

Planning Services

Gateway Determination Report

LGA	Edward River Council
PPA	Edward River Council
NAME	Planning proposal to amend Deniliquin LEP 2013 and Deniliquin LEP 1997 to update Flood Planning Maps and Clauses (0 homes, 0 jobs)
NUMBER	PP_2018_ERIVE_001_00
LEP TO BE AMENDED	Deniliquin Local Environmental Plan 2013 Deniliquin Local Environmental Plan 1997
ADDRESS	Multiple
DESCRIPTION	Multiple
RECEIVED	22 March 2018
FILE NO.	IRF18/1826
POLITICAL DONATION	There are no known donations known or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The planning proposal intends to insert flood planning controls and mapping into the Deniliquin Local Environmental Plan 2013 (DLEP 2013) and the Deniliquin Local Environmental Plan 1997 (DLEP 1997) as per the recommendations in the Floodplain Risk Management Study and Plan in accordance with OEH requirements.

Site description

The amendment applies to land affected by changes to the Flood Planning Map and the amendment potentially applies to all land identified in the Deniliquin LEPS.

Existing planning controls

Deniliquin Local Environmental Plan 2013

6.2 Flood planning

(1) *The objectives of this clause are as follows:*

- (a) *to minimise the flood risk to life and property associated with the use of land,*
- (b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*

(c) to avoid significant adverse impacts on flood behaviour and the environment.

(2) This clause applies to:

(a) land that is identified as “Flood planning area” on the [Flood Planning Map](#) and that is at or below the flood planning level, and

(b) any other flood liable land.

(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 Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.

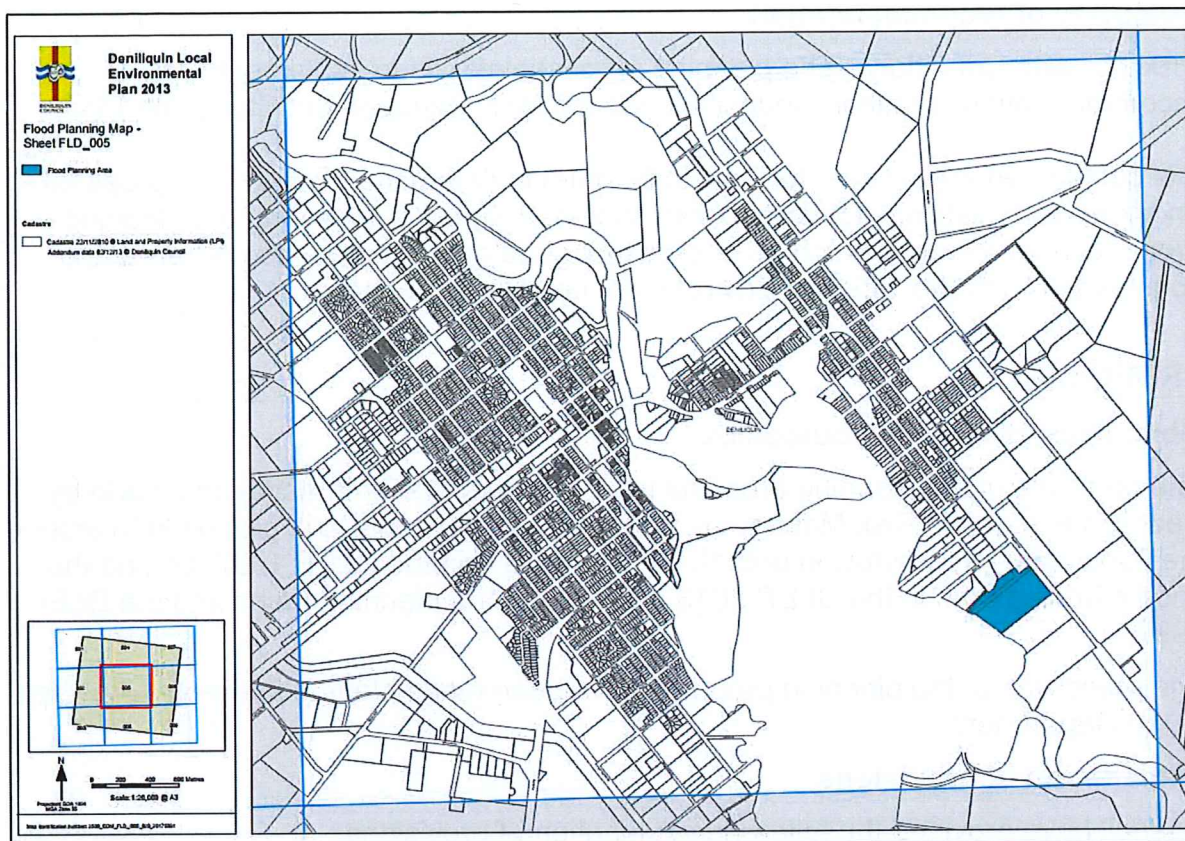
(5) In this clause:

land at or below the flood planning level means land at or below the level of:

(a) a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard, or

(b) a 1:100 ARI (average recurrent interval) flood event plus 0.3 metre freeboard,

based on the Edward River at Deniliquin Flood Study 2014 and the Edward River at Deniliquin Floodplain Risk Management Study and Plan 2017, available from the office of the Council.



Deniliquin Local Environmental Plan 1997

21 Flood liable land

- (1) A person must not erect a building or carry out a work for any purpose on flood liable land except with the consent of the Council.
- (2) The Council must not consent to the erection of a building or the carrying out of a work on flood liable land if the Council is satisfied that the development is likely:
 - (a) to impede the flow of floodwater on that land or on adjoining land, or
 - (b) to imperil the safety of persons on that land or on adjoining land in the event of those lands being inundated with floodwater, or
 - (c) to aggravate the consequences of floodwater flowing on that land or on adjoining land with regard to erosion, siltation and the destruction of vegetation, or
 - (d) to have an adverse effect on the watertable of that land or adjoining land.
- (3) The Council must not grant a consent required by this clause unless it has taken into consideration:
 - (a) the cumulative effect of the proposed development and other development on flood behaviour, and
 - (b) the risk of pollution to the waterways caused by the proposed development, and
 - (c) the availability of flood free access to the proposed development.

Summary of recommendation

Proceed with Condition – The planning proposal intends to implement recommendations made in Council Floodplain Risk Management Study and Plan.

It is considered appropriate to allow to favourably determine the planning proposal and is issue a Gateway Determination, subject to Council amending the planning proposal prior to consultation, to ensure that good quality maps are prepared and consultation with the Office of Environment and Heritage occurs.

PROPOSAL

Objectives or intended outcomes

The objective of the planning proposal is to implement recommendations made by Councils Floodplain Risk Management Plan. To achieve this, it is proposed to amend the flood planning controls in both the DLEP 2013 and the DLEP 1997, amend the flood planning map in the DLEP 2013 and insert flood planning maps into the DLEP 1997.

The objectives of the planning proposal have been made clear in the report provided to the Department.

Explanation of provisions

Council have provided the following explanation of provisions:

The intended outcome will be achieved by:

DLEP 2013

- a. Delete sub clause 6.2(2)(b) referring to 'any other flood liable land'.*
- b. Amend Flood Planning Map Sheet FLD_005 to identify all the FPA to which this map applies.*
- c. Prepare additional flood planning map sheets to identify the FPA under the DLEP 2013.*

DLEP 1997

- d. Delete clause 21 of LEP 1997 and replacing it with the model flood planning clause.*
- e. Identify the FPL as being 1%AEP + 500mm within the mapped floodway extent and 1%AEP + 300mm outside the mapped floodway extent and within the FPA.*
- f. Prepare flood planning maps to identify the FPA under DLEP 1997.*

Appendix 3 shows the extent of the proposed FPA.

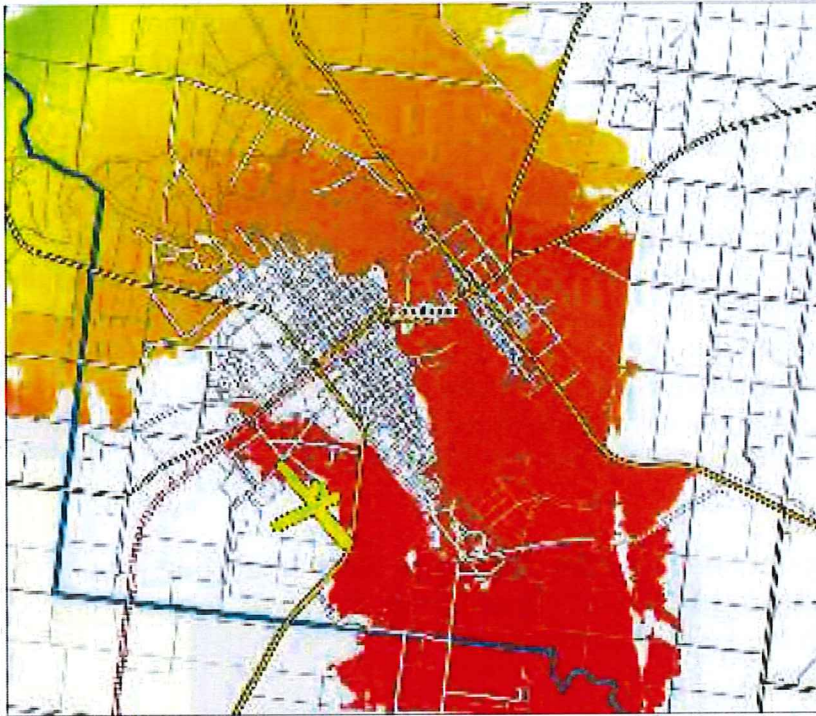
Comment: The explanation of provision clearly describe the intended changes appropriate for public exhibition. The mapping identified in Appendix 3 is assessed below.

Mapping

The below map identifies the Flood Planning Area, subject to the planning proposal. This is the only map provided by Council demonstrating the extent of the Flood Planning area.

It is considered that the mapping is not satisfactory for consultation. As a result, a condition is recommended to ensure suitable mapping is prepared prior to

consultation. The Council is to forward the mapping to the Department prior to consultation for approval and must be of a quality that allows individual property owners to identify their lot and extent of the impact as a result of the amendment.



Extent of the proposed flood planning area (WMAwater 2017)

NEED FOR THE PLANNING PROPOSAL

Council have provided the following to justify the need for the planning proposal:

The planning proposal is the result of the FRM Study and Plan and will partly implement recommendation PM01 and PM02. It should be noted that within each of these recommendations there are several actions and some will occur once the amendments to the two LEPs are made.

The planning proposal is the most appropriate means of achieving the objectives and intended outcomes as it will amend the LEP 2013 and LEP 1997.

Comment: The above view is supported. The recommendations made in the FRM Study and Plan are best achieved by way of a planning proposal. Currently the DLEP 2013 identifies two lots subject to the flood planning area in Flood Map Sheet FLD_005. Currently, there are no maps identified in the DLEP 1997. The planning proposal seeks to rectify this and improve Councils ability to manage development on flood prone land.

It is considered, that there is no other appropriate means to achieve the objectives of the planning proposal and implement recommendations in the FRM Study and Plan.

STRATEGIC ASSESSMENT

State

The planning proposal is a result of the preparation of the FRM Study and Plan which was prepared in accordance with the NSW Floodplain Development Manual. The planning proposal is considered to be consistent with the state planning frameworks.

Riverina Murray Regional Plan

The planning proposal provides an assessment against the Riverina Murray Regional Plan. As identified in the planning proposal Direction 16: Increase resilience to natural hazards and climate change (16.1, 16.5, 16.6 and 16.7) applies to a planning proposal of this nature. The planning proposal has adequately addressed the above direction and the planning proposal is considered to be consistent with the overall objectives of the Riverina Murray Regional Plan. Specifically, the planning proposal will identify flood controls for development, in accordance with a FRM Study and Plan, that will inform future planning decisions.

Local

Edward River Council does not have a local strategy or other local strategic plan that applies to the former Deniliquin Local Government Area. However, the planning proposal is consistent with the FRM Study and Plan.

Section 9.1 Ministerial Directions

1.1 BUSINESS AND INDUSTRIAL ZONES: This Direction does apply to the planning proposal as it will affect land within an existing business and industrial zone.

The proposal is considered to be inconsistent with this Direction as it the planning proposal has the potential reduce the total potential floor space area for employment uses and related public services in business and industrial zones.

RECOMMENDATION: The Director Regions, Western can be satisfied that the inconsistency is of minor significance, whereby Council are applying flood planning controls to all land within the flood planning area regardless of the existing zone in accordance with FMP and OEH requirements..

1.5 RURAL LANDS: This Direction does apply to the planning proposal as it will affect land within an existing rural zone. The proposal is considered to be CONSISTENT with this Direction as no minimum lots size changes are proposed.

2.1 ENVIRONMENT PROTECTION ZONES: This Direction does apply to the planning proposal as it will affect land within an environment protection zone or land otherwise identified for environment protection purposes. The proposal is considered to be CONSISTENT with this Direction as the planning proposal will not reduce the environmental protection standards that apply to the land rather it will introduce specific flood planning controls for all land within the flood planning area.

3.1 RESIDENTIAL ZONES: This Direction does apply to the planning proposal as it will affect land within an existing residential zone or any other zone in which significant residential development is permitted.

The proposal is considered to be CONSISTENT with this Direction. The planning proposal only introduces flood planning controls within the flood planning area and will not affect the provision of housing in terms of housing choice, use of infrastructure, development on the urban fringe, design, does not relate to the permissible residential density of land and/or relates to the servicing of land for residential development.

3.4 INTEGRATING LAND USE AND TRANSPORT: This Direction does apply to the planning proposal as it will alter a provision relating to urban.

The proposal is considered to be CONSISTENT with this Direction. This planning proposal will alter a provision relating to urban land but the introduction of flood planning controls will not impact on the integration of land use and transport.

3.5 DEVELOPMENT NEAR LICENSED AERODROMES: This Direction does apply to the planning proposal as it will alter a provision relating to land in the vicinity of a licensed aerodrome.

The proposal is considered to be CONSISTENT with this Direction. This planning proposal applies to land that is within the vicinity of a licensed aerodrome but the introduction of flood planning controls will not impact on the operation of the aerodrome.

4.3 FLOOD PRONE LAND: This Direction does apply to the planning proposal as it will create, remove or alter a provision that affects flood prone land.

The proposal is considered to be CONSISTENT with this Direction.

The planning proposal states:

The planning proposal is consistent with the provisions of 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) except for the proposal to adopt a flood planning area based on a level of 1%AEP + 300mm and a subsequent FPL at the same level for land that is within the FPA but outside the floodway and not introducing flood planning controls for sensitive uses. This variation has been recommended by the FRM Study and Plan.

In terms of controls for sensitive uses (being caravan parks, centre based child care facilities, correctional centres, emergency services facilities, group homes, hospitals, residential care facilities, respite day care centres and tourist and visitor recommendation) Council does not propose any additional flood planning controls for these uses. If Council was to introduce flood planning controls for specifically for sensitive uses, Council would not be able to grant development consent unless it is satisfied that the development is consistent with any relevant floodplain risk management plan adopted by the Council and will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land. When referring to a flood event that exceeds the flood planning level, it means the probable maximum flood (PMF). The PMF is defined as the largest flood that could

conceivably occur at a location, usually estimated from probable maximum precipitation.

The proposed changes to the flooding provisions are based on FMP and OEH requirements.

5.10 IMPLEMENTATION OF REGIONAL PLANS: This Direction does apply to the planning proposal as the Riverina Murray Regional Plan applies to the land. The proposal is considered to be CONSISTENT with this Direction as demonstrated above.

State environmental planning policies

Council have identified the Murray Regional Environmental Plan No 2 Riverine Land (MREP), a deemed State Environmental Planning Policy as the only SEPP applicable to the planning proposal and provided the following commentary supporting the proposal consistency:

The introduction of flood planning controls will ensure that any development within the flood planning area has the appropriate controls to manage flood risk. This will ensure that flood risk within the riverine environment is managed.

The flood planning controls will be consistent with the FRM Study and Plan which has been prepared in accordance with the Floodplain Development Manual ensuring that the controls provide a consistent and co-ordinated approach to flood planning across the River Murray. The introduction of flood planning controls will ensure that appropriate consideration is given to flood risk for development and its impact on the River Murray.

Comment: The above statements provided in the planning proposal by Council are supported. The planning proposal meets the overall aims, objectives and the specific matters outlined in the MREP.

SITE-SPECIFIC ASSESSMENT

Social and economic effects

The planning proposal will provide a social and economic benefit to the community. The planning proposal has provided the following statement which supports the benefits.

The planning proposal will provide social and economic benefits to the community through the consideration of flood risk for development. The assessment of development will require Council to minimise the flood risk to life and property associated with the use of land, allow development on land that is compatible with the land's flood hazard and avoid significant adverse impacts on flood behaviour and the environment. In addition to this, Council cannot grant development consent to development that is likely to result in unsustainable social and economic costs the community because of flooding.

Environmental

The planning proposal does not propose any detrimental environmental impacts from the introduction of flood planning controls. DPE support the following statement from the planning proposal which justifies the minimal impact.

It is considered that no adverse environmental impacts are likely to arise from the planning proposal. The planning proposal is seeking to manage flood risk with the identification of a FPA and introduction of FPLs.

Council statement is supported. In addition, it is considered that consultation with OEH, as per the gateway determination condition, any significant environmental issue will be resolved through the consultation process.

CONSULTATION

Community

The planning proposal has proposed the following community consultation.

In accordance with schedule 1 clause 4 of the Environmental Planning and Assessment Act, it is proposed to exhibit the planning proposal for 28 days in the local media and on Council's website. Individual land owner notifications will not occur due to the number of properties affected by this planning proposal.

This is considered to appropriate and will be further conditioned in the gateway determination. In addition, a pre-exhibition condition is recommended to ensure that suitable maps are prepared for community consultation.

Agencies

Council has not specifically stated any agency consultation. As a result, a condition is recommended to ensure consultation occurs with OEH and NSW SES, both agencies were involved in the development of the FRM Study and Plan.

TIME FRAME

Council have proposed 9 month timeframe to complete the amendment. It is recommended that a 12 month timeframe be required to complete the LEP to allow time for the maps to be prepared and the plan making process to be undertaken.

LOCAL PLAN-MAKING AUTHORITY

Council has requested Council Officer Delegation to prepare the draft LEP under section 3.36 of the Act. Appendix 4 – Evaluation Criteria for the Delegation of Plan making Functions was submitted.

Due to the planning proposal being a local matter that is following the FMP process and it is considered appropriate that delegations are given to Council.

CONCLUSION

- Preparation of the planning proposal is supported to proceed with conditions.
- The planning proposal addresses the Department's 'A guide to preparing planning proposals'.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.1 Business and Industrial Zones are minor or justified; and

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. Community consultation is required under sections 2.22 and 3.34(2)(c) of the Act as follows:
 - (a) The planning proposal should be made available for community consultation for a minimum of 28 days.
 - (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 local environmental plans (Department of Planning and Environment 2016)*".
2. Prior to undertaking community consultation, consultation with NSW Office of Environment and Heritage and NSW State Emergency Service, the planning proposal is to be amended to include revised flood planning maps that clearly identify the flood planning area. The maps are to be endorsed by the Department prior to consultation being undertaken.
- 3.
4. Consultation is required with the following public authorities:
 - NSW Office of Environment and Heritage
 - NSW State Emergency Service
5. LEP maps are to be prepared in accordance with the LEP Map Technical guidelines.
6. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
7. Given the nature of the planning proposal, Council should be the local plan-making authority.

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