

Gunnedah LEP 1998 - Change in definition of flood prone land.

Proposal Title : **Gunnedah LEP 1998 - Change in definition of flood prone land.**

Proposal Summary : **This Planning Proposal seeks to amend the Gunnedah LEP 1998 by changing the definition of flood prone land to take into account recent studies and reports that provide more accurate information on potential flood behaviour in Gunnedah.**

PP Number : **PP_2011_GUNNE_003_00** Dop File No : **11/16719**

Proposal Details

Date Planning Proposal Received :	08-Sep-2011	LGA covered :	Gunnedah
Region :	Northern	RPA :	Gunnedah Shire Council
State Electorate :	TAMWORTH	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :
 Suburb : **Gunnedah** City : Postcode : **2380**
 Land Parcel : **This Planning Proposal applies to the entire Shire.**

DoP Planning Officer Contact Details

Contact Name : **Jon Stone**
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RPA Contact Details

Contact Name : **Carolyn Hunt**
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DoP Project Manager Contact Details

Contact Name :
 Contact Number :
 Contact Email :

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	Yes

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MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment : **To the best of the Regional Team's knowledge the NSW Government Lobbyist Code of Conduct has been complied with.**

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **The current definition of flood prone land in the Gunnedah LEP 1998 relies on information dating back to 1978. More recent flood studies and analysis has provided greater accuracy of the potential area of land subject to flooding. Council wishes to have a definition of flood prone land that reflects the most recent and accurate information available.**

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The Planning Proposal clearly states that its objective is to amend the definition of 'flood prone land' in the Gunnedah LEP 1998.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The Planning Proposal clearly explains the intended outcome of the amendment will be achieved through an alteration to the definition 'flood prone land' in the LEP.**

The current definition of 'flood prone land' in Gunnedah LEP 1998 is:

"flood prone land means land identified as being within a flood prone area on the Flood Inundation Map dated 1978 related to the Council's "Interim Policy on Development on Flood Prone Land" and available at the office of the Council and includes land that would be affected by the 1% probability flood."

Council wishes to replace the above definition with:

"flood prone land means land identified as being within a flood prone area in the Namoi Valley Floodplain Atlas – 1980, Gunnedah – Carroll Floodplain Management Study and Plan – 1999, Blackjack Creek Floodplain Risk Management Study and Plan – 2011. This includes land that would be affected by flooding up to the 1% AEP."

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

3.1 Residential Zones

* May need the Director General's agreement

4.3 Flood Prone Land

6.1 Approval and Referral Requirements

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

SEPP No 1—Development Standards

SEPP No 44—Koala Habitat Protection

SEPP (Exempt and Complying Development Codes) 2008

e) List any other matters that need to be considered :

Council has identified that while these SEPPs apply, the Planning Proposal is consistent with the provisions of the SEPPs.

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

The Planning Proposal is considered to be inconsistent with s117 Direction 4.3 Flood Prone Land which requires LEP provisions to be consistent with the NSW Flood Prone Land Policy and the Floodplain Development Manual (FDM) 2005. This inconsistency arises due to the use of the term "flood liable land" which in the FDM 2005 relates to the Probable Maximum Flood (PFM) event rather than the 1% Annual Exceedance Event (AEP), and the failure to include a 0.5m freeboard in the area affected by flood related development controls.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

No mapping has been included in the Planning Proposal. It is noted that no mapping will be required for the legal drafting of the amendment as the proposal will be achieved by the alteration of wording in the written instrument.

While mapping is not required for the legal drafting of the amendment, it is considered important that the maps illustrating the affected land are included in the information to be placed on public exhibition. This will help the community to better understand the changes and consequences of the proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council has proposed a 14 day exhibition of the Planning Proposal. The proposed timeframe and method of exhibition is considered appropriate.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : July 2012

Comments in relation
to Principal LEP :

On 29 August 2011 a certificate permitting the exhibition of the Draft Gunnedah LEP 2011 was issued to Council. The Draft Gunnedah LEP includes a model local clause relating to "Flood Planning". It is anticipated that Council will commence exhibition of the Draft comprehensive LEP shortly. The definition contained in the Draft LEP is "flood planning level means the level of a 1:100ARI (average recurrent interval) flood event plus 0.5 metres freeboard."

It is noted that Gunnedah Shire Council has also received LEP Acceleration Funding to help finalise its draft comprehensive LEP.

Assessment Criteria

Need for planning
proposal :

Council has identified the need for this Planning Proposal as an outcome of the completion of the Blackjack Creek Floodplain Risk Management Study and Plan 2011 and recent legal advice that it has received.

The completion of the flood study has provided Council with more accurate information on flood behaviour and potential impacts of floods within Gunnedah and they wish to use this information in conjunction with other available flood studies and flood data when implementing flood controls. Council has received independent legal advice about the status of the current flood prone land definition which urges them to update the definition within the Gunnedah LEP 1998. An extract from Council's legal advice states that:

"We believe that it would be prudent if the gazettal of the new Gunnedah Local Environmental Plan is some time, to amend the flood prone land maps of the Gunnedah Local Environmental Plan 1998 to incorporate the new information.
We suggest that an amendment be made to the Gunnedah LEP 1998 so as to make sure that the land identified in the new study is included in the definition of 'flood prone land' under the Gunnedah LEP 1998.

Regardless of when the data is incorporated into the LEP it is essential that this be done as soon as possible, so that Council can obtain the protection of the indemnity provided under the Section 733 of the Local Government Act." (Mallik Rees Lawyers - April 2011)

It is considered that this Planning Proposal is not essential as the provisions of the Draft comprehensive LEP will be matters for consideration when assessing development applications and will be referenced on planning certificates once it has commenced exhibition. Despite this, the Planning Proposal is supported given the legal advice Council has received, the intent of Council to utilise the most accurate and up to date information available when dealing with flood planning controls and in case progress in finalising the draft comprehensive LEP is delayed due to unforeseen circumstances.

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Consistency with
strategic planning
framework :

There is no Regional Strategic Plan that applies to the Gunnedah Shire.

The Planning Proposal is considered to be consistent with the Gunnedah Local Environmental Study (Bridging Report) 2010 that was endorsed by the Director General's delegate in August 2010.

The Planning Proposal is consistent with all SEPPs that apply to the Gunnedah Shire.

Council identifies that s117 Directions 3.1 Residential Zones, 4.3 Flood Prone Land and 6.1 Approval and Referral Requirements apply to this Planning Proposal. After further assessment it is considered that Directions 1.1 Business and Industrial Zones and 1.5 Rural Lands also apply to this Planning Proposal.

The Planning Proposal is considered to be consistent with all the applicable s117 Directions except 4.3 Flood Prone Land.

4.3 Flood Prone Land

The Planning Proposal aims to amend the flooding provisions of the LEP by altering the definition of "flood prone land". The proposed alteration is considered not to be consistent with the NSW Flood Prone Land Policy and the Floodplain Development Manual (FDM) 2005 (including the Guideline on Development Controls on Low Flood Risk Areas). The inconsistency with this Direction is considered not to be of minor significance.

The FDM 2005 defines flood prone land as "land susceptible to flooding by the PMF event. Flood prone land is synonymous with flood liable land". The current and proposed definitions of flood prone land in Gunnedah LEP 1998 are inconsistent with the FDM 2005 as they apply only to land identified on the specified maps and includes land affected by the 1% Annual Exceedence Probability flood event rather than the PMF. To provide consistency with the definitions of the FDM 2005, the definition of "flood prone land" should be replaced in the Gunnedah LEP 1998 with the definition of "flood planning level". Flood planning levels relate to "flood planning areas" which more accurately represent the intent of the Planning Proposal to identify land to which development controls apply. A "flood planning area" is defined in the FDM 2005 as "the area of land below the FPL and thus subject to flood related development controls. The concept of flood planning area generally supersedes the flood liable concept in the 1986 manual".

The Flood Prone Land Policy and FDM 2005 also state that "FPLs [flood planning levels] for typical residential development would generally be based around the 1% AEP [annual exceedence probability] flood event plus an appropriate freeboard (typically 0.5m)". Council's current and proposed definitions do not include a freeboard. Advice from the Floodplain Management Unit of the Office of Environment and Heritage (OEH) has been sought regarding the proposed change to the LEP. Verbal advice from OEH staff has confirmed that they support the use of the updated data for LEP matters but the flood planning level should include a 0.5m freeboard. It is therefore considered inappropriate for the proposal to proceed without including an appropriate freeboard in the flood planning level due to potential implications for public safety and property damage. The freeboard component of a flood planning level plays an important role as an additional buffer that may be required due to inaccuracies in flood modelling, wind and wave action of floodwaters and future developments that may have minor, but compounding, impacts upon flood levels. It is also considered to be inappropriate to establish an alternate flood planning level at the current time that does not include a 0.5m freeboard and is contrary to the new draft comprehensive LEP that will commence exhibition shortly.

It is therefore recommended that if the proposal proceeds that the definition of "flood prone land" be replaced in the LEP with "flood planning level" and a 0.5m freeboard be included as follows:

"flood planning level means the level of a 1:100ARI (average recurrent interval) flood event plus 0.5 metres freeboard."

If the proposal is amended in this fashion, consistency with s117 Direction 4.3 Flood Prone

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Land will be achieved.

It is noted that this approach also removes the need to reference specific maps within the definition. It will however require the Gunnedah-Carroll Floodplain Management Study and Plan - 1999 maps to be updated to incorporate the 0.5m freeboard prior to exhibition to allow the public to be accurately informed. Amendment to the Blackjack Creek maps will not be needed as it is understood that a 0.5m freeboard has already been included, while the large scale of the Namoi Valley Floodplain Atlas maps will not allow any change but this should not have any significant impact on the interpretation of the maps by the public due to their scale. A consequential change to Clause 26 - Is the development of flood prone land permitted by this Plan? of the Gunnedah LEP 1998 will also be needed to replace the current words of "flood prone land" with "land below the flood planning level"

Environmental social
economic impacts :

Council has identified that the Planning Proposal will have no environmental, social or economic impacts. It is considered that the changes to the definition of flood prone land will have no environmental impact but may have a minor social and economic impact as more land will be affected by flood planning controls than previously. It is understood that this change in definition will affect a relatively small additional area of land.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	14 Days
Timeframe to make LEP :	9 Month	Delegation :	DDG
Public Authority Consultation - 56(2)(d)	Office of Environment and Heritage		

Is Public Hearing by the PAC required? No

(2)(a) Should the matter proceed ? Yes

If no, provide reasons : This Planning Proposal should proceed (with amendments as discussed) as it will result in Council having flood planning controls based on the latest available information and will help to address their indemnity concerns relating to s733 of the Local Government Act.

Resubmission - s56(2)(b) : No

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? No

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Cover_Letter.pdf	Proposal Covering Letter	Yes

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Planning_Proposal_15_09_2011.pdf

Proposal

Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **3.1 Residential Zones**
 4.3 Flood Prone Land
 6.1 Approval and Referral Requirements

Additional Information : **It is recommended that:**

- 1. the Planning Proposal be supported;**
- 2. the Planning Proposal be amended prior to exhibition to replace the definition of "flood prone land" in the LEP with the definition of "flood planning level". Flood planning level is to be defined as "the level of a 1:100ARI (average recurrent interval) flood event plus 0.5 metres freeboard".**
- 3. Council undertake consultation with the following Public Authorities:**
- Office of Environment and Heritage on flooding issues.
- 4. the flood mapping that supports the Planning Proposal (Namoi Valley Floodplain Atlas – 1980, the Gunnedah – Carroll Floodplain Management Study and Plan – 1999 and the Blackjack Creek Floodplain Risk Management Study and Plan – 2011) be amended as necessary in consultation with Office of Environment and Heritage to incorporate a 0.5m freeboard where appropriate, and are placed on exhibition with the Planning Proposal;**
- 5. the Planning Proposal be considered as 'low impact' and is exhibited for a period of 14 days; and**
- 6. the Planning Proposal should be completed within 9 months.**

Supporting Reasons : **The Planning Proposal will update the LEP flood controls and will allow Council to utilise the most current and relevant flood data and information in its assessment processes as a consent authority.**

Signature:



Printed Name:

Craig Diss

Date:

16 / 9 / 11