation to the acquisition and development of land are made having regard to the best flooding information available.

B13.3.5 The policy manages development of flood prone and flood-affected land and requires assessment of the risks and consideration of satisfactory precautions where appropriate.

B13.3.6 To implement State Government Policies relating to Sea Level Rise including the Coastal Design Guidelines for NSW, State Environmental Planning Policy 71 and the Draft NSW Coastal Planning Guideline "Adapting to Sea Level Rise" and to comply with the NSW Sea Level Rise Policy Statement, Oct 2009.

B13. 4 Development Controls

Flood Planning Area

B13.4.1 Land affected by flooding should not be developed without adequate assessment of the risks and consideration of the satisfactory precautions where appropriate.

Application may be sought from Council for the relevant Flood Planning Level of a development site.

B13.4.2 Before granting development consent on flood prone land or on land directly or indirectly affected by flooding, the applicant must address the following:

- The extent and nature of the flooding or inundation hazard affecting the land,
- Whether or not the proposed development would increase the risk of or severity of flooding or inundation affecting other land or buildings, works or other land uses in the vicinity,
- Whether the risk of flooding or inundation affecting the proposed development could be reasonably mitigated and whether conditions should be imposed on any consent to further objectives of this plan,
- The social impact of flooding on occupants, including the ability of emergency services to access, rescue and support residents of flood affected areas, and
- The provisions of any Floodplain Management Plan, Floodplain Study or Development Control Plan adopted by Council or in draft form.

B13.4.3 If Council determines that a comprehensive flood report is required to support the development application, then this shall be prepared by an experienced Flood Engineer.

B13.4.4 Council will then assess the applicant's flood report as part of the assessment and determination of the application.

B13.4.5 Land use and purchase decisions are best made with the best knowledge available of any potential risks to life and property.

B13. 5 Flood Planning Area including Sea Level Rise

All development

13.5.1 For development below RL4.0 metres AHD or within 100 metres of the foreshore the applicant shall consider Sea Level Rise in the design of the development and in the development application

Residential Development

B13.5.2 For residential development within 50 metres of the foreshore the Flood Planning Level for habitable rooms shall provide an increase of 0.9 metres (sea level rise) plus 0.2 metres (freeboard*) above the 1997 Manly Hydraulic Laboratory report 1% Annual Exceedence Probability Flood level including wind and wave run up, or a minimum of RL 3.0 metres AHD, whichever is the greater.

B13.5.3 For residential development beyond 50 metres of the foreshore the Flood Planning Level for habitable rooms shall be at RL 3.0 metres AHD* or above.

B13.5.4 Non habitable rooms, garages, carports, boat sheds, garden sheds and the like may have a reduced Flood Planning Level.

B13.5.5 Additions and alterations with habitable rooms up to 20% net additional floor area will be assessed on their merit relative to the Flood Planning Level. Such factors as design compatibility with existing structure and visual effect will be important factors in applying discretion. Alterations and additions exceeding 20% floor area should comply with the Flood Planning Level.

13.5.6 For any components of the development including road, water, sewer and stormwater drainage infrastructure proposed on land below 4.0 AHD further assessment of sea level rise is required.

13.5.7 For subdivision proposals no new residential lots are to be created below 4.0 AHD unless Sea Level Rise has been taken into consideration and suitable area for building is provided to satisfy the flood planning level.

13.5.8 Where strict compliance with the flood planning level will create a situation whereby the amenity of adjoining properties is compromised

in relation to privacy, views, over shadowing and the like, Council will judge each case on its merits taking into account broader public interest considerations and comply with Section 79c of the Environmental Planning and Assessment Act, 1979.

* Note Freeboard

The NSW Floodplain Management Development Manual 2005 advises a nominal 0.5m freeboard to provide for uncertainties of flood estimates, local factors, wave action, climate change and cumulative infill effects. The Manly Hydraulic Laboratory report already includes wave action. Sea Level Rise as part of climate change has already been factored into the Flood Planning Level. A reduced freeboard has therefore been adopted.

ATTACHMENT 2

SEA LEVEL RISE PLANNING BENCHMARKS

Derivation of the NSW Government Sea level Rise Planning Benchmarks (2009).
Department of Environment, Climate Change and Water

Table1 Components of the sea level rise planning benchmarks

Component	Year 2050	Year 2100
Sea level rise	30 cm	59 cm
Accelerated ice melt	(included in above value)	20 cm
Regional sea level rise variation	10 cm	14 cm
Rounding	-	-3 cm
Total	40 cm	90 cm

ATTACHMENT 3

SEA LEVEL RISE OBSERVATIONS

Derivation of the NSW Government Sea level Rise Planning Benchmarks (2009). Department of Environment, Climate Change and Water

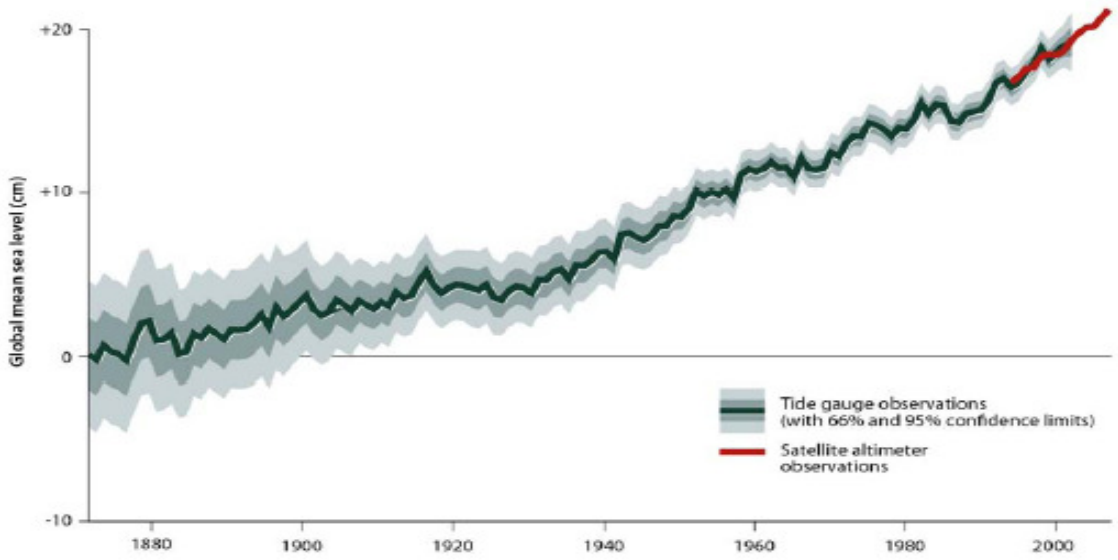
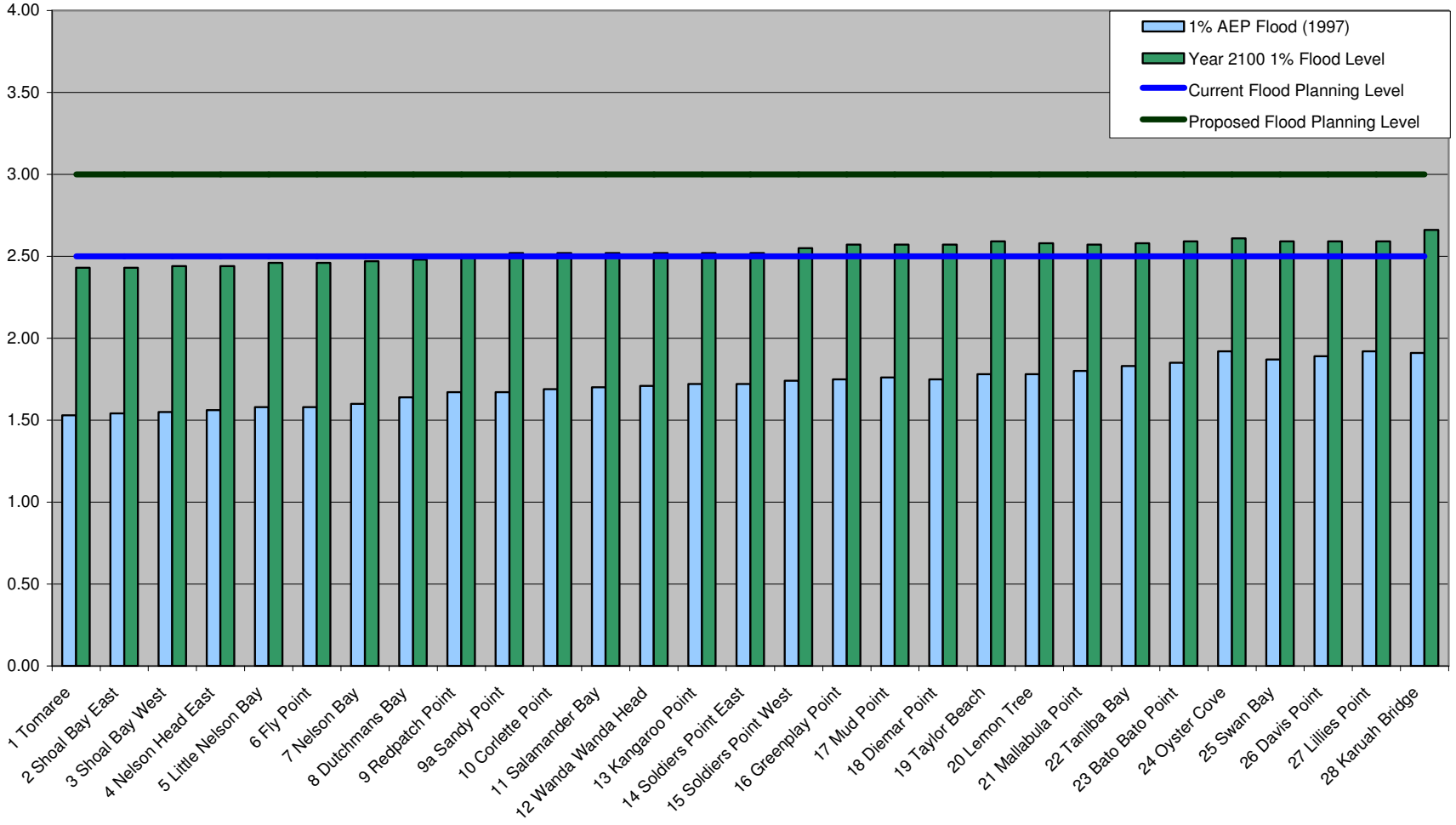


Figure 3 Annual averages of the global mean sea level (cm)
(*Source*: UNEP/GRID-Arendal 2007a)

Recent analysis of satellite data (1993–2007) shows the current global average annual sea level rise to be 3.4 ± 0.4 mm per year (Beckley et al. 2007).

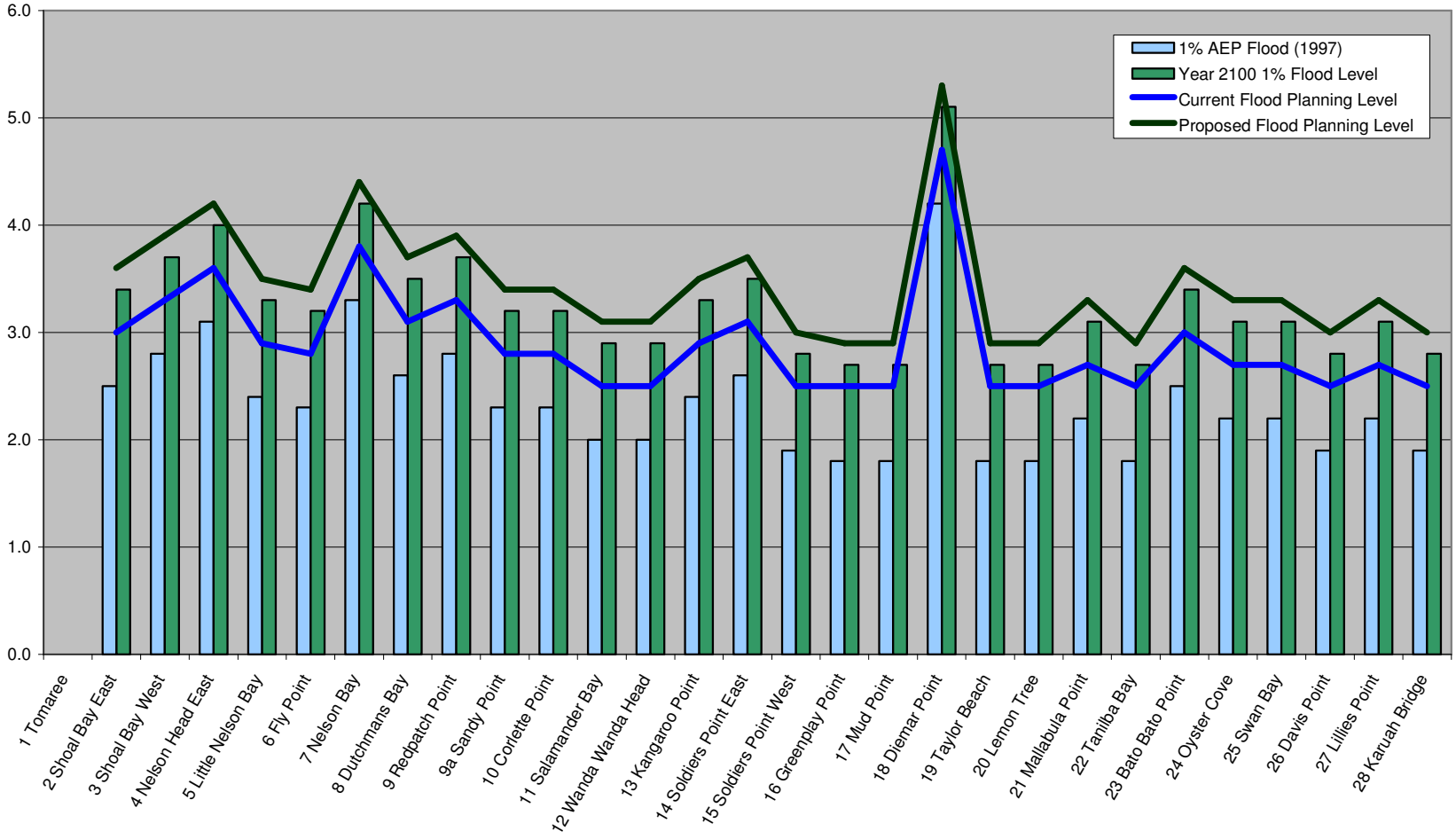
ATTACHMENT 4

Flood Levels beyond 50 metre from Foreshore (Excludes wind wave and wave runup)



ATTACHMENT 5

Flood Levels within 50 metre of Foreshore (includes wind wave and wave runup)



ATTACHMENT 6

Port Stephens
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POLICY

Adopted: 27/1/98
Minute No: 12
Amended: 19/12/2000
Minute No: 711
Amended: 19/10/2004
Minute No: 375
Amended: 24/10/2006
Minute No: 732
Amended: 25/9/2007
Minute No: 280
Amended: 16/12/2008
Minute No: 384

FILE NO: **PSC2006-2097**

TITLE: **AREAS AFFECTED BY FLOODING AND/OR INUNDATION**

REPORT OF **TREVOR ALLEN, INTEGRATED PLANNING MANAGER**

BACKGROUND

Council's original policy was introduced to manage the development on land within the Council area that is affected by flooding and/or inundation. The Policy was amended in December 2000 and October 2004 in accordance with changes to Government Policy, the NSW Floodplain Development Manual and available flooding information. This policy has been now been amended to incorporate the revised NSW Floodplain Development Manual 2005 and the provisions of draft and adopted Floodplain Management Plans prepared for land within the Port Stephens Local Government Area.

OBJECTIVE

- To manage the development of land subject to or affected by the likelihood of flooding and/or tidal inundation defined as floodprone land in the Port Stephens Local Environmental Plan 2000.
- To base the nature of the restriction applied to an affected site on the principles of the NSW Floodplain Development Manual 2005, the Port Stephens Foreshore (Floodplain) Management Study and Plan 2002, the Paterson River Floodplain Management Study and Plan 2001, the draft Lower Hunter Valley Floodplain Management Study 2001, the Williamtown Salt Ash Flood Study and any further flooding information available to Council at the time.
- To ensure that decisions in relation to the acquisition and development of land are made having regard to the best flooding information available.

- To ensure that Council complies with the provision of S733 of the Local Government Act 1993 - Exemption from liability—flood liable land and land in coastal zone

PRINCIPLES

The policy manages development of flood prone and flood-affected land and requires assessment of the risks and consideration of satisfactory precautions where appropriate.

POLICY STATEMENT

1. Land affected by flooding should not be developed without adequate assessment of the risks and consideration of the satisfactory precautions where appropriate.

2. Council must, before granting development consent on flood prone land or on land directly or indirectly affected by flooding, consider the following:

   - The extent and nature of the flooding or inundation hazard affecting the land,
   - Whether or not the proposed development would increase the risk of or severity of flooding or inundation affecting other land or buildings, works or other land uses in the vicinity,
   - Whether the risk of flooding or inundation affecting the proposed development could be reasonably mitigated and whether conditions should be imposed on any consent to further objectives of this plan,
   - The social impact of flooding on occupants, including the ability of emergency services to access, rescue and support residents of flood affected areas, and
   - The provisions of any Floodplain Management Plan, Floodplain Study or Development Control Plan adopted by Council or in draft form.

3. (a) If Council determines that a comprehensive flood report is required to support the development application, then this shall be prepared by an experienced Flood Engineer.

3. (b) Council will then assess the applicant's flood report as part of the assessment and determination of the application. If the flood report is concluded to be inadequate to achieve full merit assessment, then the Council shall advise the applicant, in writing, within 21 days of receipt. The applicant will then have 28 days in which to provide a response to the issues. Should the response not be received within that time period, or inadequate justification is given for an extension of time, the application will be refused under delegation.

4. Land use and purchase decisions are best made with the best knowledge available of any potential risks to life and property.

5. Subdivision of Low Risk Flood Prone land shall only be granted where the minimum lot size created is one Hectare.

RELATED POLICIES

N/A

REVIEW DATE

This policy will be reviewed as and when necessary.

RELEVANT LEGISLATIVE PROVISIONS

Environmental Planning and Assessment Act 1979 (NSW)
Local Government Act 1993 (NSW)
Port Stephens Draft Local Environmental Plan 2000

IMPLEMENTATION RESPONSIBILITY

The Integrated Planning section of Council, through its Infrastructure Planning Team is responsible for the implementation of this policy in conjunction with other staff as appropriate.

Councillor Francis returned to the meeting at 5.54pm prior to Item 2.

ITEM NO. 2 **FILE NO: 16-2009-945-1**

DEVELOPMENT APPLICATION FOR TWO STOREY DWELLING AT NO. 140 SANDY POINT ROAD, CORLETTE

REPORT OF: KEN SOLMAN - ACTING MANAGER, DEVELOPMENT AND BUILDING
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

1) Refuse Development Application 16-2009-945-1 for the following reasons:

   i) The proposed construction of a dwelling development site is unsuitable for the proposed development site as it is susceptible to and significantly affected by sea level rise, inundation and flooding when assessed against Section 79C of the Environmental Planning and Assessment Act 1979;
   ii) The Designed Ground Floor Levels are below the minimum acceptable Flood Planning Level (FPL) for this location of 3.1m AHD;
   iii) The proposed development is inconsistent with the provisions of Port Stephens Local Environment Plan 2000 - in particular, the Residential 2(A) Zone objectives and considerations for development on land affected by or susceptible to environmental constraints including sea level rise, inundation and flooding.

ORDINARY COUNCIL MEETING – 30 MARCH 2010

094	**Councillor Bruce MacKenzie** **Councillor Sally Dover**	It was resolved: 1. Support the development application for the two storey dwelling at 140 Sandy Point Road, Corlette at the level that is proposed in the application plans of 2.6AHD and delegate determination of the DA to the General Manager. 2. This decision is made recognising Council's responsibilities in relation to sea level rise, on the basis that: a) the proposed level in the

		submitted plans is significantly above existing ground level; b) approval at the level of 2.6 AHD is compatible with the levels of properties in the local area; c) To require an increased floor level to 3.1 AHD would significantly change proposed development. Without major redesign there would be adverse environmental and amenity impacts in relation to overshadowing, rural amenity, bulk and scale.

Councillor Francis left the meeting at 5.56pm prior to voting.

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

Those for the Motion: Crs Bruce MacKenzie, Peter Kafer, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury and Sally Dover.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present development application16-2009-945-1 for a two storey dwelling at No. 140 Sandy Point Road, Corlette to Council for determination at the request of the Mayor.

Consent has been sought for the construction of a two storey dwelling on Lot 1 DP: 21499, 140 Sandy Point Road Corlette. The subject site is zoned 2(a) – Residential "A" which is described in Port Stephens Local Environment Plan 2000 (LEP). The subject site is identified as potentially and significantly affected by sea level rise, storm surge, wave run-up, inundation and flooding.

Councils attention is directed to another item on the business paper entitled "flood policy sea level rise" the purpose of which is:-

> *"The purpose of this report is to advise Council of the current Government Policy on Sea Level Rise, to update Council's previous resolution on Sea Level Rise and to place on exhibition a draft Development Control Plan Chapter B13 "Areas Affected by Flooding and/or Inundation" of the Port Stephens Development Control Plan 2007, including "Areas Affected by Flooding and/or Inundation" to repeal and replace Councils existing Flood Policy and include a Sea Level Rise component to residential habitable floor levels."*

The application was referred to Council's Strategic Engineer for advice on minimum floor levels and compliance with Council's adopted planning benchmark for sea level rise. (Council Resolution 155 dated 19th May 2009).

The Strategic Engineer has advised:

- *"To prevent storm surge inundation all habitable floor levels should be to the Flood Planning Level of RL 3.4m AHD*
- *The FPL for garages and laundry only may proceed to be designed at RL 2.8m AHD (5% AEP flood event in the year 2100).*
- *All construction below 3.4 AHD will be required to consist of flood compatible materials*
- *A collapsible style retaining wall inside the property boundary, adjacent to the public reserve boundary will be required."*

It is noted that following on from a flood policy – sea level rise meeting of Council staff on 25/3/2010 a revised flood planning level of 3.1m AHD has been recommended to prevent storm surge inundation for all habitable floor levels.

The proposed ground floor level for habitable rooms and garage is 2.6m AHD, which is 800mm below the flood planning level of 3.1m AHD. This minimum level is recommended to minimise the chances of storm surge inundation of the habitable rooms. A merit assessment, under the provisions of Section 79C of the Environmental Planning and Assessment Act, has confirmed that the site is not suitable for the proposed dwelling design and the application, as submitted, can not be supported.

The applicant has been advised in writing and verbally of the original 3.4m AHD minimum floor level requirements and given the opportunity to redesign the proposed dwelling. Despite this, the applicant has sought a determination by Council without a redesign with the ground floor levels at unaltered, 2.6m AHD, as per the plans submitted. It is noted that the adjoining premises, number 142/142A (approved in 1999) ground floor level is approximately 2.6AHD.

FINANCIAL/RESOURCE IMPLICATIONS

The financial/resource implications are difficult to determine as Council may accept a significant legal/financial liability if consent is issued for a dwelling house on a property identified as subject to significant sea level rise, inundation and flooding. Council is best advised to follow due process and complete a full and proper assessment ensuring that all environmental impacts and factors are fully addressed.

LEGAL AND POLICY IMPLICATIONS

Council is considering an appropriate flood level and sea level rise policy at this meeting Council may increase legally liability in cases of property damage and/or loss of life where approval has been given to construct residential dwellings contrary to policy in flood prone areas whilst being specifically aware of the risks.

To issue a consent may also set an undesirable precedent in regard to flood level, sea level rise and climate change, resulting in difficulty to implement climate change policy at a later date.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Approval of this application increases the proposed dwelling's susceptibility to the effects of sea level rise, inundation, flooding and the associated consequences due to climate change. The cumulative effects of such decisions may have long term adverse social, economic and environmental implications.

The long term social implications directly attributable to flood inundation include, but are not limited to:

- risks to public safety
- community disruption
- direct and indirect damages caused by inundation (property damage, loss of goods and personal possessions)
- emotional, mental and physical health costs
- provision of food and accommodation for evacuees
- loss of wages and opportunity cost to the public.

The temporary and intermittent impacts of unsuitable development on such land may contribute to long term and incremental environmental pollution through erosion, waterborne debris, residual debris, structural failure of dwellings, fences, outbuildings and other structures.

CONSULTATION

The application was exhibited in accordance with Council policy and one submission was received. The submission was largely centred on the provision of the privacy screen on the ground floor and loss of view along the beach. In this regard the proposed design partly addresses the concern by providing privacy screens at each end of the first floor balconies. Otherwise the proposed design is considered compatible with the surrounding residential development, streetscape and existing amenity of the foreshore.

OPTIONS

1) Adopt the recommendation

2) Reject the recommendation and approve the application subject to appropriate conditions.

3) Amend the recommendation.

4) Defer the determination of the application pending the preparation and adoption of a Council Development Control Plan to guide the development assessment for properties affected by sea level rise and flooding due to climate change as per Council's adopted planning benchmark for sea level rise.

ATTACHMENTS

1) Locality Plan
2) Assessment
3) Council's Resolution of 19 May 2009
4) NSW Sea Level Rise Policy Statement

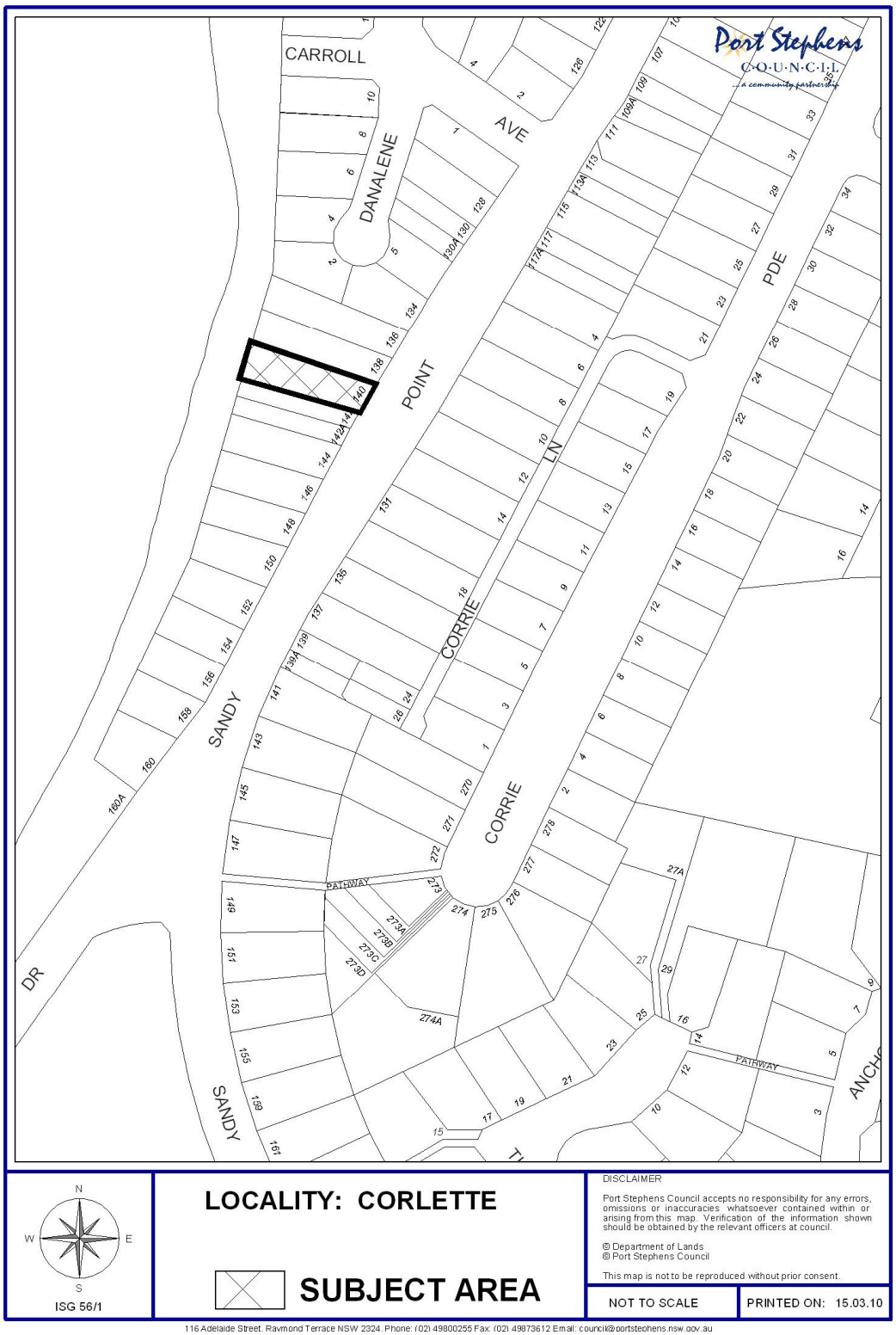
COUNCILLORS ROOM

1) Plans including (Landscape, Site Analysis, Site Roof Plan, Ground Floor/1st Floor and Elevations)
2) Photos

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



ATTACHMENT 2
ASSESSMENT

The application has been assessed pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 and the following is a summary of those matters considered relevant in this instance.

THE PROPOSAL

The application seeks approval for a Two Storey Dwelling.

THE APPLICATION

Owner	Mr P N & Mrs M S Grice
Applicant	Grice Lynch Architecture & Interiors
Detail Submitted	Statement of Environmental Effects Geotechnical Report Bushfire Report Development Plans

THE LAND

Property Description	Lot 1 DP 21449
Address	140 Sandy Point Road Corlette
Area	695m^2
Dimensions	The development site is a regular shape having a frontage to Sandy Point Road of 12.805m and a rear width of 14.630m. The site's northern boundary is 53.125m and the southern boundary is 49.685m.
Characteristics	The site currently contains a Two Storey Dwelling and single storey structure. The double story dwelling on site is proposed to be demolished in the context of this application. The site contains a lawn, and is predominantly clear of vegetation. The site is elevated at the front and slopes toward the Reserve at the rear.

THE ASSESSMENT

1. Planning Provisions

Environmental Planning and Assessment Act 1979

N.S.W Sea Level Rise Policy Statement

State Environmental Planning Policies SEPP 71

LEP 2000 – Zoning	2(a) Residential
Relevant Clauses	16, 19, 37 & 38
Development Control Plan	Port Stephens DCP 2007

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
NSW Sea Level Rise Policy Statement			
Minimum Habitable Floor Area	2.6m AHD	3.1m AHD	No
LEP Requirements			
Min. Area Per Dwelling	695m^2	500m^2	Yes
Floor Space Ratio	0.49:1	0.5:1	Yes
Height	7m	9m	Yes
DCP Requirements			
Number of storeys (except for loft spaces)	2	2	Yes
Building Line Setback	8m	6m	Yes
Side Setbacks	Northern Boundary (2 Storey) 2m Northern Boundary (1 Storey) 0.9m Southern Boundary (1 Storey) 0.9m Southern Boundary (2 Storey) 0.9m	2m 0.9m 0.9m 2m	Yes Yes Yes No
Rear Setbacks	Western Boundary 4.5m	4.5m	Yes
Privacy	Balcony proposed on the Western side at ground and First Floor Levels	1 objection was received. The submission surrounded dwindling views of the trees on the waterfront reserve.	Yes
Resident parking	2	2	Yes
Retaining Walls	No boundary retaining walls	If development is set back greater than 1.3m, retaining walls may be 900mm	Yes
BASIX	Water Score 40 Energy Score 40	Target 40 Target 40	Yes Yes

NSW Sea Level Rise Policy

The development in respect to the dwelling site and proposed finished floor level is inconsistent with the objectives of the NSW Sea Level Rise Policy and its intended purpose of safeguarding development from inundation from sea water due to sea level rise and other factors relating to climate change.

Port Stephens Local Environmental Plan 2000

Consent of a two (2) storey dwelling in the form proposed is considered consistent with the provisions of Port Stephens Council Local Environmental Plan 2000 except in the instance of flooding risk in association with Sea Level Rise.

The design fails to take into account the environmental constraints of the site.

Clause 19

The proposed development is considered to be consistent with the development standards of minimum site area per dwelling and floor space ratio specified within Clause 19 of the Port Stephens LEP 2000.

The proposed development is considered to be consistent with the development standard of height specified within Clause 19 of the Port Stephens LEP 2000

Clause 37
Objectives for development on flood prone land
The objectives for development on flood prone land are:

> *(a) to minimise risk to human life and damage to property caused by flooding and inundation through controlling development, and*
> *(b) to ensure that the nature and extent of the flooding and inundation hazard are considered prior to development taking place, and*
> *(c) to provide flexibility in controlling development in flood prone localities so that the new information or approaches to hazard management can be employed where appropriate.*

It is considered that the development with its proposed finished floor level of 2.6m AHD is inconsistent with the provisions of this clause and do not satisfy the intent of the objectives. The adoption of a climate change sea level rise increase of .91m with a linear increase till the year 2100 indicates that this development will be unsustainable at its proposed levels within a limited time period.

Clause 38
Development on flood prone land

> *(1) A person shall not carry out development for any purpose on flood prone land except with the consent of the consent authority.*
> *(2) Before granting consent to development on flood prone land the consent authority must consider the following:*
> > *(a) the extent and nature of the flooding or inundation hazard affecting the land,*

(b) whether or not the proposed development would increase the risk or severity of flooding or inundation affecting other land or buildings, works or other land uses in the vicinity,
(c) whether the risk of flooding or inundation affecting the proposed development could reasonably be mitigated and whether conditions should be imposed on any consent to further the objectives of this plan,
(d) the social impact of flooding on occupants, including the ability of emergency services to access, rescue and support residents of flood prone areas,
(e) the provisions of any floodplain management plan or development control plan adopted by the Council.

In the consideration of (2) of clause 38 it is considered that the proposed development is inconsistent with the objectives of subclauses (a), (c), (d) and (e) given the proposed ground floor level of 2.6mAHD. The adopted figure to accommodate for Climate Change, Sea Level Rise at this location is 3.4m AHD.

The applicants proposed figure of 2.6m AHD does not address the adopted levels for Climate Change, Sea Level Rise. The projected increase of sea level rise in the year 2050 of 400mm is well within the expected, assumed life span of the structure. As a result it is expected, based on these figures that the development may be compromised by the increase of sea level and associated climate change phenomenon during its practical lifespan.

In consideration of Subclause (b), the proposed development at the levels of 2.6m AHD is not expected to have a major impact on other land or buildings in the vicinity due to the pre-existing adopted levels.

The most practical mitigation measure to offset the effects of Climate Change, Sea Level Rise available to the development is the adoption of the new Flood Planning Level (FPL) of 3.4m AHD. Given the proposed FFL level of 2.6m AHD the safe and flood free floor level of the development may be compromised.

The social impact is hard to quantify however, the effects of flooding and inundation of seawater into dwellings is well documented. Given the level of development within the coastal fringe it would be acceptable to consider that the ability of emergency services to service individual households would be limited at best. The frequency of flooding events is a main factor in the amenity of the occupants. In the context of climate change, predictions would indicate that a sea level rise coupled with increased storm events and increased severity that flooding events in this location would increase.

The development is inconsistent with the provisions of the NSW Sea Level Rise Policy and adopted sea level rise increase of .91m in the year 2100.

State Environmental Planning Policy No. 71 – Coastal Protection

The development is not considered to be contrary to the provisions of SEPP 71.

Port Stephens Development Control Plan 2007

The application was lodged on 17/12/2009. The performance based design requirements of Port Stephens Development Control Plan 2007 are relevant to the assessment of this application. Assessment of the key design considerations are addressed below:

Streetscape, Building Height, Bulk and Scale

The proposed two (2) storey dwelling is not considered to have a serious impact on the surrounding development and associated land uses that comprise residential occupancies.

There has been one submission responding to these matters in relation to its compatibility with the surrounding residential development and streetscape and subsequent foreshore. The submission surrounded diminished views to trees on the foreshore reserve. The matter was considered outside the scope of the assessment and the development in its current form is acceptable in regards to bulk, scale and height.

The objectives and control principles of the DCP indicate that the bulk and scale of a dwelling in 2(a) Residential should be sympathetic to the local street content. The development is to take into consideration its design elements to minimise the impact on the amenity of the adjacent dwellings and land.

The proposal complies with the floor space ratio and site coverage objectives; the design presents a compromise with the two neighbouring developments and complies with Council's Development Control Plan 2007 Clause B6.5.

Privacy

There are no issues with privacy as the proposal has allowed privacy screens at each end of the first floor balconies to protect the adjoining properties.

Boundary Setbacks
The boundary setback on the Southern boundary is not consistent with the intent of the LEP. However the site is considered to be infill development and as such a 0.9m setback to the side boundary is consistent with adjoining properties and suitable in this case.

Site Coverage

The development is compliant with the requirements of floor space ratio and site coverage specified in Clause 19 of the LEP.

The proposed development, including hardstand areas, covers 57.7% of the site. Under the requirements of DCP 2007, the development may have maximum site coverage of 60% and as such the development is considered to comply with Council's site coverage requirements.

Acoustic Privacy

Whilst external open space forms part of typical residential development, the resulting elevated open space associated with the dwelling and external balcony areas has the potential to have a minor impact on acoustic privacy.

Solar Access

With respect to overshadowing, given the orientation of the allotment it is considered that the development is compliant with the provisions of DCP 2007 in respect to solar access.

Views

The development site and adjacent properties contain excellent water views of Port Stephens. Given the location of the building and the direction of view in the area, it is not considered that the development will unreasonably impact on existing views.

Parking & Traffic

The parking and traffic arrangements are in accordance with Council's Development Control Plan 2007.

The development provides garage parking for two (2) cars.

Usable Open Space

The size of the allotment provides extensive ground level open space accessible from living areas.

Landscaping

The proposal provides adequate planter and garden bed landscape areas.

Flora and Fauna

The development site is not identified as containing any threatened flora or fauna or endangered ecological communities. It is not considered that this development will result in adverse impacts to, or pose an unacceptable risk to, threatened flora and fauna.

2. Likely Impact of the Development

The impact of the proposed development on the site is unsuitable as it is susceptible to and significantly affected by sea level rise, inundation and flooding.

The Designed Ground Floor Levels are below the minimum acceptable Australian Height Datum (AHD) benchmark levels for sea level rise for this location (0.91m for the year 2100 for use in developing FPL for AEP flooding events, adopted by Council at its meeting on the 19th May 2009).

The proposed development is inconsistent with the provisions of Port Stephens Local Environment Plan 2000 - in particular, the Residential 2(A) Zone objectives and

considerations for development on land affected by or susceptible to by sea level rise, inundation and flooding.

Otherwise, the proposed development is generally consistent with the requirements of Port Stephens Local Environmental Plan 2000 and Development Control Plan 2007. The bulk and scale of a two storey dwelling in the form proposed is generally consistent with the intent and objectives of the controls.

3. Suitability of the Site

The site is constrained as it is susceptible to and significantly affected by likely sea level rise and associated climate change phenomenon, inundation and flooding and hence is unsuitable for the proposed dwelling in its current form.

4. Submissions

The application was advertised and notified in accordance with Port Stephens Development Control Plan 2007. One submission was received. The submission received surrounded dwindling views of the trees on the waterfront reserve.

5. Public Interest

The proposed building is in keeping with the design characteristics, suitability and appearance within the existing streetscape. The proposed dwelling is not consistent with public expectations in relation to the predicted impacts of climate change.

ATTACHMENT 3
COUNCIL'S RESOLUTION OF 19 MAY 2009

ORDINARY MEETING – 19TH MAY 2009

ITEM NO. 8 **FILE NO: PSC2005-4473**

ADOPTION OF A SEA LEVEL RISE PLANNING FIGURE

REPORT OF: DAVID BROYD – GROUP MANAGER SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

1) Council adopt a planning benchmark for sea level rise of 0.91m for the year 2100 with an assumed linear increase from present day levels as the basis for Council staff to proceed with risk assessment, policy development, and planning and development decisions.
2) Review these figures on an as needs basis when new information becomes available such as the release of future Intergovernmental Panel on Climate Change assessment reports and guidelines being drafted by the NSW Departments of Planning and Environment and Climate Change.
3) Continue to investigate Climate Change impacts on both Council and the community to determine appropriate responses.

COMBINED STRATEGIC & OPERATIONS COMMITTEE – 12TH MAY 2009

RECOMMENDATION:

	Councillor Glenys Francis **Councillor John Nell**	That Council:- 1) Council adopt a planning benchmark for sea level rise of 0.91m for the year 2100 with an assumed linear increase from present day levels as the basis for Council staff to proceed with risk assessment, policy development, and planning and development decisions. 2) Review these figures on an as needs basis when new information becomes available such as the release of future Intergovernmental Panel on Climate Change assessment reports and guidelines being drafted by the NSW Departments of Planning and Environment and Climate Change. 3) Continue to investigate

ORDINARY MEETING – 19TH MAY 2009

		Climate Change impacts on both Council and the community to determine appropriate responses. 4) That Council continue to consult with the community using the Residents Panel and other forums and report back to Council following the consultation.

ORDINARY COUNCIL – 19TH MAY 2009

155	**Councillor John Nell** **Councillor Glenys Francis**	It was resolved that the Operations Committee recommendation be adopted.

STRATEGIC & OPERATIONS COMBINED MEETING – 12TH MAY 2009

ITEM NO. 8 FILE NO: PSC2005-4473

ADOPTION OF A SEA LEVEL RISE PLANNING FIGURE

REPORT OF: DAVID BROYD – GROUP MANAGER SUSTAINABLE PLANNING

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1) Council adopt a planning benchmark for sea level rise of 0.91m for the year 2100 with an assumed linear increase from present day levels as the basis for Council staff to proceed with risk assessment, policy development, and planning and development decisions.
2) Review these figures on an as needs basis when new information becomes available such as the release of future Intergovernmental Panel on Climate Change assessment reports and guidelines being drafted by the NSW Departments of Planning and Environment and Climate Change.
3) Continue to investigate Climate Change impacts on both Council and the community to determine appropriate responses.

BACKGROUND

The purpose of this report is to provide Council with information on recent developments involving the management of sea level rise by NSW coastal councils and recommends the adoption of a sea level rise figure to provide a basis for decision-making and future planning associated with climate change adaptation. The report also discusses the advice recently released by the NSW government in relation to planning for sea level rise and outlines the legal and policy implications.

It should be noted that sea level rise is only one aspect of climate change that will affect Port Stephens. More instances of extreme storms, a greater number of extreme hot days and incremental increases in temperature will also have effects on both public and private assets. While there has been a considerable volume of studies undertaken in the area of sea level rise the impact of other climate change variables is yet to be fully understood. More investigations will need to be undertaken in these areas to determine appropriate responses. Given that sea level rise is already occurring Council has a responsibility to undertake a risk management approach to current and future decisions.

In support of the reality of sea level rise the NSW government made the following statement in the February 2009 draft Sea Level Rise Policy Statement which is to be used in planning guidelines being prepared by the NSW Department of Planning. *'Over the 20th Century, global sea levels have risen by 17 cm and are continuing to rise. Sea level rise is a gradual process and will have medium to long term impacts. The best national and international projections of sea level rise along the NSW coast are for a rise relative to 1990 mean sea levels of up to 40 cm by 2050 and 90 cm by 2100[1]. There is no scientific evidence to suggest that sea levels will stop rising beyond 2100 or that the current trends will be reversed.'* DECC (2009).

1 Department of Environment and Climate Change *Technical Note: Scientific Basis of the 2009 Sea Level Rise Benchmark.*

addition to sea level rise. Putting this into perspective the following levels are provided:

Mean Tide level	~ RL 0.0 metres AHD (Australian Height Datum)
Mean High Water	~ RL 0.5 m AHD
King Tide (eg 12 January 2009)	~ RL 1.0 m AHD
Design 1% Water Level	~ RL 1.5 m AHD
Design Extreme Water level	~ RL 1.6 m AHD
Design 1% Water Level plus 0.91 m sea level rise	~ RL 2.4 m AHD
Design Extreme Water level plus 0.91 m sea level rise	~ RL 2.5 m AHD

Council's current standard for minimum floor level for Port Stephens is 2.5 metres AHD while that for Fern Bay is 2.3 metres which include 0.5 metre freeboard. These levels may need to be increased to include freeboard above sea level rise.

Council is also undertaking a Climate Change Risk Adaptation project under the Federal Government's Local Adaptation Pathways Program. The project, which will conclude in June 2009, firstly involves undertaking an organisational risk assessment to identify and assign priorities to risks that climate change impacts pose to Councils operations and responsibilities. The second stage involves developing an adaptation action plan that will assist council to plan for the impacts of climate change both within councils businesses and to set in place policies and practices to help the community avoid the major impacts of climate change over the coming decades. This will involve developing strategies for managing risks that are well understood and identifying where further investigation is necessary for risks that are not well enough understood to determine an appropriate management strategy.

The initial stages of the Local Adaptation Pathways Program has highlighted that Port Stephens Council's main areas of exposure in relation to sea level rise are flooding, engineering, infrastructure and planning. A considerable amount of work will need to be undertaken to determine the extent of council's exposure and it is likely that council, and the community, face some difficult decisions in the near future.

The Coastline Management Manual (CMM) lists a number of potential 'Hazard Management Options', which could be adopted/adapted by Council as part of its adaption response to sea level rise. The appropriate response will vary from location to location, depending in part, on whether the area is in public or private ownership, the level, and form of development, level of affectation etc. Examples of options suggested in the CMM are given below.

STRATEGIC & OPERATIONS COMBINED MEETING – 12TH MAY 2009

Hazard Management Options Suggested by Coastline Management Manual

Category	Management Option Examples
Environmental Planning	Restrictive Zonings Planned Retreat Voluntary Purchase
Development Controls	Building Setbacks Relocatable Buildings Planned Retreat
Dune Management	Dune Reconstruction and revegetation Dune Protection and/or Maintenance
Protective Works	Seawalls Groynes Beach Nourishment Offshore Breakwaters

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

SOCIAL SUSTAINABILITY – Council will preserve and strengthen the fabric of the community, building on community strengths.

CULTURAL SUSTAINABILITY – Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.

ECONOMIC SUSTAINABILITY – Council will support the economic sustainability of its communities while not compromising its environmental and social well being.

ENVIRONMENTAL SUSTAINABILITY – Council will protect and enhance the environment while considering the social and economic ramifications of decisions.

BUSINESS EXCELLENCE – Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey

This report also aligns with Goal 7 of the Council Plan: Sustaining the Environment: Mitigate the effects of climate change and population growth on the environment.

FINANCIAL/RESOURCE IMPLICATIONS

The adoption of sea level rise planning benchmarks may have significant implications for Council's current planning legislation. Adaptation strategies relating to sea level rise in floodplain risk management, estuarine risk management, and coastline risk management through out the LGA will need to be considered for incorporation into relevant Council policies.

LEGAL AND POLICY IMPLICATIONS

Climate change and its effects are referred to in a number of State Government policies including the *NSW Coastal Policy 1997.*

The *NSW Coastal Policy 1997* which in relation to climate change recommends an approach to minimise risks based on ecologically sustainable development principles. This policy also has an objective to recognise and consider the potential effects of climate change in the planning and management of coastal development.

The NSW Coastal Policy 1997 is given statutory effect through State Environmental Planning Policy 71 – Coastal Protection and through a Ministerial Direction to local councils under section 117 of the Environmental Planning and Assessment Act 1979.

In February 2009 the NSW Department of Environment and Climate Change released a draft Sea Level Rise Policy Statement which once adopted will supersede the 1988 *NSW Coastline Hazard Policy*.

The Legal industry has also suggested that Climate Change has significant implications with respect to Council in it role as a consent authority. Lake Macquarie Council, who has already adopted a sea level rise planning figure, received the following advice from its solicitor:

"*In relation to development assessment, the consensus amongst practitioners and academics seems to be that councils will owe a duty of care to landowners in their consideration of individual development applications in coastal areas that are most at risk of climate change.*"

"*A reasonable council located on the coast in an area prone to erosion and storm damage, would foresee that its decisions to approve development may place landholders at risk from the effects of climate change. Scientific evidence and impacts already observed make this clearly foreseeable. In order to meet their duty of care, councils can either refuse consent, or allow the development to proceed with conditions that attempt to reduce the risk. Councils when assessing development should consult the NSW Coastline Management Manual 1990 and the NSW Coastal Policy 1997. It is probably also advisable to create a management plan specific to the locality. As long as a council makes a genuine and serious attempt to alleviate the potential risks of climate change, then it is likely that a council's duty of care will be satisfied.*"

In addition to suggesting that Council as a consent authority has a duty to consider climate change in its consideration and determination of development applications The Lake Macquarie City Solicitor also recommended that Council consider:

1. Determining a "normal building and component design life" to be used as a guide for estimating the period of time a building will be located at a particular site (in the absence of more detailed or specific data provided by the proponent).

2. Using, without delay, the information currently available on sea level rise projections to assist with determination of development applications upon land likely to be affected by rising sea levels and flooding.

3. Making such information available in response to applications for certificates called "Development Restrictions Certificate Flooding/Tidal Inundation" and in relation to certificates under section 149 of the EPA Act 1979.

BUSINESS EXCELLENCE FRAMEWORK
Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

1) **LEADERSHIP** – Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.
2) **CUSTOMERS** – Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.
3) **SYSTEMS THINKING** – Continuously improve the system.
4) **PEOPLE** – Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.
5) **CONTINUOUS IMPROVEMENT** – Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.
6) **INFORMATION AND KNOWLEDGE** – Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.
7) **CORPORATE AND SOCIAL RESPONSIBILITY** – Behave in an ethically, socially and environmentally responsible manner.
8) **SUSTAINABLE RESULTS** – Focus on sustainable results, value and outcomes.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS
Sea level rise, and the wider impacts of climate change, will impact on the lives and wellbeing of Port Stephens residents, particularity those living in the low lying and coastal areas. The effects relating to impacts on property can be largely avoided with appropriate planning; however more work will need to be undertaken in relation to planning for the effects of increased instances of extreme heat, particularly on our aging population.

ECONOMIC IMPLICATIONS
Climate change has the potential to significantly impact on the financial resources of the Council and the broader community. Such impacts are likely to be considerably greater if left unaddressed as Council could be seen as not fulfilling its duty of care and could be left open to future litigation.

ENVIRONMENTAL IMPLICATIONS

Climate Change and sea level rise has the potential to have significant impacts on the natural environment. Of particular concern is the impact on coastal salt marsh, an Endangered Ecological Community which fringes the estuary and is building block of the ecosystem. Coastal wetlands are also at risk as are wildlife corridors. While the adoption of a sea level rise planning figure will go some way to recognising these impacts further adaptation initiatives will need to be implemented to counteract the effects of climate change on the regions biodiversity.

CONSULTATION

In the preparation of this report consultation has been undertaken with the Managers of Integrated Planning and Development and Building and Legal Services.

Future consultation and education with the community will be vital to making future decisions as to how council responds all aspects of Climate Change. In the meantime it is proposed that council continue to investigate the impacts of climate change on its own operations and carry out work to determine which areas of the LGA will be at risk of coastal inundation from sea level rise. Once this further information is available it is proposed to report back to Council with a view to undertaking community education.

Also, there is an Inter-Group team and consultants (funded by the Commonwealth Government grant) providing extensive input into the Local Adaptation pathways Program.

Also, this issue has been extensively discussed by the Directors of Planning/equivalents of member councils of Hunter Councils.

OPTIONS

1) Adopt, reject or amend the recommendation

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

1) Position Paper: Adoption of a Regionally Consistent Planning Level in Response to Climate Induced Sea Level Rise (HCCREMS Directors Forum, 26 June 2008).

ATTACHMENT 4
NSW SEA LEVEL RISE POLICY STATEMENT

NSW Sea Level Rise Policy Statement

New South Wales Government

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Cover (clockwise from main photo):
Bellinger River flooding at Myleston (Coffs Harbour Advocate);
coastal erosion at Old Bar (P. Watson, DECCW);
flooding from the Richmond River at Coraki, January 2008 (B. Eggins, Richmond Valley Council); coastal erosion at Belongil Beach, Byron Bay (P. Watson, DECCW).

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Introduction

The NSW Government acknowledges that increased sea levels will have significant medium- to long-term social, economic and environmental impacts. As an integral part of the state's response to climate change, the Government is committed to supporting coastal communities in adapting to long-term rising sea levels in a manner that minimises the resulting social disruption, economic costs and environmental impacts. Sea level rise is a global problem that will impact locally on the NSW coastline and will require action by communities, the Government and local councils.

Coastal communities and environments are particularly vulnerable to climate change due to the potential for permanent coastal inundation and increasing coastal hazards associated with changing weather patterns and extreme weather events. This policy statement deals with sea level rise only, and represents an important component of the Government's response to climate change.

This policy statement outlines the Government's objectives and commitments in regards to sea level rise adaptation. It outlines the support that the Government will provide to coastal communities and local councils to prepare and adapt to rising sea levels.

The impacts of rising sea levels

Over the period 1870–2001, global sea levels rose by 20 cm, with a current global average rate of increase approximately twice the historical average[1]. Sea levels are expected to continue rising throughout the twenty-first century and there is no scientific evidence to suggest that sea levels will stop rising beyond 2100 or that the current trends will be reversed.

Sea level rise is an incremental process and will have medium- to long-term impacts. The best national and international projections of sea level rise along the NSW coast are for a rise relative to 1990 mean sea levels of 40 cm by 2050 and 90 cm by 2100[1]. However, the Intergovernmental Panel on Climate Change (IPCC) in 2007 also acknowledged that higher rates of sea level rise are possible.

In simple terms, sea level rise will raise the average water level of oceans and estuaries. As the average water level rises, so too will high and low tide levels affecting the natural processes responsible for shaping the NSW coastline. Exactly how the coast and estuaries will respond is complex and often driven by local conditions but, in general, higher sea levels will lead to:

- increased or permanent tidal inundation of land by seawater
- recession of beach and dune systems and to a lesser extent cliffs and bluffs
- changes in the way that tides behave within estuaries
- saltwater extending further upstream in estuaries

[1] Refer to the Department of Environment, Climate Change and Water 2009 *Technical note: Derivation of the NSW Government's sea level rise planning benchmarks* for further details

- higher saline water tables in coastal areas and
- increased coastal flood levels due to a reduced ability to effectively drain low-lying coastal areas.

These physical changes will have an impact on coastal ecosystems, access to and use of public and private lands, historical and cultural heritage values, arable land used for agriculture, freshwater access, public and private infrastructure, and low-lying areas of coastal land that are affected by flooding.

Sea level rise will also affect coastal hazards such as beach erosion during storms and coastal flooding. As the sea level rises, severe erosion of beaches during storms will affect areas further inland, while the depth of floodwaters and the areas affected by flooding will increase due to a reduced ability to effectively drain low-lying coastal areas. Climate change will also affect the frequency and intensity of storms, further exacerbating the effects of sea level rise. Such hazards will further impact coastal ecosystems, historical and cultural heritage values, agriculture and infrastructure, and residential and other urban land uses on land around beaches, estuaries, bays and harbours.

Related NSW Government initiatives

The NSW Government currently has in place policies, programs and legislation that allow for ecologically sustainable growth in coastal areas, while reducing the risks to life and property from coastal hazards and flooding. These are also relevant to managing the projected increased risks from sea level rise.

The NSW Coastal Policy 1997 sets the overall strategic direction for coastal management in NSW and is based on the principles of ecologically sustainable development. It aims to facilitate the development of the coastal zone in a way that protects and conserves its values. One of the policy's goals is to recognise and accommodate coastal processes and hazards, including a related objective to recognise and consider the potential effects of climate change in the planning and management of coastal development. The NSW Coastal Policy is given statutory effect through State Environmental Planning Policy 71 – Coastal Protection and through a Ministerial Direction to local councils under section 117 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The State Environmental Planning Policy 71 – Coastal Protection (SEPP 71) also requires that both land use planning and development assessment within the NSW Coastal Zone consider the likely impact of coastal processes and coastal hazards on development and any likely impacts of the development on coastal processes and coastal hazards.

In 2006, the State Government gazetted the new Standard Instrument – Principal Local Environmental Plan. Clause 5.5 of the Standard Instrument prevents the granting of development consent on land that is wholly or partly within the NSW Coastal Zone, unless consideration has been given to the effect of coastal processes and coastal hazards and potential impacts, including sea level rise on the proposed development, and arising from the proposed development.

Two additional NSW Government policies of relevance to sea level rise are the 1988 NSW Coastline Hazard Policy and the NSW Flood Prone Land Policy. This Sea Level Rise Policy Statement supersedes the 1988 NSW Coastline Hazard Policy. Most of the objectives from that policy were included in the NSW Coastal Policy 1997, which remains current. Other objectives from the NSW Coastline Hazard Policy are updated by this Sea Level Rise Policy Statement.

The NSW Flood Prone Land Policy remains in effect and has a primary objective to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property, and to reduce private and public losses resulting from floods.

These policies are supported by the Government's Coastal, Estuary and Floodplain Management programs, which provide technical policy support and grants to local councils in order to identify and manage coastal hazards and flooding risks. The hazards associated with sea level rise have been incorporated into these programs from as early as 1990, and the benchmarks established under this policy statement will support the consistent consideration of sea level rise across these activities.

The NSW Government's objective and commitments for action on adapting to sea level rise

The NSW Government has an objective to see coastal communities adapt to rising sea levels in a manner that minimises the resulting social disruption, economic costs and environmental impacts. To assist in meeting this objective, the Government will support local councils and the community in adapting to sea level rise by:

1. promoting an adaptive risk-based approach to managing the impacts of sea level rise
2. providing guidance to local councils to support their sea level rise adaptation planning
3. encouraging appropriate development on land projected to be at risk from sea level rise
4. continuing to provide emergency management support to coastal communities during times of floods and storms
5. continuing to provide up-to-date information to the public about sea level rise and its impacts.

Further details of these commitments are provided below.

1. Promoting adaptive risk-based management

The NSW Government will promote an adaptive, risk-based approach to managing the impacts of sea level rise. The adaptive risk-based approach recognises that there are potentially significant risks from sea level rise and that the accuracy of sea level rise projections will improve over time.

Planning and investment decisions should therefore consider the sea level rise projections over timeframes that are consistent with the intended timeframes of the decision. For example, these decisions should consider likely sea levels over the expected life of an asset in order to decide on how the asset can be located or designed, thereby avoiding or minimising any associated impacts. This early consideration will minimise the initial costs of considering sea level rise and the future costs of adapting to sea level rise, such as through relocation of affected buildings or infrastructure.

The NSW Government has adopted sea level rise planning benchmarks to support this adaptive risk-based approach. These benchmarks will enable the consistent consideration of sea level rise within this adaptive risk-based management approach. The primary purpose of the benchmarks is to provide guidance supporting consistent considerations of sea level rise impacts, within applicable decision-making frameworks. This will include strategic planning and development assessment under the EP&A Act and infrastructure planning and renewal.

The use of the benchmarks will be required when undertaking coastal and flood hazard assessments in accordance with the Coastline Management and Floodplain Development Manuals. It is already a statutory requirement that the preparation of local environmental plans give effect to and be consistent with these manuals.

The NSW sea level rise planning benchmarks are an increase above 1990 mean sea levels of 40 cm by 2050 and 90 cm by 2100, with the two benchmarks allowing for consideration of sea level rise over different timeframes. The benchmarks were established by considering the most credible national and international projections of sea level rise[2] and take into consideration the uncertainty associated with sea level rise projections. The Government will continue to monitor sea level rise observations and projections and will periodically review these planning benchmarks, with the next review likely to coincide with the release of the fifth IPCC report, due in 2014.

The sea level rise planning benchmarks can be used for purposes such as:

- incorporating the projected impacts of sea level rise on predicted flood risks and coastal hazards
- designing and upgrading of public and private assets in low-lying coastal areas where appropriate, taking into account the design life of the asset and the projected sea level rise over this period
- assessing the influence of sea level rise on new development (see below for further details)
- considering the impact of sea level rise on coastal and estuarine habitats (such as salt marshes) and identifying valuable habitats at most risk from sea level rise
- assessing the impact of changed salinity levels in estuaries, including implications for access to fresh water.

2. Supporting local councils

The NSW Government recognises that local councils are responsible for many of the land use planning and development assessment decisions made in coastal areas. Local councils prepare studies to identify areas at risk from coastal flooding and coastal hazards through the coastal, estuary and floodplain management programs, and the NSW Government will continue to provide assistance. Priority for funding assistance will be given to areas at greatest current and future risk from flooding and coastal hazards. These studies will provide information on the influence of sea level rise on coastal hazards and flood risk, which can be considered at the land use planning and development assessment stage.

The Government will also continue to provide guidance and assistance to local councils on reducing the risks to private and public property from coastal hazards. The risks from coastal hazards are significant and are projected to increase with sea level rise. Government financial assistance to local councils is unlikely to extend to protecting or purchasing all properties at risk from coastal hazards and sea level rise.

When allocating funding assistance to local councils for coastal protection works, the

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[2] Refer to the Department of Environment, Climate Change and Water *Technical Note: Derivation of the NSW Government sea level rise planning benchmarks*

Government will give priority to public safety and protecting valuable publicly-owned assets, and then to private land. The criteria that the Government will use to allocate any funds to local councils to protect or voluntarily purchase private property will include the:

- magnitude of current and future hazards
- cost-effectiveness of management actions
- contribution to the project's costs from the local council and benefiting landowners, taking into consideration genuine hardship for affected coastal residents
- effectiveness of the proposed arrangements for maintaining any proposed works
- ability of the project to accommodate sea level rise.

Where assistance is provided to reduce the impacts of coastal hazards, the Government does not assume any responsibility for these hazards. The Government will continue to provide funding assistance to local councils for coastal hazard studies and management planning.

These criteria will not affect the NSW Coastal Lands Protection Scheme, where the criteria for land purchase under the scheme does not include coastal hazard reduction.[3]

3. Supporting appropriate coastal development

Provisions under the EP&A Act require consent authorities to consider coastal and flooding hazards in their planning and development approval decisions. The NSW Coastal Policy and coastal regional strategies also require consideration of sea level rise, as does the Standard Instrument for Local Environmental Plans where relevant.

The sea level rise planning benchmarks will support consistent consideration of the influence of sea level rise on any coastal hazards and flooding risks that may influence a development or redevelopment site. The benchmarks are not intended to be used to preclude development of land that is projected to be affected by sea level rise. The goal is to ensure that such development recognises and can appropriately accommodate the projected impacts of sea level rise on coastal hazards and flooding over time, through appropriate site planning, design and development control.

Department of Planning guidelines will describe how sea level rise should be considered in land use planning and development assessment. These guidelines will provide assistance to local councils, landowners, infrastructure providers and developers.

Coastal hazards and flooding are natural processes and the Government considers that the risks to properties from these processes appropriately rest with the property owners, whether they be public or private. This will continue where these risks are increased by sea level rise. Under both statute and common law, the Government does not have nor does it accept

[3] The Coastal Lands Protection Scheme is used to bring significant coastal lands into public ownership. The criteria for acquisition under the Scheme are to promote public access to the coastal foreshore, to maintain the scenic quality of the NSW coast, and to protect ecological sites of regional, state and/or national significance.

specific future obligations to reduce the impacts of coastal hazards and flooding caused by sea level rise on private property.

Landowners affected by current and future coastal hazards may seek approval from their local council to construct works on their land to protect their property. These works may be approved under the EP&A Act where they do not cause adverse impacts on coastal processes beyond the property boundary or on public amenity or the environment. Private landowners will not normally be permitted to construct works on State-owned land to protect their property. All required approvals must be obtained before any works commence and unauthorised works may be removed at the landowner's cost.

4. Community support during emergencies

The Government currently provides emergency management support to coastal communities during and following floods and major storms. This support is normally coordinated by the State Emergency Service, operating under the *State Emergency and Rescue Management Act 1989*. The Government will continue to provide this support to coastal communities likely to be affected by sea level rise.

The Government's direct community support will be focused on emergency management. The Government currently does not provide compensation to the owners or potential developers of land affected by coastal hazards or flood risks, except for some compensation and other payments that may be made in relation to an emergency or disaster. This arrangement will continue and will include land where these hazards or risks are increased by sea level rise. Compensation will not be provided for any impact on property titles due to erosion or sea level rise.

5. Information availability

The Government has provided information to the community on sea level rise projections and the likely impacts of sea level rise on low-lying coastal areas. The Government will continue to provide up-to-date information on sea level rise and its impacts, and will continue to work with local councils to provide information on the impacts of sea level rise on local flooding and coastal hazards.

Continuing public access to current and credible information on sea level rise is important for various reasons, including:

- supporting community adaptation to sea level rise
- supporting the community and the private sector to make appropriate investment decisions in coastal areas
- assisting the insurance industry to price risks from sea level rise in their insurance policies.

There being no further business the meeting closed at 6.05pm.

Councillor Francis did not return prior to the close of the meeting.

I certify that pages 1 to 50 of the Open Ordinary Minutes of Council 30 March 2010 were confirmed by Council at its meeting held on 13 April 2010.

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Cr Bruce MacKenzie
MAYOR