

Public Exhibition – Explanation of Intended Effect: Special Flood Considerations Clause

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Submission

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Explanation of Intended Effect (EIE): Special Flood Considerations Clause

Proposal to amend 32 identified council LEPs

Goulburn Mulwaree Council resolved to adopt the standard special flood considerations clause at its meeting of the 2 November 2021. Council has since adopted: the *Goulburn Floodplain Risk Management Study and Plan 2022*, an associated *Flood Policy* and amended flood chapter in the *Goulburn Mulwaree Development Control Plan (DCP) 2009* (including the Flood Policy). The Flood Policy introduces flood planning constraint categories (FPCCs) which include the probable maximum flood (PMF) and assessment criteria for a range of sensitive uses in the PMF (or FPCC 4). These uses extend beyond those nominated for inclusion in standard LEP clause 5.22 as the DCP has the advantage of being more flexible.

Uses to be excluded as specified in the Council resolution are:

Boarding houses; Early education and care facilities; Eco tourist facilities; Group homes; Hostels; Information and education facilities; Respite Day Care Centres; Seniors Housing; Tourist and visitor accommodation; Sewerage systems and Water supply systems.

Appendix A of the EIE is accurate in relation to the list of land uses to be excluded from the clause as per the extract below.

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<p>Goulburn Mulwaree Local Environmental Plan 2009</p>	<p>Boarding houses; Early education and care facilities; Eco tourist facilities; Group homes; Hostels; Information and education facilities; Respite Day Care Centres; Seniors Housing; Tourist and visitor accommodation; Sewerage systems and Water supply systems.</p>	<p>The clause will implement and support at a LEP level the Wollondilly River and Mulwaree Chain-of-Ponds Floodplain Risk Management Study and Plan 2003; and Wollondilly and Mulwaree Rivers Flood Study, 2016.</p>
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It should be noted now that *the Goulburn Mulwaree Floodplain Risk Management Plan 2022* has now been adopted by Council and that the proposed clause will implement and support this document.

Council has no objection to the State-wide application of Standard Instrument (SI) clause 5.22, however, the associated list of land uses should remain optional to reflect the nature of local land use planning and flood conditions. **Council is willing to review the application of this clause and to add additional uses in future should it become apparent that this is beneficial.**

The following potential outcomes of a standard clause without the flexibility to adopt or exclude relevant local land uses should be considered:

- The implications of being within the probable maximum flood (PMF) will not be the same for each area within the PMF. For instance, the PMF does affect the CBD of Goulburn (which is well above the 1% AEP) with flood water being more flood storage than flow path (within the area affected the PMF there is significant variability in affectation). The PMF design event flood emergency response categorisation for the CBD is “Rising Road (FER)”. Consideration needs to be made in relation to the relative risk of each situation versus the loss of development potential in areas historically already developed. At its most distant extent there is only 450m walking distance from the most affected portion of the CBD to areas outside the PMF.

This consideration would differ in relation to greenfield sites or planning proposals where the appropriateness of the site would have to be assessed in relation to the Ministerial Direction on flooding.

- Sewerage systems (particularly sewerage treatment plants) tend to be located close to rivers (low points) due to the need to service as broad an area as possible and be close to the discharge point for treated water. This is largely unavoidable, but the way the clause is written it may prevent this type of development occurring depending on how strict the interpretation of Cl 5.22 (3)(c) is in relation to any adverse effect on the environment?

Proposal for State - wide application of clause 5.22

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Notwithstanding the above, on-site effluent (waste-water) management systems may not be appropriate within the PMF especially in the Sydney drinking water catchment. Currently on-site waste-water management systems are excluded within 100m of a watercourse but Water NSW Guidelines may need to be updated to exclude the PMF area where this is known.

- Existing uses in established flood affected areas could be limited from expanding. The Goulburn CBD is largely within the PMF and contains development including boarding houses, education establishments, hostels, tourist and visitor accommodation (which again depending on how strictly the clause is applied) could be limited from expanding?

Proposal to insert Clause 5.22 into SEPP Resilience and Hazards

The nature and risk associated with flooding from catchment to catchment (and site to site) varies substantially and therefore needs to be considered in relation to the local context. There can be a significant difference between flood events in different areas depending on the location in the catchment and is relative due to the elevation of development to the event, velocities etc. Therefore, there needs to be some flexibility as to the way this provision is applied to reflect the local circumstances.

This option is not supported as it is unlikely to provide councils with the opportunity to tailor the list of affected land uses to reflect local conditions.

Combination of DCP and LEP?

Goulburn Mulwaree Council's DCP has now adopted a flood policy which provides additional considerations for sensitive and critical uses. Where an optional land use has not been taken up in Clause 5.22 there is still an assessment required for these matters in the DCP/policy.

Furthermore, Clause 5.22 (2) allows for the broader use of the clause where required:

(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.

The above combination of provisions provides some flexibility in approach to these assessments.