

## ITEM 7

## OPTIONAL STANDARD LOCAL ENVIRONMENTAL PLANNING CLAUSE - FLOOD PLANNING

As part of an amendment to the Standard LEP Instrument and all Local Environmental Plans, including the Wollongong LEP 2009, the NSW Department of Planning, Industry and Environment is replacing the existing flood planning clause with two new clauses. The second clause is optional, and the Department is seeking Council's advice as to whether it should be included in the Wollongong LEP 2009.

It is recommended that Council support the inclusion of the optional clause 5.22 in the Wollongong LEP 2009.

### RECOMMENDATION

The NSW Department of Planning, Industry and Environment be advised that Council supports the inclusion of clause 5.22 Special flood considerations and all the nominated land uses, in the Wollongong Local Environmental Plan 2009.

### REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

### ATTACHMENTS

- 1 Standard Instrument (LEP) Amendment (Flood Planning) Order 2021 – Proposed Flood Clauses

### BACKGROUND

Wollongong LEP 2009 clause 7.3 Flood Planning currently identifies the flood planning area (1% Average Recurrence Interval flood event, plus 0.5m freeboard) and controls to be considered when assessing development applications.

The NSW Department of Planning, Industry and Environment has reviewed flood planning provisions across NSW. The Department exhibited a draft Flood Planning Package between 30 April 2020 until 25 June 2020. On 14 May 2021 the Department published the final Flood Planning Package comprising of six documents. The new provisions will commence on 14 July 2021.

- 1 Environmental Planning and Assessment Amendment (Flood Planning) Regulation 2021 which introduces a replacement clause to be included in Planning Certificates. The clause requires Council to provide advice on whether the land is subject to development controls as either a flood planning area or a special flood consideration area (discussed below).
- 2 Section 9.1 Local Planning Direction – Flooding, which will replace the existing Direction. The Direction applies when Council is considering a Planning Proposal on flood prone land.
- 3 Planning Circular – Considering flooding in land use planning guidance and statutory requirements.
- 4 Considering Flooding in Land Use Planning Guideline.
- 5 State Environmental Planning Policy Amendment (Flood Planning) 2021 which will remove clause 7.3 and the definition of flood planning map from the Wollongong LEP 2009 and other LEPs.
- 6 Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021 (Attachment 1) which introduces two new clauses into the Standard LEP Instrument and all NSW LEPs, including the Wollongong LEP 2009.
  - o Clause 5.21 Flood Planning - This clause is compulsory, and will apply to land located within the flood planning area, which is defined as being 1% Average Recurrence Interval plus 0.5m freeboard. This represents the high and medium flood hazard areas in our current Floodplain Risk Management Studies and Plans.

The clause requires that development consent must not be granted unless Council (or other consent authority) is satisfied that the development -

- is compatible with the flood function and behaviour on the land
- will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties
- 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
- incorporates appropriate measures to manage risk to life in the event of a flood
- 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 clause requires that as part of the assessment of development applications consideration be given to -

- the impact of the development on projected changes to flood behaviour as a result of climate change
  - the intended design and scale of buildings resulting from the development
  - whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood
  - the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.
- Clause 5.22 Special flood considerations - This clause is optional, and Council can choose to have it included in the Wollongong LEP 2009, by the Department if advice is provided by 30 June 2021. After this date, Council would need to resolve to prepare and exhibit a draft Planning Proposal if it subsequently decided to include the clause in the LEP.

The clause will apply to land located above the flood planning area (1% Average Recurrence Interval) and below the Probable Maximum Flood (PMF). This represents the low hazard flood areas in our current Floodplain Risk Management Studies and Plans.

The clause requires that as part of the assessment of development applications for nominated sensitive and hazardous types of development consideration be given to -

- the safe occupation and efficient evacuation of people in the event of a flood
- measures to manage risk to life in the event of a flood
- not adversely affecting the environment in the event of a flood.

Council can also choose to nominate all or some of the land uses from the following list of sensitive and hazardous development. It is recommended that all the land uses be nominated -

- 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 (ie treatment plants, and the reticulation system)
- q tourist and visitor accommodation
- r water supply systems (ie water storage and treatment facilities and the reticulation system)

The list is similar to land uses listed in Council DCP Chapter E12 Development in the Floodplain, that currently require an additional level of assessment.

While some uses are not permitted (eg eco-tourism facilities) and others are unlikely to occur in the low hazard area, it is considered preferable for the entire list to be included in the LEP to ensure its continued relevance over time.

## PROPOSAL

The legislative changes made by the NSW Department of Planning, Industry and Environment will mean that on 14 July 2021, the existing LEP clause 7.3 will be removed and the new clause 5.21 Flood Planning, inserted into the Wollongong LEP 2009.

The Department has asked Council whether it wishes clause 5.22 Special flood considerations to be included in the LEP now by an amendment made by the Department. Clause 5.22 applies to nominated sensitive and hazardous development in the low flood hazard area. Council has the options of -

- 1 Requesting the Department to include the clause in the LEP now, via the SEPP amendment. The clause will become effective on 14/7/21. Recommended.
- 2 Resolving at a later date to prepare and exhibit a draft Planning Proposal to include the optional clause in the LEP.
- 3 Resolving not to include the optional clause in the LEP.

## CONSULTATION AND COMMUNICATION

The NSW Department of Planning, Industry and Environment exhibited the draft Flood Planning Package between 30 April 2020 until 25 June 2020.

The new flood provisions have been reviewed by Council officers from the Infrastructure Strategy and Planning Division, Development Assessment and Certification Division and City Strategy Division.

## PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 Goal 1.1 "Our natural environment and waterways are protected and enhanced". It specifically delivers on the following:

Community Strategic Plan	Delivery Program 2018-2022	Operational Plan 2020-21
Strategy	4 Year Action	Operational Plan Actions
1.1.3 The potential impacts of natural disasters, such as those related to flood and landslips are managed and risks are reduced to protect life, property and the environment	1.1.3.3 Establish and maintain research programs to reduce environmental risk	Develop and implement best practice for Flood Management Studies and Plans and Development Control Plans

## CONCLUSION

The NSW Department of Planning, Industry and Environment has reviewed flood planning provisions across NSW. The NSW Department of Planning, Industry and Environment is replacing the existing flood planning clause within LEPs with two new clauses. The second clause is optional, and the Department is seeking Council's advice as to whether it should be included in the Wollongong LEP 2009.

It is recommended that Council support the inclusion of the optional clause 5.22 in the Wollongong LEP 2009.



New South Wales

## **Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021**

under the

Environmental Planning and Assessment Act 1979

MARGARET BEAZLEY, Governor

I, the Honourable Margaret Beazley AC QC, Governor of New South Wales, with the advice of the Executive Council, make the following Order under section 3.20 of the *Environmental Planning and Assessment Act 1979*.

Dated 12 May 2021.

By Her Excellency's Command,

ROB STOKES, MP  
Minister for Planning and Public Spaces

Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021 [NSW]

---

## **Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Order**

This Order is *Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021*.

### **2 Commencement**

This Order commences on 14 July 2021 and is required to be published on the NSW legislation website.

Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021 [NSW]  
Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental  
Plans) Order 2006

## **Schedule 1      Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental Plans) Order 2006**

### **Clauses 5.21 and 5.22**

Insert after clause 5.20—

#### **5.21 Flood planning [compulsory]**

- (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—

Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021 [NSW]  
Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental  
Plans) Order 2006

*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.

## 5.22 Special flood considerations [optional]

- (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—



Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021 [NSW]  
Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental  
Plans) Order 2006

---

(a) *[list land uses]*

**Direction—** Only the following land uses are permitted to be included in the 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.