

Removal of residential accommodation, commercial premises and industries from Clause 6.4 Floodplain Risk Management of Fairfield LEP 2013

Proposal Title :	Removal of residential accommodation, commercial premises and industries from Clause 6.4 Floodplain Risk Management of Fairfield LEP 2013		
Proposal Summary :	The planning proposal seeks to remove 'residential accommodation', 'commercial premises' and 'industries' from Clause 6.4 Floodplain Risk Management of Fairfield Local Environmental Plan 2013 and insert 'seniors housing' as an additional form of development. Recent flood studies undertaken by Council have identified specific areas of Fairfield that need to address flood safety and evacuation criteria. By removing 'residential accommodation', 'commercial premises' and 'industries' from the restrictive legal framework of Clause 6.4 and using Fairfield City Wide Development Control Plan 2013 to include detailed controls regarding specific areas, the amendment will provide greater certainty for development affected by flooding.		
PP Number :	PP_2015_FAIRF_002_00	Dop File No :	15/12101

Proposal Details

Date Planning Proposal Received :	04-Sep-2015	LGA covered :	Fairfield
Region :	Metro(Parra)	RPA :	Fairfield City Council
State Electorate :	FAIRFIELD	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :			
Suburb :		City :	Postcode :
Land Parcel :	The amendment applies to all land within the Fairfield Local Government Area.		

DoP Planning Officer Contact Details

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Removal of residential accommodation, commercial premises and industries from Clause 6.4 Floodplain Risk Management of Fairfield LEP 2013

Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :		Consistent with Strategy :	
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
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 knowledge of the regional team, the Department's Code of Practice in relation to communications and meetings with Lobbyists has been complied with. Metropolitan (Parramatta) has not met with any lobbyist in relation to this proposal, nor has the Director been advised of any meetings between other departmental officers and lobbyists concerning this proposal.**

POLITICAL DONATIONS DISCLOSURE STATEMENT

Political donations disclosure laws commenced on 1 October 2008. The legislation requires the public disclosure of donations or gifts for certain circumstances relating to the Planning system.

"The disclosure requirements under the new legislation are triggered by the making of relevant planning applications and relevant public submissions on such applications.

The term relevant planning application means:

- A formal request to the Minister, a council or the Secretary to initiate the making of an environmental planning instrument..."

Planning Circular PS 08-009 specifies that a person who makes a public submission to the Minister or Secretary is required to disclose all reportable political donations (if any).

The Department has not received any disclosure statements for this Planning Proposal.

Have there been meetings or communications with registered lobbyists? :

No

If Yes, comment : **The Department's Lobbyist Contact Register was checked on 28 September 2015 and there are no records of contact with lobbyists in relation to this proposal.**

Supporting notes

Internal Supporting Notes :

BACKGROUND

Fairfield City is one of the most flood affected areas of New South Wales. During preparation of Fairfield Local Environmental Plan 2013 Council obtained approval from the Department of Planning and Environment and the Office of Environment and Heritage to include a 'discretionary' clause 6.4 - Flood Risk Management in the new plan. This clause requires Council to take into account whether adequate arrangements have been made for safe occupation and evacuation for all development between the flood planning level up to and including the probably maximum flood event. In Fairfield City, this incorporates land

Removal of residential accommodation, commercial premises and industries from Clause 6.4 Floodplain Risk Management of Fairfield LEP 2013

within the low flood risk precinct and is identified on maps prepared by Council in various flood studies.

As a result of recent floodplain risk management studies carried out in the City, Council officers have identified the scope to rationalise the extent to which controls need to be considered for development affected by low risk floods. This involves introducing the new category of 'very low flood risk precinct' where it is proposed that no flood controls apply to residential (excluding seniors housing), commercial and industrial development.

In relation to provisions in the Fairfield City Side Development Control Plan, Council is proposing to introduce the 'very low flood risk precinct' to include removal of development controls (in practice principally relating to evacuation controls) applying to residential, commercial and industrial development in the low risk precinct above the flood planning level) and instead focus on an education program for landowners in this precinct to make them aware of evacuation issues in the event of a very large flood above the flood planning level.

A map of the Canley Corridor Floodplain Risk Management Study: Preliminary Risk Precinct Classification is provided as Attachment B of the Planning Proposal with accompanying table at Attachment C.

In addition, Council is proposing to amend the provisions of Chapter 11 of the Development Control Plan by removing current controls applying to 'residential accommodation', 'commercial premises' and 'industries' located above the flood planning level (1 in 100 year ARI plus 500mm freeboard).

EXTERNAL CONSULTATION - OFFICE OF ENVIRONMENT AND HERITAGE

A Case of Exceptional Circumstances was submitted by Council on 4 September 2015. The Case is a requirement under Planning Circular PS 07-003 (31 Jan 2007), which states that:

'Councils should not impose flood related development controls on residential development on land above the residential flood plain level (low flood risk areas).

Justification for variations to the above should be provided in writing to, and agreed by, the Department of Natural Resources and the Department of Planning prior to exhibition of a draft local environmental plan or a draft development control plan that proposes to introduce flood-related development controls on residential development.'

Accordingly, Council sent the planning proposal and Case for Exceptional Circumstances to the Office for Environment and Heritage (formerly the Department of Natural Resources) on 4 September 2015. Council and the Department of Planning are awaiting comment from the Office for Environment and Heritage and, in order to progress the planning proposal, have inserted a condition into the Gateway determination that exhibition may only occur pending approval of the planning proposal and Case for Exceptional Circumstances by the Office for Environment and Heritage.

INTERNAL CONSULTATION - COASTAL AND NATURAL RESOURCES POLICY TEAM

The planning proposal was referred to the Department's Coastal and Natural Resources Policy team for comment. The following comments were received on 19 August 2015 in support of the proposal.

'The proposal suggested by Council is sound from a policy perspective. The addition of 'seniors housing' to Clause 6.4 is consistent with the 'GUIDELINE ON DEVELOPMENT CONTROLS ON LOW FLOOD RISK AREAS—FLOODPLAIN DEVELOPMENT MANUAL, which states that flood related planning controls can extend beyond the 1% flood for sensitive land uses including development for aged care.'

A copy of the email is attached at Tag D.

Removal of residential accommodation, commercial premises and industries from Clause 6.4 Floodplain Risk Management of Fairfield LEP 2013

The Case for Exceptional Circumstances was forwarded to the Department's Coastal and Natural Resources team for comment on 14 September 2015. No comment has been received.

External Supporting
Notes :

Adequacy Assessment

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

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

Comment : The objectives of the planning proposal are to remove the terms 'residential accommodation', 'commercial premises' and 'industries' as types of development affected by the provisions of Clause 6.4 Floodplain Risk Management of Fairfield Local Environmental Plan 2013. In addition, the proposal seeks to insert the term 'seniors housing' as an additional form of development affected by the provisions of Clause 6.4.

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

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

Comment : The objectives will be achieved by amending Clause 6.4 of Fairfield Local Environmental Plan 2013 as follows:

6.4 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 land between the flood planning level and the level of a probable maximum flood, 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 centres,
- c) emergency services facilities,
- d) group homes,
- e) hospitals,
- f) residential care facilities,
- g) seniors housing
- h) tourist and visitor accommodation.

4. In this clause:

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

- 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.

Removal of residential accommodation, commercial premises and industries from Clause 6.4 Floodplain Risk Management of Fairfield LEP 2013

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

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

6.3 Site Specific Provisions

7.1 Implementation of A Plan for Growing Sydney

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

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

N/A

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

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

3.1 RESIDENTIAL ZONES

The planning proposal does not change the permissibility of existing residential development on land affected by this planning proposal.

4.3 FLOOD PRONE LAND

Direction 4.3 applies as the planning proposal alters provisions that affect flood prone land. The main inconsistency of the proposal is with Clauses 6(c) and 7 of Direction 4.3.

Clause 6(c) requires that a planning proposal must not contain provisions that apply to the flood planning areas which (c) permit a significant increase in the development of that land. The removal of less sensitive land uses, being 'residential accommodation', 'commercial premises' and 'industries' in this case, from Clause 6.4 of Fairfield Local Environmental Plan 2013 will allow for residential development in very low risk flood planning areas, with appropriate evacuation measures in place through development control plan provisions.

Clause 7 requires that a planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for these controls to the satisfaction of the Secretary or nominated delegate.

Council has provided the following justification for the amendment to Clause 6.4 and has provided a Case for Exceptional Circumstances supporting the justifications below, as required under the provisions of Planning Circular 07-003:

1. The changes proposed by Council are based on detailed flood investigations and flood mapping. Recent flood investigations have clarified areas where evacuation from buildings need to be taken into account in the low and very low risk flood precincts (i.e. above the 1 in 100 year flood event) for different categories of development including residential development, commercial and industrial development.

2. In relation to Clause 6.4 - Floodplain Risk Management, the changes proposed by Council are consistent with the following advice from the former Director General of the NSW Department of Planning and Environment under implementation of the Fairfield Local Environmental Plan 2013:

'Council should map areas that are outside the flood planning area that are subject of a flood event that are subject to isolation in a flood event, as well as those areas susceptible to instances of flash flooding...as part of finalisation of Council's City Wide Development Control Plan'

Removal of residential accommodation, commercial premises and industries from Clause 6.4 Floodplain Risk Management of Fairfield LEP 2013

3. Guidelines and an education process represent a more practical way of raising awareness of evacuation issues from residential, commercial and industrial buildings affected by flooding above the flood planning level up to the probable maximum flood level.

4. The amendments proposed by Council provide greater certainty for development affected by flooding.

The Department's Coastal Natural Resources Policy team were consulted and advised that there are no policy issues with the proposal. In addition, the team confirmed that the addition of seniors housing to clause 6.4 is consistent with the Guideline on Development Controls on Low Flood Risk Areas - Floodplain Development Manual, which states that 'flood related planning controls can extend beyond the 1% flood for sensitive land uses including development for aged care'.

It is considered that Council has provided adequate justification in support of the proposal's inconsistencies with Direction 4.3, subject to the endorsement of the Secretary or Secretary's delegate.

6.1 APPROVAL AND REFERRAL REQUIREMENTS

The proposal is consistent with this Direction as the proposed changes encourage the efficient and appropriate assessment of development on the subject site.

6.3 SITE SPECIFIC PROVISIONS

It is considered that the Planning Proposal is consistent with Direction 6.3, as the proposal will remove certain land uses without imposing any development standards or requirements in addition to those already contained in Fairfield Local Environmental Plan 2013.

7.1 IMPLEMENTATION OF A PLAN FOR GROWING SYDNEY

The planning proposal is consistent with the following objectives contained within A Plan for Growing Sydney:

GOAL 4: SYDNEY'S SUSTAINABLE AND RESILIENT ENVIRONMENT

A Plan for Growing Sydney seeks to build a more sustainable, resilient city that responds to the potential threat of natural hazards such as flooding.

ACTION 4.1.2: PREPARE A STRATEGIC FRAMEWORK FOR THE METROPOLITAN RURAL AREA TO ENHANCE AND PROTECT ITS BROAD RANGE OF ENVIRONMENTAL, ECONOMIC AND SOCIAL ASSETS

The framework will assist decision making by establishing criteria to:

- consider natural hazards, such as the need to evacuate people from flood/bushfire prone areas; how flood-prone areas will be avoided and not increasing flood risks in new flooding areas (through early planning for stormwater management).

SEPPS and SREPS

No SEPPs and SREPs apply to this planning proposal.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : The proposed changes to Fairfield Local Environmental Plan 2013 do not require mapping.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Consultation will be carried out in accordance with the requirements of the Gateway determination.

Removal of residential accommodation, commercial premises and industries from Clause 6.4 Floodplain Risk Management of Fairfield LEP 2013

Council is proposing public exhibition of the proposal for a minimum period of 28 days, to include:

- A notice in the local newspaper
- Publication of all relevant information on Council's website

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 : **May 2013**

Comments in relation to Principal LEP :

Fairfield Local Environmental Plan 2013 was notified on 17 May 2013.

Assessment Criteria

Need for planning proposal :

The planning proposal is a result of Council undertaking flood studies to identify with greater accuracy areas within the Fairfield Local Government Area that are affected by flooding. Under this process Council has been able to identify specific areas where there is the potential for evacuation concerns above the flood planning level up to and including the probable maximum flood.

It is considered that a planning proposal is the best means of achieving the intended outcomes as it will allow greater clarification of where evacuation needs to be considered in closer detail for land affected by flood above the flood planning level up to and including the probable maximum flood, referred to as the low flood risk precinct in the Fairfield City Wide Development Control Plan.

Consistency with strategic planning framework :

A PLAN FOR GROWING SYDNEY

A Plan for Growing Sydney seeks to build a more sustainable, resilient city that responds to the potential threat of natural hazards such as flooding.

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The framework will assist decision making by establishing criteria to:

- consider natural hazards, such as the need to evacuate people from flood/bushfire prone areas; how flood-prone areas will be avoided and not increasing flood risks in new flooding areas (through early planning for stormwater management).

DRAFT WEST CENTRAL SUBREGIONAL STRATEGY

The proposal is consistent with Objective E5.3 of the draft West Central Subregional Strategy (2007): Councils to identify natural hazards and risk management measures in principal Local Environmental Plans and subsection E5.3.1 Local councils to plan for land affected by flooding in accordance with the Government's Flood Prone Land Policy and Floodplain Development Manual.

Removal of residential accommodation, commercial premises and industries from Clause 6.4 Floodplain Risk Management of Fairfield LEP 2013

Environmental social
economic impacts :

It is Council's belief that there will be community benefit as a result of the proposed amendment to Fairfield LEP 2014 as it will provide greater certainty and indication of Council's requirements for development affected low flood risk flooding where evacuation is an issue during flood events. In addition, the removal of development controls relating to residential, commercial and industrial land within the very low risk flood areas will provide for potential development of these lands, as previously prohibited by the provisions of Clause 6.4.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **Office of Environment and Heritage
Transport for NSW - Roads and Maritime Services
State Emergency Service
Sydney Water**

Is Public Hearing by the PAC required? **No**

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

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required :

If Other, provide reasons :

No additional studies are required.

Identify any internal consultations, if required :

Metropolitan and Regional Strategy

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

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Council Cover Letter - Amendment to Floodplain Risk Management clause.pdf	Proposal Covering Letter	Yes
Planning Proposal - Amendment to Floodplain Risk Management clause - July 2015.pdf	Proposal	Yes
Case for Exceptional Circumstances.pdf	Study	Yes
PS 07_003_Guidelines for Flood Prone Land.pdf	Study	Yes

Planning Team Recommendation

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

Removal of residential accommodation, commercial premises and industries from Clause 6.4 Floodplain Risk Management of Fairfield LEP 2013

S.117 directions:

3.1 Residential Zones
4.3 Flood Prone Land
6.1 Approval and Referral Requirements
6.3 Site Specific Provisions
7.1 Implementation of A Plan for Growing Sydney

Additional Information :

GATEWAY DETERMINATION AND CONDITIONS

It is recommended that the planning proposal should proceed, subject to the following conditions:

1. Public exhibition of the planning proposal should not occur prior to approval of the planning proposal and Case for Exceptional Circumstances by the Office for Environment and Heritage, as required by Planning Circular 007-003, and the planning proposal should be updated to reflect such approval.

2. Consultation is required with the following public authorities under section 56(2)(d) of the Act and/or to comply with the requirements of relevant Section 117 Directions:

- Office for Environment and Heritage (Council awaiting comments)
- Sydney Water
- Transport for NSW – Roads and Maritime Services
- State Emergency Services

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

3. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:

(a) the planning proposal must be made publicly available for a minimum of 28 days; and
(b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013).

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Supporting Reasons :

The planning proposal is supported and justified by recent flooding studies. The planning proposal will allow greater clarification of where evacuation needs to be considered in closer detail for land affected by flood above the flood planning level up to and including the probable maximum flood.

Signature:



Printed Name:

DERRYN JOHN

Date:

15 OCTOBER 2015