

4.3 Planning Proposal - Revision of Wyong LEP 2013 - Revision of Flood Planning Mapping

TRIM REFERENCE: F2013/01345 - D03740357

MANAGER: Martin Johnson, Manager Strategic Development

AUTHOR: Rodney Mergan; Senior Planner

SUMMARY

A revision of Council's flood mapping has been prepared. The revised maps reflect Council's current sea level rise planning level. The adoption of new mapping under Council's Local Environmental Plan (LEP) is required to go through the rezoning (planning proposal) process.

RECOMMENDATION

- 1 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.
- 2 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.
- 3 That Council undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.
- 4 That Council receive a further report on results of the community consultation.
- 5 That Council prepare an amendment to (draft) Development Control Plan 2013 for Wyong Shire to align with the amendments to Wyong LEP 2013.

ORDINARY MEETING HELD 13 NOVEMBER 2013

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.**

4.3 Planning Proposal - Revision of Wyong LEP 2013 - Revision of Flood Planning Mapping (contd)

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

BACKGROUND

Council at its Ordinary Meeting held on 24 July 2013,

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

This report addresses Resolution 988/13 above.

CURRENT STATUS

Following the introduction of the NSW Sea Level Rise Policy Statement (2009), flood mapping produced by Council (and incorporated into draft Wyong LEP 2013) considered the Sea Level Rise predictions of this State Government Policy.

Draft Wyong LEP 2013 Clause 7.2 requires the consideration of flooding on land identified on the flood planning maps that form part of the LEP. The mapping exhibited with Wyong LEP 2013 reflects the requirements of the former NSW Sea Level Rise Policy Statement.

This Policy has since been repealed by the NSW State Government and revised mapping has now been developed for the majority of the Shire's flood prone land to align with Wyong Shire Council's adopted sea level rise policy noted above under Resolution 987/13. The new mapping would result in a significant change to Wyong LEP 2013 that cannot be undertaken without public exhibition.

THE PROPOSAL

It is proposed that a Planning Proposal be prepared and submitted to the Department of Planning and Infrastructure (DoPI) for the alteration of Council's flood mapping to reflect Council's current position. It is proposed that this amendment be commenced immediately and not wait for the major amending LEP (previously referred to as Wyong LEP (2013) Amendment No.1) which will bundle several issues deferred from the current Draft Wyong LEP 2013 and is likely to be submitted for consideration some time during 2014.

The new mapping extends to the 1% AEP flood (similar to 100 year flood) + 500 mm freeboard. In the Tuggerah Lakes catchment this equates to a level of 2.7m AHD. This is a significant reduction from the mapping exhibited with Draft Wyong LEP 2012 which extends up to 3.6 m AHD and will result in a significant reduction in the number of properties where flood related development controls apply.

DoPI have recently provided Council with instruction in correspondence headed "Wyong LEP 2013 - Drafting Instructions to Parliamentary Counsel" by stating:

"we would need Council to confirm its approach is consistent with our flood planning circular, particularly in relation to flood-related controls on residential development"

The Planning Circular mentioned above introduces The NSW Government Guideline on Development Controls on Low Flood Risk Areas- Floodplain Development Manual. Relevant to this report is the following:

"for typical residential development would generally be based around the 100 year flood plus an appropriate freeboard (typically 0.5m)"

"The area of flood prone land above the residential FPL and therefore these are areas where residential development is not subject to flood related development controls. These areas generally have a low risk of flooding and are sometimes known as low flood risk areas (i.e.- up to probable maximum flood or PMF). As such, they are areas where no development controls should apply for residential development but the safety of people and associated emergency response management needs to be considered"

In accordance with the advice of DoPI the new mapping extends to the 1% AEP flood + 500 mm freeboard. By coincidence this is equivalent to the PMF level for Tuggerah Lakes so mapping will generally only extend to the 1% AEP flood + 500 mm or 2.7 m AHD and 149 Certificate identification for flood related development controls for residential or other uses will not extend beyond this point. This is a significant reduction from the mapping exhibited with Draft Wyong LEP 2012 which extends up to 3.6 m AHD.

It is yet to be seen how the use of freeboard for sea level rise will be accepted by DoPI and other authorities likely to require consultation as part of the Gateway Determination such as Office of Environment and Heritage (OEH). This is an issue to be resolved during the Planning Proposal process.

OPTIONS

Option 1: Make mapping changes as part of a bundled revision of WLEP 2013

It is considered that this could potentially cause delay to the introduction of mapping and result in 149 Certificate notifications of properties being subject to flood related development

controls for an extended period that would not be consistent with Council's current policy position.

Option 2: Maintain Mapping Submitted with LEP 2012

The mapping exhibited with Draft Wyong LEP 2012 includes up to an additional 0.9 m contingency for climate change impact. This is not consistent with the current policy of Council.

Option 3: Proceed to Gateway Determination-preferred option

This is considered to be the most appropriate way to expedite changes to the LEP flood mapping to reflect Council's Policy.

CONSULTATION

Community consultation and government agency referrals will be undertaken following the Gateway Determination.

DRAFT

GOVERNANCE AND POLICY IMPLICATIONS

The processing of the Planning Proposal is being undertaken in accordance with Council's adopted procedure.

Alteration to the flood mapping is undertaken by preparing an amendment to the local environmental plan through progressing of a Planning Proposal under sections 55-59 of the Environmental Planning and Assessment Act 1979.

Section 55 requires Council to prepare a Planning Proposal that explains the intended effect of the amendment to the LEP and sets out the justification for the amendment. Section 55 specifies matters to be included in the Planning Proposal.

Section 56 provides for Council to submit the Planning Proposal to the Minister (DoPI) for a Gateway Determination. DoPI will advise whether or not the matter should proceed (with or without variation), and may specify further studies or modification to the Proposal, community and government agency consultation requirements and other matters.

MATERIAL RISKS AND ISSUES

The Council Resolution that provides the basis for this report, was resolved following the consideration of a report that provided information which indicates that there is a level of risk in adopting a sea level rise policy that does not allow for a sea level rise component that goes beyond the 500mm freeboard allowance. A copy of this report is attached.

In accordance with the relevant Guideline made under Section 55, all Planning Proposals must indicate consistency with and applicable Regional/Sub-Regional Strategies and Ministerial (Section 117) Directions. The applicable documents in this instance include the Central Coast Regional Strategy, Wyong Shire Settlement Strategy and Section 117 Direction 4.3 – Flood Prone Land all of which require the adequate consideration of climate change impacts.

It is uncertain whether the view of Council will be shared by DoPI and other Authorities such as the Office of Environment and Heritage (OEH) that will be required to provide concurrence if the Planning Proposal is to be advanced.

CONCLUSION

Council has adopted its current sea level rise policy consisting of compliance with the 1% AEP flood level and 500mm freeboard allowance. Mapping has been produced to align with Council's policy position.

It is appropriate that the Planning Proposal process be initiated as soon as possible to ensure adoption of new mapping is not delayed and to provide both the public and relevant authorities the opportunity to comment on the proposal.

ATTACHMENTS

- 1 Consideration of Freeboard and Sea Level Rise Planning Levels

Enclosure D03477115