



**Liverpool**city council  
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# **Planning Proposal**

**Liverpool Local Environmental Plan 2008**

## **Draft Amendment No. 49**

**Removal of Flood Mapping from LLEP**

***December 2014***

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## **Background**

The Liverpool Local Government Area (LGA) is traversed by a large number of rivers and creeks making flood management a key area for Liverpool Council. Significant parts of Liverpool are subject to flooding from both overland flows and mainstream including such major rivers as the Georges River, Nepean River and Cabramatta Creek.

The New South Wales government's *flood prone lands policy* places primary responsibility for planning and management of flood prone lands in NSW with the local government. In response, council has adopted a range of strategies and a program of works to manage the human occupation and use of flood liable lands. This review investigated relevant policies and best practice guidelines.

### *Flood Prone Land Policy*

The NSW Flood Prone Land Policy recognises the following two important facts:

- Flood prone land is a valuable resource that should not be sterilised by unnecessarily precluding its development.
- If all development applications and proposals for rezoning of flood prone land are assessed according to rigid and prescriptive criteria, some appropriate proposals may be unreasonably disallowable or restricted, and equally quite inappropriate proposals may be approved.

The primary objective of the *NSW Flood Prone Land Policy* is to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property, and to reduce private and public losses resulting from floods, utilising ecologically positive methods wherever possible. That is:

- a) The impact of flooding and flood liability on existing developed areas shall be reduced by flood mitigation works and measurements, the removal of unnecessary development and building controls and the voluntary acquisition of property in hazardous areas;
- b) The potential for flood losses in all new developed areas shall be contained by the application of effective planning and development controls;
- c) A merit approach to all development and building decisions which takes account of social, economic and ecological as well as flooding considerations should be followed.

Local Government is the primary authority responsible for both flood risk management and land use planning in New South Wales. The NSW Government's flood policy provides for a flexible merit based approach to be followed by local government when dealing with planning, development and building matters on flood prone land. For Council to fully carry out its responsibilities for management of flood prone land, it is necessary to prepare local Floodplain Risk Management Plans.

### *State Government's Floodplain Development Manual 2005*

The *Floodplain Development Manual* has been prepared in accordance with the NSW Government's Flood Prone Land Policy. It guides councils in the development and implementation of detailed local floodplain risk management plans to produce robust and effective floodplain risk management outcomes. The manual also outlines the technical assistance provided by the State Government throughout the floodplain risk management process.

The manual states that Councils are responsible for the preparation of LEPs under the EP&A Act 1979. Councils are encouraged to incorporate appropriate planning provisions of

floodplain risk management plans into LEPs, DCPs and policies. Importantly, it recommends councils exclude complying development from areas that require flood related development controls.

Liverpool Council has achieved this through its LLEP Section 7.8 Flood Planning which denotes any development shown within the flood planning level is required to gain development consent. The flood planning level is identified in Council's development control policies (local policies) as the floodplain risk management studies and also within the LLEP 2008 Flood Prone Land Mapping.

If a property is identified within either any floodplain risk management study or identified on the LLEP Flood Prone Land Mapping, then Liverpool's DCP Part 1.1 Section 9 Flooding Risk is triggered as part of the assessment process of 79C of the EP&A Act 1979. The current LEP and DCP provisions have been provided as attachments at the end of this proposal.

The Manual requires Councils prepare Floodplain Risk Management Studies as a prelude to the formulation of a Floodplain Risk Management Plan that would control development and other activity within the floodplain. These development controls are incorporated into Council's DCP 2008.

Council's Flood Risk Management Strategies requires the inclusion of identifying Flood Risk Categories, they are:

- **High Flood Risk Category** is means land below the 1% Annual Exceedance Probability (AEP) flood that is either subject to a high hydraulic hazard or where there are significant evacuation difficulties.
- **Medium Flood Risk Category** means land below the 1% AEP flood that is not subject to high hydraulic hazards and where there are no significant evacuation difficulties.
- **Low Flood Risk Category** means all other land within the floodplain (i.e. within the extent of the probable maximum flood) but not identified a within either a High Flood Risk or the Medium Flood Risk Category. This would the area above the 1% AEP flood and most land uses would be permitted.
- **No Flood Risk Mapping** means that there has not yet been any risk determined for this area.

The Floodplain Development Manual states that Councils are generally responsible for the investigation, design, construction and maintenance of flood mitigation works. An essential part of ongoing floodplain risk management is that each council needs to put in place a formal asset management program for management measures. This not only applies to structural mitigation works but is equally applicable to planning measures.

There are additional State guidelines relating to flood planning which include:

1. Guideline on Development Controls on Low Flood Risk Areas, Department of Planning & Department of Natural Resources 2008.  
*This Guideline provides advice to council on appropriate flood related development controls for residential development in areas of flood prone land above the Flood Planning Level and associated advice on section 149 certificate notifications.*
2. Restoring the Balance: Guidelines for Managing Floodgates and Drainage Systems on Coastal Floodplains, Johnston, S., Kroom, F., Slavich P., Cibilic, A. & Bruce, A. NSW Agriculture 2008.

*These are guidelines for the management of coastal floodplain drainage systems. The guidelines present strategies to reduce the adverse impacts of coastal floodplain drainage systems on fisheries and estuarine water quality.*

The State Government's *Floodplain Development Manual* requires Councils to prepare and monitor Floodplain Risk Management Studies that control development and activities within flood prone land. Development controls are then formulated and incorporated within the Council's Development Control Plan. The State Government's *Planning Circular PS 07-003* confirmed that councils should adopt the 100-year flood as the flood planning level (FPL) for residential development. This is shown on the Liverpool LEP *Flood Planning Area Map* as flood prone land but also displayed within all Liverpool Floodplain Risk Management Studies.

### **Local Planning Provisions regarding Flooding**

#### ***The Liverpool Development Control Plan 2008***

The Liverpool Development Control Plan (DCP) 2008 Part 1.1 *Section 9 – Flooding Risk* is an application of the State Policy which reflects local circumstances and associated development controls as identified within Floodplain Risk Management Plans. It applies to all land identified as Flood Prone Land within the local flood planning and management policies and also land identified within the *Flood Prone Land Area Map* of the LLEP 2008. Any identified property displayed as flood affected within the Flood Planning Area Map of the LEP is subject to the development controls stated within the DCP in order to gain consent approval by the consent authority.

#### ***The Liverpool Local Environmental Plan 2008***

In addition to the development controls within Liverpool DCP 2008, there are also written provisions pertaining to flood prone land planning within the Liverpool Local Environmental Plan 2008. The LLEP *Clause 7.8 Flood Planning* details planning provisions and planning considerations specific to the Liverpool local government area. This clause is a more locally specific to that of the *Clause 7.3* which was the model clause recommended by the NSW Government in the formation of Standard Instrument LEP Program (SI Order) in 2006. It was also recommended within this model clause that councils incorporate a flood planning map within their LEP too which Liverpool City Council incorporated.

It is worth noting that the NSW Government's *Standard Technical Requirements for LEP Maps* (Version 2.0) defines the *standard maps* as mandatory for inclusion within the new LEPs. Flood mapping is **not** a standardised map but a locally specific map which illustrates unique local conditions or affectations. Many local government authorities opted not to incorporate a flooding map into their LEPs.

The Figure 1 and Table 1 (page 5) identify which outer Sydney Councils have incorporated flood mapping into their LEPs like Liverpool, and which Councils have not. As can be seen most Councils have opted to not include flood mapping into their LEPs. Through this planning proposal it is proposed that Liverpool remove the flood prone land maps from the LEP and rely upon these maps in the adopted flood studies. Please refer to Table 1.0 and Map on page 5 for an analysis of flood policies of the surrounding Sydney councils.

#### ***Liverpool's Flood Management Policies***

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 Study.

As development occurs in these areas which alter the flood affection of properties these maps need to be updated. Flood maps are only updated to reflect changes to flooding condition of properties resulting from landfill and associated subdivision works. Council's Infrastructure and Environment department update the relevant flood map, thus any proposed development on flood affected land then triggers compliance with the LLEP Clause 7.8 and LDCP flooding development controls, irrespectively of the LLEP Flood Mapping.

The LLEP Flood Mapping is constantly out-of-date due to the fluidity of these developing areas making these maps effectively "working maps" subject to ongoing change. To amend the LLEP 2008 mapping a planning proposal must undergo the Gateway Process and as this often takes approximately 12 months, by the time of gazettal the maps are often out-of-date again.

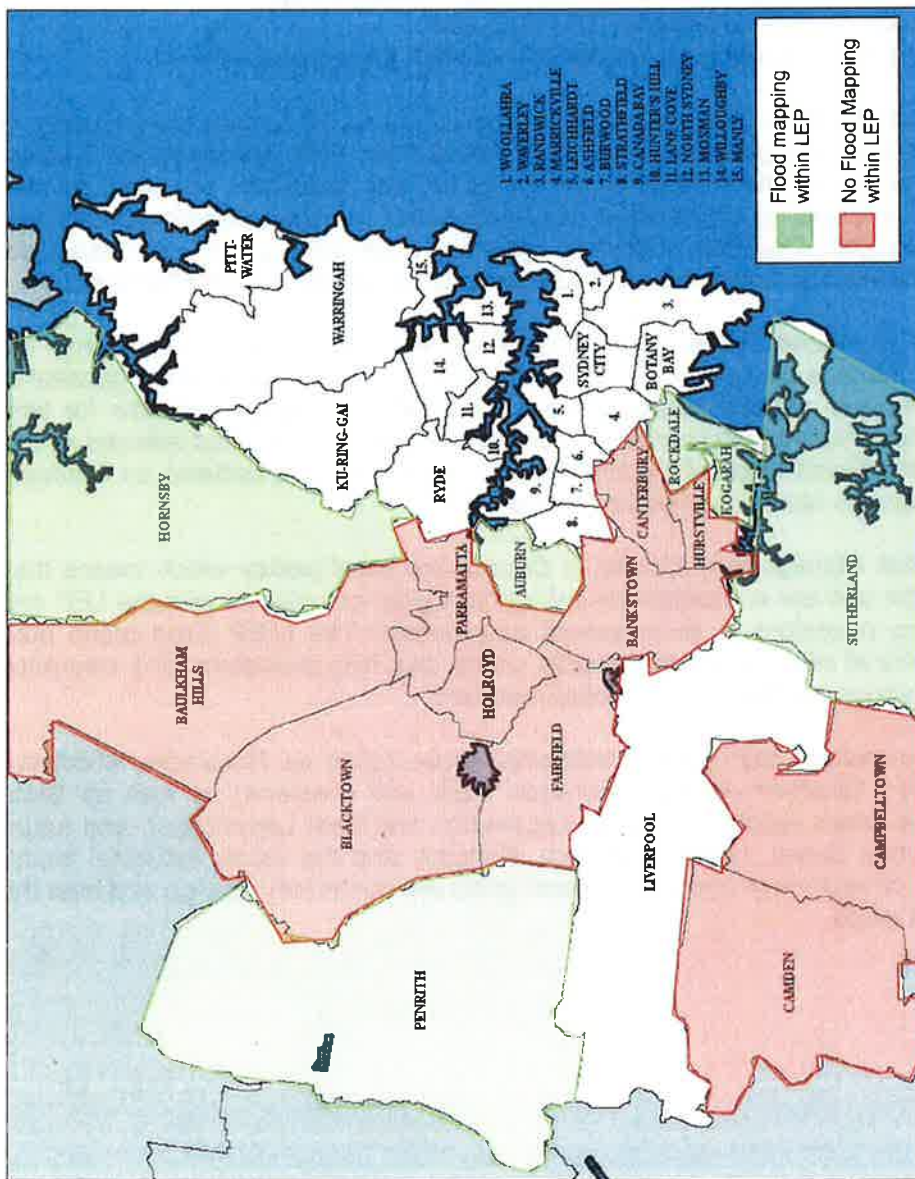


Figure 1: Local Government Areas with Flood Mapping included in their LEPs.

Table 1.0: Councils and LEP Flood Mapping

| Local Government Area                      | Area Flood Prone Land Area <u>Map</u> shown in LEP?           |
|--------------------------------------------|---------------------------------------------------------------|
| Penrith 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 2013                   | 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                                                           |
| Botany Bay LEP 2013                        | No                                                            |

## ***Introduction***

This planning proposal seeks to remove the Flood Prone Land Area Maps from the Liverpool Local Environmental Plan 2008, and to amend Clause 7.8 of the written instrument to the NSW Department of Planning and Environment's Flood Planning model clause. The amendment of Clause 7.8 is necessary so to refer to the *flood planning level* of Council's flood policies rather than the LEP maps, and to remove the overly verbose nature of the existing clause.

Currently, land that is affected by the flood planning level is identified via two mechanisms:

1. Council's Flood Plain Risk Management Studies- which is required by the State's Floodplain Development Manual; and
2. The Flood Prone Land Area Maps of the Liverpool LEP 2008.

If a property is identified by any of these two mechanisms as within the flood planning level then it must comply with:

- Clause 7.8 of the Liverpool LEP 2008 regarding flood planning;
- Part 1.1 Section 9 of the Liverpool DCP 2008; and
- Development controls within the relevant Flood Risk Management Plan.

A problem exists with the Flood Prone Land Area Maps of the LLEP as they are indicative of the flood planning level recognised by the 2004 Flood Plain Risk Management Studies. These studies were up-to-date in 2008 when the LLEP was gazetted; however, as new developments and engineering works have been completed the flood planning area maps have been altered (on Council's mapping system), especially within new large lot subdivisions area by altering and/or relieving flood affectation of many residential lots.

Any alterations to the Flood Prone Land Area Maps are then required to undergo the Planning Proposal Process and delays of 12 months are commonplace since the gazettal of the LEP 2008. This has serious consequence on insurance property premiums for land owners as the section 149 planning certificate must note the property is flood affected as it is highlighted within the Flood Maps of the LEP 2008, even though it is updated on Councils' flood mapping system as having the flood risk removed.

The *Flood Plain Risk Management Studies* of Council are **local policy** which means they hold statutory weight and are in themselves enough to trigger compliance with the LEP and DCP flood planning provisions in development assessment. The LLEP flood prone area maps are an additional mechanism that places undue planning provisions and insurance premiums on land where the flood risk has been removed.

The presence of numerous high-growth residential areas (such as Rossmore, Middleton Grange, Moorebank, Elizabeth Hills, Edmondson Park and Prestons) as well as State government release areas (such as Austral, Leppington and East Leppington), and future release areas (Kemps Creek, North Rossmore, Bringelly and the future Industrial lands) mean that ongoing development and subdivisions which will continually change and alter the flood planning area maps.





The Flood Prone Land Area Maps of the Liverpool LEP 2008 are no longer accurate and are placing lengthy barriers to the delivery and uptake of housing within Liverpool. Properties which are identified as flood prone will be identified through Council's Flood Studies and Management Plans as identified below;

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

These studies can be accessed from Council's website following this link:

<http://www.liverpool.nsw.gov.au/environment/water-and-waterways/flood-management>

If a property is identified as flood affected within these plans they will therefore be subject to all relevant LEP and DCP controls as it exists currently. Therefore, there is no need for the Flood Prone Area Maps to exist within the LLEP.

## Delegation of Plan Making Function to Council

Council is seeking an authorisation to make the plan for this planning proposal. The following response to the evaluation criteria is in support of this request;

| (NOTE – where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)               | Council Response |              | Department Assessment |           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|--------------|-----------------------|-----------|
|                                                                                                                                                                                        | Y/N              | Not Relevant | Agree                 | Not Agree |
| Is the planning proposal consistent with the Standard Instrument Order, 2006?                                                                                                          | Y                |              |                       |           |
| Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?                                                  | Y                |              |                       |           |
| Are appropriate maps included to identify the location of the site and the intent of the amendment?                                                                                    | Y                |              |                       |           |
| Does the planning proposal contain details related to proposed consultation?                                                                                                           | Y                |              |                       |           |
| Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?                                  | Y                |              |                       |           |
| Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?                                                                              | Y                |              |                       |           |
| Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?                                                                                   | Y                |              |                       |           |
| <b>Minor Mapping Error Amendments</b>                                                                                                                                                  | Y/N              |              |                       |           |
| Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed? | Y                |              |                       |           |
| <b>Heritage LEPs</b>                                                                                                                                                                   | Y/N              |              |                       |           |
| Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?                                        | N                |              |                       |           |
| Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?                                           |                  | N/A          |                       |           |
| Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?                                | N                |              |                       |           |
| <b>Reclassifications</b>                                                                                                                                                               | Y/N              |              |                       |           |
| Is there an associated spot rezoning with the reclassification?                                                                                                                        | Y                |              |                       |           |
| If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?                                                                                 | Y                |              |                       |           |
| Is the planning proposal proposed to rectify an anomaly in a classification?                                                                                                           | N                |              |                       |           |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |            |     |  |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----|--|--|
| Will the planning proposal be consistent with an adopted POM or other strategy related to the site?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Y          |     |  |  |
| Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Y          |     |  |  |
| If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Y          |     |  |  |
| Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <i>Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?                                                                                                                                                                                                                                                                                                                                                                                                                    | Y          |     |  |  |
| Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Y          |     |  |  |
| <b>Spot Rezoning</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>Y/N</b> |     |  |  |
| Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | N          |     |  |  |
| Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | N          |     |  |  |
| Matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |            | N/A |  |  |
| If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |            | N/A |  |  |
| Does the planning proposal create an exception to a mapped development standard?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | N          |     |  |  |
| <b>Section 73A matters</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Y/N</b> |     |  |  |
| Does the proposed instrument<br>a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;<br>b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?;<br>or<br>c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land? | N          |     |  |  |

Council is seeking delegation to make the plan.

## Site Identification

Council is proposing to remove all Flood Planning Area Maps of the LLEP (FLD001-FLD015). No sites are identified within this plan.

## Part 1 - Objectives

The primary objective of this planning proposal is to ensure the Liverpool Local Environmental Plan 2008 places appropriate planning provisions on flood prone land whilst removing flood restrictions from land which is not at risk.

## Part 2 - Explanation of Provisions

The aims of this planning proposal will be achieved through removing the Flood Prone Land Area Map from the Liverpool Local Environmental Plan 2008 (LLEP 2008) and amending Clause 7.8 Flood Planning provisions. The four proposed amendments are:

1. To amend Clause 7.8 Flood Planning to the following model clause:

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

2. To remove all the Flood Prone Land Mapping from the Liverpool LEP 2008, (FLD001 to FLD015).
3. To remove *Flood Planning Area* and *Flood Planning Area Map* from the LLEP Dictionary.
4. To amend references of 'flood planning area' to 'flood planning land' in Clause 3.2 Complying Development 3A(f)(ii).

### ***Guidelines regarding Flooding Provisions on 149 Planning Certificates***

The Government's *Planning Circular PS 07-003* is a guideline for implementation directions on three policy matters which are;

- the *Floodplain Development Manual*;
- changes to the *Environmental Planning and Assessment Regulation 2000* regarding section 149 planning certificates; and
- *Section 117 Direction flood prone land*.

Provided within this is information on how the manual is to be applied in relation to development controls in low flood risk areas and how this is to be applied to section 149 planning certificates. The guideline confirms that councils should adopt the 100-year flood as the flood planning level (FPL) for residential development, and that councils should not impose flood related development controls on residential development on land above the residential FPL (low flood risk areas).

Flood-related development controls are not defined but would include any development standards relating to flooding applying to land that are a matter for consideration under section 79C of the Environmental Planning and Assessment Act 1979 (the EP&A Act). As such, it is mandatory that any relevant LEP provision must be displayed on the section 149 certificate.

Clause 7A(1) of the Regulation means that councils should not include a notation for residential development on section 149 certificates in low risk areas if no flood-related development controls apply to the land. However, a notation for all residential development below the flood planning level would be appropriate if council has adopted flood-related development controls for this area.

The Flood Prone Land Area Maps within the Liverpool LEP 2008 depict the 100-year flood planning level in accordance with these directions, however there are inconsistencies where this flood area has been altered due to engineering and subdivision works. In many cases engineering works of large subdivisions have significantly altered the flood planning area and land levels. The section 149 planning certificates are then seen to incorrectly state flood-related provision on land where the flood risk has been removed. Lengthy delays are experienced as planning proposals undergo the Gateway Process in order to amend the maps

## **Part 3 - Justification**

### **A. Need for the planning proposal**

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

Council has undertaken a review of the current planning controls as well as relevant policies, regional strategies, and best practice guidelines with regard to flood prone land as noted in the afore sections of this planning proposal. An investigation was conducted into the anticipated impacts of removing the Flood Prone Land Area Maps from the Liverpool LEP 2008, and whether this would be the best planning practice for Liverpool. The subsequent paragraphs denote these conclusions.

The ongoing development of Liverpool has substantially changed the topography of selected areas as changes to land use and creation of lot subdivisions have occurred. Infrastructure and engineering works have altered where flood waters travel, the flow and velocity, and where flood waters gather and disperse. In line with the Government's requirements to regularly update the *Floodplain Risk Management Plans*, Council's Infrastructure and Environment team constantly update Liverpool's flood mapping database to reflect these changes.

In some cases the risk of flooding is changed, downgraded, added, or removed from areas, however there are substantial delays in transferring these changes into the LEP. The Flood Prone Area Maps within the Liverpool LEP 2008 must undergo the planning proposal process in order to be amended which can take up to 12 months or more. This process is lengthy, time consuming and would require constant LEP amendments to remain current with land development.

The section 149 planning certificates must state the planning provisions relating to that property as required by the EP&A Act 1979. If a property is shown as flood affected on the Flood Prone Land Area Map of the Liverpool LEP 2008 it must therefore be stated on the correlating section 149 planning certificate regardless the updates made on Council's flood mapping database. In some situations where the flood risk has been removed from the property, yet the flood risk remains stated on the section 149 planning certificate as the flood maps within the LEP 2008 identify the property as flood affected- it can be especially problematic for land owners where insurance companies then impose flood premiums which can increase annual fees by up to \$15,000. This can deter prospective buyers and hinder the deliverance of the housing targets stated within the draft *South West Subregional Strategy*.

It is considered that the current written controls within the DCP and the amended Clause 7.8 of the LLEP are best practice flood planning policy, and in themselves achieve the objectives intended of the Flood Prone Land Area Maps. Excluding these maps from the Liverpool LEP 2008 would have nil negative impacts on land assessment given flood prone land.

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

This planning proposal is the only means to achieve the objectives and intended outcomes of this review. The proposed removal of the Flood Prone Land Area Maps from the Liverpool Local Environmental Plan 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 being currently experienced.

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 it's planning provisions which should be evolving along with the area.

***Will the net community benefit outweigh the cost of implementing and administering the planning proposal?***

The 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 levels, it will remove confusion between the LLEP 2008 out-of-date flood maps versus the real-time flood mapping available on Council's in-house systems as well as within the flood risk management plans on Councils website.

It will also provide environmental benefits as accurate flood mapping will allow development proposals in the surrounding area and downstream to actively engage in mitigation works or emergency works as necessary to their flood risk level. The flood risk management policies have delivered accurate assessment of changing flood water levels so that environmental testing and monitoring on waterways can continue to be productive and ameliorate any negative effects that may be attributed to land development.

***B. Relationship to strategic planning framework***



***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)?***

The planning proposal is deemed consistent with the objectives and actions contained within the Metropolitan Plan and South-West Subregional Strategy. This is discussed as below:

**4.1 Draft Metropolitan Strategy for Sydney to 2031**

The draft Metropolitan Strategy's Section Healthy and Resilient Environment – Objective 19 refer to flood prone land planning and is discussed below.

***Objective 19: Building Resilience to Natural Hazards***

This section mentions the flood risk of the Hawkesbury-Nepean, Georges and Parramatta River catchments of particular concern to the Sydney Metropolitan Area. It is stated that the NSW Government aims to increase the number of floodplain risk management plans as a way of building resilience in land-use planning to natural hazards.

*Action 19.2* states that the aim exists to “link completion and periodic review of flood studies and coastal hazards studies with strategic land use planning”. This is to be delivered through Local Plans with the timing being ongoing and a key partner being Local Councils.

This planning proposal achieves all of these outcomes in a quicker and more user friendly manner than the existing situation. Liverpool Council's floodplain risk management plans are continually under review by Council's engineers due to the amount of on-going development of its evolving precincts and release areas. As the local policy is up-dated so too is the relevant section 149 planning certificates so the flood planning provisions within the LLEP & LDCP 2008 are triggered.

**4.3 Draft South West Subregional Strategy**

The South West Subregional Strategy notes that two large water catchments are noted in the region being the Hawkesbury Nepean and Georges Rivers and states that they each have been greatly modified with the construction and operation of dams, weirs and urban development. Flooding is addressed specifically in the environment heritage and resources sections under direction E5.3.1 as stated below:

SW E5.3.1 Councils to plan for land affected by flooding in accordance with the Government's Flood Prone Land Policy and *Floodplain Development Manual*.

*The objective of the Government's Flood Prone Land Policy is 'to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property and to reduce private and public losses resulting from floods'. The policy is merit based in which social, economic, environmental and flood risks are balanced to determine whether a particular development or use of the floodplain is appropriate and sustainable.*

*Floodplain risk management assessment needs to be undertaken strategically through the development of floodplain risk management studies and plans, which consider the flood implications for existing and proposed development. Further details on how flood is to be considered in the development of draft LEPs is contained in Section 117 Direction No. 4.3 – Flood Prone Land and the Floodplain Development Manual.*

The policy and manual have previously been discussed in the background section of this planning proposal and the Section 117 Direction is discussed in the Ministerial Section in the latter parts of this proposal. The planning proposal is however consistent with the objectives and recommendations of all the directions and policies stated herein.

***Is the planning proposal consistent with the Liverpool Community Strategic Plan "Growing Liverpool 2023"***

The community strategic plan sets the strategic directions for change over the next ten year period to achieve a vibrant regional city of opportunity, prosperity and diversity. It is stated within Direction 5 *Natural Sustainable City* that Liverpool is currently undergoing significant change and development. There will be 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. Impetus is then placed on the synergetic relationship between an evolving precinct and the trigger mechanisms which review planning provisions- which should also be evolving along with an area.

This proposal to exclude the Flood Prone Land Area maps from the Liverpool LEP 2008 is in congruence with Liverpool's Community Strategic Plan in regards to:

**Direction 2: Liveable Safe City**

*2.a Deliver an efficient planning system which embraces sustainable urban renewal and development;*

*2.d Facilitate diverse and more affordable housing options.*

**Direction 5: Natural Sustainable City**

*5.a Lead the community to develop and implement environmentally sustainable practices*

The flood risk management policies identify and enforce appropriate flood planning provisions on the affected properties. This planning proposal will result in an efficient planning system which removes confusion, removes unnecessary planning provisions, removes insurance premiums being placed on unaffected lots, and identifies changes to the flood planning level as they are calculated and notifies affected property owners.

This planning proposal provides an effective, appropriate and accurate response to the evolving nature of natural hazard planning. It is therefore consistent with the Liverpool Community Strategic Plan.

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

***The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008***

The code places various land based exclusions for exempt and complying development such as flood prone land, critical habitat, wilderness areas and heritage listed items. Councils are required to identify whether the entire lot is affected or only partly affected in Section 149 Certificates.

***Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?***

The Planning Proposal is consistent with the Section 117 Direction No. 15 – Flood Prone Land as explained below:

- (1) The proposal is consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, including the *Guideline on Development Controls on Low Flood Risk Areas*.

- (2) The proposal does not propose to rezone land within the flood planning areas.
- (3) This proposal;
  - a) does not permit development in floodplain areas;
  - b) does not permit development that will result in significant flood impacts to other properties;
  - c) does not increase the development of land (which are controlled by other planning provisions such as minimum lot sizes, maximum dwelling capacities, floor space ratios, and building heights);
  - d) does not result in any increases to government spending on flood mitigation measures, infrastructure or services; and
  - e) does not permit development to be carried out without development consent for the purposes of agriculture or exempt development.
- (4) Parts of the current LEP flood prone land area maps currently impose flood related controls on land above the residential flood planning which is against Direction No. 15. This planning proposal will serve to remove this barrier so that Council's objectives and LEP are consistent with the Ministerial Direction.
- (5) No changes to the flood planning level that are inconsistent with the Floodplain Development Manual 2005 are proposed, therefore the proposal complies with this objective.
- (6) Not applicable given compliance with (5).

The planning proposal better achieves the objectives and directions of Ministerial Direction No. 15 – Flood Prone Land than that of the current Liverpool LEP 2008, thus the proposal is consistent with the objectives of the Direction.

### ***C. Environmental, Social and Economic Impact***

***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?***

The planning proposal is very minor in nature seeking only to remove the flood maps from the LLEP. The proposal poses no impact to critical habitats or threatened species, populations or ecological communities as a result.

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

There are no likely environmental effects of the proposal. Flood planning will be identified by Council's Flood Risk Management Strategies and engineers and environmental scientists will continue to manage and evaluate any changes and development applications in accordance with the Environmental Planning and Assessment Act 1979, the Liverpool Local Environmental Plan 2008, and the NSW Government's Flood Prone Land Policy and Floodplain Development Manual 2005.

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

The planning proposal has very minor social and economic impacts considering the flood planning mechanisms within the written instrument and flood risk management policies already address these issues. The planning proposal simply seeks to remove a 'doubled-up' mechanism which incorrectly identifies the flood planning areas within Liverpool which is seen as a positive to both social and economic considerations.

## ***D. State and Commonwealth Interests***

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

The planning proposal requires no public infrastructure to be implemented nor will it have any impact on the delivery or use of public assets. The planning proposal has no immediate

or future impacts on public infrastructure or perceived future impacts that are not already mandated by the Floodplain Development Manual 2005 in local flood risk management policies.

***What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal?***

This will be determined by NSW Department of Planning and Environment upon the assessment for Gateway Determination.

## **Part 4 - Mapping**

Proposed deletion of FLD 001- 015 Maps from LLEP 2008.

## **Part 5 - Community Consultation**

The Gateway Determination will specify the community consultation that must be undertaken on the planning proposal.

## **Part 6 - Timeline**

Council estimates that a timeframe of 6-9 months, from the issue of a Gateway determination, is required to complete the process.

| <b>Timeframe</b> | <b>Action</b>                                                             |
|------------------|---------------------------------------------------------------------------|
| February 2015    | Receive Gateway Determination                                             |
| Early March 2015 | Public authority consultation                                             |
| March 2015       | Public exhibition                                                         |
| April 2015       | Review of submissions                                                     |
| May 2015         | Report to Council                                                         |
| June 2015        | Review of Planning Proposal by PC, legal drafting and finalisation of LEP |

