

OUTCOMES COMMITTEE

Meeting Date 14 September 2021

Item Number. 87

SUBJECT: Special Flood Consideration Standard LEP Clause
Premises: N/A
Applicant/Owner: N/A
Zoning: Various under Fairfield Local Environmental Plan 2013

FILE NUMBER: 14/20306

PREVIOUS ITEMS: 48 - Submission to State Flood Planning Controls - Outcomes Committee - 09 Jun 2020

REPORT BY: Elizabeth Workman, Senior Strategic Land Use Planner

RECOMMENDATION:

That Council advise the NSW Department of Planning, Infrastructure and Environment that it wishes to “opt-in” for the inclusion of the ‘special flood considerations’ model clause relating to land above the flood planning level up to the probable maximum flood within Fairfield Local Environmental Plan (LEP) 2013.

Note: This report deals with a planning decision made in the exercise of a function of Council under the Environmental Planning & Assessment Act and a division needs to be called.

SUPPORTING DOCUMENTS:

There are no supporting documents for this report.

CITY PLAN

This report is linked to *Theme 3 Environmental Sustainability* in the Fairfield City Plan.

SUMMARY

The NSW Department of Planning, Industry and Environment (DPIE) has recently finalised a package of new State wide flood planning controls. The package includes 2 new flood risk planning model clauses which will replace the principle flood controls set out under Clauses 6.3 Flood Planning and 6.4 Floodplain Risk Management of the Fairfield Local Environmental Plan (LEP) 2013.

While clause 6.3 is a universal change to all local planning instruments, councils are being asked to formally “opt-in” (via resolution) to include the new model clause relating to special flood considerations for land above the Flood Planning Level (FPL) up to and including the Probable Maximum Flood (PMF). This clause will replace the existing clause 6.4 Floodplain Risk Management within Fairfield LEP 2013.

Report

The current planning controls applying to flood liable land in Fairfield City first came into force in 2006. These controls require Council to take into account whether adequate arrangements have been made for the safe occupation and evacuation for all development between the FPL up to and including the PMF. In Fairfield City, this incorporates land within low flood risk precincts and is identified on maps prepared by Council in various flood studies.

After the completion of a number of Floodplain Risk Management Studies and Plans carried out in the City prior to 2015, Council sought to rationalise which controls needed to be considered for development affected by low risk floods. Consequently, Council initiated a Planning Proposal seeking to remove the development controls applying to residential, commercial and industrial land uses, above the FPL and up to the PMF, as the current controls were considered to be too onerous and went beyond the requirements in most other local government areas. The Planning Proposal, whilst initially supported by the NSW DPIE, was not supported by the NSW Office of Environment and Heritage and was subsequently refused in July 2020.

Around this time, the NSW DPIE exhibited and finalised a revised flood prone land package which placed a greater recognition on the consequences of extreme floods and the need to consider all flood risk including extreme events. The exhibited package included 2 new flood related LEP model clauses for inclusion within applicable LEPs as follows:

Clause 5.21 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 flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—

- (a) is compatible with the flood function and behaviour on the land, and*

- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

(4) A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.

(5) In this clause—

Considering Flooding in Land Use Planning Guideline means the Considering Flooding in Land Use Planning Guideline published on the Department's website on 14 July 2021.

flood planning area has the same meaning as it has in the Floodplain Development Manual.

Floodplain Development Manual means the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

Clause 5.22 Special flood considerations

- (1) The objectives of this clause are as follows—*
 - (a) to enable the safe occupation and evacuation of people subject to flooding,*
 - (b) to ensure development on land is compatible with the land's flood behaviour in the event of a flood,*
 - (c) to avoid adverse or cumulative impacts on flood behaviour,*
 - (d) to protect the operational capacity of emergency response facilities and*

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*critical infrastructure during flood events,
(e) to avoid adverse effects of hazardous development on the environment during flood events.*

(2) This clause applies to—

(a) for sensitive and hazardous development—land between the flood planning area and the probable maximum flood, and

(b) for development that is not sensitive and hazardous development—land the consent authority considers to be land that, in the event of a flood, may—

(i) cause a particular risk to life, and

(ii) require the evacuation of people or other safety considerations.

(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) will not affect the safe occupation and efficient evacuation of people in the event of a flood, and

(b) incorporates appropriate measures to manage risk to life in the event of a flood, and

(c) will not adversely affect the environment in the event of a flood.

(4) A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.

(5) In this clause—

Considering Flooding in Land Use Planning Guideline—see clause 5.21(5).
flood planning area—see clause 5.21(5).

Floodplain Development Manual—see clause 5.21(5).

probable maximum flood has the same meaning as it has in the Floodplain Development Manual.

sensitive and hazardous development means development for the following purposes—

(a) [list land uses]

Direction— Only the following land uses are permitted to be included in the list—

(a) boarding houses,

(b) caravan parks,

(c) correctional centres,

(d) early education and care facilities,

(e) eco-tourist facilities,

(f) educational establishments,

(g) emergency services facilities,

(h) group homes,

(i) hazardous industries,

(j) hazardous storage establishments,

(k) hospitals,

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- (l) hostels,*
- (m) information and education facilities,*
- (n) respite day care centres,*
- (o) seniors housing,*
- (p) sewerage systems,*
- (q) tourist and visitor accommodation,*
- (r) water supply systems.*

The content of these clauses mirrored the intent of what Council had set out to achieve under its refused Planning Proposal and, for this reason, Council made a submission to the Department on the proposed Flood Prone Land Controls supporting the new controls.

On 14 July 2021 the first of the Flood Planning model clauses was transitioned into Fairfield LEP 2013 via a Standard Instrument LEP Amendment (Flood Planning) Order and State Environmental Planning Policy (SEPP) Amendment (Flood Planning) 2021. Clause 6.3 Flood Planning of Fairfield LEP 2013 was subsequently repealed and replaced with the new model clause 5.21 Flood Planning within the Miscellaneous Provisions of the LEP. This clause relates to land at or below the FPL and the intent of the clause mirrors that previously contained within the former clause 6.3 of Fairfield LEP 2013.

As noted above, to include the provisions of the second model clause, relating to land above the FPL up to the PMF, Council must now formally resolve to “opt-in” to the LEP amendment process. The purpose of this report is therefore to seek a formal Council resolution to be included within this process.

This clause will provide the mechanism for controls on development above the FPL and below the PMF with specific consideration of sensitive, vulnerable and critical uses; hazardous industry or hazardous material storage establishments; or other land uses requiring controls in relation to risk to life matters, in line Floodplain Risk Management Studies and Plans previously adopted by Council. Any future Floodplain Risk Management Studies and Plans will also consider the need for flood related development controls above the FPL which will also be covered by this clause.

CONCLUSION

DPIE’s flood prone land control package includes 2 model clauses for inclusion within LEPs. Council has previously supported the use of both these clauses within Fairfield LEP 2013 as the intent reflects the outcomes Council endeavoured to achieve under its former (but refused) Floodplain Risk Management Planning Proposal.

The first model clause has been legislated and incorporated within Fairfield LEP 2013 in July this year. To incorporate the second clause, relating to land above the FPL up to the PMF, Council must now formally resolve to partake in this amendment process. The review, consultation and implementation required will be facilitated by the NSW DPIE in consultation with Council however, at this stage, little detail has been provided. Further information will be provided to Councillors once it is available from the Department.

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Elizabeth Workman
Senior Strategic Land Use Planner

Authorisation:

Manager Strategic Land Use Planning
Group Manager City Strategic Planning

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File Name: **OUT14092021_8.DOCX**

***** END OF ITEM 87 *****

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1. Council advise the Western Sydney Aerotropolis Independent Community Commissioner, Minister for Planning and the State and Federal Members for Horsley Park and Cecil Park that:
 - 1.1 The report (Attachment A) issued by the Commissioner does not identify that the Western Sydney Airport 20 Australian Noise Exposure Concept (ANEC) noise contour restrictions have been placed on landowners in Horsley Park and Cecil Park located outside of the Aerotropolis precinct.
 - 1.2 The terms of reference and future work of the Commissioner needs to be expanded to include issues relevant to residents of Horsley Park and Cecil Park located under the 20 ANEC who have been disadvantaged by the provisions of the SEPP (Western Sydney Aerotropolis).
 - 1.3 Any future communications regarding the SEPP (Western Sydney Aerotropolis) or Western Sydney Airport from the State or Federal Governments should also be sent to affected landowners in Horsley Park and Cecil Park.
2. Council endorse the findings and recommendations of the Marshall Day Aircraft Noise Strategy to support further submissions to the State Government in relation to aircraft noise issues and planning investigations relating to the Fairfield Rural Lands Urban Investigation Area.
3. Council continue discussions with State agencies to identify the preferred location for a possible railway station in Cecil Park on the proposed Parramatta to Western Sydney Airport passenger rail line and agree to support a more central location for a future rail station than that currently shown on Council's adopted Structure Plan.
4. Investigations into the housing densities/population that would support a rail station at Cecil Park form part of the Business Case for the proposed Parramatta to Airport (East-West) Rail line.
5. The State Government provide funding for the Business Case for the Parramatta to Airport (East-West) Rail line in accordance with Future Transport 2056 and, further, that the local community and Council be actively engaged in the preparation and consideration of that Business Case.
6. Council's website be updated regarding the above matters to notify landowners in Horsley Park and Cecil Park accordingly.

CARRIED UNANIMOUSLY

87: SUBJECT: Special Flood Consideration Standard LEP Clause
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Zoning: Various under Fairfield Local Environmental Plan 2013
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MOTION: (Le/Wong)

That Council advise the NSW Department of Planning, Infrastructure and Environment that it wishes to “opt-in” for the inclusion of the ‘special flood considerations’ model clause relating to land above the flood planning level up to the probable maximum flood within Fairfield Local Environmental Plan (LEP) 2013.

A division was taken with the following results:

| Aye | Nay |
|------------|------------|
|------------|------------|

Mayor Carbone
Councillor Bennett
Councillor Le
Councillor Ly
Councillor Molluso
Councillor Rohan
Councillor Wong

Total=(7)

Total=(0)

CARRIED UNANIMOUSLY

- 88:** Western Sydney City Deal and Western Parklands Councils Update
File Number: 19/08483

MOTION: (Le/Rohan)

That the report be received and noted.

CARRIED UNANIMOUSLY

- 89:** Major Projects Update - August 2021
File Number: 17/17730 and 17/22902

MOTION: (Wong/Le)

That the report be received and noted.

CARRIED UNANIMOUSLY

- 90:** Monthly Investment Report - August 2021
File Number: 17/17769

MOTION: (Wong/Le)

That the report be received and noted.

CARRIED UNANIMOUSLY