
ITEM 13.242/14 PLANNING PROPOSAL – REVISION TO IDENTIFICATION OF FLOOD PLANNING AREA IN CLARENCE VALLEY LEP 2011 & DEVELOPMENT CONTROL PLANS

Meeting	Environment, Planning & Community	9 December 2014
Directorate	Environment, Planning & Community	
Submitted by	Director - Environment, Planning & Community (Des Schroder)	

SUMMARY

<i>Proponent</i>	Clarence Valley Council
<i>Owner</i>	Various landowners (including Council) of land located on the Clarence River floodplain downstream of Mountainview-Seelands and in the vicinity of Glenreagh along the Orara River and Tallawudjah Creek floodplains
<i>Subject land</i>	Various (see above)
<i>Current Zoning CVLEP 2011</i>	Various. Most CVLEP zones likely to be affected. No change to zones proposed.
<i>Proposal</i>	To revise the identity of land parcels subject to flood hazard on the Clarence River floodplain downstream of Mountainview and on the Orara River floodplain in the vicinity of Glenreagh and identify that land on the Clarence Valley LEP 2011 Flood Planning Map and amend relevant provisions of Clarence Valley DCPs

The flood planning area is identified on the Flood Planning Map adopted as part of the Clarence Valley Local Environmental Plan 2011. Council has received more recent flood mapping for both the Clarence River floodplain and Glenreagh village and surrounds that will result in changes to the land affected by flood hazard. This hazard should be correctly identified in the Flood Planning Map under the Clarence Valley Local Environmental Plan 2011 to ensure proper consideration of the potential for flooding to impact on, or be affected by, new development proposals that are subject to development assessment by Council. This report seeks Council support for referral of a planning proposal to the NSW Department of Planning and Environment's Planning Gateway to amend the Flood Planning Map under the Clarence Valley Local Environmental Plan 2011, in association with related amendments to relevant Council Development Control Plans.

OFFICER RECOMMENDATION

That Council:

1. Endorse the planning proposal seeking to amend the Clarence Valley Local Environmental Plan 2011 by replacing the area of land affected by flood hazard (1% AEP event and Probable Maximum Flood) on both the Clarence River floodplain and in the vicinity of Glenreagh village in the 'Flooding Planning Map' with the latest flood hazard information and refer the planning proposal to the Planning Gateway of the NSW Department of Planning and Environment.
 2. Amend the Residential Zones DCP 2011, Business Zones DCP 2011, Rural Zones DCP 2011 and DCP Development in Environmental Protection, Recreation and Special Use Zones 2011 by inclusion of revised or new Floor Height Controls provisions for Glenreagh village [including a revised flood hazard map consistent with Figures F.4a (1-in-100-year flood event extent) and F.6a (Probable Maximum Flood event extent) of the Glenreagh Flood Study, GHD (2013)] and publicly exhibit those changes in accordance with the provisions of the Environmental Planning and Assessment Act 1979.
 3. Ensure notations are included on Section 149 Certificates for land affected by flood-related development controls in the vicinity of Glenreagh village that are identified by the Glenreagh Flood Study (GHD, 2013) as being affected by flood hazard in up to the Probable Maximum Flood event.
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This is Page 62 of the Minutes of the Ordinary Council Meeting of Clarence Valley Council on 9 December 2014.

COUNCIL RESOLUTION - 13.242/14

(Crs Hughes/Kingsley)

That Council:

1. Endorse the planning proposal seeking to amend the Clarence Valley Local Environmental Plan 2011 by replacing the area of land affected by flood hazard (1% AEP event and Probable Maximum Flood) on both the Clarence River floodplain and in the vicinity of Glenreagh village in the 'Flooding Planning Map' with the latest flood hazard information and refer the planning proposal to the Planning Gateway of the NSW Department of Planning and Environment.
2. Amend the Residential Zones DCP 2011, Business Zones DCP 2011, Rural Zones DCP 2011 and DCP Development in Environmental Protection, Recreation and Special Use Zones 2011 by inclusion of revised or new Floor Height Controls provisions for Glenreagh village [including a revised flood hazard map consistent with Figures F.4a (1-in-100-year flood event extent) and F.6a (Probable Maximum Flood event extent) of the Glenreagh Flood Study, GHD (2013)] and publicly exhibit those changes in accordance with the provisions of the Environmental Planning and Assessment Act 1979.
3. Ensure notations are included on Section 149 Certificates for land affected by flood-related development controls in the vicinity of Glenreagh village that are identified by the Glenreagh Flood Study (GHD, 2013) as being affected by flood hazard in up to the Probable Maximum Flood event.

Voting recorded as follows

For: Councillors Williamson, Baker, Howe, Hughes, Kingsley, McKenna, Simmons and Toms

Against: Nil

LINKAGE TO OUR COMMUNITY PLAN

Theme 4 Our Environment

Objective 4.3 We will establish a healthy balance between development and the environment

Strategy 4.3.4 Ensure that the Clarence Valley is sufficiently prepared to deal with natural disasters

BACKGROUND

The Clarence Valley Local Environmental Plan 2011 contains a Flood Planning Map that identifies land subject to flood hazard in a 1:100 ARI (Average Recurrence Interval) flood event, as well as the Probable Maximum Flood (PMF). The land subject to flood hazard has been identified following preparation of technical flood studies including predictive modelling using best available ground level information and previous flood and rainfall data. The flood study for the Clarence River floodplain on which the current Flood Planning Map is based was completed in 2004. In 2013, consultants BMTWBM Pty Ltd prepared a fresh flood study for the Clarence River floodplain, while consultants GHD prepared a new flood study for the area within and surrounding Glenreagh village. The Glenreagh area has not previously been subject to a flood study. Improvements in modelling techniques as well as the accuracy of baseline data provides the opportunity to obtain more accurate forecasting of the land area affected by future flood events. In addition, inclusion of climate change factors into flood modelling results in adjustments to outcomes from time to time.

Identification of latest available flood hazard in the Clarence Valley Local Environmental Plan 2011 Flood Planning Map ensures proper assessment of the impact of flooding events on, and the potential effects on flooding of, new development proposals that are being considered by Council. Provisions contained within the LEP as well as relevant DCPs ensure this hazard is considered as the Flood Planning Map is updated from time to time.

The updated data will also be utilised for notification of land where flood-related development controls apply when Council issues Section 149 Planning Certificates. Council considered the Glenreagh flood study outcomes at its meeting on 17 September 2013 and resolved to commence notification on land affected by the updated flood hazard (for the 1% AEP event) on those Certificates as well as replace a map showing flood liable land at Glenreagh in the Residential Zones Development Control Plan 2011 with Figure F 4a from the Flood Study (Resolution 13.205/13). In drafting changes to the Development Control Plan (DCP) it has been determined that similar revisions are required to other Council DCPs.

The September 2013 Council resolution did not account for the PMF event and Council should consider that data to ensure consistency between LEP and DCP provisions and Section 149 Certificate notations between affected land on the Clarence River floodplain and the Glenreagh flood study area.

KEY ISSUES

LAND AFFECTED – The Grafton and Lower Clarence Floodplain Study area includes land from the mouth of the Clarence River at Yamba-Iluka upstream as far as Seelands-Mountainview. Several thousand land parcels are considered to be subject to current flood hazard in the 1-in-100-year flood event and even more land parcels are affected by the combined coverage of the 1-in-100-year flood event and Probable Maximum Flood (PMF). The latest flood model (BMTWBM P/L, 2013) output that has been prepared with the benefit of significantly more accurate digital elevation modelling (ground level data) indicates that there is an overall reduction in number of land parcels affected by both the 1-in-100-year flood event (1037 less parcels) and the PMF event (606 less parcels).

These results should not be interpreted to suggest that predicted flood levels have fallen between the 2004 and 2013 models but rather that the ground level data and improved modelling technique has provided a result that Council has a higher level of confidence in. The nett result is that less land parcels on the Clarence River floodplain will be subject to flood-related development controls and associated notations through Section 149 Certificates.

For Glenreagh, the differences are quite marked as the current 1-in-100-year/1974 flood data is based on a report/map prepared by the former NSW Public Works Department in 1974. Further, that flood map only applied to land in the Glenreagh village on the western side of the Orara River, and as a result 77 land parcels are identified as being affected by that flood event. The latest GHD Study has been prepared over a significantly larger geographical area and is based on improved modelling techniques and ground level data making it a much more useful product from Council's perspective. The result however, is that 227 land parcels are now deemed to be subject to 1-in-100-year flooding in and around the village of Glenreagh, adjacent to both the Orara River and Tallawudjah Creek systems. The number of land parcels affected by the PMF event is 240 according to the GHD Study.

The nett result is that 163 more land parcels in the vicinity of Glenreagh village will be subject to flood-related development controls and associated notations through Section 149 Certificates.

Both of the 2013 flood studies identify the level or height of flood water in the different flood events. That data is applicable to the floor height requirements for new development and review of the relevant DCP provisions should ensure consideration of the latest flood level data. Incorporating that data into development application decisions and advice to land owners will reduce the potential for damages to new development as a result of flood events. Increased awareness of updated flood data, as will occur through

preparation of the Floodplain Management Study and Plan at Glenreagh and updated Section 149 Certificate advice, will improve the potential for landowners to manage their land holdings in a manner that respects the potential for adverse impact on other private assets. These outcomes enhance resilience in the local community and also reduce potential liability risk to Council arising from relevant development application decisions.

CLARENCE VALLEY LOCAL ENVIRONMENTAL PLAN 2011 – Clause 7.3 of the CVLEP 2011 states,

7.3 Flood planning

- (1) The objectives of this clause are as follows:*
 - (a) to minimise the flood risk to life and property associated with the use of land,*
 - (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
 - (c) to avoid significant adverse impacts on flood behaviour and the environment.*
- (2) This clause applies to:*
 - (a) land that is shown as "Flood planning area" on the Flood Planning Map, and*
 - (b) other land at or below the flood planning level.*
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
 - (a) is compatible with the flood hazard of the land, and*
 - (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) incorporates appropriate measures to manage risk to life from flood, and*
 - (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
 - (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*
- (4) A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government, unless it is otherwise defined in this clause.*

Identification of land subject to the flood hazard in the Flood Planning Map requires application and consideration of this clause whenever Council receives a development application proposing development on land subject to the identified flood hazard.

In addition, Clause 7.4 of the CVLEP 2011 states,

7.4 Floodplain risk management

- (1) The objectives of this clause are as follows:*
 - (a) in relation to development with particular evacuation or emergency response issues, to enable evacuation of land subject to flooding in events exceeding the flood planning level,*
 - (b) to protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.*
- (2) This clause applies to:*
 - (a) land between the flood planning area and the line indicating the level of the probable maximum flood as shown on the Flood Planning Map, and*
 - (b) land surrounded by the flood planning area, but does not apply to land subject to the discharge of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.*

(3) *Development consent must not be granted to development for the following purposes on land to which this clause applies unless the consent authority is satisfied that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land:*

- (a) caravan parks,*
- (b) correctional facilities,*
- (c) emergency services facilities,*
- (d) group homes,*
- (e) hospitals,*
- (f) residential care facilities,*
- (g) tourist and visitor accommodation.*

(4) *In this clause:*

probable maximum flood *has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.*

Note.

*The **probable maximum flood** is the largest flood that could conceivably occur at a particular location, usually estimated from probable maximum precipitation.*

Identification of land subject to the PMF hazard on the Flood Planning Map requires application and consideration of this clause whenever Council receives a development application proposing development with particular evacuation or emergency response issues on land subject to the identified flood hazard.

CLARENCE VALLEY DEVELOPMENT CONTROL PLANS – Development controls to guide better assessment of flood hazard in the design and assessment of new development proposals is contained within each of the Council DCPs. Specific provisions for Glenreagh in relation to flooding and floor height requirements are contained in the Business Zones DCP 2011 (Part N, Clause N6 and Map N2), Residential Zones DCP 2011 (Part R, Clause R6 and Map R4), and Rural Zones DCP 2011 (Part O, Clause O6 and Map O3), however there are no Glenreagh-specific provisions in the DCP Development in Environmental Protection, Recreation and Special Use Zones 2011 despite the fact that flooding already affects land in such zones within the village. This report recommends updating or adding the Floor Height Controls provisions for Glenreagh village into all relevant Council DCPs.

COUNCIL IMPLICATIONS

Budget/Financial

N/A

Policy or Regulation

NSW Environmental Planning & Assessment Act 1979

Clarence Valley Local Environmental Plan 2011

Clarence Valley Development Control Plans

Glenreagh Flood Study (GHD, 2013)

Lower Clarence Flood Model Update 2013 (BMTWBM Pty Ltd, 2013)

Consultation

No consultation has been undertaken at this stage. In the event that the Planning Gateway supports the Planning Proposal then the Gateway Determination will contain requirements for consultation. The flood-related planning controls have a significantly greater impact on lands in the vicinity of the village of Glenreagh where 163 more land parcels are affected compared to the 1974 flood map. Hence, direct consultation with affected landowners is reasonable. On the Clarence River floodplain however, there is a much longer history of flood-related development controls, combined with the fact that a lower number of land parcels are predicted to be impacted by large flood events, and hence less direct consultation is

considered reasonable in the circumstances. Relevant Government agencies, such as the Office of Environment and Heritage, would typically be consulted.

Legal and Risk Management

Council has a duty of care to its constituents to make them aware of hazards in the environment and further, to ensure decisions made by Council properly consider the level of risk. Updating of hazard studies, associated mapping, LEP and DCP provisions to ensure well-informed decision making reduces liability for Council. Further, ensuring consistency between flood-related provisions across different geographical areas or floodplains that are subject to flood hazard as that data becomes available is also appropriate. Providing consistency reduces legal liability for Council. Any consultation on the planning proposal will also raise awareness of the hazard, especially to affected landowners, which enhances consideration of the risk when landowners are managing their land and assets thereon. This further reduces potential damage and liabilities resulting from flood events.

Prepared by staff member:	Scott Lenton
Approved/Reviewed by Manager:	David Morrison
Section:	Strategic & Economic Planning
Attachment:	Planning Proposal – Update of Flood Planning Area in CVLEP 2011