

Planning Proposal Review of Flood Controls (no dwellings or jobs)

Proposal Title : Planning Proposal Review of Flood Controls (no dwellings or jobs)

Proposal Summary : The Planning Proposal seeks to amend the current flood related development controls in Shoalhaven LEP 2014 to:

- Remove the Flood Planning Area mapping from the LEP to ensure that the most accurate and up to date flood mapping is relied upon from Council's adopted Flood Risk Management Studies and Plans.

- Update Clause 7.3 in Shoalhaven LEP 2014 to ensure consistency with the definitions in the NSW Floodplain Development Manual and to identify historic flooding information and subsequently provide controls for areas previously mapped as Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) in Shoalhaven LEP 1985 that fall outside the adopted flood study areas.

- Incorporate provisions for stock mounds in flood prone or acid sulphate soil areas.

PP Number : PP_2017_SHOAL_002_00 Dop File No : 17/06877

Proposal Details

Date Planning
Proposal Received : 15-May-2017

LGA covered : Shoalhaven

Region : Southern

RPA : Shoalhaven City Council

State Electorate : KIAMA
SOUTH COAST

Section of the Act : 55 - Planning Proposal

LEP Type : Policy

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : Shoalhaven LGA wide

DoP Planning Officer Contact Details

Contact Name : George Curtis
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RPA Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub	Illawarra-Shoalhaven	Consistent with Strategy :	Yes
Regional Strategy :	Regional Plan 2036		
MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**
If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**
If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : The Planning Proposal (PP) has been prepared by Shoalhaven City Council, in response to its ongoing program of flood studies and flood risk management plans, to ensure the Shoalhaven LEP 2014 (LEP 2014) reflects the most up to date flooding data. The proposed provision for stock mounds is a result of a specific issue identified following the commencement of the LEP 2014.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment : The intent of the PP is to review and update the flood controls in the Shoalhaven LEP 2014, namely to:

- Remove the Flood Planning Area mapping from the LEP to ensure that the most accurate and up to date flood mapping is relied upon from Council's adopted Flood Risk Management Studies and Plans.

- Update Clause 7.3 in Shoalhaven LEP 2014 to ensure consistency with the definitions in the NSW Floodplain Development Manual and to identify historic flooding information and subsequently provide controls for areas previously mapped as Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) in Shoalhaven LEP 1985 that fall outside the adopted flood study areas.

- Incorporate provisions for stock mounds in flood prone or acid sulphate soil areas.

Council has undertaken preliminary consultation with the Office of Environment and Heritage on the PP which is generally supportive of the PP. The OEH has advised that Council will need to ensure transparency and make flood mapping available to the public. Council has advised that it intends to provide access to flood data via its online mapping service. It is recommended that Council consult further with OEH during the exhibition of the PP.

Recommendation: That Council consult with the OEH during the exhibition of the planning proposal.

The relevant Department policy team has advised that the decision whether Council includes flood planning area maps in its LEP is a matter for Council. Notably, some local councils, such as Eurobodalla and Warringham, have chosen not to include the FPA mapping in their comprehensive LEPs, even though the FPA mapping is available. The PP is consistent with the approach taken to flood mapping in these LEPs.

The PP seeks to insert an additional provision in Shoalhaven LEP 2014 to clarify that stock mounds require consent. The purpose of stock mounds is to provide elevated refuge areas in flood plains for cattle, sheep and other stock to protect them from flood waters. Stock mounds are currently permitted without consent as ancillary to Extensive Agriculture in the RU1 and RU2 Zones under the Shoalhaven LEP 2014. Council's intent is to manage any potential impact associated with the construction of stock mounds on flooding as well as on water quality from acid sulphate soil. Council's objective to better manage the potential impact on flooding as a result of the construction of stock mounds by farmers in the flood plain or within acid sulphate soils is supported in principle.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment : The PP seeks to remove subclause 7.3(2)(a) to reflect the removal of Flood Planning Area Maps from the LEP. The effect of this would be that clause 7.3 would only apply to "land at or the flood planning level" in accordance with subclause 7.3(2)(b). The PP also seeks to remove subclause 7.3(5) from the LEP to clarify that "flood planning level" is consistent with the definition in the Floodplain Development Manual as per subclause 7.3(4) of the LEP.

It is considered that the proposed provisions are appropriate and consistent with Warringham and Eurobodalla Comprehensive LEPs.

Proposed stock mound provision:

The PP indicates that it seeks to insert an additional provision in the Shoalhaven LEP 2014 to clarify that stock mounds require consent in the following circumstances:

- Land zoned RU1 Primary Production and RU2 Rural Landscape.
- Land that is at or below the 'flood planning level' as identified in clause 7.3 'Flood Planning' or land identified as Class 1-4 Acid Sulphate Soils on the Acid Sulphate Soils Map; and
- Where the usable surface area of the stock mound is 100 square metres or greater in area.

The Department's legal team have raised an issue that the proposal to make ancillary stock mounds for Extensive Agriculture permissible with consent via a new clause 7.3A 'Exceptions to earthworks in a Flood Planning Area' could be challenged in the context of the law governing ancillary uses. This is because it may be argued that the ancillary use does not require consent.

The Legal Team have suggested an alternative option of providing a new local clause dealing with the dominant use ie Extensive Agriculture as opposed to the ancillary use. This new local clause could set out standards for Extensive Agriculture as development permitted without consent which could seek to examine aspects of stock mounds that are ancillary to Extensive Agriculture that Council is particularly concerned with.

Regardless of how the matter is drafted by Parliamentary Counsel, Council's proposal for suitable provisions for stock mounds in flood prone areas or acid sulphate soil areas are reasonable.

Recommendation: That suitable provisions for stock mounds in flood prone areas or acid sulphate soil areas are prepared in consultation with Parliamentary Counsel's Office during the LEP drafting stage.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? No

b) S.117 directions identified by RPA :

* May need the Director General's agreement

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.2 Sydney Drinking Water Catchments
- 5.10 Implementation of Regional Plans

Is the Director General's agreement required? Yes

c) Consistent with Standard Instrument (LEPs) Order 2006 : Yes

d) Which SEPPs have the RPA identified?

- SEPP No 14—Coastal Wetlands
- SEPP No 21—Caravan Parks
- SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)
- SEPP No 33—Hazardous and Offensive Development
- SEPP No 36—Manufactured Home Estates
- SEPP No 44—Koala Habitat Protection
- SEPP No 50—Canal Estate Development
- SEPP No 55—Remediation of Land
- SEPP No 62—Sustainable Aquaculture
- SEPP No 64—Advertising and Signage
- SEPP No 70—Affordable Housing (Revised Schemes)
- SEPP No 71—Coastal Protection
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Exempt and Complying Development Codes) 2008

SEPP (Housing for Seniors or People with a Disability) 2004
SEPP (Infrastructure) 2007
SEPP (Major Projects) 2005
SEPP (Mining, Petroleum Production and Extractive Industries) 2007
SEPP (Rural Lands) 2008
Drinking Water Catchments Regional Environmental Plan No. 1
SEPP (Affordable Rental Housing) 2009

e) List any other matters that need to be considered :

Council has requested to use its delegated plan making functions for the PP. Given the local significance of the PP it is considered that Council's request is reasonable and should be supported.

Recommendation: That Council's request to use its delegated plan making functions for the PP is supported.

Have inconsistencies with items a), b) and d) being adequately justified? Yes

If No, explain :

SECTION 117 DIRECTIONS:

4.3 FLOOD PRONE LAND:

The PP identifies that the Direction applies as it proposes to create a provision that affects flood prone land being a provision to require consent for stock mounds on land in the RU1 and RU2 zones that are flood affected. The PP states that it is consistent with the Direction because it:

- Does not rezone land within the flood planning area from Special Uses, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.
- Does not contain provisions that apply to the flood planning area that:
 - permit development in floodway areas
 - permit development that will result in significant flood impacts to other properties
 - permits a significant increase in the development of that land
 - is likely to result in a substantially increased requirement for government pending on flood mitigation measures, infrastructure or services
 - permits development to be carried out without development consent except for the purposes of agriculture, roads or exempt development.

Council's view that the PP is consistent with the Direction is supported for the reasons provided above.

RECOMMENDATION: The Secretary can be satisfied that the PP is consistent with the Direction.

4.4 PLANNING FOR BUSHFIRE PROTECTION: This Direction does apply to the planning proposal as it will affect land mapped as bushfire prone land.

A condition of the Gateway will be required to consult with the Rural Fire Service. At this stage of the Planning Proposal, it is neither consistent nor inconsistent as the Direction requires consultation with the RFS post Gateway determination and prior to exhibition.

RECOMMENDATION: The Secretary's delegate can be satisfied that the requirements of the Direction will be met once Council has consulted with the Rural Fire Service in accordance with the Direction.

5.2 SYDNEY DRINKING WATER CATCHMENT

Although the PP identifies that it applies to parts of the Sydney Drinking Water Catchment, Council has not undertaken preliminary consultation with the Sydney Catchment Authority (now WaterNSW) prior to Gateway determination as required by the Direction. Council has advised that the PP applies to parts of the Sydney Drinking

Water Catchment, namely Kangaroo Valley catchment north of the escarpment and to land at Braidwood. Given that the PP will not facilitate development within the catchment, rather it will provide additional development controls to improve the management of stock mounds in floodplains, it is considered that any inconsistency with the Direction in relation to the consultation requirement is of minor significance.

It is, however, recommended that Council consult with WaterNSW post Gateway determination but prior to public consultation and arrange for any correspondence from WaterNSW to be included in the exhibition materials.

Recommendation:

1. That the Secretary can be satisfied that any inconsistency with the Direction is of minor significance.
2. Council consult with WaterNSW on the Planning Proposal and arrange for any correspondence from WaterNSW to be included in the exhibition material.

5.10 IMPLEMENTATION OF REGIONAL PLANS

Although not identified by the PP, the Direction applies because the PP applies to land covered by the Illawarra Shoalhaven Regional Plan. The Regional Plan provides the following relevant Direction and Action:

- Direction 5.2 to build the Illawarra-Shoalhaven's resilience to natural hazards and climate change.
- Action 5.2.1 to apply contemporary risk management to coastal and other hazards. It requires the NSW Government to:
 - Work with councils so that planning controls incorporate the best available hazard information to build resilience to natural hazards; and
 - Require that councils review and update their floodplain risk and coastal management plans, particularly where new growth opportunities are being considered that may be affected by natural hazards.

It is considered that the PP is consistent with the above requirements of the Illawarra Shoalhaven Regional Plan.

The proposal is considered to be consistent with all other relevant s.117 Directions and SEPP's.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : The PP provides a Subject Land map. The map is considered to be adequate for the purposes of public exhibition and to explain the PP. The PP does not seek to include any new or amended maps in the LEP and would remove the Flood Planning Area maps.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council intends to exhibit the PP for a 28 day period and provide notification in local newspapers, via Council's website and at Council's Nowra and Ulladulla offices. It is considered that the community consultation proposed is adequate.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

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Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment : It is considered that overall the PP is adequate and meets the adequacy requirements provided in the Department's guide to preparing planning proposals.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The PP seeks to amend the flood controls in the Shoalhaven LEP 2014.

Assessment Criteria

Need for planning proposal : The PP is needed to facilitate an amendment of the Shoalhaven LEP 2014 to implement Council's objectives to review and improve flood planning controls across the LGA.

Consistency with strategic planning framework : As previously discussed the PP is considered to be consistent with the Illawarra Shoalhaven Regional Plan, notably Direction 5.2 to build the Illawarra-Shoalhaven's resilience to natural hazards and climate change and action 5.2.1 to apply contemporary risk management to coastal and other hazards.

It is also considered that the PP is consistent with Council's Community Strategic Plan and local strategies (Shoalhaven Growth Management Strategy, Nowra Bomaderry Structure Plan, Jervis Bay Settlement Strategy, Milton Ulladulla Structure Plan, Sussex Inlet Settlement Strategy) in relation to the effective management of flooding.

Environmental social economic impacts : The PP is likely to have a positive environmental, social and economic impact as a result of improved accuracy of and community access to flood information as well as improved management of stock mounds in rural areas.

Assessment Process

Proposal type : Consistent Community Consultation Period : 28 Days

Timeframe to make LEP : 12 months Delegation : RPA

Public Authority : Sydney Catchment Authority
Consultation - s56(2)(d) : NSW Department of Primary Industries - Agriculture
Office of Environment and Heritage - NSW National Parks and Wildlife Service

Is Public Hearing by the PAC required? No

(2)(a) Should the matter proceed ? Yes

If no, provide reasons : It is considered that the Planning Proposal has merit to improve the management of flooding in the Shoalhaven LGA. The PP is the appropriate mechanism to facilitate the required amendment of the Shoalhaven LEP 2014.

Resubmission - s56(2)(b) : No

If Yes, reasons :

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Identify any additional studies, if required. :

If Other, provide reasons :

Nil

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? No

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal PP012 - Review of Flood Controls in SLEP 2014 - Pre-Gateway Version 1 - 11 May 2017.pdf	Proposal	Yes
Council covering letter.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.2 Sydney Drinking Water Catchments
- 5.10 Implementation of Regional Plans

Additional Information : It is **RECOMMENDED** that the Director Regions, Southern, at the Department of Planning and Environment as delegate of the Minister for Planning, determine under Section 56(2) of the Environmental Planning and Assessment Act 1979 that an amendment to the Shoalhaven Local Environmental Plan (LEP) 2014 to review the current flood related development controls should proceed subject to the following conditions:

CONSULTATION

1.Consultation is required with WaterNSW and the NSW Rural Fire Service prior to community consultation. Council is to include a copy of any correspondence provided by WaterNSW or the RFS during the exhibition of the Planning Proposal.

2.Community consultation is required under Sections 56(2)(c) and 57 of the EP&A Act as follows:

(a)the Planning Proposal must be made publicly available for a minimum of 28 days; and
(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).

3.Consultation is required with the Office of Environment and Heritage and the

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Department of Primary Industries (Agriculture) under Section 56(2)(d) of the EP&A Act. The OEH and DPI (Agriculture) are to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under Section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

TIMEFRAME

5. The timeframe for completing the LEP is to be 12 months following the date of the Gateway determination.

DELEGATION

6. The Council is authorised to use the Minister's plan making functions under sections 59(2),(3)&(4) of the Environmental Planning and Assessment Act 1979.

SECTION 117 DIRECTIONS

7. It is recommended that:

(a) The Secretary's delegate can be satisfied that the planning proposal is consistent with s117 Directions 1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 4.1 Acid Sulphate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies and 5.10 Implementation of Regional Plans.

(b) The Secretary's delegate can be satisfied that the planning proposal will be consistent with s117 Direction 4.4 Planning for Bushfire Protection and 5.2 Sydney Drinking Water Catchment when Council has consulted with the Rural Fire Service and WaterNSW prior to undertaking community consultation.

(c) The Secretary's delegate can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are of minor significance.

(d) No further consultation or referral is required in relation to s117 Directions while the planning proposal remains in its current form.

SEPPS

8. The planning proposal is considered to be consistent with all relevant SEPPs.

Supporting Reasons :

The proposal will make improvements to flood management in the Shoalhaven.

Signature:



Team Leader

Printed Name:

Graham Towers

Date:

8/6/17.