



MOREE PLAINS SHIRE COUNCIL

12 OCTOBER 2017

ORDINARY COUNCIL MEETING

PUBLIC BUSINESS PAPER

Tuesday, 3 October 2017

TO:

- Councillors
- General Manager
- Director – Corporate Services
- Director – Planning and Community Development
- Director – Engineering Services
- Manager – Water and Waste
- Manager – Executive Projects

Notice is hereby given that the **Ordinary Meeting of Council** will be held in the Council Chamber, the Max Centre, 30 Heber Street, Moree, on **Thursday, 12 October 2017** commencing at **4pm**.

Please note that all Council meetings are recorded.

Yours sincerely



Lester Rodgers
GENERAL MANAGER

Agenda

1. Open Meeting
2. Apologies
3. Confirmation of Minutes
4. Leave of Absence requests
5. Declarations of Interest
6. Public Forum
7. Reports

Ordinary Council Meeting Public Business Paper

12 October 2017

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Report Title	5 Floodplain Development Policy
Report by	Planning and Community Development
Contact	Angus Witherby, Director of Planning and Community Development
Attachments	Three (3) attachments; refer to Attachments section
File	FILE 17/609

RECOMMENDATION

1. That Council advise the community of the process of how the consultant recommendations provided in the Floodplain Risk Management Study and draft Floodplain Risk Management Plan will be considered by the Council.
2. That Council adopt the Communication Strategy set out in Attachment 11 of the report.
3. That Council endorse the formation of a Floodplain Management Community Reference Group with the terms of reference as set out in Attachment 12 of the report.
4. That Council adopt the interim policy positions regarding existing development as set out in Attachment 13 of the report.

REPORT

ALIGNMENT WITH MOREE PLAINS 2027 – YOUR SHIRE. THE PLAN. OUR FUTURE

- ☒ **An Inclusive, Caring Community**
C2.4 Encourage volunteering, community ownership of challenges and opportunities for community members to get actively involved in decision-making
- ☒ **Sustainable Spaces and Places**
S3.1 Evaluate and respond to flood impacts associated with land use and development
- ☒ **A Vibrant Regional Economy**
E3.1 Keep the businesses we have vibrant and economically sustainable
- ☒ **A Leading Organisation**
L1.2 Deliver the desired services throughout the Shire to meet community needs in an effective, efficient and financially viable way, having regard to compliance and risk obligations

BACKGROUND AND KEY ISSUES

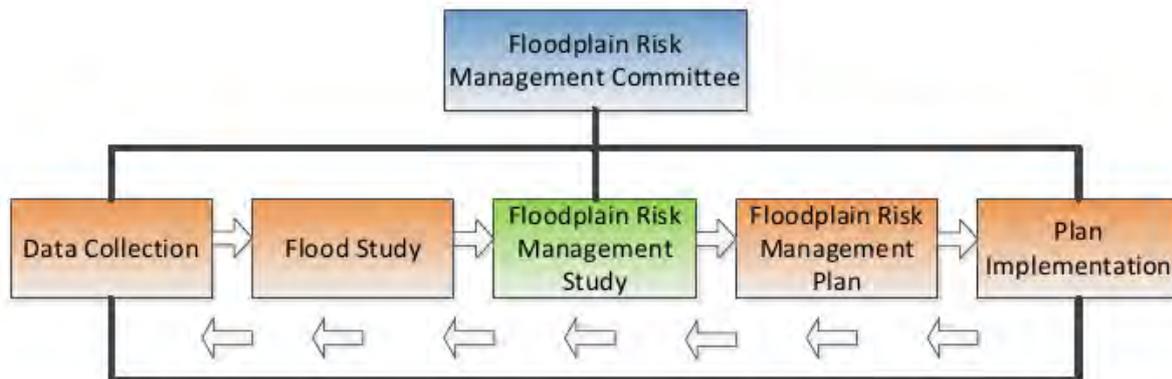
This report addresses several main areas and responds to the public meeting regarding floodplain development held in the Moree Memorial Hall on Monday, 11 September 2017. The areas covered in this report are:

1. To update Council on the processes to be followed from here in responding to the consultant's report "Volume II – Floodplain Risk Management Study"
2. To seek Council endorsement for a Communication Strategy as part of developing Councils final policy positions regarding flooding
3. To address a number of interim positions to provide enhanced community certainty regarding existing, incomplete developments.

Processes to be followed

The development of an adopted Floodplain Management Plan is set out in the NSW Governments Floodplain Development Manual (April 2005). This manual sets out the procedures that Council needs to follow in order to ensure that Council’s decisions regarding flood policy are sound and provide legal protection for Council in the future. It is critical that the process be followed in order for Council to manage risks associated with decisions around flooding and flood policy. In brief, Council needs to act “in good faith” based on the best technical information available including consultation with the community.

Set out below is a diagram indicating the overall process established in the manual:



This process is managed by a Floodplain Risk Management Committee (**Committee**) (which has already been established by Council). This Committee has the core role of ensuring that the processes set out in the manual are followed and that systematic recommendations are made to Council to form the basis of Council’s decision-making. The Committee includes a wide range of stakeholders including Councillors, relevant state agencies and community representation. Historically, the Committee has struggled to obtain comprehensive community “buy in”. This is addressed in the subsequent section of this report.

At the time of the public meeting on 11 September 2017, Council had received and adopted the Floodplain Risk Management Strategy noting that this strategy makes recommendations to Council which need to be addressed for the formulation of a Floodplain Risk Management Plan. Council is not able to make ad hoc decisions regarding flooding policy, but must work within the established process.

The next step in the process is the receipt by Council of a draft Floodplain Risk Management Plan (**draft Plan**) which has been prepared by the consultants who are undertaking the studies on Council’s behalf. On receipt of that draft plan it is then the responsibility of the Committee to review the draft Plan and develop a series of food options for public exhibition. These preferred options are subject to revision in the light of community responses following which a revised Floodplain Risk Management Plan (**Plan**) would then be submitted to Council formal approval.

Following adoption of the Plan, Council then moves to implementation. This includes implementation of flood, response and property modification measures including mitigation works, planning controls, flood warnings, flood readiness and response plans, environmental rehabilitation, ongoing data collection and monitoring.

Communication Strategy

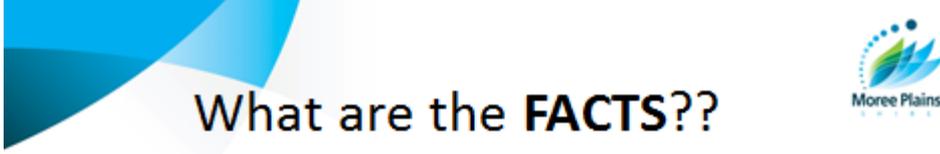
As indicated above, Council has struggled to attract significant community engagement and interest in the Committee. At times only two to three members of the public have responded to press releases and notifications by Facebook.

A public meeting was held on 11 September 2017 in response to a letter circulating in the community relating to flood policy. At the public meeting approximately 350 people were present, all of whom had a very strong interest in flooding matters. The letter contained a number of statements that were inaccurate and led to considerable community alarm and concern. Council staff fielded some 50 to 60 phone calls shortly following release of the letter, and a similar number of calls subsequent to that. Individual landholders continue to contact Council with concerns about impacts on their particular properties.

Concerns communicated to Council fall into the following categories:

1. The possibility of a levee being constructed and the potential impacts of that
2. Whether compulsory acquisitions were being considered
3. Whether Council had reached firm policy positions on flooding issues
4. The ability of people, particularly within the northern floodway, to buy, sell, gift or deed property.

Council communicated some clear messages at the public meeting as set out in the PowerPoint slide below:



What are the FACTS??

- The letter in the community
 - Compulsory acquisition? – **NO**
 - Prohibition maps in the planning scheme? – **NO**
 - Wholesale changes to land use zones? **NO**
 - Pass it on to my kids? – **YES**
 - Will I be able to extend my house or put up a shed? – **YES** (probably some restrictions)
 - Sell my house?? – **YES**
 - Is there going to be any change? – **YES**, but only with full involvement of people affected.

During the course of the meeting many members of the public felt a strong need to speak regarding their concerns and the majority of people present expressed opposition to a possible levee. In noting this opposition, it needs to be understood that the vast majority of attendees at the meeting were from areas outside any potential levee and that only small numbers of people within the area of a potential levee (be they residential or commercial landholders) were represented. At the time of preparation of this report some 302 residents had registered to receive ongoing information from Council.

There are negative methods by which strong community engagement can be encouraged around issues, and in this case, the circulation of a copied letter predominantly to residents in the areas of Yarraman, Stonnington and Gwydirfield. This can skew the feedback as the positive benefits are overlooked and/or poorly represented. For this reason, targeted representations of focus groups/committees/consultation groups give a broader representation of the entire community. Based on information received at the public meeting the approximate proportions of people attending from different areas are set out in the graph below:

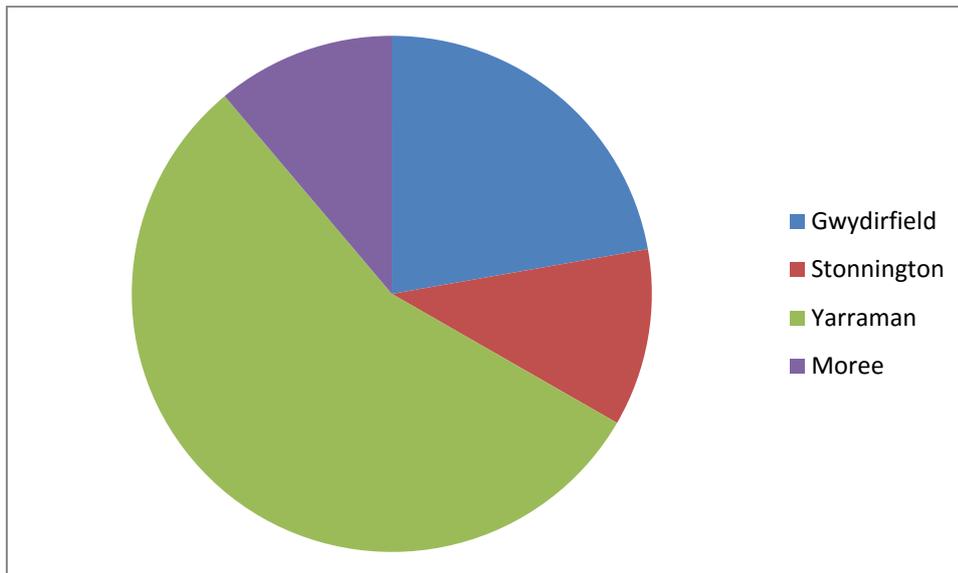


Fig 1 - Approximate proportion of attendance at public meeting 11 September 2017 by area

The main target for community involvement are people located within the Flood Planning Level Map which represents the area “called up” by Moree Local Environmental Plan 2011 (LEP) through the flooding clause reproduced below:

7.6 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 land’s flood hazard, taking into account projected changes as a result of climate change,*
 - (c) *to avoid significant adverse impacts on flood behaviour and the environment.*
- (2) *This clause applies to land at or below the flood planning level.*
- (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) *is compatible with the flood hazard of the land, and*
 - (b) *is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) *incorporates appropriate measures to manage risk to life from flood, and*
 - (d) *is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
 - (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*
- (4) *A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government, unless it is otherwise defined in this clause.*
- (5) *In this clause, flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.*

This is the area defined by the standard clause within the Council’s LEP where specific local flood planning controls apply to development. While significant flood-prone areas outside the flood planning level as defined for this study exist, the map below sets out the flood planning level as applying to Moree and its immediate environs which have been the subject of the current flood study. The map showing this area is reproduced below:

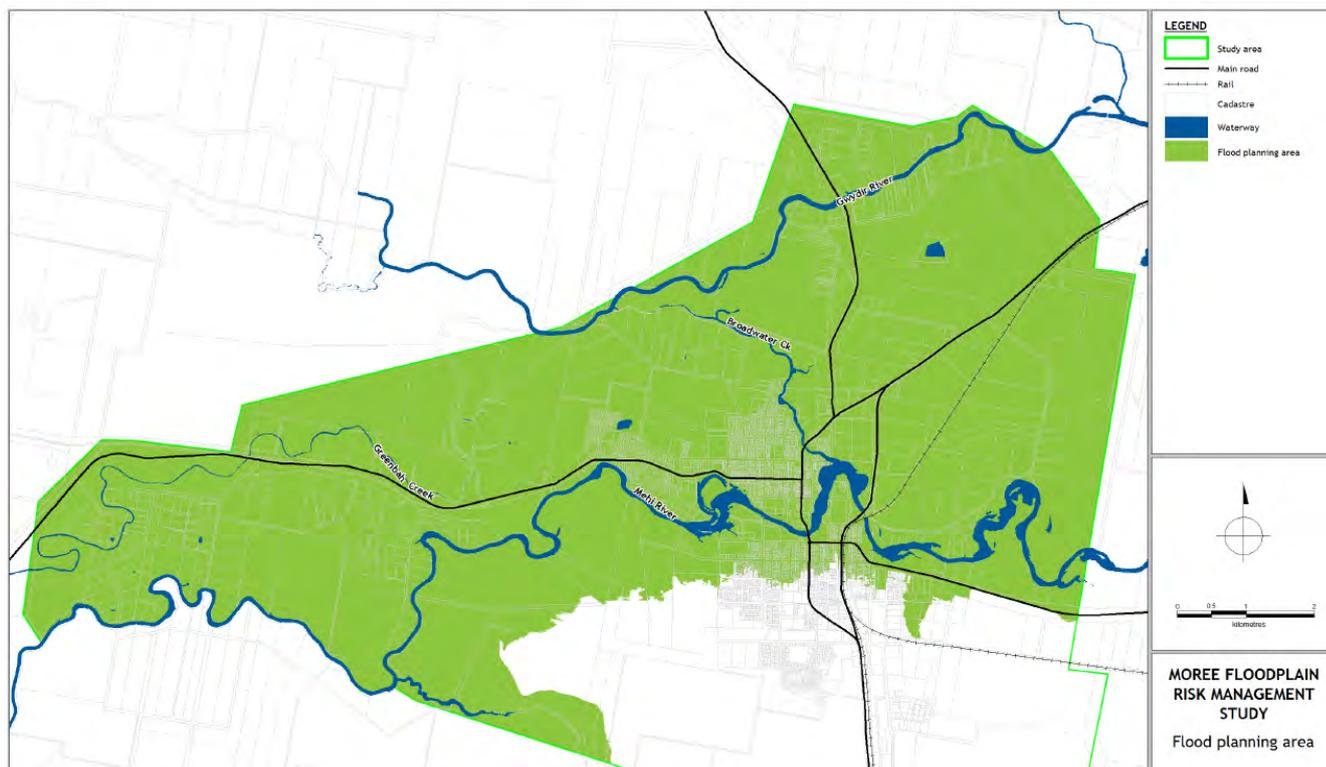


Fig 2 - Flood Planning Area

The land within the green area is where Council’s policy development is currently focused, and where broad-based input from various groups and areas is required. To ensure that Council’s policy decisions are fully informed by an appropriate cross-section of the community, it is considered essential that the following areas and groups within the area shown on the map be specifically targeted through a Communication Strategy.

- **Residential** landholders and occupants within Moree township (essentially people on land within a residential zone)
- **Commercial and industrial** landholders and occupants within Moree township (essentially people on land within a business or industrial zone)
- **Rural residential** landholders and occupants (covering Yarraman, Gwydirfield, Stonnington and Bendyleet within the large lot residential and rural small holdings zones)
- **Primary production** landholders and occupants (essentially people within the primary production rural zone).

The Communication Strategy needs to be broad-based and utilise a range of different techniques in order to ensure the widest possible coverage. The potential techniques identified are:

- Press releases
- Media interviews – TV, radio, press
- Public/Moree Memorial Hall Meetings
- Social media
- Letterboxing – addressed
- Email and text broadcast groups
- Dedicated web site

Of these, the only technique not recommended for ongoing use is the large-scale Moree Memorial Hall meeting, although a series of targeted public meetings with the targeted groups identified above should be considered.

A proposed Communication Strategy utilising the identified techniques is provided at Attachment 11.

Floodplain Management Community Reference Group

A key recommendation within the adopted Floodplain Management Study is the development of a Community Reference Group (Group). Such a group is in addition to the Committee which already exists.

The purpose of the Group is to ensure that a targeted range of stakeholders are engaged with the policy development process at various levels. These consist of:

1. People who want to be kept informed of progress but do not necessarily wish to take an active role
2. People who want to be informed so that they can choose to participate on different issues/items
3. People who want to be directly involved in an ongoing way.

The Group is also an appropriate source of community nominees to the Committee. Terms of Reference of the Group are provided at Attachment 12.

Interim policy positions

While it is critical that Council does not prejudge policy positions pending full public engagement on the draft Plan, it is nevertheless important that landholders who are part way through development have some certainty regarding their situation. The categories of development which are potentially affected by the new flood information include:

1. Developments that have been approved but not yet constructed (houses and subdivisions)
2. Developments that have been approved and are partially complete (generally subdivisions where not all construction required for registration has been completed, but also potentially some dwellings)
3. Subdivisions that have been constructed but not yet fully built out
4. Dwellings approved but not constructed/completed outside the mapped area of the former Flood Planning Level that are now within the Flood Planning Level

Each of the potentially affected developments need to be assessed on their own merits. This assessment needs to be based on the information that Council now has regarding each individual allotment, but taking into account that people have a lawful right to act on an existing consent. Council staff are currently undertaking an audit regarding the number of developments affected and it is anticipated that definitive advice on the number of properties will be able to be provided at the 12 October 2017 Ordinary Council Meeting. The approach to each category is outlined in Attachment 13.

It is noted that in most cases the actual variation to heights is likely to be quite minor; potentially in the order of up to 200mm in most cases which could be accommodated within the existing "freeboard" provisions.

FINANCIAL IMPACT TO COUNCIL

The initial financial impact is the cost of establishing and operating the Group, together with the costs of undertaking the Communication Strategy. The estimated costs to undertake these additional activities is \$30,000.

STATUTORY AND POLICY IMPLICATIONS

Key legislation is the *Local Government Act 1993 (NSW) (LG Act)*.

The main policy of relevance is the NSW Floodplain Development Manual (April 2005).

RISK IMPLICATIONS

Council is exposed to both reputational risk and legal risk should the floodplain policy not be developed in accordance with the requirements of the Floodplain Development Manual and based on the most current information available to Council.

Council must be seen to be acting in good faith and taking into account all available information when reaching final policy positions. This is essential if Council's legal position is to be protected in the future.

ASSET MANAGEMENT IMPLICATIONS

No asset management implications have been identified directly associated with this report however significant asset management implications will arise through any adopted Floodplain Risk Management Plan.

PREVIOUS COUNCIL DECISIONS

The Council, at its 10 August 2017 Ordinary Council Meeting resolved as follows:

17/08/11 RESOLVED (CASSELLS/SMITH)

That Council adopts the Floodplain Risk Management Study and Plan Volume II – Flood Study Report with:

- 1. Further consideration of the two dot points in the second section of the 'Conclusions and recommendations', when a further report is brought back to Council;***
 - a. "the two undeveloped areas within the northern floodway that currently zoned for residential use should be rezoned back to rural;***
 - b. the development control plan should be updated to utilise the flood planning area map (Figure 3.4) and the floodway map (Figure 3.3) to manage development applications;"***
- 2. Further consideration of the proposed strategies in Section 7 to align with number one recommendation as above; and***
- 3. That the community is further consulted.***

ATTACHMENTS

Attachment 11 Communication Strategy

Attachment 12 Floodplain Management Community Reference Group

Attachment 13 Interim Policy Positions

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(To be provided under separate cover)

Report 5 **Floodplain Development Policy**

Attachment 12 Floodplain Management Community Reference Group

- Purpose**
1. To provide an opportunity for interested citizens to be informed, on an ongoing basis, about the development of floodplain policy in Moree; in particular the adoption of a Floodplan Risk Management Plan.
 2. To provide feedback on draft policies associated with the Floodplan Risk Management Plan.
 3. To provide nominees to the Floodplain Risk Management Committee.

Membership Open membership by self-nomination

Meeting frequency On demand

Category 1 - Developments that have been approved but not yet constructed (houses and subdivisions)

In the case of developments within Category 1, it is considered that these are a very high priority for individual assessment and Council has already received a written request for advice on a subdivision at the end of Kamilaroi Drive. A similar review should be undertaken for other subdivisions, of which at least one is known to Council at this stage. The issue here is whether subsequent dwellings on approved subdivisions would be able to be approved given the information currently available to Council.

For dwellings in this category, it is suggested that assessment be undertaken as to the impacts on floor levels and that discussions be held with any affected landholders to assess whether changes to floor levels should be considered. Landholders (while able to act on their existing approval) would be encouraged to adjust floor levels, if necessary, to take into account the revised Flood Planning Level.

Category 2 - Developments that have been approved and are partially complete (generally subdivisions where not all construction is required for registration has been completed, but also potentially some dwellings).

In terms of subdivisions that are partially constructed, the key issue for assessment is whether changes to flood levels raise any issues with respect to the future approval of dwellings. Of particular concern is any situation where there is significant investment in a subdivision and there may be problems in terms of approving subsequent dwellings. In this case it is necessary to assess each subdivision and review whether, on merit, dwellings are considered appropriate. Council is aware of one subdivision that would be in this category.

While Council is not aware of any partly constructed dwellings that might be affected, should any be identified through the audit process, it is likely that they would be at a stage where alteration to the floor level would not be feasible. No action is proposed, other than to make owners aware of the revised levels.

Category 3 - Subdivisions that have been constructed but not yet fully built out.

Council is aware of at least two subdivisions which still have vacant allotments which have not yet been built upon. Consideration as to the ability to build on these lots would need to be through a development application. In most cases minimum floor heights for subsequent dwellings have been established with reference to the previous Flood Planning Level, however, any new applications would need to consider the revised levels.

Category 4 - Dwellings approved but not constructed/completed outside the mapped area of the former Flood Planning Level that are now within the Flood Planning Level

It is possible that some dwellings that have been approved but not yet constructed may be within the new Flood Planning Level area whereas they were not within the existing mapped area. This raises the possibility that a floor level restriction may be appropriate.

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