

Planning Proposal

AMENDMENT TO LISMORE LEP 2012 TO INCLUDE OPTIONAL CLAUSE 5.22 SPECIAL FLOOD CONSIDERATIONS

24 March 2023



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EXECUTIVE SUMMARY

This Planning Proposal has been prepared to amend the Lismore LEP 2012 to include Standard Instrument LEP Optional Clause 5.22 Special Flood Considerations.

The proposal requests to opt into Clause 5.22 Special Flood Considerations to ensure flood risk for sensitive and hazardous development in the Lismore LGA is appropriately considered.

The aim of the Planning Proposal is to ensure that where sensitive or hazardous uses are proposed between the flood planning level (FPL) and probable maximum flood (PMF), that there are adequate controls to:

- (a) enable the safe occupation and evacuation of people subject to flooding.
- (b) ensure development on land is compatible with the land's flood behaviour in the event of a flood.
- (c) avoid adverse or cumulative impacts on flood behaviour.
- (d) protect the operational capacity of emergency response facilities and critical infrastructure during flood events; and
- (e) avoid adverse effects of hazardous development on the environment during flood events.

The Planning Proposal is consistent with the North Coast Regional Plan 2041 and State Environmental Planning Policies. The proposal is also consistent with section 9.1 Ministerial Directions.

This report assesses the merits of the Planning Proposal in accordance with the Department of Planning and Environment's *Local Environmental Plan Making Guideline* (September 2022). A Gateway determination is sought pursuant to Section 3.34 of the *Environmental Planning and Assessment Act 1979*.

PART 1 – OBJECTIVES AND INTENDED OUTCOMES

Objective

To amend the Lismore LEP 2012 to include Optional *Clause 5.22 Special Flood Considerations*.

Intended outcomes

- To ensure flood risk for sensitive and hazardous development in the Lismore LGA is appropriately considered.
- To enable the safe occupation and evacuation of people subject to flooding in floods greater than the defined flood event.
- To protect the operational capacity of emergency response facilities and critical infrastructure during large flood events.
- To avoid adverse effects of hazardous development on the environment during large flood events.

PART 2 – EXPLANATION OF PROVISIONS

The proposed outcome of the planning proposal will be achieved by:

- Opting into Standard Instrument LEP Clause 5.22 Special Flood Considerations, including the following land uses under Clause 5.22(5)(a):
 - (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
 - (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 Lismore local government area's (LGA's) urban area is largely built around the confluence of the Wilsons River and Leicester Creek. The Wilson River catchment is a complex catchment considered to be high risk, as noted in the 2022 Independent NSW Flood Inquiry.

The February 2022 flood caused significant damage to property and assets above the flood planning level, including to land uses listed under Standard Instrument Clause 5.22(5)(a). As such, Council requests that the optional Clause 5.22 be inserted into the Lismore LEP 2012.

Council will opt into all allowable land uses except for 5.22(5)(a)(m) *information and education facilities*. In determining appropriateness of land uses to be included under Clause 5.22, consideration has been given to whether the land use may be a critical use necessary during a flood event, whether flood inundation of the site could pose an unacceptable risk to the surrounding environment or people, and whether the user profile of the land use is considered more at risk during a flood event than those of other similar development.

Considering this, information and education facilities are not considered to have any greater risk profile than similar forms of development, are not necessary for flood response activities, and would not pose a risk to the environment or people in the event of flood. Therefore, it is not considered necessary for this land use to be included under Clause 5.22(5)(a) for the Lismore LGA.

The full clause as proposed to be adopted is provided in **Appendix 1**.

PART 3 – JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT

Section A – Need for the Planning Proposal

1. ***Is the Planning Proposal a result of an endorsed LSPS, strategic study or report?***

The Planning Proposal is not a result of an endorsed LSPS, strategic study or report. Lismore City Council was initially approached by the Department of Planning and Environment (DPE) with the option of having the clause added to the LEP by way of an amending State Environmental Planning Policy (SEPP). Due to policy priorities, Council elections and the timing of subsequent Council meetings, there was insufficient time for Council staff to obtain a Council resolution on the matter by the deadline provided.

2. ***Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?***

Considering there is now no option provided to Council to be included in an amending SEPP to adopt optional Clause 5.22, a Council-led Planning Proposal is the best and only means of achieving the objectives and intended outcomes.

Section B – Relationship to the strategic planning framework

3. ***Will the Planning Proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?***

Yes. The Planning Proposal gives effect to the objectives of the North Coast Regional Plan 2041. See **Appendix 2** for detail on how the proposal gives effect to the Plan.

4. ***Is the Planning Proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?***

The Planning Proposal is consistent with Council's LSPS – *Inspire Lismore 2040*. The relevant planning priorities are addressed in **Table 1**.

Table 1: Consistency with LSPS

#	Planning Priority	Consistency
13	Identify, manage and adapt to risks from natural hazards	Allowing flood-related development controls for sensitive uses between the FPL and PMF will allow Council to better manage and adapt to flood hazard.
14	Build community resilience and adapt to climate change	Being able to apply development controls to land affected by a broader range of floods greater than the defined flood event (DFE) will allow Council to ensure resilience to a range of land uses and the communities that use these facilities.

5. *Is the Planning Proposal consistent with any other applicable State and regional studies or strategies?*

The Planning Proposal is not inconsistent with any State and regional study or strategy.

6. *Is the Planning Proposal consistent with applicable SEPPs?*

The Planning Proposal simply adopts an optional clause in the Standard Instrument LEP. The Planning Proposal does not preclude the application of, and is consistent with, relevant State Environmental Planning Policies.

7. *Is the Planning Proposal consistent with applicable s9.1 Ministerial Directions?*

The Planning Proposal only seeks to insert an optional Standard Instrument LEP clause into the Lismore LEP 2012. There is therefore no inconsistency with any section 9.1 Ministerial Direction.

Section C – Environmental, social and economic impact

8. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?*

The Planning Proposal only provides considerations for development for flood prone land between the FPL and PMF. This will not have any environmental impacts.

9. *Are there any other likely environmental effects of the Planning Proposal and how are they proposed to be managed?*

There are no other environmental effects foreseen through adoption of the optional clause.

10. *How has the Planning Proposal adequately addressed any social and economic effects?*

The Planning Proposal may lead to additional requirements for development applications related to sensitive and hazardous development between the flood planning area and PMF. It is considered that a possible increase in the burden of information required to be submitted with a development application will be offset by the greater social and economic benefit provided through ensuring safe evacuation of people and greater protection of buildings and assets.

The February 2022 flood led to significant damage to properties and assets above the flood planning level. This had made clear the importance of consideration of flood events above the defined flood event, and the benefits of adopting Clause 5.22.

Section D – Infrastructure (Local, State and Commonwealth)

11. *Is there adequate public infrastructure for the Planning Proposal?*

The Planning Proposal will not increase demand for local, State or Commonwealth infrastructure.

Section E – State and Commonwealth Interests

12. What are the views of State and Federal public authorities and government agencies consulted in order to inform the Gateway determination?

No consultation has been conducted pre-Gateway given the minor nature of the planning proposal. State and federal public authorities and government agencies will be consulted in line with any Gateway condition.

PART 4 - MAPPING

The Planning Proposal does not include changes to any mapping. It only involves adding an optional clause from the Standard Instrument LEP into the Lismore LEP 2012. The clause as proposed to be inserted is provided at **Appendix 1**.

PART 5 – COMMUNITY CONSULTATION

Council will conduct community consultation in accordance with any Gateway determination. Public exhibition will be undertaken in accordance with the DPE *Local Environmental Plan Making Guideline* – September 2022 and Council's Community Participation Plan.

PART 6 – PROJECT TIMELINE

The proposed timeline for the completion of the Planning Proposal is as follows:

Estimated Completion	Plan Making Steps
April 2023	Report Planning Proposal to Council
June 2023	Gateway determination issued by DPE
June 2023	Amend Planning Proposal report in accordance with Gateway
June 2023	Commence agency consultation
June 2023	Commence public exhibition
July 2023	Consideration of submissions
August 2023	Report to Council – consultation and submissions analysis
August 2023	Submission to Department for finalisation (where applicable)
September 2023	Gazettal of LEP amendment

APPENDIX 1

PROPOSED LEP CHANGES

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 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.
- (b) incorporates appropriate measures to manage risk to life in the event of a flood.
- (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) 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
- (l) hostels
- (m) respite day care centres
- (n) seniors housing
- (o) sewerage systems
- (p) tourist and visitor accommodation
- (q) water supply systems

APPENDIX 2

NORTH COAST REGIONAL PLAN 2041 - COMPLIANCE TABLE

Objective	Consistency
1. Provide well located homes to meet demand	N/A
2. Provide for more affordable and low cost housing	N/A
3. Protect regional biodiversity and areas of high environmental value	N/A.
4. Understand, celebrate and integrate Aboriginal culture	N/A
5. Manage and improve resilience to shocks and stresses, natural hazards and climate change	Allowing consideration of flood impacts on sensitive development between the FPL and PMF will improve Council's ability to manage and improve resilience to natural hazards and climate change.
6. Create a circular economy	N/A
7. Promote renewable energy opportunities	N/A
8. Support the productivity of agricultural land	N/A
9. Sustainably manage and conserve water resources	N/A
10. Sustainably manage the productivity of our natural resources	N/A
11. Support cities and centres and coordinate the supply of well-located employment land	N/A
12. Create a diverse visitor economy	N/A
13. Champion Aboriginal self-determination	N/A
14. Deliver new industries of the future	N/A
15. Improve state and regional connectivity	N/A
16. Increase active and public transport usage	N/A
17. Utilise new transport technology	N/A
18. Plan for sustainable communities	N/A
19. Public spaces and green infrastructure support connected and healthy communities	N/A
20. Celebrate local character	N/A