



Wyong
Shire
Council
CENTRAL COAST

Planning Proposal

**Planning Proposal – Flood Planning and Flood
Risk Management - Wyong LEP 2013**

May 2014

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Part 1 Objectives or Intended Outcomes

To enable the revision of the Wyong Local Environmental Plan (LEP) 2013 to remove the Flood Planning Map and revise Clause 7.2 – Flood planning and Clause 7.3 – Flood risk management, to reflect the omission of this mapping and to facilitate the appropriate ongoing consideration of these clause

Removal of this map will allow Council to ensure that the most up-to-date and reliable flood mapping is being used when considering development proposals. In addition the removal of this map from the LEP will provide for a consistent approach to dealing with flooding by all Councils that are required to consider the Central Coast Regional Strategy.

Part 2 Explanation of Provisions

The proposed outcome will be achieved by:

- The deletion of the Flood Planning Map from Wyong LEP 2013.
- The amendment of Clause 7.2 – Flood planning and Clause 7.3- Floodplain risk management of Wyong LEP 2013. The draft revised clauses are shown in Annexure A.

Part 3 Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of any Strategic Study or report?

The Planning Proposal is not as a result of any specific study or report but does relate to the implementation of ongoing flood studies and their implementation.

New flood studies and associated mapping have been developed for the Lower Wyong, Ourimbah Creek and Saltwater Creek Catchments since the exhibition of Wyong LEP 2013 and Council is seeking approval and/or funding for up to five new flood studies over the next twelve to eighteen months. As the introduction of new mapping currently requires the amendment of Wyong LEP 2013, there is a significant delay in the implementation of Council's best current information.

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

In January 2104, Council submitted a Planning Proposal to amend the Flood Planning Map Gazetted via the initial adoption of Wyong LEP 2013. In the short time from the time of the initial drafting of the Planning Proposal to preparation for public exhibition, Council has received new studies and other information that would require the further amendment of the Flood Planning Map. This is envisaged to be an ongoing issue for Wyong Shire Council with new studies and new development involving approved land filling and other flood mitigation works, being undertaken on a regular basis. The alternative of maintaining a Flood Planning Map does not allow Council to adequately consider its most up-to-date and reliable flood mapping at all times when considering development proposals.

Gosford LEP 2014 was Gazetted 11 February 2014 and does not include a Flood Planning Map with this Council applying its latest mapping which is made publically available via Council's Website. This Planning Proposal ensures that a consistent approach to flood planning is maintained across the Central Coast Region.

Section B – Relationship to strategic planning framework

3. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?*

Central Coast Regional Strategy

With regard to LEP preparation and Flood Risk Management Plans the Central Coast Regional Strategy (CCRS) states the following:

Councils must incorporate processes and planning provisions in LEPs consistent with the Floodplain Development Manual, including preparation of floodplain management plans. These policies and resulting development controls for flood prone land must also be considered as part of the development assessment process...

The Central Coast Regional Strategy recognises that some areas may be subject to the effects of natural hazards such as flooding, coastal inundation and recession which are closely linked to the coastline, estuaries and foreshore areas of coastal lakes. These areas are also subject to some of the Region's greatest development pressures. Existing and future development within the Region faces varying degrees of risk from natural hazards.

Preparation and future reviews of floodplain and coastline management plans must consider the potential for these risks to increase as a result of climate change, including sea level rise.

The CCRS states the following actions that must occur:

7.1 - Councils are to prepare (or update) floodplain, estuary and coastal zone management plans in order to reduce risks from natural hazards. These plans must be completed and considered in planning decisions made within the areas that they apply to.

Council Action

Council is progressively undertaking Floodplain Risk Management Studies and Plans for each catchment of Wyong Shire. These studies are being carried out in accordance with the NSW Floodplain Development Manual, and involve input from the local community, relevant industry and Government bodies, and Council.

Floodplain Risk Management Studies and Plans recommend appropriate development controls that inform Council's LEP and Development Control Plan (DCP) with regard to flood planning levels, appropriate land uses and cost effective flood mitigation measures.

It is noted that the other Local Government Area (Gosford City Council) subject to the CCRS does not use a Flood Planning Map in its LEP to implement Flood Risk Management Plans.

7.3 - In order to manage the risks associated with climate change, councils will undertake investigations of lands with the potential to be affected by sea level rise and inundation to ensure that risks to public and private assets are minimised.

Council Action

Since the release of the CCRS, the repeal of the NSW Sea Level Rise Policy Statement through the State Government Coastal Reforms of 2012 moved the responsibility of sea level rise projections from the NSW State Government to Councils.

As part of this reform package as per the NSW Government Environment and Heritage Website (accessed 15 May 2014):

- *the Government would no longer prescribe state-wide sea level rise projections for use by councils.*
- *Councils would have the flexibility to determine their own sea level rise projections to suit their local conditions*

In accordance with the policy of the State Government, Council will develop Flood Risk Management Studies and Plans considering sea level rise relevant to the local area subsequently amending mapping and development controls as required.

The removal of the Flood Planning Map from Wyong LEP 2013 will allow Council to immediately implement new Flood Risk Management information and reliable information on the impacts of sea level rise and other potential climate change impacts (such as changes in storm intensity) as it becomes available without having to go through an LEP amendment which generally takes six months as a minimum.

4. Is the planning proposal consistent with a Council's local strategy, or other local strategic plan?

Wyong Shire Council Strategic/ Annual Plan

Wyong Shire Council Strategic Plan 2013-17 was adopted 10 April 2013. The Annual Plan and 4 Year Delivery Plan are Council's short to medium term plans that sit within the Strategic Plan and outline the strategic role that Council will play in delivering the community's strategic vision. Council has 12 Principal Activities, each activity provides a set of services to the community and the Delivery Plan and Annual Plan show the net cost of each service.

The following lists the 12 Principal Activities, identifies any relevant service, and relationship to the proposal.

| Principal Activity | Relationship to Proposal |
|--|--|
| Principal Activity 1 - <i>Community and Education: information, places and spaces for people to participate, learn and contribute to their local neighbourhood to improve their quality of life.</i> | More accurate flooding information ensures that facilities are appropriately located |
| Principal Activity 2 - <i>Community Recreation: planning, promotion and operation of sport and recreation facilities, including maintenance of natural areas and open spaces such as beaches, lake foreshores and parks.</i> | More accurate flooding information ensures that facilities are appropriately located |
| Principal Activity 3 - <i>Economic and Property Development: strengthening the economic base of the Shire by promoting economic development as well as the creation of employment opportunities, identifying and developing sustainable income strategies for Council, and providing property related services to the organisation.</i> | More accurate flooding information ensures that facilities are appropriately located and provides greater certainty for proponents |

| Principal Activity | Relationship to Proposal |
|---|--|
| Principal Activity 4 - Council Enterprises: operation of care and education facilities, that provide long day care and education for 0-6 year olds, and holiday parks which significantly contribute to the local tourism industry and provide a funding stream for works on surrounding Crown Reserves. | More accurate flooding information ensures that facilities are appropriately located and provides greater certainty for proponents |
| Principal Activity 5 - Regulatory: ensuring compliance with statutory requirements across a wide range of regulatory responsibilities, including the management of Council's animal care facility. | Nil |
| Principal Activity 6 - Environment and Land use: enhancing the natural and built environment on both private and public land through waterway improvements, strategic planning and policies, as well as controls over land use. | More accurate flooding information for planning and assessment purposes. |
| Principal Activity 7 - Waste Management: providing safe, reliable and environmentally responsible waste collection, recycling and disposal services to help reduce the Shire's environmental footprint and provide waste management and soil processing facilities. | Accurate information ensuring suitable location for reliable service. |
| Principal Activity 8 - Roads: providing and maintaining roads (excluding Roads and Maritime Services roads), bridges, footpaths, shared pathways, bus shelters and traffic management to help ensure ease of travel and environmental responsibility. | Accurate information ensuring suitable location for reliable service. |
| Principal Activity 9 - Stormwater: providing safe and reliable collection, transmission, treatment and discharge facilities for stormwater. | Accurate information ensuring suitable location for reliable service. |
| Principal Activity 10 - Sewerage Services: providing safe and reliable collection, storage, treatment and disposal facilities for sewage. | Accurate information ensuring suitable location for reliable service. |
| Principal Activity 11 - Water Supply: providing safe and reliable water services including the collection, storage, transportation, treatment and distribution of water. | Accurate information ensuring suitable location for reliable service. |
| Principal Activity 12 - Administration (Shared Services): corporate-wide internal services including the governance and statutory compliance of finance, human resources and corporate information. | Nil |

Settlement Strategy

Council's Settlement Strategy (2013) identifies the following "Key Planning Considerations for flooding":

All planning and development to comply with the appropriate Floodplain Risk Management Plan for that area. Rezoning of areas should not occur until detailed flood hazard mapping and development of Floodplain Risk Management Plans has occurred. This will include the impacts of climate change.

If a Floodplain Risk Management Plan has not been adopted for an area, investigations must be made to determine the flood hazard and appropriate flood planning areas including climate change.

Master planning for flood prone areas to demonstrate compliance with ESD principles and consideration of climate change impacts including future flooding constraints.

All critical emergency response and recovery facilities and infrastructure, as well as developments vulnerable to emergency response, to consider the Probable Maximum Flood (PMF) level for planning and development purposes.

Council has a Floodplain Management Program, which aims to help manage flood prone land in a sustainable manner consistent with the flood hazard. As part of this program, Council is progressively undertaking Floodplain Risk Management studies and plans for each catchment to help protect residents and existing developments from flood damage, and minimise flood risks to future developments. These plans detail a wide range of structural and non-structural measures that can be used to help protect against flooding.

These studies are being carried out in accordance with the NSW Floodplain Development Manual and involve input from the local community, relevant industry and Government bodies and Council.

Currently development controls recommended by these plans are implemented once adopted by Council and the Wyong LEP 2013 Flood Maps are updated as required. This process unnecessarily delays the implementation of Council's most accurate flooding information.

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

| SEPP | Consistency |
|---|---|
| SEPP (Exempt and Complying Development Codes) 2008 | The Planning Proposal does not include any specific provisions relating to Exempt and Complying Development, nor does it contradict or repeat any provisions in the SEPP (Exempt and Complying Development Codes) 2008. |

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

The proposal has been considered against the relevant Ministerial Section 117 Directions and is considered to be consistent with the relevant Directions as summarised below.

| Number | Direction | Applicable | Consistent |
|--|--|------------|------------|
| Employment & Resources | | | |
| 1.1 | Business & Industrial Zones | Yes | Yes |
| 1.2 | Rural Zones | Yes | Yes |
| 1.3 | Mining, Petroleum Production and Extractive Industries | No | NA |
| 1.4 | Oyster Aquaculture | No | NA |
| 1.5 | Rural Lands | No | NA |
| Environment & Heritage | | | |
| 2.1 | Environmental Protection Zones | Yes | Yes |
| 2.2 | Coastal Protection | Yes | Yes |
| 2.3 | Heritage Conservation | No | NA |
| 2.4 | Recreation Vehicle Areas | No | NA |
| Housing, Infrastructure & Urban Development | | | |
| 3.1 | Residential Zones | Yes | Yes |
| 3.2 | Caravan Parks and Manufactured Home Estates | Yes | Yes |
| 3.3 | Home Occupations | No | NA |
| 3.4 | Integrating Land Use & Transport | No | NA |
| 3.5 | Development Near Licensed Aerodromes | No | NA |
| 3.6 | Shooting Ranges | No | NA |
| Hazard & Risk | | | |
| 4.1 | Acid Sulfate Soils | No | NA |
| 4.2 | Mine Subsidence and Unstable Land | Yes | Yes |
| 4.3 | Flood Prone Land | Yes | Yes |
| 4.4 | Planning for Bushfire Protection | No | NA |
| Regional Planning | | | |
| 5.1 | Implementation of Regional Strategies | Yes | Yes |
| 5.2 | Sydney Drinking Water Catchments | No | NA |
| 5.3 | Farmland of State and Regional Significance on the NSW Far North Coast | No | NA |
| 5.4 | Commercial and Retail Development along the Pacific Highway, North Coast | No | NA |
| 5.5 to 5.7 | Revoked | No | NA |
| 5.8 | Second Sydney Airport: Badgerys Creek | No | NA |
| Local Plan Making | | | |
| 6.1 | Approval and Referral Requirements | Yes | Yes |
| 6.2 | Reserving Land for Public Purposes | No | NA |
| 6.3 | Site Specific Provisions | No | NA |
| Metropolitan Planning | | | |
| 7.1 | Implementation of the Metropolitan Strategy | No | NA |

Ministerial Directions under s.117 of the Act relevant to the planning proposal are addressed below,

| Ministerial Direction | Consistency |
|---|--|
| <p>1.1 Business & Industrial Zones</p> <p>Aims to encourage employment growth in suitable locations, protect employment land in business and industrial zones and to support the viability of identified strategic corridors.</p> <p>Applies when a planning proposal affects land within an existing or proposed business or industrial zone.</p> | <p>The proposal involves ensuring the use of the latest information that Council has available on the impacts of flooding. The implementation of this information ensures that development is:</p> <ul style="list-style-type: none"> - not located where inappropriate due to flooding constraints - not constrained by inaccurate mapping where considered appropriate on the floodplain -subject to appropriate controls only <p>The Planning Proposal ensures that development proposals within business and industrial zones will not be impacted by outdated mapping.</p> |
| <p>1.2 Rural Zones</p> <p>Aims to protect the agricultural production value of rural land.</p> <p><i>This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).</i></p> <p><i>(4) A planning proposal must:</i></p> <p><i>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</i></p> <p><i>(b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).</i></p> | <p>The Planning Proposal affects rural zones but does not rezone land or alter development densities.</p> |
| <p>2.1 Environmental Protection Zones</p> <p>The objective of this direction is to protect and conserve environmentally sensitive areas.</p> | <p>The planning proposal will not alter the provisions that protect environmentally sensitive areas.</p> |
| <p>2.2 Coastal Protection</p> <p>Aims to implement the principles in the NSW Coastal Policy.</p> <p>Applies when a planning proposal applies to land in the coastal zone as defined in the Coastal Protection Act 1979.</p> | <p>Council's draft Coastline Management Plan is currently under review.</p> <p>Council's most current flooding information will be used to inform this Plan and this information will be used in the assessment of development proposals within the coastal zone.</p> |

| | |
|--|--|
| <p>3.1 Residential Zones</p> <p>Aims to encourage a variety and choice of housing types to provide for existing and future housing needs, to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and to minimise the impact of residential development on the environmental and resource lands.</p> <p>Applies when a planning proposal affects land within an existing or proposed residential zone, and any other zone in which significant residential development is permitted or proposed to be permitted.</p> | <p>The implementation of flooding information as it becomes available ensures that development is:</p> <ul style="list-style-type: none"> - not located where inappropriate due to flooding constraints, - not constrained by inaccurate mapping where development would otherwise be considered appropriate on the floodplain -subject to appropriate controls only - ensure that Section 149 Planning Certificates contain the most up to date information available to Council. |
| <p>3.2 Caravan Parks and Manufactured Home Estates</p> <p>Aims to provide for a variety of housing types and provide opportunities for caravan parks and manufactured home estates.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p> | <p>The implementation of flooding information as it becomes available ensures that development is:</p> <ul style="list-style-type: none"> - not located where inappropriate due to flooding constraints - not constrained by inaccurate mapping where development would otherwise be considered appropriate on the floodplain -subject to appropriate controls only |
| <p>4.2 Mine Subsidence and Unstable Land</p> <p>Aims to prevent damage to life, property and the environmental on land identified as unstable or potentially subject to mine subsidence.</p> <p>Applies when a planning proposal permits development on land which is within a mine subsidence district, or identified as unstable in a study or assessment undertaken by or on behalf of the relevant planning authority or other public authority and provided to the relevant planning authority.</p> | <p>Parts of Wyong Shire that are Mines Subsidence Districts are also areas where flood related development controls apply.</p> <p>Allowance for the consideration of subsidence impacts are made in DCP 2013 Ch. 3.3 - Floodplain Management. The Mines Subsidence Board was involved in the development of the DCP.</p> |
| <p>4.3 Flood Prone Land</p> <p>Aims to ensure: development on flood prone land is consistent with NSW Government's Flood Prone Land Policy and principles of the Floodplain Development Manual 2005; and provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts both on and off the subject land.</p> <p>Applies when a planning proposal creates, removes or alters a zone or provision that affects</p> | <p>Council's Flood Mapping referred to in Wyong LEP Clauses 7.2 & 7.3 is based on information provided by Flood Risk Management Plans that have been guided by the requirements of the Floodplain Development Manual. Wyong LEP Clause 7.3 specifically addresses this 117 Direction by specifying land uses that are to be considered for the application of flood related development controls above the 1 in 100 year flood level.</p> <p>For development matters, up-to-date the mapping will be implemented through Council's</p> |

| | |
|--|---|
| flood prone land. | Development Control Plan. DCP 2013 Chapter 3.3- Floodplain Management includes provisions and controls that are consistent with the requirements of this Section 117 Direction, the relevant LEP Clauses and the Floodplain Development Manual. |
| 5.1 Implementation of Regional Strategies The objective of this direction is to ensure draft LEPs are consistent with regional strategies such as the Central Coast Regional Strategy. | The planning proposal is considered to be consistent with the Central Coast Regional Strategy (see above). |
| 6.1 Approval and Referral Requirements Aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development. | The planning proposal will not seek to include additional provisions which require concurrence from other agencies. |

Section C – Environmental, Social and Economic Impact

7. *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 proposal involves the use of consistently up-to-date mapping to ensure the environmental impacts of flooding are managed based on the latest information available.

The proposal does not impact on critical habitat or threatened species, populations or ecological communities or their habitats.

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

The proposal involves the use of consistently up-to-date mapping to ensure the environmental impacts of flooding are managed based on the latest information available.

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

The proposal involves the introduction of the latest information that Council has available on the impacts of flooding. The implementation of this information ensures that development is:

- not located where inappropriate due to flooding constraints,
- not constrained by inaccurate mapping
- located where appropriate on the floodplain
- subject to appropriate controls only

Section D – State and Commonwealth Interests

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

N/A

11. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

To be completed prior to exhibition if required.

Part 4 Mapping

Nil

Part 5 Community Consultation

It is recommended that the proposal be publicly exhibited for a period of 28 days, concurrently with a revision of DCP 2013 Chapter 3.3 – Floodplain Management.

Notification of the public exhibition is recommended to be placed in the Central Coast Express Advocate and written notification sent to owners adjacent to the site. Notices will be placed on Council's website and a link attached to Council's new ePanel initiative.

The Planning Proposal, Gateway Determination, and supporting studies will be made available on Council's website, at Council's Administration Building in Hely Street Wyong.

A public hearing is considered unlikely to be necessary.

Part 6 Project Timeline

| | |
|-----------------------------------|--------|
| Council Endorsement | May 14 |
| Gateway Referral | May 14 |
| Gateway Determination | Jun 14 |
| Completion of Exhibition Material | Jun 14 |
| Exhibition | Jul 14 |
| Consideration of Submissions | Aug 14 |
| Report to Council | Sep 14 |
| PC Consultation | Oct 14 |
| Notification and Effect | Nov 14 |

Attachments and Supporting Documentation

| Annexure | Document | Attached |
|-----------------|---|-----------------|
| A | Draft Revision – Wyong LEP 2013 Clauses 7.2 & 7.3 | Yes |
| B | Council Report and Minutes | Yes |

Annexure "A"

DRAFT AMENDMENT TO WYONG LEP 2013 – CLAUSES 7.2 & 7.3

Draft changes to Clause 7.2 shown in red and/or strikethrough:

7.2 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 land ~~identified as "Flood planning area" on the Flood Planning Map, at or below the flood planning level.~~*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
 - (a) *is compatible with the flood hazard of the land, and*
 - (b) *is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) *incorporates appropriate measures to manage risk to life from flood, and*
 - (d) *is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
 - (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*
- (4) *A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.*

Justification

Aligns with the comparative Clause for Gosford LEP 2014. The definition for flood planning level is already defined under the dictionary for Wyong LEP 2013 and is consistent with the recommendation of the Floodplain Development Manual.

Draft changes to Clause 7.3 shown in red and/or strikethrough:

7.3 Floodplain risk management

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

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

- (a) *air strips,*
- (b) *air transport facilities,*
- (c) *child care centres,*
- (d) *correctional centres,*
- (e) *educational establishments,*
- (f) *electricity generating works,*
- (g) *emergency services facilities,*
- (h) *group homes,*
- (i) *helipads,*
- (j) *home-based child care,*
- (k) *hospitals,*
- (l) *hostels,*
- (m) *public utility undertakings,*
- (n) *respite day care centres,*
- ~~(o) *roads,*~~
- (p) *seniors housing,*
- (q) *sewerage systems,*
- (r) *water supply systems.*

~~(4) *In this clause:*~~

~~*flood planning area means the land identified as “Flood Planning Area” on the Flood Planning Map. probable maximum flood has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.*~~

~~*Note:*~~

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

~~(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.*~~

Justification

- The definition for flood planning level is already defined under the dictionary for Wyong LEP 2013 is consistent with the recommendation of the Floodplain Development Manual. The Manual defines PMF.
- 7.3(2)(b) – superfluous with the “flood planning area” removed.
- Council has reviewed the land uses specified under 7.3(3) and consider this list to be generally consistent with the type of land uses that should be considered as part of “*emergency response planning purposes to address the safety of people*”, consistent with the Floodplain Development Manual.
- Roads have been removed due to the impracticality of ensuring all roads are constructed above PMF level and given that many existing roads including Classified Roads are not.

Annexure "B"

COUNCIL REPORT AND RESOLUTION 14/5/14

14 May 2014

Director's Report

To the Ordinary Council Meeting

Development and Building Department

Planning Proposal - Wyong LEP 2013 Flood Mapping - Request for revised Gateway Determination

TRIM REFERENCE: RZ/4/2013 - D07107855

MANAGER: Scott Cox, Director

AUTHOR: Rodney Mergan; Senior Planner

SUMMARY

The Wyong Local Environmental Plan 2013 ("WLEP2013") includes the Flood Planning Maps, which define both the "Flood Planning Area" and "Level of Probable Maximum Flood" for the purposes of the flood planning controls contained in cl. 7.2 and 7.3 of the WLEP2013.

On 13 November 2013 Council resolved to forward a Planning Proposal to the NSW Department of Planning and Infrastructure ("DP&I") seeking to amend the Flood Planning Maps that form part of the WLEP2013 so that those Maps align with Council's resolution 987/13 (being 1% AEP + 500mm freeboard). In January 2014 a Planning Proposal (D05245294) was forwarded to DP&I, and on 24 February 2014 DP&I issued Gateway Determination (D05916091) for that Planning Proposal.

This report recommends that Council resolve to seek an amendment to the Gateway Determination so as to amend the WLEP2013 to adopt an approach similar to the approach applied by the Minister for Planning when making the *Gosford Local Environmental Plan 2014*, which does not require Flood Planning Maps.

RECOMMENDATION

- 1** That Council submit a revised Planning Proposal to the Minister for Planning (or her delegate) seeking to amend the Wyong Local Environmental Plan 2013 so as to delete the Flood Planning Maps and introduce other amendments to flood controls consistent with the flood control provisions in the Gosford Local Environmental Plan 2014, pursuant to section 56(6) of the Environmental Planning and Assessment Act 1979
- 2** That Council request that the Minister for Planning (or her delegate) issue a revised Gateway Determination, pursuant to s. 56(7) of the Environmental Planning and Assessment Act 1979, in accordance with the above revised Planning Proposal.
- 3** That Council note that resolutions 1 and 2 operate to modify resolutions 1367/13 and 1368/13 of 13 November 2013.

BACKGROUND

At the Ordinary Meeting of Council of 24 July 2013, Council resolved as follows:

“RESOLVED on the motion of Councillor TAYLOR and seconded by Councillor TROY:

987/13 That Council reaffirm its current sea level rise policy consisting of compliance with the 1% AEP flood level and 500mm freeboard allowance.

988/13 That Council review the current draft LEP and DCP in line with this policy.

989/13 That Council note that in accordance with the advice provided by the NSW Department of Environment & Heritage on its website, reference to the NSW sea level rise planning benchmarks in guidelines and documents should be taken as referring to Council's adopted sea level rise policy.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, NAYNA, TAYLOR, TROY AND WEBSTER

AGAINST: COUNCILLORS GREENWALD AND VINCENT”

At the Ordinary Meeting of Council of 13 November 2013, Council resolved as follows, in circumstances where the WLEP2013 was imminent:

“RESOLVED on the motion of Councillor TAYLOR and seconded by Councillor TROY:

1367/13 That Council initiate the Local Environmental Plan “Gateway” process, pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 through the preparation of a Planning Proposal requesting the adoption of new flood mapping under Wyong LEP 2013.

1368/13 That Council forward the Planning Proposal to the Department of Planning and Infrastructure requesting a “Gateway” determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.

1369/13 That Council undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.

1370/13 That Council receive a further report on results of the community consultation.

1371/13 That Council prepare an amendment to (draft) Development Control Plan 2013 for Wyong Shire to align with the amendments to Wyong LEP 2013.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, TAYLOR, TROY AND WEBSTER

AGAINST: COUNCILLORS GREENWALD AND VINCENT”

On 23 December 2013 the WLEP2013 commenced. Flood controls are contained in clause 7.2 and 7.3 of the WLEP2013, which are set out below:

7.2 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 land identified as "Flood planning area" on the [Flood Planning Map](#).*
- 3 *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
 - a *Is compatible with the flood hazard of the land, and*
 - b *Is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
 - c *Incorporates appropriate measures to manage risk to life from flood, and*
 - d *is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
 - e *Is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*
- 4 *A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.*

7.3 Floodplain risk management

- 1 *The objectives of this clause are as follows:*
 - a *In relation to development with particular evacuation or emergency response issues, to enable evacuation of land subject to flooding in events exceeding the flood planning level,*
 - b *To protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.*
- 2 *This clause applies to:*
 - a *Land between the flood planning area and the line indicating the level of the probable maximum flood as shown on the [Flood Planning Map](#), and*

b Land surrounded by the flood planning area,

but does not apply to land subject to the discharge of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.

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

- (a) air strips,
- (b) air transport facilities,
- (c) child care centres,
- (d) correctional centres,
- (e) educational establishments,
- (f) electricity generating works,
- (g) emergency services facilities,
- (h) group homes,
- (i) helipads,
- (j) home-based child care,
- (k) hospitals,
- (l) hostels,
- (m) public utility undertakings,
- (n) respite day care centres,
- (o) roads,
- (p) seniors housing,
- (q) sewerage systems,
- (r) water supply systems.

4 In this clause:

Flood planning area means the land identified as “Flood Planning Area” on the [Flood Planning Map](#).

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

The Flood Planning Map that currently forms part of the WLEP2013 defines the land that forms the “flood planning area” for the purpose of cl. 7.2 and 7.3 of the WLEP2013, and the “level of probable maximum flood for the purpose of cl. 7.3 of the WLEP2013. That Flood Planning Map reflects the public exhibition of Wyong LEP 2012 and the since repealed NSW Sea Level Rise Policy Statement (2009), and so is inconsistent with Council’s resolution 987/13 of 24 July 2013 .

In January 2014 Council forwarded a Planning Proposal (D05245294) to the then Minister for Planning, pursuant to s. 56(1) of the *Environmental Planning and Assessment Act 1979* (“EP&A Act”). That Planning Proposal proposed amendments to the Flood Planning Map that forms part of the WLEP2013, as required by Council’s resolution of 13 November 2013.

On 24 February 2014 a delegate of the then Minister for Planning issued a Gateway Determination (D05916091) pursuant to s. 56(2) of the EP&A Act in respect to Council’s Planning Proposal. The Gateway Determination included requirements for public exhibition.

Following the issue of the Gateway Determination appropriate mapping and other exhibition material was prepared for the public exhibition of the Planning Proposal. The preparation of the mapping for exhibition highlighted errors within the Flood Planning Map and identified that the Flood Planning Map had become outdated as a result of changes to landform (usually filling as part of a subdivision of land) and updated flood studies.

The process of seeking amendments to the Flood Planning Map in the WLEP2103 takes a considerable period of time (usually 6 to 9 months), is resource intensive for both Council and for Planning & infrastructure NSW, and will not effectively keep pace with updated information about flooding within the Wyong local government area.

It would be more appropriate if the flood controls contained in cl. 7.2 and 7.3 of the WLEP2013 were defined by reference to specific defined terms, rather than by reference to a Flood Planning Map that is part of the WLEP2013.

The *Gosford Local Environmental Plan 2014* (“GLEP2014”) commenced on 11 February 2014. The GLEP2014 does not reference or contain any flood mapping, and instead defines the “flood planning level” relevant to cl. 7.2 and 7.3 in the Dictionary to the GLEP2014 as follows:

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

The more recent approach adopted by the Minister in the GLEP2014 can be achieved in the WLEP2013 by seeking revised amendments to the WLEP2013. Seeking those revised amendments can be achieved by submitting a revised Planning Proposal to the Minister, and requesting that the Minister (or her delegate) issue a revised Gateway Determination. Seeking those revised amendments to the WLEP2013 would also ensure a consistent regional approach to flood controls in the Gosford and Wyong local government areas, and so ensure regional consistency.

CURRENT STATUS

The original resolution of Council of 13 November 2013 is current. If Council were to support Council amending the Planning Proposal and seeking an amendment to the Gateway Determination a new Council resolution would be required to proceed with a revised Gateway determination from Planning and Infrastructure.

THE PROPOSAL

It is proposed that Council submit a revised Planning Proposal that seeks to amend the WLEP2013 so as to be consistent with the approach taken to flooding controls in the GLEP2014, and to request that the Minister (or her delegate) issue a revised Gateway Determination. Council is empowered to submit a revised Planning Proposal by s. 56(6) of the EP&A Act, and the Minister (or her delegate) is empowered to alter the current Gateway Determination by s. 56(7) of the EP&A Act.

CONSULTATION

Council has contacted Planning & infrastructure NSW to ascertain if a revision to the current Gateway Determination would be considered, with the following response provided on 17 April 2014:

It is not compulsory for Wyong Shire Council to identify flood affected areas in Wyong LGA via the Flood Planning Maps in Wyong LEP 2013. We are happy to discuss an alternative approach to identifying flood affected areas in Wyong LGA, if required.

We are also happy to discuss amendment to or termination of the current Planning Proposal (PP) which proposes to amend clause 7.2 of Wyong LEP 2013 (PP_2014_WYONG_001_00, RZ/4/2013), if required.

GOVERNANCE AND POLICY IMPLICATIONS

The proposal seeks to seek different amendments to the WLEP2013 in a manner that is consistent with Council's resolution 987/13 of 24 July 2013 and that ensures that those flood controls are not tied to Flood Planning Maps that can take up to 9 months to amend because the only way to effect an amendment is to further amend the WLEP2013. The proposed revised amendments to the WLEP2013 will ensure that flood related planning controls in the WLEP2013, and therefore as disclosed on Planning Certificates issued by Council pursuant to s. 149 of the EP&A Act, are based on the most recent flood information, not on out of date mapping.

MATERIAL RISKS AND ISSUES

Removing mapping from an Environmental Planning Instrument

The inclusion of the Flood Planning Map within the WLEP2013 provides certainty when determining whether a flood control in cl. 7.2 or 7.3 applies to particular land, which is important when Council considers an application under the EP&A Act or issues a Planning Certificate. This approach provides legal certainty because all Council has to do is ascertain whether the land is appropriately identified on the Flood Planning Map, and so does not need to make any other assessment of the relevant facts. Even if the Flood Planning Map within the WLEP2013 contains errors the decisions Council makes in reliance of the Flood Planning Map expose Council to very little legal risk because the Flood Planning Map forms part of a statutory instrument, made by the Minister.

Removing the Flood Planning Map from the WLEP2013 does, therefore, introduce slightly greater legal risk as it requires Council to make an informed decision on whether land is at or below the 1:100 ARI plus 500mm, and below the probable maximum flood level, when it considers an application under the EP&A Act or issues a planning certificate. That greater risk can be managed by proper management of flood information.

CONCLUSION

Since the initiation of the Standard Instrument Process for local environmental plans it has become apparent that the requirement for the mapping of certain elements such as vegetation mapping or flooding is problematic for regional growth areas, such as the Wyong and Gosford local government areas. New information and the development of land is constantly taking place and the mapping is not as static as it is for other LEP layers such as a zoning or floor space ratio requirements. This has been recognised in the GLEP2014, which does not include a Flood Planning Map. This allows flood mapping information to being maintained "in house" by Council staff, made available to the public and (possibly) administered through a DCP.

It is therefore recommended that Council amend the current Planning Proposal and seek a revised Gateway Determination. This will allow a revised Planning Proposal to be publicly exhibited.

ATTACHMENTS

- | | | |
|---|---|-----------|
| 1 | Planning Proposal - Revision of Wyong LEP 2013 - Revision of Flood Planning Mapping | D03740357 |
| 2 | Consideration of Freeboard and Sea Level Rise Planning Levels | D03477115 |

COUNCIL RESOLUTION 14/5/14

Subject: Planning Proposal - Wyong LEP 2013 Flood Mapping - Request for revised Gateway Determination

Author:

Target Date: 28/05/2014

Notes:

RESOLVED unanimously on the motion of Councillor TAYLOR and seconded by Councillor TROY:

470/14 That Council submit a revised Planning Proposal to the Minister for Planning (or her delegate) seeking to amend the Wyong Local Environmental Plan 2013 so as to delete the Flood Planning Maps and introduce other amendments to flood controls consistent with the flood control provisions in the Gosford Local Environmental Plan 2014, pursuant to section 56(6) of the Environmental Planning and Assessment Act 1979

471/14 That Council request that the Minister for Planning (or her delegate) issue a revised Gateway Determination, pursuant to s. 56(7) of the Environmental Planning and Assessment Act 1979, in accordance with the above revised Planning Proposal.

472/14 That Council note that resolutions 1 and 2 operate to modify resolutions 1367/13 and 1368/13 of 13 November 2013.

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL



Planning Proposal