

Attachment B

Detailed assessment of relevant clauses of Kempsey Local Environmental Plan 2013.

5.21 Flood planning

(1) *The objectives of this clause are as follows—*

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

(2) *Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

(3) *In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—*

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

(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—*

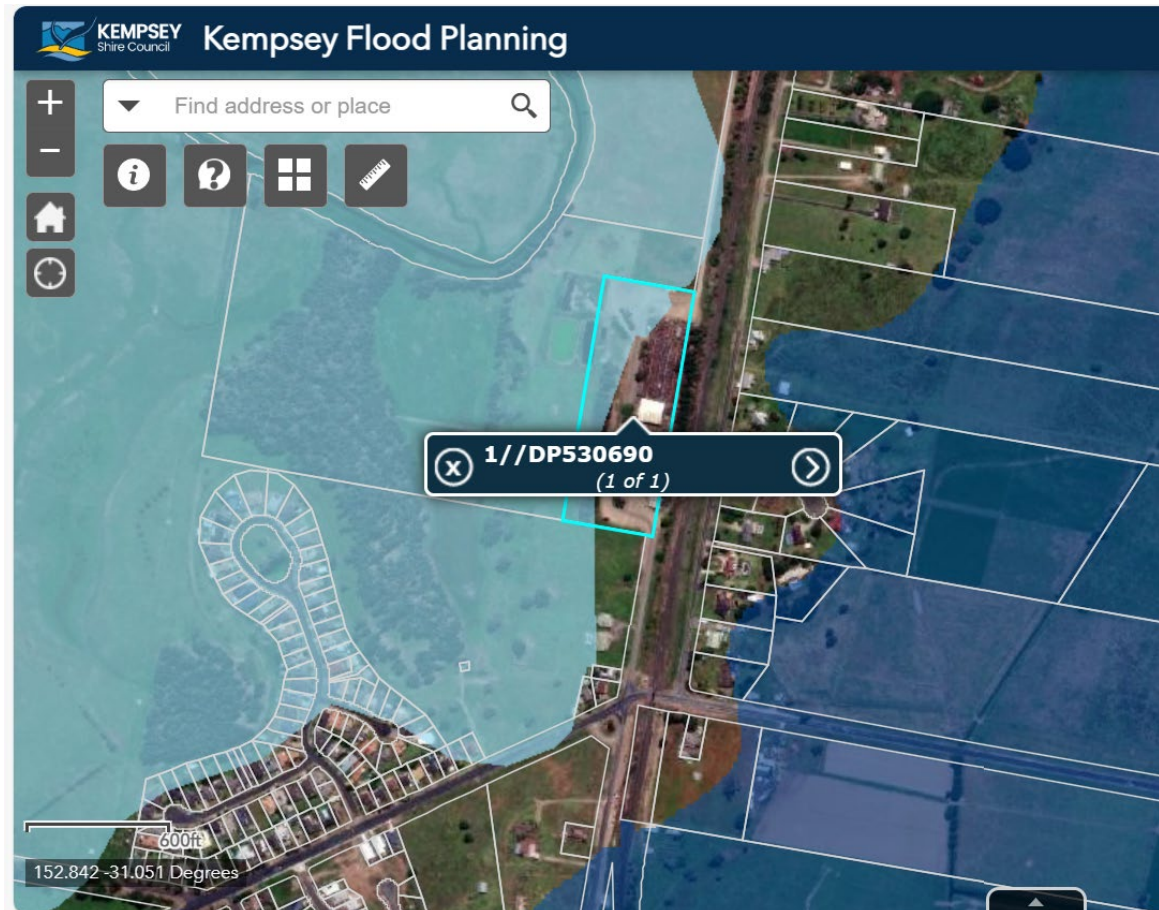
Considering Flooding in Land Use Planning Guideline means the Considering Flooding in Land Use Planning Guideline published on the Department's website on 14 July 2021.

flood planning area has the same meaning as it has in the Floodplain Development Manual.

Floodplain Development Manual means the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

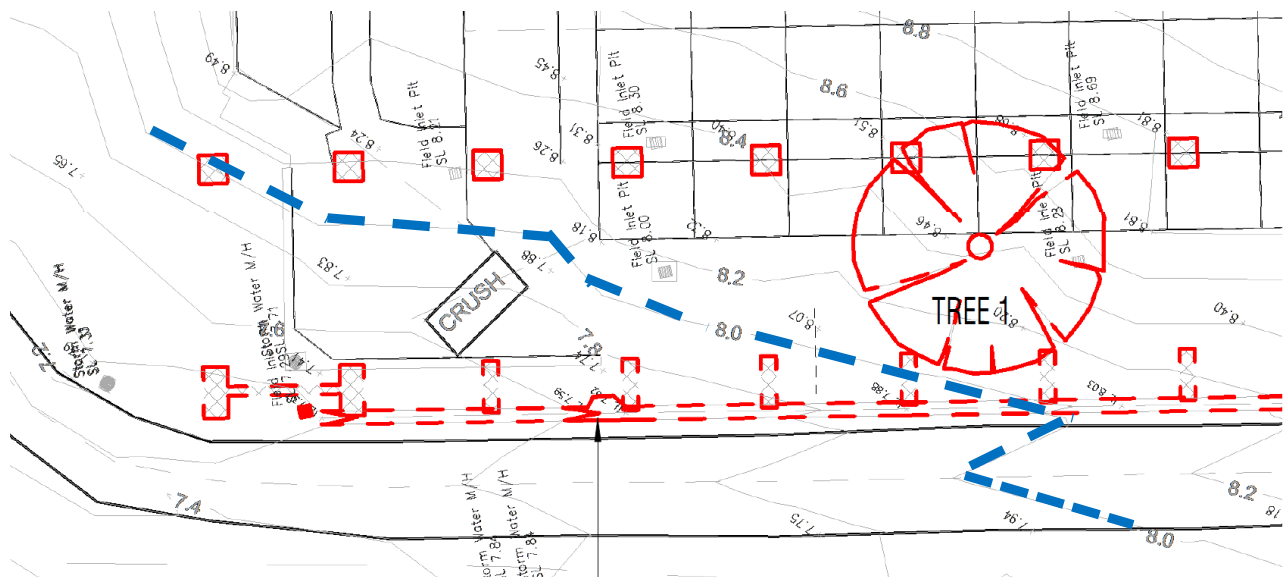
Response:

The statement of environmental effects indicated that the site was only impacted in the PMF event. However, this only took into consideration the flooding from the main channel of the Macleay River and not the flooding from Christmas Creek to the west of the site. See the extract from Council's flood mapping below.



Kempsey Shire Council engineer has now provided a 1% AEP Flood Level for the site of R.L.8.03m AHD taking in climate change from the latest model CC2100. This means that the north west corner of the proposed roof structure is impacted by the 1% AEP Flood level. In effect just the foundations of the seven corner roof columns are impacted and then only to a maximum depth of 600mm. The extract of the structure plan is over the page with the blue dashed line showing the approximate 1% AEP Flood Level.

Extract of structure site plan with approximate 1% AEP Flood Level



The key provisions are in parts (2) and (3). I advise as follows:

(2)

(a) is compatible with the flood function and behaviour on the land, and

The proposed building is only marginally impacted by the 1% AEP Flood Level. However, the overflow parking, truck parking and waste treatment system are impacted. Given the provision of higher ground on the site and the infrequent use of the facility the impacts are manageable.

(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and

The development is away from neighbouring developments. The parts of the building below flood level are very minor. It is reasonable to simply condition the development consent to ensure the appropriate design.

(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and

The vast majority of the yards are flood free. It is likely in periods of impending flood the saleyards would not be operating. However, works are required to ensure the site is prepared for the impending flood. It is important that those people undertake the necessary tasks can exit the site in sufficient time before access roads are flooded.

(d) incorporates appropriate measures to manage risk to life in the event of a flood, and

The flood evacuation is relatively simple as there is ample space on the site above the flood planning level.

(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

The proposed development is on relatively flat highly modified land and is remote from any riparian areas or waterways.

(3)

(a) the impact of the development on projected changes to flood behaviour as a result of climate change,

The flood level provided takes into account climate change.

(b) the intended design and scale of buildings resulting from the development,

The buildings are essentially flood free.

(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,

A condition of consent has been recommended to ensure safe evacuation.

(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

The buildings are essentially flood free.

7.1 Acid sulfate soils

(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

Class of land	Works
1	Any works.
2	Works below the natural ground surface. Works by which the watertable is likely to be lowered.
3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.
4	Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

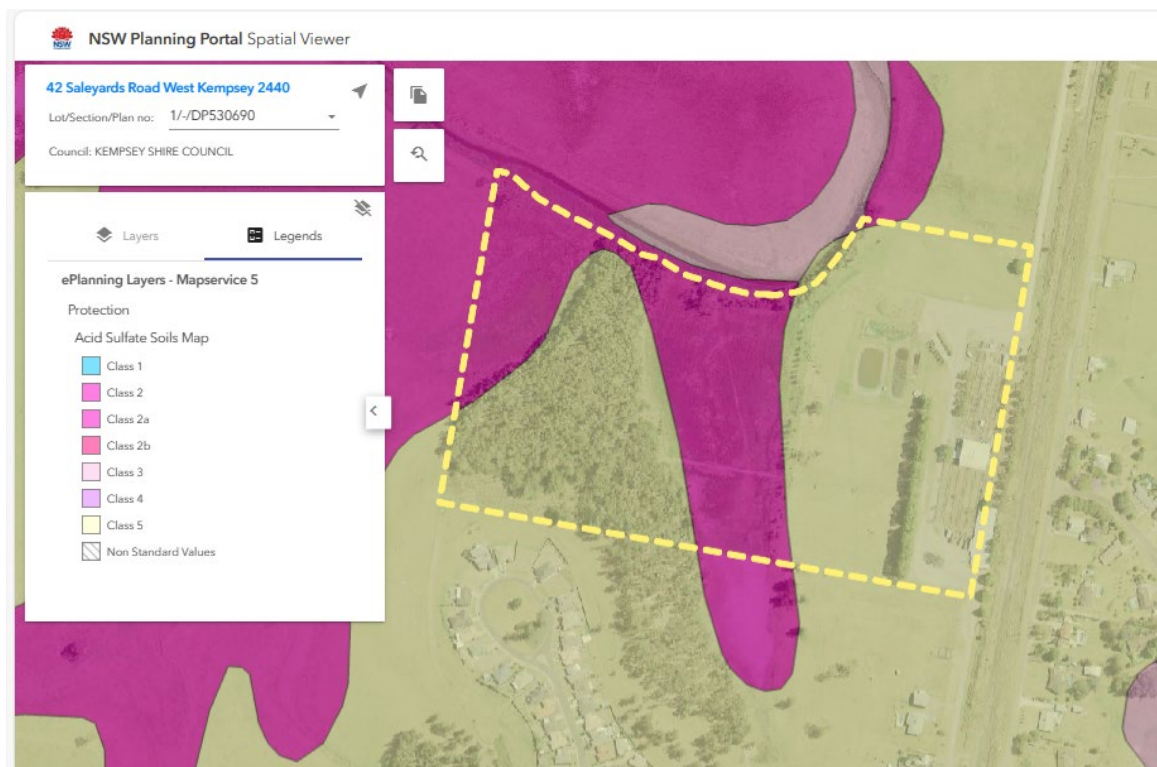
(4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if—

(a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and

- (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.
- (5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power)—
- (a) emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,
 - (b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),
 - (c) minor work, being work that costs less than \$20,000 (other than drainage work).
- (6) Despite subclause (2), development consent is not required under this clause to carry out any works if—
- (a) the works involve the disturbance of less than 1 tonne of soil, and
 - (b) the works are not likely to lower the watertable.
- (7) Despite subclause (2), development consent is not required under this clause for the carrying out of works for the purpose of agriculture if—
- (a) a production area entitlement is in force in respect of the land when the works are carried out, and
 - (b) the works are carried out in accordance with a drainage management plan, and
 - (c) the works are not carried out in respect of a major drain identified on the Acid Sulfate Soils Map, and
 - (d) the works are not carried out on land in Zone C2 Environmental Conservation or on land identified as “coastal wetlands” on the Coastal Wetlands and Littoral Rainforests Area Map, within the meaning of State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2.
- (8) In this clause—
- drainage management plan* means an irrigation and drainage management plan that—
- (a) is prepared in accordance with the NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005), and
 - (b) is endorsed by the Sugar Milling Co-operative as being appropriate for the land.
- NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005)* means the guidelines approved by the Director-General of the Department of Infrastructure, Planning and Natural Resources on 25 May 2005.
- production area entitlement* means a contractual arrangement between the Sugar Milling Co-operative and a grower member of that co-operative for the production of sugar cane for milling.
- Sugar Milling Co-operative* means the New South Wales Sugar Milling Co-operative Limited or its successor.

Response:

Even though the land is mapped as Class 5 the clause does not apply to the development as development site is above 5 metres AHD.



7.2 Earthworks

- (1) *The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*
- (2) *Development consent is required for earthworks unless—*
 - (a) *the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or*
 - (b) *the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.*
- (3) *Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—*
 - (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
 - (b) *the effect of the development on the likely future use or redevelopment of the land,*
 - (c) *the quality of the fill or the soil to be excavated, or both,*
 - (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
 - (e) *the source of any fill material and the destination of any excavated material,*
 - (f) *the likelihood of disturbing relics,*
 - (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Note—

The [National Parks and Wildlife Act 1974](#), particularly section 86, deals with harming Aboriginal objects.

Response:

Earthworks are generally limited to those required for the building pad and car park.

Recommended conditions include a requirement to prepare a sediment and erosion control plan by a qualified practicing Civil Engineer.

Recommended conditions also deal with the unexpected disturbing of aboriginal relics.

7.4 Koala habitat

- (1) *The objective of this clause is to effectively manage koala habitat, including—*
- (a) *minimising the potential for adverse impacts within current and future areas of core koala habitat, and*
 - (b) *ensuring that preferred koala food trees are effectively managed and conserved across all land where possible.*
- (2) *This clause applies to land identified as “Area Subject to Koala Management Plan” on the Koala Management Plan Map.*
- (3) *Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development is in accordance with the Comprehensive Koala Plan of Management for Eastern Portion of Kempsey Shire LGA Volume I—The CKPoM (Working Provisions), published in April 2011.*

Response:

Council's [Comprehensive Koala Plan of Management for Eastern Portion of Kempsey Shire LGA](#) applies to the site. The land is not mapped Potential Koala Habitat and no koala habitat trees are to be removed. As such no further assessment under the plan is required.

7.9 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

Response:

Adequate services can be provided to service the development. Treatment of sewage will be via a new onsite system.