



IRF23/968

## Gateway determination report – PP-2023-783

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Insert Clause 5.22 Special Flood Considerations into  
Lismore LEP 2012

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 Reports and plans supporting the proposal**

### Relevant reports and plans

Planning Proposal: Amendment to Lismore LEP 2012 to include optional clause 5.22 Special Flood Considerations dated 24 March 2023

Council resolution 39/23 of 11 April 2023 Council meeting

Planning Proposal Application Form PP-2023-783 dated 17 April 2023

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Lismore</b>
<b>PPA</b>	<b>Lismore City Council</b>
<b>NAME</b>	<b>Insert Clause 5.22 Special Flood Considerations</b>
<b>NUMBER</b>	<b>PP-2023-783</b>
<b>LEP TO BE AMENDED</b>	<b>Lismore LEP 2012</b>
<b>ADDRESS</b>	<b>Applies to Lismore LGA.</b>
<b>DESCRIPTION</b>	<b>As above</b>
<b>RECEIVED</b>	<b>17/04/2023</b>
<b>FILE NO.</b>	<b>IRF23/968</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to amend Lismore LEP 2012 to include the SI LEP optional clause 5.22 Special Flood Considerations. The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Lismore LEP 2012 to insert the SI LEP optional clause 5.22 Special Flood Considerations. It is proposed to include clause 5.22 as drafted within the standard instrument and include all sensitive and hazardous development land uses listed under subclause 5(a) except 'information and education facilities'.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The planning proposal does not apply to a specific site. Clause 5.22 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.

## 1.5 Mapping

The planning proposal relates only to written provisions of the LEP and does not require any maps.

## 1.6 Background

Councils were contacted in 2021 by the Department's policy team with an option to opt into the new optional SI LEP clause 5.22 without having to prepare an individual planning proposal. Due to time constraints Lismore Council did not opt in as part of this process.

At the 14 March 2023 Council meeting, Council adopted the minutes and recommendations of its Floodplain Risk Management Committee to prepare a planning proposal to insert Clause 5.22 into Lismore LEP 2012.

The clause 5.22 Special Flood Considerations Explanation of Intended Effect (EIE), and the LEPs into which it is going to be inserted, was exhibited by the Department in January 2023. The EIE also considered the possibility of state-wide application of clause 5.22 through the standard instrument or inserting the clause into the Resilience and Hazards SEPP. The Department's policy team has indicated that subject to ministerial approval this process is expected to be completed in July / August 2023.

A planning proposal to insert clause 5.22 into Lismore LEP 2012 is considered appropriate. As it is expected that the EIE for clause 5.22 will be finalised first, any changes that result from that process in terms of method or content can and will be adequately addressed prior to finalising the proposal.

## 2 Need for the planning proposal

The planning proposal is needed to amend Lismore LEP 2012 to include the SI LEP optional clause 5.22 Special Flood Considerations.

The planning proposal is the best means of achieving the objectives and intended outcomes.

## 3 Strategic assessment

### 3.1 Regional Plan

The North Coast Regional Plan 2041 provides the overarching strategic direction for land use and development across the North Coast region with a focus on liveability, resilience, economic growth, environmental protection, and planning for sustainable communities.

The proposal is considered to be consistent with the North Coast Regional Plan 2041.

## 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies.

**Table 4 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement Inspire Lismore 2040	<p>The proposal is consistent with the themes within Council's LSPS, particularly the following planning priorities:</p> <ul style="list-style-type: none"> <li>Identify, manage and adapt to risks from natural hazards (PP13)</li> <li>Build community resilience and adapt to climate change (PP14)</li> </ul>

## 3.3 Local planning panel (LPP) recommendation

Council staff have advised that the General Manager has determined that the planning proposal will not have any significant adverse impacts on the environment or adjoining land. Consistent with the Department's Local Planning Panels Direction, it has therefore not been referred by Council to the Lismore Local Planning Panel for advice.

## 3.4 Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all relevant section 9.1 Ministerial Directions except Direction 4.3 Planning for Bushfire Protection as it applies to areas of bushfire prone land. Until after a Gateway determination has been issued and consultation with the NSW Rural Fire Service has been completed, consistency with this Direction remains unresolved.

## 3.5 State environmental planning policies (SEPPs)

The planning proposal is not inconsistent with any State Environmental Planning Policies.

# 4 Site-specific assessment

## 4.1 Environmental

The planning proposal does not enable any specific development and is not likely to have any adverse environmental impacts. As the proposal does affect land below the PMF, it is recommended that consultation with the NSW Biodiversity and Conservation Division be undertaken.

## 4.2 Social and economic

The special flood consideration clause will allow for greater consideration of flood impacts of sensitive and hazardous land uses between the flood planning area and probable maximum flood level.

Additional information may be required for development applications to which this clause applies, however this will be offset by the benefit of ensuring safe evacuation of people and greater protection of buildings and assets.

It is considered that this will have a positive social and economic impact.

## 4.3 Infrastructure

The planning proposal will not increase the demand for local, state or commonwealth infrastructure.

## 5 Consultation

### 5.1 Community

The planning proposal states that community consultation will be undertaken in accordance with the Gateway determination, the Department's LEP Making Guideline and Lismore Community Participation Plan.

The planning proposal is considered to be a basic LEP as outlined within the Department's LEP Making Guideline. A consultation period of 10 working days is recommended and forms part of the conditions of the Gateway determination.

### 5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 30 days to comment:

- NSW Biodiversity and Conservation Division

## 6 Timeframe

Council proposes a six (6) month time frame to complete the LEP.

A time frame of 6 months is considered appropriate and in line with the Department's commitment to reduce processing times.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal could be affected by the outcomes of the associated EIE process, it is recommended that the Department act as the local plan-making authority for this proposal.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposal is not inconsistent with the local and regional strategic planning policies;
- The proposal will provide a positive social and economic outcome with no adverse environmental impacts; and
- The proposal is consistent with the Standard Instrument (Local Environmental Plans) Order 2006.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Consultation is required with the following public authorities:
  - NSW Biodiversity and Conservation Division
  - NSW Rural Fire Service
2. The planning proposal should be made available for community consultation for a minimum of 10 working days.
3. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.
4. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



1 May 2023

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(Signature)

\_\_\_\_\_  
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16 May 2023

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