

Project:	<i>Planning proposal gateway determination appeal - Brisbane Grove Road, Goulburn (PP-2024-291)</i>
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To:	<i>Sowdes Pty Ltd, Paul Johnson</i>
Subject:	<i>Gateway determination appeal – Flooding</i>
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1. Introduction

The Department of Planning, Housing and Infrastructure (DPHI) issued a Gateway determination for the planning proposal to rezone and amend the minimum lot size of 137 Brisbane Grove Road, Goulburn (PP-2024-291) which is referred to as the Proposal in this memorandum.

The Gateway determination advised that proposed amendments to the Goulburn Mulwaree Local Environmental Plan (LEP, 2009) should not proceed. A request for formal review of this decision and alteration of the Gateway determination has been prepared.

This memorandum has been prepared as justification for why an alteration of the Gateway determination is warranted, including responses to issues raised by DPHI in relation to flooding.

2. Reference Documents

The following reference documents have been considered in preparation of this memorandum:

Gateway Determination

- ‘Gateway Determination for Planning proposal (Department Ref: PP-2024-291)’ (DPHI, dated 12 November 2024).

Flood Analysis Reporting

- ‘2 & 137 Brisbane Grove Road, Planning Proposal Flood Assessment’ (GRC Hydro, dated 20 December 2023) – This document is referred to as the Planning Proposal Flood Assessment in this memorandum.
- Goulburn Floodplain Risk Management Study and Plan (Goulburn Mulwaree Council, 2021)

Post Gateway Advice

- Biodiversity and Conservation Division (now Department of Climate Change, Energy, the Environment and Water (DCCEE)) post gateway advice:
 - ‘PP-2021-7930 to amend Goulburn Mulwaree Local Environmental Plan 2009’ (PP-2021-7390, dated 7/2/23);
 - ‘PP-2021-6932 to amend Goulburn Mulwaree Local Environmental Plan 2009’ (PP-2021-6932, dated 7/2/23); and
 - Water Floodplains and Coast (WFC), Floodplain Risk Management, Brisbane Grove, Subdivision Planning Proposal Update (dated 18 April 2023).

3. Planning Proposal Flood Assessment Overview

The Planning Proposal Flood Assessment was developed to address the Section 9.1 Ministerial Directions 4.1 Flooding and incorporated the framework presented by the Flood Impact and Risk Assessment (LU01) guidelines.

A key outcome of the Planning Proposal Flood Assessment was the development of a strategy which ensured that all future development would be located outside the Probable Maximum Flood (PMF) extent, thereby preventing flooding of future dwellings under any circumstances. This approach addresses the majority of the flood risk for the site. However, a residual risk was identified due to potential flooding of Braidwood Road, located away from the site, which could isolate the site from Goulburn during flood events with a probability of rarer than 5% (1 in 20) Annual Exceedance Probability (AEP).

DCCEEW post gateway comments (as per the documents described in Section 2) pertaining to the isolation risk were acknowledged and addressed in the Planning Proposal Flood Assessment. DCCEEW stated that, *'The assessment should examine the period of isolation across the range of flood events up to and including the PMF and assess areas within or closer to the proposal site that is outside the PMF as a potential refuge area'*. As stated previously, the Proposal accommodates this request by ensuring that all future development would be situated outside of the PMF extent and has access to *'adequate facilities to maintain the safety of the community'* as required by EM01, and as developed in consultation with the NSW State Emergency Service (SES), DCCEEW, Fire and Rescue NSW (FRNSW) and Ambulance NSW.

Recommendations from FRNSW and Ambulance NSW to manage secondary risk (associated with isolation potential) have been adopted, including requirements for future developments to provision for and maintain fire extinguishers and Automated External Defibrillators (AED). The NSW SES *'advise that the key risks to consider are access, rescue of animals and people, capacity to evacuate people requiring medical assistance, resupply, increased fire risks, and maintenance of equipment such as AEDs and fire extinguishers'*. Consideration and management of these risks is presented in the Planning Proposal Flood Assessment.

A summary of the flood risk and management measures associated with the proposal is outlined below:

- All future development will be situated outside of the PMF extent, which Council advised would be enforced through proposed changes to Council's flood planning policy;
- Flood access to the site is feasible for all vehicle types for events up to and including the 5% (1 in 20) AEP flood;
- Emergency vehicle access is expected to be limited to the site for a duration of 8.5 hours during a 1% (1 in 100) AEP event;
- Management measures to manage secondary risks were developed in consultation with FRNSW and Ambulance NSW, which Council advised would be implemented as part of future development through Council's planning policies.
- The strategy is consistent with the requirements of Section 9.1 Ministerial Directions 4.1 Flooding.

4. Gateway Determination Response

The Gateway determination outlined three reasons for rejecting the Proposal, however, the determination lacks specific references to justify its decision and relies on draft documents that are not government policy. The three reasons are reproduced below, with a response provided which details why the determination does not align with government policy and justifies why approval of the Gateway determination is warranted.

Gateway Determination Reason #1: Inconsistency with Ministerial Directions and Regional Plans

The first reason provided by DPHI for rejecting the Proposal is presented below:

The planning proposal is not consistent with the South East and Tablelands Regional Plan 2036 (Directions 16: “Increase resilience to natural hazards” and 28: “Manage rural lifestyles”) and with the draft South East and Tablelands Regional Plan 2041 (Theme 2: “Enhancing sustainable and resilient environments” and Theme 4: “Planning for fit for purpose housing and services”) and Section 9.1 Ministerial Directions 1.1 Implementation of Regional Plans and 4.1 Flooding. The inconsistencies have not been sufficiently justified.

The reasoning prepared by DPHI fails to cite appropriate specific reference to NSW State Government planning policy to support their position. No reference is made to the relevant clause(s) of Section 9.1 Ministerial Directions 4.1 Flooding with which the Proposal is stated to be inconsistent.

The Proposal is included in one of 11 areas for development intensification in the ‘Goulburn and Marulan Urban and Fringe Housing Strategy’ (July 2020), which was developed to help Goulburn Mulwaree Council meet housing demands from anticipated population growth. The Strategy aligns with the objectives of the South East and Tablelands Regional Plan 2036 and was reviewed by relevant authorities, including the Office of Environment and Heritage (OEH) and the Department of Planning, Industry and Environment (DPIE), which are now represented by BCD and DPHI. Further, the Strategy was reviewed as part of the Goulburn Floodplain risk Management Study and Plan (GFRMSP, 2022), which deemed the site suitability for rezoning as ‘fair’. The GRRMSP was reviewed by OEH, which are noted not to have flagged the site as unsuitable for rezoning during this process. Further, a review of Regional Plan 2036 Directions 16 and 28, which focus on reducing natural hazard exposure and managing flood-prone urban growth, confirms that the Proposal complies with these objectives by ensuring that future dwellings are built outside of the Probable Maximum Flood (PMF) extent. In consideration of the above, it is clear that the Proposal is consistent with South East and Tablelands Regional Plan 2036.

Additionally, references to sections of the draft South East and Tablelands Regional Plan 2041, which spans 36 pages, do not clearly identify inconsistencies. It is also noted previous post gateway correspondence did not raise perceived inconsistencies for assessment or consideration which would have enabled supporting documentation to be prepared to address any concerns.

The Gateway determination’s statement of perceived inconsistency with the Ministerial Directions and Regional Plans, is contested. The Goulburn and Marulan Urban and Fringe Housing Strategy (2020), was developed to be consistent with the 2036 Regional Plan which was reviewed by relevant authorities, who deemed the Proposal site suitable for rezoning. The draft 2041 Plan, still under review, lacks concrete references to inconsistencies, and the timing of DPHI’s concerns is deemed procedurally unfair, as they were raised too late to be adequately addressed.

Gateway Determination Reason #2: Flood Isolation Risk

The second reason provided by DPHI for rejecting the Proposal is presented below:

‘The planning proposal poses an unacceptable risk to future residents/occupants, as well as to emergency services workers, due to the risk associated with isolation of the site due to flooding of Braidwood Road for approximately 23 hours during the 1% AEP flood event and rarer. This isolation period is excessive and far exceeds the shelter in place period maximum in the draft State flood policy.’

The Planning Proposal Flood Assessment (GRC Hydro, 20 December 2023) does not agree with this characterisation of flood risk, and through detailed consideration and documentation of the risk of isolation found that the Proposal is consistent with the Section 9.1 Direction 4.1 Flooding requirements.

The determination does not appropriately reference relevant NSW State Government planning policies to support its position, with no reference to clause(s) of Ministerial Direction 4.1 Flooding made for perceived inconsistencies. Instead, it references *'draft State Flood Policy'*, which is presumably the *'Draft Shelter-in-Place Guidelines'*, which have not been finalised, and are stated at the top of the document to be *'not government policy'*.

The reasoning conflates the risks of isolation with those of sheltering-in-place. This is evident as the definition in the draft guidelines states, *'Shelter-in-place is the movement of occupants to a building or the occupants remaining in a location that provides vertical refuge on the site or near the site above the PMF level before their property becomes flood-affected'*. As per the definition in the draft guidelines, shelter-in-place applies to properties that become 'flood-affected', and as described in the Planning Proposal Flood Assessment, future development of the site would be situated outside of the PMF extent and not subject to flooding under any conditions. Therefore, the draft guidelines are not relevant in the assessment of this planning proposal.

The Planning Proposal Flood Assessment clearly identifies isolation risks, with a range of mitigation measures proposed that have been endorsed by Goulburn Mulwaree Council. The Proposal meets the requirements of the NSW State Government's Flood Risk Management Guideline (EM01), which states, *'The primary strategy for the NSW SES is evacuation of people to an area outside of the effects of flooding that has adequate facilities to maintain the safety of the community'*. As described in the Planning Proposal Flood Assessment, future development of the site would be situated outside of the PMF extent and would have *'access to ablutions, water, power and basic first aid equipment'* as described in the EM01 guidelines.

Gateway Determination Reason #3: Increased Government Investment

The third reason provided by DPHI for rejecting the Proposal is presented below:

'The planning proposal has potential to significantly increase the need for government investment on emergency management services, flood mitigation and emergency response measures.'

Direction 4.1 Clause (3)(g) specifies that a planning proposal must not be 'likely to result in a significantly increased requirement for government spending'. The Gateway determination states that the Proposal 'has potential' to increase the need for investment but does not confirm that it is 'likely' to do so, which would be required to demonstrate that there was an inconsistency with the clause's requirements.

The Planning Proposal Flood Assessment demonstrated that the Proposal complies with Clause (3)(g), ensuring that no significant increase in government spending will occur. Strategies to manage this include rezoning flood-prone land to C2 Environmental Conservation to limit development potential in areas likely to flood, situating future development outside the PMF extent to ensure dwellings are not at risk of flooding during any event, and implementing measures to address secondary flood risks which are only expected under very rare circumstances. These actions are in line with the EM01 guidelines and Direction 4.1 Clause (3)(g) and the Proposal will not *'significantly increase the need for government investment'*.

Additionally, the Goulburn Floodplain Risk Management Plan, adopted by the Council, recommends the implementation of a Total Flood Warning System (TFWS) to improve the management of flood risks. This system is expected to be in place before the occupation of any future dwellings.

5. Conclusions

In response to the Gateway determination issued by the Department of Planning, Housing, and Infrastructure (DPHI) for the proposed rezoning of 137 Brisbane Grove Road, Goulburn, this memorandum outlines discrepancies between the determination and the relevant government policies, as well as concerns of procedural fairness.

The three reasons outlined by DPHI for rejecting the Proposal, comprise alleged inconsistencies with Ministerial Directions and Regional Plans, flood isolation risks, and the potential for increased government investment, all of which are contested. The Proposal is consistent with the Goulburn and Marulan Urban and Fringe Housing Strategy' (July 2020) which aligns with the requirements of the South East and Tablelands Regional Plan 2036, and was previously deemed suitable by relevant authorities. Perceived inconsistencies with the draft South East and Tablelands Regional Plan 2041 are not clearly identified by the Gateway determination, and review of this document found that the Proposal is consistent with the flooding requirements.

Additionally, the flood risk concerns raised in the Gateway determination are addressed through a comprehensive Planning Proposal Flood Assessment which is consistent with the NSW State Government's Flood Policies. The risks of isolation have been adequately managed, and the Proposal ensures no significant increase in government investment, with strategies in place to manage secondary risks. Therefore, the Gateway determination fails to adequately support its rejection with relevant policy references, and the Proposal should be reconsidered for approval.

