

Report

Subject	Planning proposal to adopt LEP clause 5.22 - special flood considerations
TRIM Record No	BP23/203:EF23/65
Prepared by	Senior Strategic Planner
Reason	Council resolution
Strategic Theme	An inclusive and healthy community
Strategy	Our community is safe, happy and healthy.
Action	Maintain public health, safety and amenity.

Executive Summary

At the Council meeting on 14 March 2023, Council resolved to prepare a planning proposal to include Standard Instrument optional clause 5.22 (Special Flood Considerations) into the Lismore Local Environmental Plan (LEP) 2012.

Whereas the mandatory flood planning clause (5.21 *Flood Planning*) only applies to land within the flood planning area, adoption of the Special Flood Considerations clause will enable Council to consider flood matters and apply development controls to sensitive and hazardous development on land between the flood planning area and the probable maximum flood (PMF). This will allow Council to consider the impacts of rarer flood events on development that has a higher risk to life, the environment and/or essential infrastructure.

The proposal has been prepared by Council pursuant to Section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), and is referred to the Lismore Local Planning Panel for advice in accordance with Section 2.19 of the EP&A Act.

The planning proposal demonstrates strategic merit. Council officers recommend that the planning proposal proceeds to Gateway, subject to consideration by the elected Council.

Recommendation

That:

1. The Lismore Local Planning Panel (LPP) recommend that the proposal proceeds to Gateway determination.
2. Any additional advice is provided as required.

Background

In 2021, Council was contacted by the Department of Planning and Environment (DPE) in relation to opting into a special flood considerations clause (Clause 5.22 of the Standard Instrument – Principal Local Environmental Plan). Councils were able to choose to opt into the clause without having to prepare individual Council-led planning proposals. Due to the timeframes for reporting to Council, upcoming

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Council elections and the timeframe provided for response, it was considered there was insufficient time to obtain a Council resolution to opt into the clause at that stage. DPE indicated that councils wishing to opt into the clause at a later date could prepare a Council-led planning proposal.

At the 6 March 2023 Lismore Floodplain Risk Management Committee (FRMC) meeting, a presentation was provided by Council staff regarding opting into Clause 5.22.

During this presentation it was advised that an Explanation of Intended Effects (EIE) (**Attachment 1**) had been placed on public exhibition from 17 January until 28 February 2023 regarding the Special Flood Considerations clause. The EIE indicated that DPE was considering a number of options regarding the clause:

- progressing an amending SEPP to include Clause 5.22 in the LEPs of the 32 councils that chose to opt into the clause in 2021,
- making Clause 5.22 mandatory for all NSW councils, or
- transferring Clause 5.22 into the State Environmental Planning Policy (Resilience and Hazards) 2021 to apply to all councils.

Without a timeframe for DPE's decision, the FRMC resolved to recommend that Council prepare a planning proposal to opt into Clause 5.22.

At the 14 March 2023 Council meeting, Council adopted the minutes and recommendations of the March FRMC meeting (**Attachment 2**), and resolved to prepare a planning proposal to opt into Clause 5.22. Council staff have prepared a planning proposal (**Attachment 3**), and seek the Lismore Local Planning Panel's advice on its merit.

Details of the proposal

The proposal seeks to opt into the Standard Instrument LEP Clause 5.22 – Special Flood Considerations. The clause as proposed to be inserted into the Lismore LEP 2012 reads:

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, 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) *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.*

What is considered sensitive and hazardous development can be selected by Council from the following 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,
- (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.

Council staff have drafted the planning proposal to include all of the above land uses except for 'information and education facilities'. Whereas all other terms refer to populations that may be more vulnerable to flood events or where flooding may cause major adverse flow-on impacts, such as environmental or flood response impacts, information and education facilities such as museums and libraries are not considered to necessarily service vulnerable populations or have especially adverse impacts from flooding. Council, however, may choose to revise the list of land uses to which Clause 5.22 applies, and the LPP may provide advice on uses to include or exclude.

Matters for consideration

The Department's *LEP Making Guidelines* includes the following questions that must be considered to establish merit.

REQUIREMENT	JUSTIFICATION
Section A – Need for the Planning Proposal	
<p><i>Is the planning proposal a result of an endorsed LSPS, strategic study or report?</i></p> <p><i>Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?</i></p>	<p>The planning proposal is not a result of an endorsed LSPS, strategic study or report. 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. A Council-led planning proposal was recommended to those Councils that could not meet the deadlines.</p> <p>As such, a Planning Proposal is considered the best means of achieving the objectives.</p>
Section B – Relationship to Strategic Planning Framework	
<p><i>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)?</i></p> <p><i>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?</i></p> <p><i>Is the planning proposal consistent with any other applicable State and regional studies or strategies?</i></p> <p><i>Is the planning proposal consistent with applicable SEPPs?</i></p> <p><i>Is the Planning Proposal consistent</i></p>	<p>The planning proposal does not apply to any specific parcel of land, therefore many strategic planning policies and environmental planning instruments do not apply, and the planning proposal does not hinder their application.</p> <p>The Planning Proposal is consistent with applicable objectives in the North Coast Regional Plan (2041), specifically:</p> <p style="padding-left: 40px;">5. Manage and improve resilience to shocks and stresses, natural hazards and climate change</p> <p>The Planning Proposal is consistent with Lismore's Local Strategic Planning Statement, including:</p> <p style="padding-left: 40px;">13. Identify, manage and adapt to risks from natural hazards</p> <p style="padding-left: 40px;">14. Build community resilience and adapt to climate change</p>

REQUIREMENT	JUSTIFICATION
<i>with applicable s9.1 Ministerial Directions?</i>	<p>The Planning Proposal is consistent with applicable State and regional studies or strategies.</p> <p>The Planning Proposal is consistent with applicable SEPPs.</p> <p>The Planning Proposal is consistent with applicable Section 9.1 Directions.</p> <p>Further detail of consistency with the strategic planning framework is provided in the planning proposal.</p>
Section C – Environment, Social and Economic Impact	
<p><i>Is there any likelihood that critical habitat of threatened species, populations or ecological communities or their habitats, will be adversely affected because of the proposal?</i></p> <p><i>Are there any other likely environmental effects of the Planning Proposal and how are they proposed to be managed?</i></p> <p><i>Has the Planning Proposal adequately addressed any social and economic effects?</i></p>	<p>The planning proposal only provides considerations for development for flood prone land between the FPL and PMF. This will not have any environmental impacts.</p> <p>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.</p> <p>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.</p>
Section D – Infrastructure (Local, State and Commonwealth)	
<p><i>Is there adequate public infrastructure for the Planning Proposal?</i></p> <p><i>What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?</i></p>	<p>The planning proposal will not increase demand for local, State or Commonwealth infrastructure.</p> <p>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.</p>

Next steps

Following the Panel's consideration, the planning proposal will be reported to Council for consideration. Should the planning proposal request be endorsed, it will be forwarded to DPE seeking a Gateway determination.

Following a Gateway determination in support of the planning proposal, there will be public authority and community consultation and a further report to Council, prior to proceeding with the making of any amendment to the LLEP 2008.

Conclusion

Pursuant to the requirements of the LEP Making Guidelines (September 2022) and relevant Ministerial Directions, this report provides a merit assessment of the planning proposal request. The report finds

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that the proposal demonstrates strategic merit. As the proposal only opts into a Standard Instrument LEP optional clause, no site-specific concerns are relevant. The planning proposal is presented to the Panel for consideration and advice.

Attachment/s

1. Explanation of Intended Effects - Special Flood Consideration Clause (Over 7 pages)
2. Lismore Floodplain Risk Management Committee minutes - 6 March 2023 (Over 7 pages)
3. DRAFT Planning Proposal - LEP Clause 5.22 (Over 7 pages)