

Item 10.6. Planning Proposal, Palerang LEP 2014, Insertion of Captains Flat Flood Planning Area Map, Amendment of Heritage Schedule and Numbering of Clauses

SUBJECT	Planning Proposal, Palerang Local Environmental Plan 2014, insertion of Captains Flat flood planning area map, amendment of the heritage schedule and the environmental heritage map and amendment of the numbering of clauses		
FILE NO.	PROJ0035/11	DIVISION	Planning and Environmental Services

Attachments

1. Planning Proposal
2. Captains Flat Flood Planning Area Map
3. Palerang Local Environmental Plan 2014, Flood planning Map 4A (amended)
4. Palerang Local Environmental Plan 2014, Flood planning Map 4B (amended)
5. Palerang Local Environmental Plan 2014, Heritage Map 4 (amended)

Synopsis

A planning proposal has been prepared under Part 3 of the NSW Environmental Planning and Assessment Act 1979 to amend the Palerang Local Environmental Plan 2014 to insert the Captains Flat Flood Planning Map, amend Schedule 5 Environmental Heritage and an associated map concerning Lot 11 DP 237079 and Lot 1 DP 1173605 and amend the numbering of clauses 6.7 Highly erodible soils and 6.7 Slopes over 18 degrees.

The report recommends that the planning proposal is sent to the Minister of Planning and if approved by the gateway panel exhibited for 14 days.

Recommendation

Recommended that Council:

1. submit the planning proposal for the amendments of the *Palerang Local Environmental Plan 2014* concerning:
 - a. the insertion of the Captains Flat Flood Planning Map,
 - b. amendment of Braidwood and Bungendore Flood Planning Maps,
 - c. amendment of Schedule 5 Environmental Heritage concerning Lot 11 DP 237079 and
 - d. amendment of the numbering of clauses 6.7 *Highly erodible soils* and 6.7 *Slopes over 18 degrees*

to the Minister for Planning for a Gateway Determination in accordance with section 56 of the *NSW Environmental Planning and Assessment Act 1979*;
2. advise the Minister that Council considers that the planning proposal should be exhibited for 14 days.

Report

The *Palerang Local Environmental Plan 2014* was gazetted on 19 September 2014 and came into force on 31 October 2014. As with the making of any complex document there are numerous errors, omissions or matters that have been put aside. The attached planning proposal seeks to address these. It should be noted that this situation is not uncommon in relation to the making of comprehensive local environmental plans.

Captains Flat Flood Planning Map

The *Palerang Local Environmental Plan 2014* contains clause 6.2 *Flood planning* and associated maps for Bungendore and Braidwood. At the time of making the majority of the local environmental plan maps, data was only available for Braidwood and Bungendore. As a result of modelling carried out as part of the Captains Flat Flood Study, Council now has the flood planning level (1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard) data for Captains Flat.

The incorporation of the Flood Planning Map into the PLEP does not alter the flood planning provisions that apply in the flood affected parts of Captains Flat. Clause 6.2 *Flood planning* of the PLEP 2014 applies equally to land shown on a flood planning map and 'other land at or below the flood planning level'. Thus as soon as data becomes available to determine where the flood planning level is located, the flood planning clause applies to land at or below that level. On the other hand the ability to carry out exempt or complying development on land within the flood planning area at Captains Flat is affected, because clause 3.3 *Environmentally sensitive areas excluded* (subclause (2)(jb)) refers only to land identified on the Flood Planning Map, not other land at or below the flood planning level.

The inclusion of the Captains Flat Flood Planning Map in the *Palerang Local Environmental Plan 2014* will mean that land that has been identified as being within in the flood planning level will be identified on a publicly available map. This will mean that flood information will be easily available to the community, developers and government agencies which will assist in managing the flood hazard in Captains Flat. The map to be included in the *Palerang Local Environmental Plan 2014* is attached to the planning proposal (contained within this report).

The flood planning maps for Braidwood and Bungendore have also been included in the planning proposal as it is necessary to amend them to adhere to the NSW Department of Planning's mapping requirements. The Department has advised that the map tile shown in the left hand corner of each flood planning map needs to indicate that there are three flood maps affecting the Palerang local government area. The current flood planning maps only show Braidwood and Bungendore.

The inclusion of Lot 11 DP 237079, Item no 175 in Schedule 5 Environmental Heritage in the Palerang Local Environmental Plan 2014 Heritage map (no.4)

Item 175 of Schedule 5 Environmental Heritage in the *Palerang Local Environmental Plan 2014*, Currandooley, including stables and garden is located on Lot 11 DP 237079, however, the heritage item is not shown on the *Palerang Local Environmental Plan 2014* Heritage Map 4. It is a requirement that items in Schedule 5 are mapped. A planning proposal has been prepared to amend Heritage map 4 of the *Palerang Local Environmental Plan 2014* to include item no. 175. The map to be included in the *Palerang Local Environmental Plan 2014* is attached to the planning proposal (contained within this report).

Insertion of the property description for Item 233 in Schedule 5 Environmental Heritage of the Palerang Local Environmental Plan 2014

The property description for item 233 (Werriwa, including gardens and outbuildings) has not been included in Schedule 5 Environmental Heritage of the *Palerang Local Environmental Plan 2014*. A planning proposal has been prepared to include the property description of Lot 1 DP 1173605 in Item 233 of Schedule 5 Environmental Heritage of the *Palerang Local Environmental Plan 2014*.

The numbering of clauses 6.7 Highly erodible soils and 6.7 Slopes over 18 degrees

There is a numbering error in the *Palerang Local Environmental Plan 2014* that effects clauses concerning highly erodible soils and slopes over 18 degrees. Both clauses have been numbered 6.7. A planning proposal has been prepared to amend the numbering of the *Palerang Local Environmental Plan 2014*. It is likely that the numbering will become 6.7 and 6.7A to avoid the renumbering of any later clauses.

To amend the local environmental plan it is necessary to prepare and publicly exhibit a planning proposal, consider any submissions received, and following this, for the Minister for Planning to agree to the amendment. The following section outlines the planning proposal process.

The planning proposal process

A planning proposal is a document that explains the intended effect of the proposed local environmental plan or amendment and provides the justification for making it. The process is outlined below:

- Council determines whether it supports the planning proposal
- If the planning proposal is supported, it is forwarded to the Minister for Planning for a gateway determination. The intention of the gateway process is to allow the proposal to be reviewed at an early stage so that a decision whether to proceed can be made; before significant resources are committed
- If the gateway determination permits the planning proposal to proceed, the planning proposal will be sent to any relevant government agencies for comment and exhibited for the period stated on the gateway determination

Further information on the process can be found in the NSW Department of Planning and Infrastructure documents *A guide to preparing local environmental plans* and *A guide to preparing planning proposals*.

Only the planning proposal and supporting documents are exhibited. The written legal instrument (draft amending local environmental plan) is prepared by the Parliamentary Counsel when the planning proposal is finalised, immediately before it is made by the Minister or her delegates. The local environmental plan takes effect when it is published on the NSW government legislation website.

It is possible under the *NSW Environmental Planning and Assessment Act 1979* for Council to undertake much of this process 'under delegation'. It is likely that the Department of Planning will require Council to undertake the amendment under delegation.

Financial considerations

Council staff have prepared the planning proposal and the report to Council. If the proposal is supported by Council and it receives a positive gateway determination, staff will manage the consultation with government authorities, public exhibition and legislative process associated with preparing the local environmental plan. Council will pay for the costs associated with the public exhibition such as advertisements in newspapers.

Policy implications

None of the proposed LEP amendments represents a policy change.

The management of policy in relation to the minimisation of flood hazard is a responsibility of local government authorities. The inclusion of a flood planning level map for the village of Captains Flat will contribute to Council meeting its policy obligations by making the identification of flood prone land easier.

The amendments of the *Palerang Local Environmental Plan 2014* in relation to heritage and the numbering of clauses will provide a local environmental plan which contains the required data and is efficient to use.

Social implications

The inclusion of the flood planning level map for Captains Flat will assist with the management of the flood hazard which in turn will assist in improving the wellbeing of the Captains Flat community.

Environmental considerations

The Captains Flat Flood Planning Level Map will assist the community, developers and government agencies in managing the flood hazard in Captains Flat by making the identification of flood prone land easier. A flood risk minimisation approach is more cost effective than repairing flood damage.