

**ITEM NO:** DPG 03  
**FILE NO:** 089159.2014  
**SUBJECT:** LLEP Draft Amendment No 49 - Removal of Flood Prone Area Mapping from LLEP

## RECOMMENDATION

That Council:

1. Forwards a planning proposal to NSW Planning and Environment seeking a Gateway Determination to amend Clause 7.8 and remove the LEP Flood Prone Land Area Mapping.
2. Proceeds with public authority consultation and public exhibition in accordance with the determination, subject to Gateway approval.
3. Notes that the outcomes of public authority consultation and public exhibition will be reported to Council in the future.
4. Proceeds with the minor amendment to the DCP which will identify flooding risk provisions applying to land at or below the flood planning area (as opposed to being identified as per the Flood Prone Land Maps within the LLEP 2008).

### COUNCIL DECISION

**Motion:**                      **Moved: Cllr Stanley**                      **Seconded: Cllr Hadchiti**

That the recommendation be adopted.

On being put to the meeting the motion was declared CARRIED.

Councillors voted unanimously for this motion.

**DPG 03**
**LLEP Draft Amendment No 49 - Removal of Flood  
Prone Area Mapping from LLEP**

|                            |                                                                                                                     |
|----------------------------|---------------------------------------------------------------------------------------------------------------------|
| <b>Strategic Direction</b> | Liveable Safe City<br>Deliver an efficient planning system which embraces sustainable urban renewal and development |
| <b>Key Policy</b>          | Urban Development Plans                                                                                             |
| <b>File Ref</b>            | 089159.2014                                                                                                         |
| <b>Report By</b>           | Katie Miles - Strategic Planner                                                                                     |
| <b>Approved By</b>         | Toni Averay - Director Planning & Growth                                                                            |

**EXECUTIVE SUMMARY**


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The Liverpool Local Government Area (LGA) is traversed by a large number of rivers and creeks making flood management a key area of responsibility for Liverpool Council. Large areas of the LGA are subject to flooding from both overland flows and mainstream flooding. Further, with larger urban release areas, landform in the LGA is continually changing to convert flood prone areas to viable developable land through landfilling activities.

However, updating of records to reflect flood free nature of the new properties created can take up to 12 months. Whilst Council's Flood Maps can be updated quickly to reflect on the ground changes, the Flood Prone Land Maps in the LEP must go through the 9-12 month LEP amendment process. This results in inconsistencies in the identification of flood prone land and affects development assessment, 149 Certificate information, and insurance premiums, as well as creating angst and uncertainty for land owners and developers.

Council's Planning and Engineering staff have therefore undertaken a joint review to improve the internal processes in the way flood data is updated and communicated to the community. The review of current flood planning controls has been undertaken considering relevant policies, regional strategies, and best practice guidelines, in particular investigating the best mechanism to map or identify flood liable land.

A planning proposal has been prepared which proposes to remove the Flood Prone Land Maps from Liverpool LEP 2008 and amend clause 7.8 Flood Planning to rely on Council's Flood Maps rather than maps contained in the LEP. This is in line with the approach taken by many other metropolitan Councils, particularly those experiencing significant growth and change which would result in flood mapping information having to be regularly updated.



This proposed amendment would allow Council's flood planning data to be more quickly updated in response to flood mitigation works, ensuring that 149 Certificates are up to date and that there are no out dated restrictions on land which would affect new development.

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## REPORT

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Land that is affected by the flood planning area is identified via two mechanisms being:

1. Council's Flood Plain Risk Management Studies:
  - *Anzac Creek Floodplain Risk Management Study and Plan;*
  - *South Creek Floodplain;*
  - *Cabramatta Creek Flood Plain Risk Management Study and Plan;*
  - *Georges River Floodplain Risk Management Study and Plan;*
  - *Austral Floodplain Risk Management Study and Plan;*
  - *Upper Nepean River Flood Management Study and Plan.*
2. The Flood Prone Land Area Maps of the Liverpool LEP 2008.

If land is identified by either of these mechanisms as flood liable then any development proposal must comply with the relevant Flood Planning provisions within both the LLEP & LDCP 2008. Inconsistencies occur as Council's Flood Studies are able to be amended when cut and fill works are carried out and approved by Council's Infrastructure and Environment Department, in effect they are able to be updated straight away after works have been completed. However, the LLEP Maps must undergo the amendment process to be updated. This can take up to 12+ months to complete and during this time properties which are no longer flood affected are still subject to flood planning provisions, and the relevant 149 Certificate will still denote the property as flood affected which has impacts on insurance premiums and land values.

These local flood policies are updated frequently within Liverpool's high-growth areas and new urban release areas which comprise much of the LGA. As development alters the land topography, associated with infrastructure and engineering works, Council's technical



support team update Liverpool's flood mapping database and management policies to reflect these changes. However, in turn the Flood Mapping within the LLEP is unable to be quickly amended and misrepresents the flood planning areas. This is undesirable for land owners, developers, prospective buyers, Liverpool City Council and NSW Planning & Environment.

If the Flood Prone Land Area Maps remain within the Liverpool LEP 2008 council will need to progress ongoing planning proposals requesting flood area adjustments into the future. Property owners who have had the flood threat removed will experience significant delays until these proposals are gazetted on the LEP flood map. Their respective 149 planning certificate will continue to state the property is flood affected until gazettal. This means flood related development control and planning provisions are imposed on sites where the flood risk has been removed.

This review considers the mechanism of identifying flood prone land within the LLEP mapping is a doubled-up mechanism of flooding provisions which are out-of-date and problematic for all stakeholders and Council.

Council's flood engineers recommend that "the Flood Prone Land Area maps be excluded from the Liverpool LEP 2008, and that flood affectation is mapped through a flood prone land area map". It is noted that this impacts on land assessment on flood prone land. The attached planning proposal seeks the removal of these maps from the LLEP and amendment of Clause 7.8 Flood Planning to NSW Planning & Environment's model clause for flood planning.

The proposed removal of the Flood Prone Land Area Maps from the LLEP 2008 is the only way to prevent the incorrect statements of flood risk on 149 planning certificates and will thus avoid future conflicts between land owners, developers, Council and insurance companies that are being currently experienced. The proposed removal of LEP flood mapping would mean that 149(2)&(5) planning certificate flood information will be based on Council's flood mapping system and not out-dated LLEP flood prone mapping.

The exclusion of flood mapping from the LLEP 2008 will reduce red tape in development assessment and ensure appropriate planning occurs in flood prone areas. The planning proposal will aid meeting housing targets of the draft South West Subregional Strategy, encourage the uptake of new subdivision/release areas, as well as reducing the costs and concerns of land owners in regards to flood insurance premiums.

Liverpool will experience extensive population growth over the next 20 years with many residents settling in to new suburbs in a city built on the flood plains of the Georges and Nepean river systems. Effective planning policy must be continually under evaluation in high growth localities. Suburbs which are expected to undergo high rates of development, or have experienced continual development over the last decade, are evolving. Thus there is an impetus placed on monitoring the synergetic relationship between an evolving precinct and its planning provisions. This is especially apparent in regards to prevention planning for natural disasters, such as bushfires and flooding.

The bushfire prone land maps are *not* issued under the LEP Standard Instrument as the consent authority is the NSW Rural Fire Service, but these maps trigger equivalent planning provisions and development controls on affected properties as would an LEP Map relating to building heights, floor space ratios or environmentally sensitive areas for example.



As the bushfire prone land maps exist outside of the LEP it is a relevant example of how the Flood Mapping of the Flood Risk Management Policies would operate effectively if removed from the LLEP and too, how natural hazard prevention planning needs to be adaptable to specific circumstances.

### The Planning Proposal

This planning proposal seeks to:

1. Remove the Flood Prone Land Area Maps (FLD001-FLD015) from the Liverpool Local Environmental Plan 2008; and
2. To amend Clause 7.8 of the written instrument to the NSW Planning & Environment's Flood Planning model clause, as identified below:

#### **7.8 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 having 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 land at or below the flood planning area.*

(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) *will not 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) *will not 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 NSW Government's Floodplain Development Manual published in 2005, unless it is otherwise defined in this clause.*

(5) *In this clause, **flood planning area** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.*

The amendment of Clause 7.8 is necessary so to refer to the *flood planning area* of Council's flood policies, and to remove the overly verbose nature of the existing clause. This current clause was the model clause recommended by the NSW Government in 2006, however, the model clause has now been updated. This amendment seeks to utilize the updated model clause.

The NSW Government's *Standard Technical Requirements for LEP Maps* (Version 2.0) does not define flood mapping as mandatory for inclusion within the new LEPs. Flood mapping is



1. WOOLLAHRA  
2. NEWCREST  
3. RANDWICK  
4. MARRICKVILLE  
5. LEICHHARDT  
6. ASHFIELD  
7. BURWOOD  
8. STRATFIELD  
9. CANADA BAY  
10. BENTLEY HILLS  
11. LANE COVE  
12. NORTH SYDNEY  
13. MOSMAN  
14. WILLETTOCH

| Local Government Area                      | Area Flood Prone Land Area Map shown in LEP?                 |
|--------------------------------------------|--------------------------------------------------------------|
| Pennith LEP 2010                           | Yes                                                          |
| Fairfield LEP 2013                         | No                                                           |
| Bankstown Draft LEP 2012                   | No                                                           |
| Sutherland Draft LEP 2013                  | Yes                                                          |
| Camden LEP 2010                            | No                                                           |
| Campbelltown Draft LEP (not yet exhibited) | Not at this stage<br>*Under negotiations with the Department |
| Blacktown Draft LEP 2012                   | No                                                           |
| Holroyd LEP 2013                           | No                                                           |
| Parramatta LEP 2011                        | No                                                           |
| Auburn LEP 2010                            | Yes                                                          |
| Hurstville LEP 2012                        | No                                                           |
| Kogarah LEP 2012                           | Yes                                                          |
| Baulkham Hills (The Hills) LEP 2012        | No                                                           |
| Hornsby LEP 2013                           | Yes                                                          |
| Canterbury LEP 2012                        | No                                                           |
| Rockdale LEP 2011                          | Yes                                                          |
| Antony Bay LEP 2013                        | No                                                           |

 Flood mapping within LEP

 No Flood Mapping within LEP

The Liverpool area is located on a number of floodplains, which means that significant portions of land are subject to flooding. As flooding can cause significant damage Council has adopted a number of Flooding Risk Management Plans which include:

- Anzac Creek Floodplain Risk Management Study and Plan;
- South Creek Floodplain;
- Cabramatta Creek Risk Management Study and Plan;
- Georges River Floodplain Risk Management Study and Plan;
- Austral Floodplain Risk Management Study and Plan;
- Upper Nepean River Flood Management Study and Plan.

The implementation of the attached planning proposal will provide important community benefits including ensuring individual land owners are not subject to unnecessary flood insurance premiums, it will provide security to developers that flood engineering and



mitigation works will be reflected in development assessment, it will provide Council with an accurate real-time flood assessment areas, it will remove confusion between the LLEP 2008 flood maps versus the real-time flood mapping available on Council's in-house systems as well as within the flood plan and risk management studies on Council's website.

It is important to note that only parts of the current LLEP flood prone mapping which are inaccurate area in locations where substantial development occurs, however the majority of Liverpool's floodplain mapping is correct. As a result of the development ground topography is altered primarily by raising land levels above the 100 year flood planning level, thus flood mapping is altered to remove the flood affectation from completed development sites. There are no changes to the flood planning level nor are there any changes to any adopted flood policies.

### **The Draft DCP Amendment**

Part 1 of the Liverpool DCP describes general controls relating to all development within the Liverpool and within this document is Section 9 Flooding Risk. The denotation of this Section of when it applies currently states:

*Applies to:*

*This section applies to land identified as Flood Prone Land within the Liverpool LEP 2008.*

With the proposed removal of these maps from the LEP, the wording of this clause will need to be amended. It is recommended that the following is incorporated:

*Applies to:*

*This section applies to land identified as at or below the flood planning area.*

### **Conclusion**

Due to the lengthy legislative process to facilitate LEP amendments, the LLEP 2008 flood prone land maps are unable to keep up to date with amendments to the flood plain particularly in Council's rapidly developing release areas. An analysis of flood planning options has been undertaken including research into the new model clause and comparisons to similar growth area council's which recommends that flood prone land mapping not be included in the LLEP, but are managed as a standalone set of maps which are referenced through the LEP Clause 7.8.

The proposal to amend the LEP to make this change will provide advantages to the community, developers, Council and the NSW Department of Planning and Environment with clearer information provided through flood prone land maps, accuracy in Section 149 certificates and eradication of the need to prepare ongoing amendments to the LEP to address flood prone land. The suggested approach will ensure that land which is flood prone will continue to trigger assessment of flood impacts thereby protecting existing and future developments. This report and ancillary planning proposal is endorsed by Council's flood engineers.

## CONSIDERATIONS

|                                         |                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Economic and Financial</b>           | There are significant benefit in having up to date flood data shown on the property report including S149 planning certificates with respect to property value and insurance premium.                                                                                                                   |
| <b>Environmental and Sustainability</b> | Manage the environmental health of waterways.<br>Manage air, water, noise and chemical pollution.<br>Enhance the environmental performance of buildings and homes.                                                                                                                                      |
| <b>Social and Cultural</b>              | Raise awareness in the community about the available services and facilities.                                                                                                                                                                                                                           |
| <b>Civic Leadership and Governance</b>  | Act as an environmental leader in the community.<br>Provide information about Council's services, roles and decision making processes.<br>Deliver services that are customer focused.<br>Operate a well-developed governance system that demonstrates accountability, transparency and ethical conduct. |

## ATTACHMENTS

1. DCP Controls - Flood Planning
2. Current LEP Clause 7.8 Flood Planning
3. Flood Mapping Planning Proposal (Amendment No. 49) (Under separate cover)