

Shire of

G u n n e d a h

Land of Opportunity

Planning Proposal

Amendment to Flood Prone Land Definition

Prepared by

Gunnedah Shire Council
15 September 2011

PART 1 – Statement of the Objectives or Intended Outcomes

The objectives or intended outcome of the Planning Proposal is to amend the Gunnedah Local Environmental Plan (LEP) 1998 to alter the *flood prone land* definition.

PART 2 – Explanation of Provisions

The objectives or intended outcome of the Planning proposal are to be achieved by amending the *flood prone land* definition in clause 6 of the Gunnedah Local Environmental Plan 1998 to read

Flood prone land - *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.*

PART 3 – Justification

Section A – Need for the planning proposal

1. *Is the planning proposal a result of any strategic study or report?*

The planning proposal is the result of the completion of the Blackjack Creek Floodplain Risk Management Study and Plan. The plan was adopted by Council at the June 2011 Ordinary Council Meeting following an extensive public consultation process. The study and plan recommended amendment to the Gunnedah Local Environmental Plan 1998 and the Development Control Plan – Principles of Development.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Gunnedah's Local Environmental Plan has been under review since 2003. With the release date of the revised Plan being uncertain, it is considered that the Gateway Process is the most appropriate means of achieving the desired outcomes as the timeframe for the completion of the Comprehensive LEP is unknown.

Following the adoption of the Blackjack Creek Floodplain Risk Management Plan Council has received legal advice in relation planning certificate and s733 of the Local Government Act indicating a necessity to amend the *flood prone land* definition. An extract of the legal received from Mallik Rees Lawyers (April 2011) is attached.

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.

The Blackjack Creek Floodplain Risk Management Plan is a politically sensitive issue and therefore it is essential that Council implement the plan and act on legal advice received.

3 *Is there a community benefit?*

There is a clear community benefit in amending the *flood prone land* definition. The current definition is not an accurate reflection of the records held by council in relation to flooding within the Namoi River and Blackjack Creek. The new concise definition will provide a community benefit ensuring that a clear interpretation of flood prone land is available and reflects all documents and maps held by council.

The origins of this planning proposal are of a politically sensitive nature and therefore there is a clear community benefit in ensuring that the '*flood prone land*' definition is clear, concise and accurate.

Section B – Relationship to strategic planning framework.

1. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

Floodplain Management was not detailed in the Namoi 2030 Regional Resource Strategy.

2. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

The planning proposal is consistent with the recommendations set out in the Blackjack Creek Floodplain Risk Management Study and Plan 2011. This report identified the need to amend the *flood prone land* definition in the Gunnedah Local Environmental Plan 1998.

3. *Is the planning proposal consistent with applicable state environmental planning policies?*

The Planning Proposal is considered to be consistent with applicable State Environmental Planning Policies (refer to Appendix 1).

4. *Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?*

The Planning Proposal is considered to be inconsistent with the following Ministerial Directions:

- 3.1 Residential Zones

The planning proposal to amend the flood prone land definition is inconsistent with the objectives of this ministerial direction. The planning proposal amends the flood prone land definition affecting Clause 26 of the Gunnedah Local Environmental Plan 1998. Clause 26 outlines the permissibility of development of flood prone land.

The inconsistency is justified by the NSW Government Floodplain Development Manual 2005, the Gunnedah – Carroll Floodplain Management Plan and the Blackjack Creek Floodplain Risk Management Plan 2011 which stipulate development controls for flood prone land.

The Planning Proposal is considered to be consistent with the following Ministerial Directions:

- 4.3 Flood Prone Land

The planning proposal to amend the *flood prone land* definition is consistent with the objectives as specified in the s117 Directions and the NSW Government Floodplain Development 2005. The amendment to the definition ensures that all flood prone land within the Gunnedah Shire as identified by the Namoi Flood Atlas 1980, Gunnedah – Carroll Floodplain Management Plan and the Blackjack Floodplain Risk Management Plan is subject to the appropriate flood related development controls as set out in Clause 26 of the Gunnedah LEP 1998.

- 6.1 Approval and Referral Requirements

The planning proposal is consistent with the s117 direction objective.

Section C – Environmental, social and economic impact.

1. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

It is unlikely that critical habitat or threatened species, populations or ecological communities or their habitats, will be subject to any additional adverse impacts as a result of the Planning Proposal proceeding.

2. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

The Planning Proposal will not have any other environmental impacts.

3. *How has the planning proposal adequately addressed any social and economic effects?*

The Planning Proposal will not directly have any social or economic effects.

Section D – State and Commonwealth interests

4. *Is there adequate public infrastructure for the planning proposal?*

The planning proposal will have no impact on public infrastructure.

5. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

Council has consulted with the Office of Environment & Heritage Floodplain Management Unit in Tamworth regarding this planning proposal and associated issues with the current *flood liable land* definition.

Further consultation with the State and Commonwealth Public Authorities is to be carried out following findings that may be identified in the Gateway Determination.

Part 4 – Community Consultation

PART 4 – COMMUNITY CONSULTATION THAT IS TO BE UNDERTAKEN

It is proposed to exhibit the Planning Proposal for 14 days, with notice of the public exhibition being given:

- in a newspaper that circulates in the area affected by the Planning Proposal – the “Namoi Valley Independent” newspaper, and
- on Council’s web-site at www.infogunnedah.com.au

Appendix 1 Consideration of State Environmental Planning Policies

The following SEPP's apply to the Gunnedah local government area, as at 24 August 2011.

SEPP	Applicable	Consistent
No. 1 Development Standards	Yes	Yes
No. 4 Development without Consent and Miscellaneous Exempt and Complying Development	No	Not applicable
No. 6 Number of Storeys in a Building	No	Not applicable
No. 21 Caravan Parks	No	Not applicable
No. 22 Shops and Commercial Premises	No	Not applicable
No. 30 Intensive Agriculture	No	Not applicable
No. 32 Urban Consolidation Re-development of Urban Land	No	Not applicable
No. 33 Hazardous and Offensive Development	No	Not applicable
No. 36 Manufactured Home Estates	No	Not applicable
No. 44 Koala Habitat Protection	Yes	Yes
No. 50 Canal Estate Development	No	Not applicable
No. 55 Remediation of Land	No	Not applicable
No. 62 Sustainable Agriculture	No	Not applicable
No. 64 Advertising and Signage	No	Not applicable
No. 65 Design Quality of Residential/Flat Development	No	Not applicable
Affordable Rental Housing 2009	No	Not Applicable
Building Sustainability Index: BASIX 2004	No	Not applicable
Exempt and Complying Development Codes 2008	Yes	Yes
Housing for Seniors and People with a Disability 2004	No	Not applicable
Infrastructure 2007	No	Not applicable
Major Developments 2005	No	Not applicable
Mining, Petroleum Production and Extractive Industries 2007	No	Not applicable
Rural Lands 2008	No	Not applicable
Temporary Structures and Places of Public Entertainment 2007	No	Not applicable