

15.4 OPTIONAL SPECIAL FLOOD CONSIDERATIONS CLAUSE FOR GOULBURN MULWAREE LEP 2009**RESOLUTION 2021/530****Moved: Cr Sam Rowland****Seconded: Cr Leah Ferrara****That:**

- 1. The report by the Business Manager Strategic Planning in relation to an optional clause for *Goulburn Mulwaree Local Environmental Plan 2009* addressing special flood considerations be received.**
- 2. Council request that the Department of Planning, Industry and Environment include the special flood considerations clause 5.22 within *Goulburn Mulwaree Local Environmental Plan 2009* with the clause to only apply to the following land uses: correctional centres, hospitals, hazardous industries, hazardous storage establishments and emergency service facilities.**

Section 375A of the *Local Government Act 1993* requires General Managers to record which Councillors vote for and against each planning decision of the Council, and to make this information publicly available.

CARRIED

At 8:14 pm, Cr Peter Walker left the meeting.

In Favour: Crs Bob Kirk, Andrew Banfield, Sam Rowland, Leah Ferrara, Carol James and Denzil Sturgiss

Against: Nil

15.4 OPTIONAL SPECIAL FLOOD CONSIDERATIONS CLAUSE FOR GOULBURN MULWAREE LEP 2009

Author: Business Manager Strategic Planning

Director Planning & Environment

Authoriser: Warwick Bennett, General Manager

Attachments: Nil

Reference to LSPS:	Planning Priority 8: Natural Hazards – Vision 2040 – Natural hazards are identified, planned for and mitigated where possible throughout the planning process.
Cost Implications:	Nil – however, the introduction of this clause may reduce “red tape” and provide cost savings in future by avoiding planning proposals.
Key Issues:	Reducing planning restrictions to the replacement of lawfully constructed dwellings in the event of a natural disaster.

RECOMMENDATION

That:

1. The report by the Business Manager Strategic Planning in relation to an optional clause for *Goulburn Mulwaree Local Environmental Plan 2009* addressing special flood considerations be received.
2. Council request that the Department of Planning, Industry and Environment include the special flood considerations clause 5.22 within *Goulburn Mulwaree Local Environmental Plan 2009* with the clause to only apply to the following land uses: correctional centres, hospitals, hazardous industries, hazardous storage establishments and emergency service facilities.

Section 375A of the *Local Government Act 1993* requires General Managers to record which Councillors vote for and against each planning decision of the Council, and to make this information publicly available.

BACKGROUND

The Department of Planning, Industry and Environment commenced its Flood Prone Land Package on 14 July 2021. This resulted in:

- revised Ministerial Direction on flooding for planning proposals;
- a new flood planning circular;
- new flood planning guideline;
- a new standard clause for flooding being introduced to all local environmental plans; and
- changes to Planning Certificates in relation to flood questions.

An additional part of the package was the introduction of an optional “opt in” special flood consideration clause.

The optional clause has already been included in the *Standard Instrument Local Environmental Plan*. Councils have been invited by Department of Planning, Industry and Environment to opt in to having the clause added to their LEPs without having to undertake a planning proposal. Interested councils have been asked by Department of Planning, Industry and Environment to consider this matter prior to the caretaker period commencing in relation to Local Government elections (as the intended changes are to occur by March 2022).

This report considers the inclusion of the “opt- in” clause to the Goulburn Mulwaree LEP 2009.

REPORT

Intention of the Special Flood Consideration Clause

Currently Clause 5.21 of the Goulburn Mulwaree LEP only applies to development that is within the “flood planning area” typically this is defined as being the area below the flood planning level. The flood planning level is currently the 1% annual exceedence probability or informally known as the 1% flood level or 1 in 100 year flood level plus 0.5m freeboard (which allows for wave action and debris).

The intention of the special flood consideration clause is to ensure appropriate planning around sensitive uses and infrastructure within flood affected areas up to the probable maximum flood event (which is the largest flood event that could conceivably occur at a particular location). Generally it is not physically or economically possible to provide complete protection against a probable maximum flood event. These additional considerations could be around matters such as:

- evacuation (where this may be difficult due to occupant’s health or need for assistance) alongside the capacity of emergency services to assist during a flood;
- the potential for environmental damage due to flood waters accessing polluting material; and
- the impact on flood behaviour due to the presence of a structure or land use.

The proposed clause does not prohibit the listed land uses but does require that additional consideration of specific matters be undertaken by the consent authority as a part of development assessment.

Assessment of development applications

Where the clause applies, it will mean that a development application will be assessed against the special considerations contained within the clause.

DPIE has already included the Special Flood Considerations Clause in the Standard Instrument Local Environmental Plan (SI LEP) as follows:

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—

- (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.

The application of the clause could cause some difficulty for existing development located within the probable maximum flood if identified as sensitive or hazardous. Essentially to expand an existing operation these uses will need to demonstrate that the any proposed development:

- will not affect the safe occupation and efficient evacuation of people in the event of a flood;
- incorporates appropriate measures to manage risk to life in the event of a flood; and
- will not adversely affect the environment in the event of a flood.

The application of this clause could be difficult where existing facilities are seeking to expand.

Where developments are proposed by the Crown/public authorities, generally development may proceed (i.e. Council cannot refuse or issue conditions on these developments without the agreement of the authority involved and the relevant Minister if escalated). Given that this is the case, the implications of this clause on private developers will be more significant. The list of suggested land uses to which this clause will apply in the next section of this report is mindful of this distinction in light of existing land uses such as private schools, hostels, tourist and visitor accommodation and child care centres which are already located within the probable maximum flood (PMF) mapped extent.

Proposed Zones to be included in the Special Flood Considerations Clause

Should Council wish to include this clause in GM LEP 2009 the following is a list of suggested land uses to which it should be applied (**Table 1**), the list includes consideration of reasons for inclusion and exclusion with recommendations.

Table 1 – Proposed land uses for Inclusion/Exclusion in Special Flood Consideration Clause

Land Uses	Reasons for Clause Application or Exclusion
<p>Correctional centres Hospitals</p>	<p>Risk to life for potentially vulnerable occupants.</p> <p>Potentially difficult to evacuate as occupants may need assistance or specialist medical care following evacuation, or otherwise very specific alternate accommodation (which may not be readily available).</p> <p>Consideration of the capacity for emergency services to assist in a timely manner would be required.</p> <p>The existing public and private hospital are outside the PMF level so the application of this clause would largely add considerations for the appropriate location/planning around any new facilities.</p> <p>The Correctional Facility is within the probable maximum flood (PMF) but is a Crown/public authority development. Therefore there is capacity for the clause to add consideration of the identified risks without actually preventing further expansion if deemed necessary.</p> <p>Recommendation: Inclusion of these uses in the application of this clause.</p>
<p>Boarding houses Early education and care facilities Educational establishments Group homes Hostels Information and education facilities Respite day care centres Seniors housing</p>	<p>Risk to life for potentially vulnerable occupants.</p> <p>Potentially difficult to evacuate as occupants may need assistance.</p> <p>Consideration of the capacity for emergency services to assist in a timely manner would be required.</p> <p>There are a number of each of these uses currently within the probable maximum flood (PMF) therefore application of this clause may be problematic.</p> <p>Recommendation: Exclusion of these uses from the clause for the time being and pending future review once the clause has been in use for a while.</p>
<p>Eco tourist facilities Tourist and visitor accommodation</p>	<p>Risk to life of occupants potentially unfamiliar with local risks.</p> <p>Potentially difficult to evacuate as occupants may need assistance.</p> <p>Consideration of the capacity for emergency services to assist in a timely manner would be required.</p> <p>Cumulative impact of development on flood behaviour.</p> <p>There are a number of each of these uses currently within the probable maximum flood (PMF) therefore application of this clause may be problematic.</p> <p>Recommendation: Exclusion of these uses from the clause for the time being and pending future review once the clause has been in use for a while.</p>

<p>Hazardous industries Hazardous storage establishments</p>	<p>Risk to facility Pollution risk to environment. Cumulative impact of development on flood behaviour. Recommendation: Inclusion of these uses in the application of this clause.</p>
<p>Emergency services facilities</p>	<p>Risk to an emergency facility Consideration of the capacity for emergency services to access facility in a flood event would be required. Some emergency services facilities are within the probable maximum flood (PMF) but are Crown/public authority development. Therefore, there is capacity for the clause to add consideration of the identified risks without actually preventing further expansion if deemed necessary. Recommendation: Inclusion of these uses in the application of this clause.</p>
<p>Sewerage Systems Water Supply Systems</p>	<p>The new Goulburn sewerage treatment plant is located within the probable maximum flood (PMF) area. Whilst the clause does not prohibit development it does include an environmental impact test in the case of a PMF event. Such an impact would be unavoidable for this site and for the broader network. Council's water supply system services a broad network of properties which are within the PMF. The application of this clause to this infrastructure is not considered to be achieving the objectives of the clause. Recommendation: Exclusion of these uses from the application of the clause.</p>

CONCLUSION

In conclusion, the addition of the special flood consideration clause in the *Goulburn Mulwaree Local Environmental Plan 2009* would facilitate the development assessment process to identify land uses where additional flood considerations for those sensitive or hazardous land uses may be appropriate.

It is recommended that Council request the inclusion of the special flood considerations clause in *Goulburn Mulwaree Local Environmental Plan* to apply to the land uses identified in this report being: correctional centres, hospitals, hazardous industries, hazardous storage establishments and emergency service facilities.