

Planning Services

Gateway Determination Report

LGA	Dungog
RPA	Dungog Shire Council
NAME	Dungog Flood Planning amendment
NUMBER	PP_2018_DUNGO_001_00
LEP TO BE AMENDED	Dungog Local Environmental Plan (LEP) 2014
ADDRESS	Dungog township
DESCRIPTION	To amend flood controls in Dungog LEP 2014
RECEIVED	22 March 2018
FILE NO.	EF18/1375
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of Planning Proposal

The Planning Proposal seeks to update the Dungog Local Environmental Plan 2014 flood planning controls to reflect the 1:500 ARI (Average Recurrent Interval) plus a 0.5 metre freeboard in Dungog town centre as a result of the Dungog Flood Risk Management Study and Plan (2017) (DFRMS&P).

Site description

The area affected by the proposed changes to the Flood Planning Level are predominantly contained within Dungog town centre. This is otherwise known as the Dungog 'tailwater area'. The map below indicates the subject area and the land use zones affected.

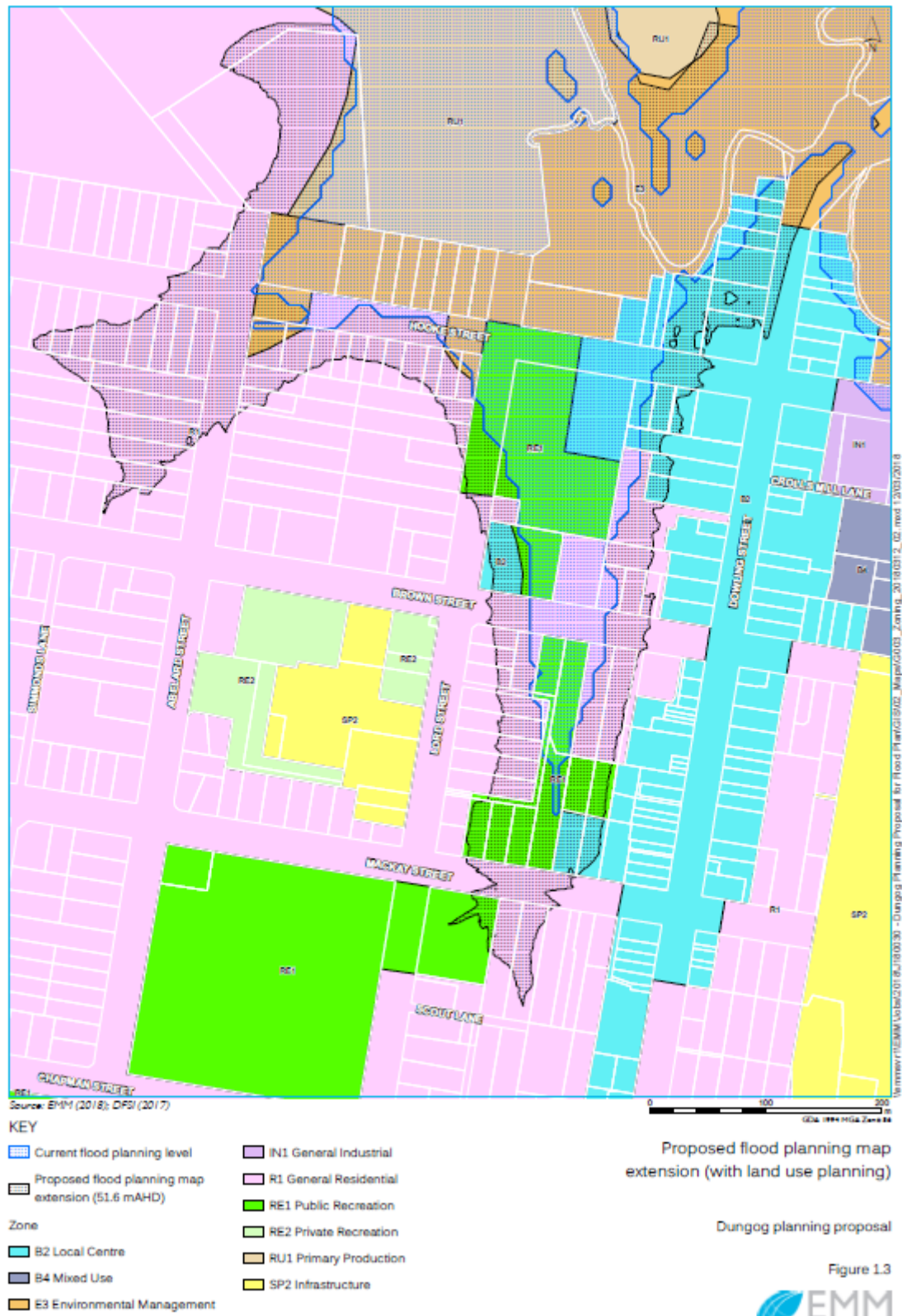


Figure 1: Dungog town centre – current and existing flood controls

Existing planning controls

Dungog Local Environmental Plan 2014 clause 6.3 seeks to minimise flood risks as a result of development on flood prone land. Clause 6.3(5) Flood planning level currently means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.

Dungog Development Control Plan (DCP) No.1 – Managing Our Floodplains also includes controls for flood related matters and sets performance criteria for flood plain areas. The DCP requires review considering the new data in the DFRMS&P and other flood studies at Paterson and Clarence Town. Office of Environment and Heritage (OEH) is working with Council to resolve the DCP issues. It is recommended that the updated DCP be exhibited with the Planning Proposal.

Surrounding area

Dungog township provides services to the agricultural community in the surrounding LGA. Most of the town is zoned R1 General Residential zone apart from the traditional main street zoned B2 Local Centre. There is some R5 Large Lot Residential zoned land adjoining the town centre to the west and south. At a strategic scale, the town is surrounded by small areas of E3 Environmental Management and RU1 Primary Production zoned land.

Summary of recommendation

The Planning Proposal should proceed with conditions as it facilitates the recommendations of the DFRMS&P.

PROPOSAL

Objectives or intended outcomes

The objectives are to amend Dungog LEP 2014 Flood Planning controls to implement the findings of the DFRMS&P. The Planning Proposal intends to amend the existing flood planning level to incorporate a 1:500 ARI plus a 0.5 metre freeboard flood planning level for the Dungog township 'tailwater area'. This level represents an increase from 50.7 metres AHD up to 51.6 metres AHD. The Planning Proposal clearly states these objectives.

The objectives of the Planning proposal do not propose any amendment to the 1:100 ARI FPL. However the DFRMS&P considers local catchment flooding and the influence of Myall Creek and has superseded existing data and the extent of the 1:100 has expanded. It is recommended that the Gateway determination be conditioned for the Planning Proposal to include this amendment.

Explanation of provisions

The Planning Proposal recommends that Clause 6.3 be amended to include a note indicating that the Flood Planning Map contains both the standard 1:100 ARI generally throughout the LGA and the 1:500 ARI level in certain areas of Dungog town centre. As clause 6.3 is a model flood clause, the actual wording and structure of the amendment will be determined by Parliamentary Counsel.

The Dungog Local Environmental Plan 2014 Flood Planning Map will be amended to map the 1:500 level.

The Planning Proposal clearly states these provisions.

The explanation of provisions in the Planning proposal do not propose any amendment to the 1:100 ARI FPL. However the DFRMS&P considers local catchment flooding and the influence of Myall Creek and has superseded existing data and the extent of the 1:100 has expanded. It is recommended that the Gateway determination be conditioned for the Planning Proposal to include this amendment.

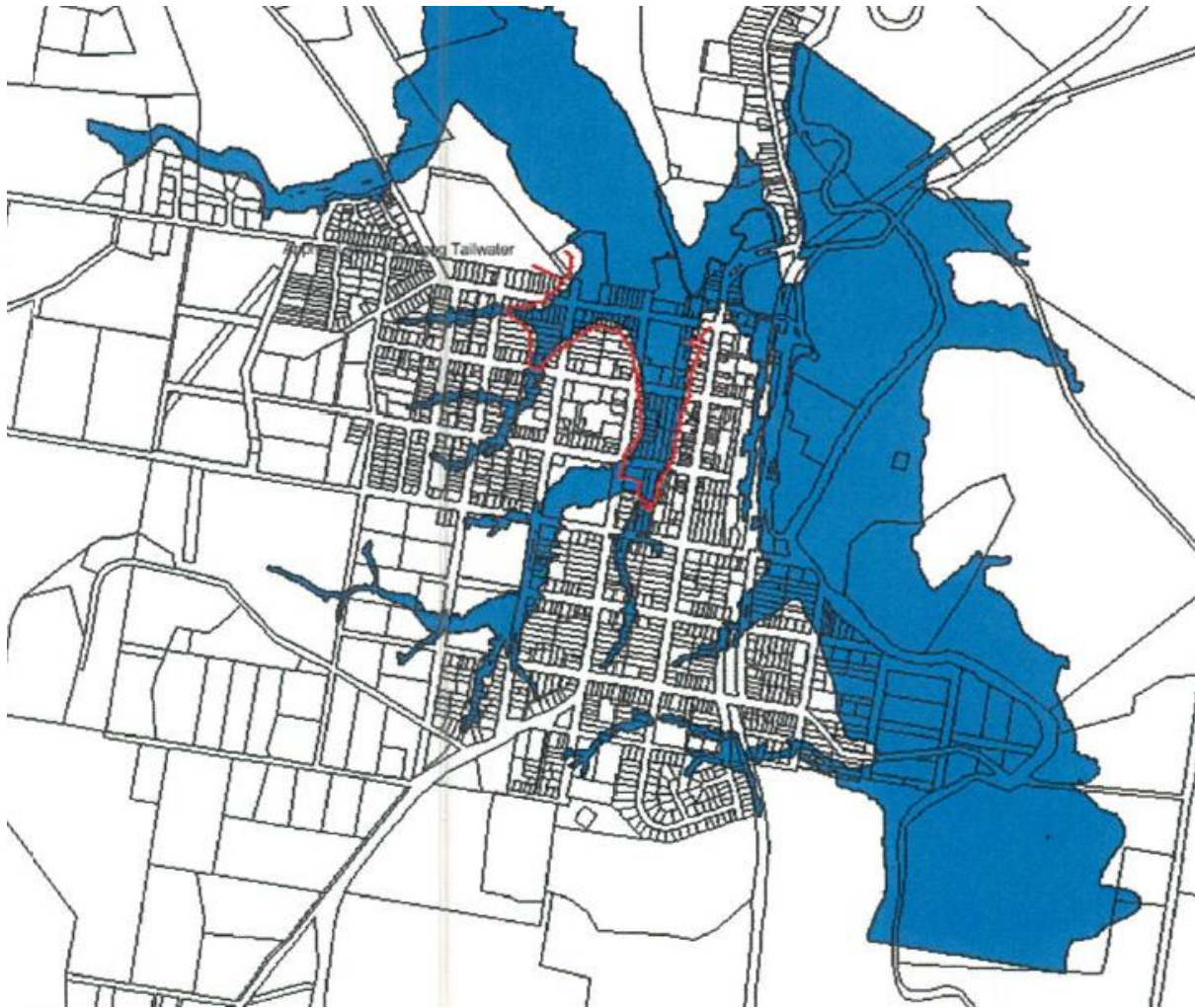


Figure 3: Combined 1:100 ARI levels

Blue area:- expanded 1:100 year flood data plus 500mm freeboard (as a result of the DFRMS&P)

Red line:- 1:500 year flood data plus 500mm freeboard

Mapping

The Planning Proposal proposes to amend the existing Flood Planning Map in the Dungog LEP. The maps in the Planning Proposal are not in the Standard Instrument format but are adequate to communicate the proposed changes clearly to community members and land owners.

The Planning Proposal will amend Flood Planning Map Sheet FLD _009AC.

NEED FOR THE PLANNING PROPOSAL

The Planning Proposal is required to implement the findings of the DFRMS&P, the outcome of the 2015 Dungog storm event that caused fatalities and received flood levels not recorded in Dungog historically. Therefore, the Planning Proposal is required to manage development in the new flood affected areas so that risk to life and property is minimised in the future.

The proposed objectives and provisions are the best means to implement the findings within the planning system. The DFRMS&P and the Superstorm Enquiry (*Inquest into the deaths of Robin MacDonald, Colin Webb and Brian Wilson (Dungog Floods) 2017*) recommended other outcomes including improvements to the flood warning system which are being implemented outside the planning system.

STRATEGIC ASSESSMENT

State

See below under State environmental planning policies and Floodplain Development Manual 2005 (Manual) and Guideline on Development Controls on Low Flood Risk Areas (Guideline).

Regional

Hunter Regional Plan 2036

Direction 16: Increase resilience to hazards and climate change

The Planning Proposal is consistent with Direction 16 and actions 16.1 and 16.2 as it will improve Dungog's resilience to flooding. The proposal implements Action 16.2 as it is the result of updated study concentrated on flooding impacts on Dungog town centre through the DFRMS&P.

Direction 21: Create compact settlement

Direction 22: Promote housing diversity

The Planning Proposal is also consistent from a housing perspective with Direction 21 to create a compact settlement and Direction 22 to promote housing diversity. The outcomes of the Planning Proposal will provide guidance for local strategies to avoid hazard areas and will contribute to settlement patterns by responding to natural constraints.

Local

Dungog Flood Risk Management Study and Plan 2017

The Planning Proposal is consistent with the DFRMS&P as it proposes limited expansion of the flood planning level. The DFRMS&P involved consultation with OEH Water, Floodplain and Coast and DP&E Environment Policy as well as community consultation before being adopted by Council on 7 October 2017.

Section 9.1 Ministerial Directions

Direction 1.1 Business and industrial zones

The Planning Proposal is inconsistent with clause 4(c) as it will potentially reduce the potential floor space in business zones. The inconsistency is justified in accordance with 5(d) as it is of minor significance because it will appropriately identify flood prone land based on an appropriate flood study. **The approval of the Minister's delegate is required for this inconsistency.**

Direction 3.1 Residential zones

The Planning Proposal is inconsistent with clause 4(a) and 5(b) as it will not broaden housing choice and it has the potential to restrict housing density over the identified flood affected land. The inconsistency is justified in accordance with 6(d) as it is of minor significance because it will appropriately identify flood prone land based on an appropriate flood study. **The approval of the Minister's delegate is required for this inconsistency.**

Direction 4.3 Flood Prone Land

The Planning Proposal is inconsistent with clauses 7 and 8 as it will impose flood related development controls above the residential flood planning level and is inconsistent with the Floodplain Development Manual 2005 (Manual) and Guideline on Development Controls on Low Flood Risk Areas (Guideline). This is not permitted unless adequate justification for the controls is demonstrated to the satisfaction of the Secretary.

The Guideline states that unless there are exceptional circumstances, the 1:100 FPL should be adopted. The Guidelines require that justification for a variation should be provided in writing OEH and the Department prior to public exhibition.

The DFRMS&P identifies that the April 2015 storm event represented a 1:1000 ARI however implementing this is not recommended because it is a very rare event (**Attachment 2**). The Planning Proposal recommends a 1:500 ARI plus a 0.5 metre freeboard because

- 1:1000 ARI would be a 0.4 metres depth increase
- 1:500 ARI is between 0.01 to 0.2 metres depth increase however in the Dungog tailwater area it represents 0.9 metres higher.
 - 0.01 to 0.2 metres plus a 0.5 metre freeboard will not mitigate the 1:500 in the Dungog 'tailwater area';
- Incorporating a 1:500 ARI means that we are planning for a more frequent event.
 - The April 2015 (1:1000) event has a 0.3% chance of happening in any 80-year period
 - The 1:500 ARI event has a 15% chance of happening in an 80-year period

The Dungog Flood Committee included members of OEH and SES who assisted the preparation of the DFRMS&P.

Further consultation has been undertaken with OEH in accordance with clauses 7 and 8. OEH have agreed to the 1:500 ARI and are supportive of exceptional circumstances being granted (**Attachment 1**).

The Planning Proposal may be inconsistent with Direction 4.3 where agreement to exceptional circumstances can be demonstrated to the Minister's delegate. Consultation with OEH confirms this support.

Considering likelihood, costs and benefits a 1:500 ARI was considered by the DFRMS&P as an acceptable balance (**Attachment 2**). There is sufficient data provided in the Planning Proposal and the DFRMS&P to justify exceptional circumstances, and this needs to be agreed to in writing by the Secretary of the Department of Planning and the Chief Executive Officer of the Office of Environment and Heritage prior to public exhibition of the planning proposal.

The community consultation for the DFRMS&P, the April 2015 storm and the subsequent Superstorm Enquiry means that the Dungog community is very aware of the changed understanding of flood impacts therefore these exceptional circumstances will be anticipated.

The approval of the Minister's delegate is required for this inconsistency, and this is to be sought as part of the approval for Exceptional Circumstances prior to the public exhibition of the planning proposal.

State environmental planning policies

- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The above State policies permit development through an accelerated approval process where the land is not *environmentally sensitive land*. Extending the flood prone land will preclude that process over an increased area in Dungog. However, development under these policies will still be permissible with consent via other planning pathways. The Planning Proposal is consistent with State policies.

SITE-SPECIFIC ASSESSMENT

Environmental

The outcomes of the Planning Proposal will not adversely impact on threatened species or native vegetation.

Social and Economic

There are approximately 50 residential dwellings, 3 lots in the B2 Local Centre zone and 8 lots that contain community facilities affected by the proposed 1:500 ARI.

Change to the flood planning level in Dungog LEP 2014 and its effect of exempt and complying development under State policies will mean that alterations and additions may incur additional costs. These additional costs to developers and home owners may be for expert flood reports or additional engineering requirements to construct higher floor levels. Changes to existing floor levels will not be imposed on existing dwellings but may be required in conjunction with proposed alterations to existing ground floor level construction.

Increase in occupancy numbers of existing dwellings through significant expansion of floor space or secondary dwellings will be required to consider flood compatibility and emergency evacuation.

Commercial floor levels may be able to retain existing floor levels however flood compatible electrical services and stock storage areas may be required.

These impacts will bring about a positive social impact as future development will be appropriate for flood affected conditions.

Infrastructure

There will be lesser imposition on public infrastructure as a result of the Planning Proposal. Future development will be assessed more cautiously given of the increased flood level.

CONSULTATION

Community

Council proposes adequate community consultation given the consultation already occurred through the DFRMS&P.

A period of 28 days is proposed and recommended for community consultation and this is considered adequate given the community understanding of the proposed changes. In conjunction with the public exhibition the following consultation is proposed;

- Report to Council post Gateway determination
- Notification to affected land owners
- Council website updated to include;
 - Exhibition details
 - FAQs
 - Hotline to answer questions from the public

Additional landowners affected by the combined 1:100 ARI have previously been consulted as part of the DFRMS&P. A letter of notification will be sent to the land owners as part of the community consultation for this Planning Proposal.

Agencies

Council proposes consultation with the following Government agencies;

- OEH Water Floodplain and Coast
- NSW State Emergency Services

Given the extent of consultation with these authorities during the preparation of the DFRMS&P further consultation is considered unnecessary.

TIME FRAME

A timeframe of 3-months is proposed to carry out the exhibition and forward the Planning Proposal to the Department to be finalised. This time period is considered appropriate.

LOCAL PLAN-MAKING AUTHORITY

The Minister delegated his plan making powers to councils in October 2012, however Dungog Council did not accept these delegations, therefore authority to exercise delegations is not issued.

CONCLUSION

The Planning Proposal is supported to proceed with conditions.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions (1.1 Business and industrial zones and 3.1 Residential zones) are minor.

It is recommended that the delegate of the Minister for Planning, determine that the Planning Proposal should proceed subject to the following conditions:

1. Prior to public exhibition, Exceptional Circumstances for the change to the flood planning level need to be granted by the Secretary of the Department of Planning and Environment and the Chief Executive of the Office of Environment and Heritage in accordance with the Guideline on Development Controls on Low Flood Risk Areas.
2. The Planning Proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is not required with any public authorities:
4. The time frame for completing the LEP is to be 3 months from the date of the Gateway determination.
5. Given that Dungog Council has not accepted the Minister delegations, Council should not be authorised to be the local plan-making authority to make this plan.
6. Amend the proposed Flood Planning Map to include the updated 1:100 flood planning level in Dungog 'tailwater area' in accordance with the Dungog Flood Risk Management Study and Plan.
7. Update Dungog Development Control Plan – Managing Our Floodplains chapter in accordance with the information and data contained in the Dungog

Flood Risk Management Study and Plan to be exhibited with the Planning Proposal



10/4/2018

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