Amendments to Port Stephens Development Control Plan 2014

DRAFT TRRA submission (due 8 December)

Presentation of the changes

These proposed changes have been presented to Council, and now to the public, as 'housekeeping' amendments which are only minor amendments and corrections'. We submit that this has been unhelpful and misleading. Some of the proposed changes are substantive. It has proved difficult and confusing to explain and direct interested parties to the opportunities for comment, for example on significant changes to Council's Tree Management policies and processes.

We submit that in future proposed changes to the LEP or DCP should be clearly 'labelled' with at least some indication of any substantive matters that are affected.

Once interested parties reach the relevant pages on the Council agenda papers and website, Council has at least provided a detailed 'Explanation of amendments' as well as highlighting the proposed changes in a 'marked up' version of relevant sections of the DCP. These are both helpful transparency measures that assist interested parties to assess and comment on the changes.

Chapter B1 Tree management

The changes proposed are to approval pathways and assessment requirements for tree clearing, removal and pruning, and are described as aiming '*to improve its overall clarity and accuracy*'. While some of the changes are helpful, we submit that others are not, and that other changes are desirable.

TRRA and EcoNetwork Port Stephens made detailed suggestions for improvements to Council's Tree Management Policies and processes in a letter dated 22 September 2021 (Attachment 1). The then Natural Systems co-ordinator finally responded in an email dated 25 March 2022 (Attachment 2), which addressed some of the concerns raised. Other priorities have prevented us from following this up to date, but we consider that many of the issues we and EcoNetwork raised in 2021 remain to be satisfactorily addressed, even with the current proposed changes.

We also refer to our recent submission on Council's Tree Vandalism Policy (Attachment 3) in which we made a case for integrating the two policies which in our view are closely related – we gave the example of an enquiry from a member of the public about damage to or removal of a significant tree, where an assessment would need to consider whether the matter fell under the DCP Chapter or the Vandalism Policy. We repeat our submission that 'pending clarification of the relationship to the Tree Vandalism Policy, and relevant operational processes EITHER the changes to the Tree Management Section should be removed from the package of other DCP changes OR the entire DCP amendment be deferred.'

Many other elements of our submission on the Tree Vandalism Policy are equally applicable to Chapter B1 of the DCP. We highlight the major 'overlaps' below, but also request that our other submission is treated as part of this one as well.

We are aware that this Chapter of the DCP applies only to tree management in **non-rural areas,** with clearing of vegetation in **rural areas** regulated by the *Local Land Services Amendment Act 2016*. While this is clearly stated at the beginning of the Chapter, we doubt if most property owners would know if they are in a rural or non-rural area. We submit that there should be a much clearer

explanation of the importance of this distinction, and of how to find out in which category a reader's property lies.

The revised Chapter does read a little clearer than the existing document. However, it still relies heavily on references to the 36 page *PSC Tree Technical Specification 2014*. As we noted in the other submission, this document is (a) not easily available through Council's website and (b) significantly out of date. It appears in at least some respects to be inconsistent with the revised Chapter B1.

We submit that many 'users' seeking approval for removal or pruning would not bother finding and referring to the *Tree Technical Specification* (or to the helpful fact sheets which are available on Council's website, but would instead rely solely on the many criteria listed in the DCP and likely find one to suit their objective.

The table in section B1.1 (Figure BA) has a difficult task – explaining the complex criteria and processes applying to removal or pruning. Despite best efforts, we submit that is it more likely to confuse than clarify. A graphic 'decision tree' could assist understanding. One example:

> In Column 2 of the second 'row' we suggest the syntax is mangled - 'Removal or pruning of a tree, not otherwise li(s)ted as requiring …. can occur' does not seem correct – unclear double negative?

The 'Explanation' of section B1.B claims that it '*clarifies the matters that cannot be used to justify tree removal*'. We do not read it in that way and suggest that it would be read by most 'users' as a dry list of assessment criteria which does not convey any sense of Council discouraging unnecessary removal. For example, in B1.4 '*Council assessment … has no regard for …. to enhance view…*' does not in our view clearly send the 'plain english' message that view enhancement alone is not an acceptable reason for removal.

TRRA notes that in B1.C the former clause B1.4 *'A tree bond consistent with the **tree technical specification** is imposed where Council deems a public tree is at risk'* has been deleted (although reference to a bond remains in B1.5). TRRA queries whether a bond has ever been paid and if so, ever lost? What is the reason for removal of this clause?

The explanation may be that this Chapter of the DCP deals only with removal or pruning of trees on private land in non-rural areas, and should not therefore address the issue of removal or pruning of trees on public land (= public trees?). However, in the real world, we expect that many applications to remove or prune trees from private property owners may necessarily also involve trees on adjacent public land. This is another good reason for dealing with tree management in the LGA more holistically in a stand- alone Policy rather than just in the DCP – see our suggestion below.

B1.8 deals with hollow tree assessment, but does not clearly explain the interaction with relevant provisions in Chapter B2, which has only been amended in relation to noxious weeds. While the requirement for replacement of hollow trees in B2.1 only applies in specific areas, we submit that there is not sufficiently clear guidance in Chapter B1 that replacement may be required in some cases – if this was more prominent, it may act as a deterrent against applications for unnecessary removal.

Inadequate resourcing of tree management

TRRA remains very concerned about the resourcing of the Natural Systems Team of Council, including the lack of a qualified professional arborist on staff, over-reliance on contractors, and a general failure to adequately staff the tree management function. Council routinely mentions its commitment to trees and 'greening' in general in promotional material and high level plans and strategies, but has consistently failed to back this up with adequate staff and financial resources for tree management and related education. We understand the financial pressures on Council but observe that tree management has suffered disproportionately from savings measures such as pauses on staff recruitment to fil vacancies.

One of the disadvantages of having tree management policies and processes dealt with in a Chapter of the DCP is that the DCP is not an appropriate location for specification of staffing and organisational arrangements to support Council's objectives in this area.

Is the DCP the appropriate vehicle for Council's Tree Management Policy?

As well as being unsuitable for outlining staffing and resourcing, the DCP is also not a suitable vehicle for conveying Council's overall aims and objectives for tree management. Because the Chapter is in effect a dispassionate outline of the criteria and processes involved in removal or pruning of trees (with circumstances where no approval required logically coming first), it does not give any sense of the importance which Council should attach (and claims to do so) to protection of trees wherever possible.

We therefore question whether it is sufficient to deal with tree management only in the DCP. We submit that consideration be given to reviewing the content of Chapter B1 and perhaps removing some or all of it into a stand-alone Tree Management Policy, incorporating the Tree Vandalism Policy, which could be a much clearer demonstration of the commitment the Council should have to protecting significant trees and overall tree canopy coverage throughout Port Stephens. This would also help send a message to the community, and to individual property owners, that unnecessary removal or pruning of trees will be strongly discouraged, with compliance and enforcement action taken where appropriate.

To the extent that some 'requirements' need to be specified in the DCP, under the State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021, this could be pared back to the minimum, with appropriate cross references to a new stand-alone Tree Management Policy.

The development of such a wider Policy should also include a review and update of the *Tree Technical Specification*.

While TRRA is generally unhappy with Council's current tree management policy, the change at B1.6 requiring a vegetation management plan for the removal of 10 instead of 20 trees is a positive improvement.
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Not yet reviewed changes to the following sections of the DCP – some may be significant???

B2 Natural Resources

B3 Environmental Management

B4 Drainage and Water Quality

B5 Flooding

B6 Noise

B7 Aboriginal Heritage

B8 Parking

C1 Battle-axe lots

C1.B Street Trees

C3 Industrial

C5 Multi-dwelling and Seniors Housing

C8 Ancillary Structures

D10 Pacific Dunes Medowie

D12 Richardson Rd Raymond Terrace

D13 on site detention and recreation (Rees James Rd??)

E1 Definitions

E3 Reference list

Attachment 1 – Joint TRRA-EcoNetwork Port Stephens letter to Council dated 25 September 2021 on Council Tree Management

Attachment 2 – Email response from PSC Natural Systems Co-ordinator dated 25 March 2022

Attachment 3 – TRRA submission on revised PSC Tree Vandalism Policy, 25 November 2022