

9.4 PLANNING PROPOSAL - KEMPSEY CBD FLOOD PLANNING

Officer	Marnie Jeffery, Town Planner
File No	KLEP2013-AM-32
Attachments	1. Planning Proposal Kempsey CBD Flooding [9.4.1 - 29 pages] 2. Draft DCP 2013 Chapter B 7 - Flood Hazard Area Management [9.4.2 - 27 pages]

PURPOSE

Report on the introduction of Flood Planning measures in accordance with recommendations contained in the Kempsey CBD Flood Risk Management Study (FRMS) and Plan (FRMP), May 2017, for the Kempsey CBD Study Area.

Seek Council's endorsement to proceed to Gateway to amend development standards and the inclusion of flood mapping to the Kempsey Local Environmental Plan (KLEP) 2013 and the Kempsey Development Control Plan (KDCP) 2013 to ensure development adopts the latest flood modelling, thereby minimising the possibility of loss of life and damage to property and reducing the impact on emergency services during a flood event.

RECOMMENDATION

That Council:

1. **Act on the recommended changes to the *Kempsey Local Environmental Plan (KLEP) 2013* and *Kempsey Development Control Plan (KDCP) 2013*, as made in the Kempsey CBD Flood Risk Management Study and Plan.**
2. **Adopt the amendments to Council Policy 1.1 - Development Control Policy and repeal Procedure 1.1.11 - Flood Risk Management.**
3. **Submit the attached planning proposal to amend KLEP 2013 Clause 7.3 and introduce a Floodplain risk management clause to KLEP 2013 to the Minister for Planning for Gateway consideration pursuant to section 3.34 of the Act.**
4. **Request written authorisation from the Secretary of the Department of Planning, Industry and Environment to exercise plan making delegations in relation to this proposal.**
5. **Take the necessary steps to exhibit the planning proposal pursuant to section 3.33 of the Act, expressing the objective and intended outcomes of proposed changes to the *Kempsey Local Environmental Plan 2013 (LEP)*, and amend *Kempsey Development Control Plan 2013 Chapter B7: Floodplain Management (DCP)* as described in the report, pursuant to section 3.43 of the Act and in accordance with any Gateway determination.**
6. **Receives a further report at the conclusion of the public exhibition period.**

BACKGROUND

In 2017, the Kempsey CBD Flood Risk Management Study (FRMS) and Kempsey CBD Flood Risk Management Plan (FRMP) were prepared, and on 17 October 2017 Council resolved to adopt the Study and Plan which updated the existing Kempsey flood model to consider new topographic data and improved modelling techniques.

Council also resolved to consider the implementation of the actions within the study and plan for inclusion in future Operating Plans, Work Programs and Budgets.

This report considers the actions in the current strategies and plans relating to revised Flood Planning Levels, Flood Planning Areas and Floodway's for the Kempsey CBD study area. As a result, Council has reviewed and updated planning instruments and plans to reflect the recommendations of the Kempsey CBD FRMS and FRMP.

Kempsey CBD Study Area

The study area for the Kempsey CBD FRMS and FRMP is comprised of 7,331 hectares and includes the following areas:

- Upstream to between Aldavilla and Sherwood,
- Downstream to Austral Eden,
- East to Frogmore, and
- Including Aldavilla, Euroka, West Kempsey, Kempsey, East Kempsey, South Kempsey, Frederickton, Red Hill, Frogmore and part of Austral Eden.

This area is depicted in Figure 1 and is the same study area as the 2009 Kempsey Flood Study Hydraulic Modelling Report undertaken by WMA Water.

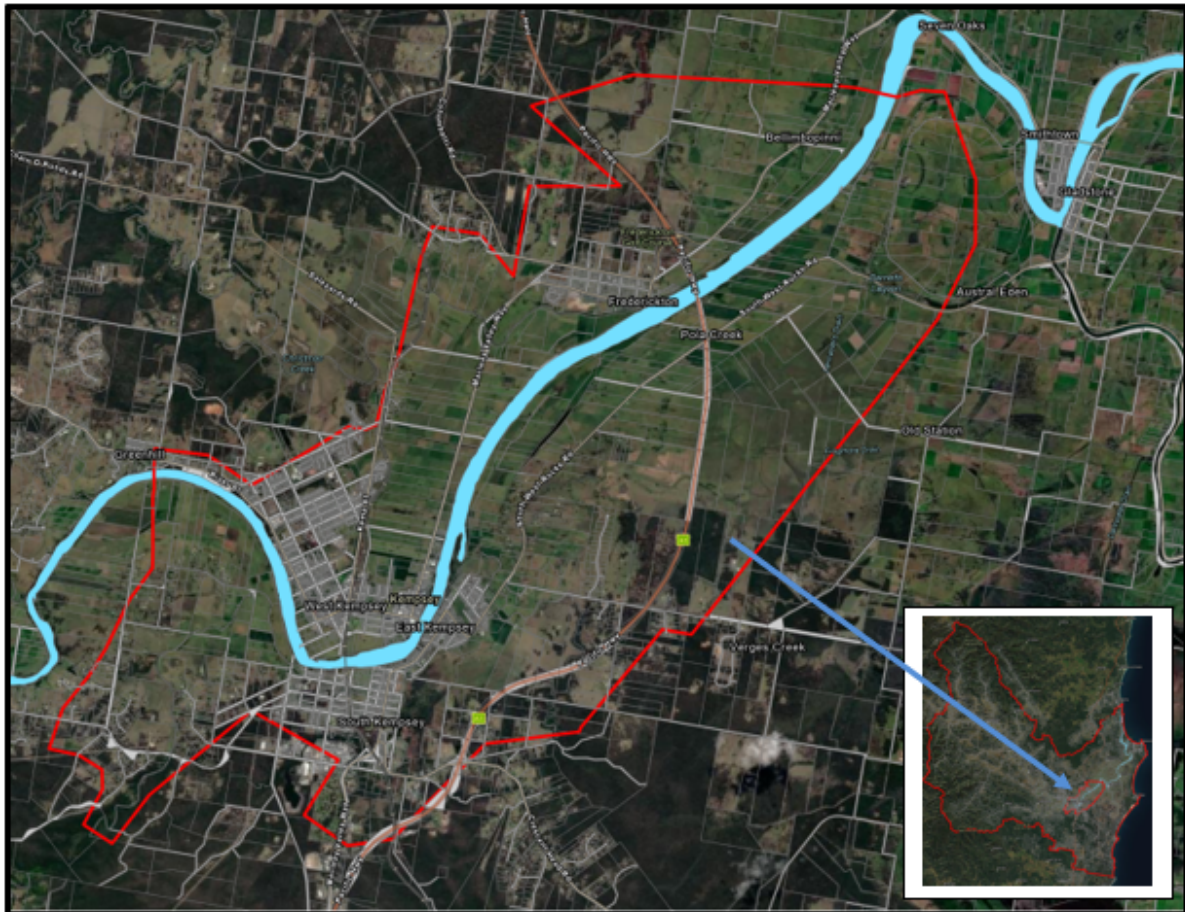


Figure 1 - Kempsey CBD Study Area

Objectives

The Kempsey CBD FRMS identifies and compares various management options, including an assessment of their social, economic and environmental impacts, together with opportunities to enhance the floodplain environments.

The primary aim of the Kempsey CBD FRMP is to reduce the flood hazard and risk to people and property in the existing community and to ensure future development is controlled in a manner consistent with the flood hazard and risk at this time and as a result of climate change. This plan prioritises and costs floodplain risk management measures recommended for implementation within the Kempsey CBD study area.

Risks

The updated hydraulic modelling technology provides updated flood levels within the study area, and the impact of a changing climate on flood behaviour. This updated information will assist in minimising social, ecological, environmental, cultural and economic impacts due to flood events.

Plans, policies and procedures

The following Council plans, policies and procedures outline development controls for development on flood prone land:

- Kempsey Development Control Plan (KDCP) 2013 – Chapter B7: Floodplain Management
- Policy 1.1 - Development Control Policy
- Procedure 1.1.11 - Flood Risk Management

The Kempsey CBD FRMS and FRMP recommends several amendments and updates to KDCP 2013 – Chapter B7.

For ease of use, KDCP 2013 – Chapter B7 and Procedure 1.1.11 - Flood Risk Management have been consolidated. This will provide users with only two documents to seek development controls for development on flood prone land, being KLEP and KDCP. The attached KDCP Chapter B7 – Flood Hazard Area Management includes the provisions of Procedure 1.1.11 and amendments to development controls as per the recommendations of the Kempsey CBD FRMS and FRMP.

By consolidating this plan and procedure, Procedure 1.1.11 will be repealed. As a result, a minor amendment to point 6 of Policy 1.1 - Development Control Policy is required. This amendment provides consistent terminology with KDCP and will no longer reference the repealed procedure. The proposed wording is as follows:

6. Flood prone land will be defined consistent with the 1% AEP flood level. No development will be allowed unless consent is given in accordance with Kempsey Development Control Plan 2013 Chapter B7 – Flood Hazard Area Management.

Land-use planning

The objective of the planning proposal is to ensure future development within the study area is compatible to the flood hazard and the necessary provisions are incorporated to development to minimise risk to property and life.

Clause 7.3 of KLEP 2013 provides planning provisions for Flood Planning on land at or below the flood planning level. To support the recommendations of this report, it is proposed to amend clause 7.3 to also include land identified within the 'Flood Planning Area' on Flood Planning maps.

In addition, it is proposed to introduce a clause for Floodplain Risk Management to KLEP 2013. This clause proposes to ensure development on the floodplain with particular evacuation or emergency response issues, provide safe occupation and evacuation from the land and to protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events. This clause will apply to land between the 'Flood Planning Area' and the 'Probable Maximum Flood'.

Land affected by flooding is mapped in Council's GIS mapping system. This mapping system is an internal system and cannot be accessed publicly. Flood Planning maps are to be introduced into KLEP 2013 to indicate land within the Flood Planning Area and the Probable Maximum Flood level. This mapping will be publicly available online via the NSW Government portals, ePlanning Spatial Viewer and the NSW Legislation website.

The amended KLEP clauses and Flood Planning maps are outlined in the attached Planning Proposal.

Development activity

The proposed amendments to the KLEP and KDCP do not require alterations to existing development. The amended planning controls will apply to any future development within the study area, for example, new development, alterations/additions to existing development or change of use. Future development applications within the Kempsey CBD study area will be assessed against the relevant development controls.

KEY CONSIDERATIONS

Policy and Legislation

The changes to KLEP 2013 and KDCP 2013 are proposed in accordance with the relevant parts of the Act and associated Regulation.

Note that the recommended actions are not retrospective and will not affect any existing development approved prior to the consideration of this report.

Strategic Alignment

The proposed changes are aligned with current strategies and plans. The adoption of the latest flood modelling, and associated development controls, in this report have been driven by key actions identified in the:

Plan / Strategy	Action
Operational Plan 2020-2021	HS04.1.10 - <i>Revise Flood Planning Levels, Flood Planning Area and Floodway definitions for the Kempsey CBD and update Council policies and plans accordingly (High priority action, Kempsey CBD Floodplain Risk Management Plan).</i>
Delivery Program 2017-2021	<u>Plan for sustainable development</u> <ul style="list-style-type: none"> <i>Review planning controls relating to use of flood affected areas.</i>
Macleay Valley 2036 - Community Strategic Plan	SAS-01 - <i>Build community resilience for, during and after emergencies.</i> SAS-02 – <i>Implement systems to minimise and mitigate the impact of disasters.</i>
Local Strategic Planning Statement 2020	H3.3 - <i>Review and update Council's planning instruments and policies to reflect the recommendations of the Kempsey CBD Flood Risk Management Plan.</i>
Local Growth Management Strategy:	<ul style="list-style-type: none"> Safety from hazards requires future residential

Residential Component (2010)	<p>areas to consider Floodplain Management Plans and avoid areas of significant flood impacts.</p> <ul style="list-style-type: none"> • Constraint mapping of each locality includes known flood constraints.
Kempsey CBD Flood Risk Management Plan 2017	<p>Section 1.1.6 - <i>Flood Planning Levels and Flood Planning Area</i></p> <p>Section 1.1.7 - <i>Revise LEP and DCPs</i></p> <p>Section 1.18 - <i>S10.7 (formerly S149) certificates</i></p> <p>Section 1.3.1 - <i>Flood Proofing</i></p> <p>Section 1.4.3 - <i>Clearance of Floodways</i></p>

Impact on Financial Sustainability

The proposed planning controls for the Kempsey CBD study area will provide improved resilience to flood events. Over time this will assist in reducing the impact placed on Kempsey Shire Council and Emergency Services during and after flood events.

Stakeholder Engagement

Should the Minister for Planning issue a favourable Gateway determination, the next step will be informing the community through the mandatory public exhibition of the proposed KLEP 2013 and KDCP 2013 changes set out above.

Once the community consultation is complete, the matter will be reported back to Council to consider any submissions received and whether to proceed to the making of the amendments to the LEP and DCP.

Key internal stakeholders who have provided input into this report include:

- Co-ordinator Strategic & Environmental Planning
- Co-ordinator Property & Facilities
- Co-ordinator Economic Development & Tourism
- Co-ordinator Development Assessment

Other Matters

Updated flood information will be available for inclusion on 10.7(2) Planning Certificates.

CONCLUSION

The proposed changes are consistent with the recommendations outlined in the Kempsey CBD FRMS and FRMP, and the actions in Council's current strategies and plans. Updated flood information will assist in minimising risk and impacts as a result of flood events as well as enable the community to be more resilient.