



14 February 2023

NSW Department of Planning and Environment  
GPO Box 239  
SYDNEY NSW 2001

Online submission at: <https://www.planningportal.nsw.gov.au/special-flood-considerations-clause>

Dear Sir or Madam

**Re: SSROC submission to the Department of Planning and Environment on the Explanation of Intended Effect: Special Flood Considerations Clause**

Thank you for the opportunity to provide feedback on the Explanation of Intended Effect: Special Flood Considerations Clause.

Southern Sydney Regional Organisation of Councils Inc (SSROC) is an association of twelve local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member councils cover a population of 1.9 million, one third of the population of Sydney, including Australia's most densely populated suburbs. SSROC seeks to advocate for the needs of our member councils and bring a regional perspective to the issues raised.

A number of SSROC member councils have self-nominated to adopt the special flood considerations clause. This clause will only be inserted into local environmental plans that have adopted the Standard Instrument.

**Introduction**

*2022 NSW Independent Flood Inquiry*

This submission concurs with the 2022 Flood Inquiry's conclusion that, "Natural disasters will recur in NSW as we see more extreme climate. NSW will experience more extreme bushfires and larger and more dangerous floods. This means that certain regions and certain areas of cities and towns (notably floodplains associated with major rivers and the parts of cities that are bushfire prone) are increasingly dangerous places to live and will increasingly be a drain on the public purse as people who live there have to be evacuated repeatedly and then re-housed."<sup>1</sup>

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<sup>1</sup> 2022 NSW Flood Inquiry, page 292



“The *NSW 2021–22 Intergenerational Report* outlines a scenario in which a 2.2°C increase in temperature would yield an indicative 12% increased risk of flood in NSW, though not necessarily uniformly across the state.<sup>2</sup>”

SSROC notes that the Inquiry’s support for the adoption and implementation of a more robust risk-based approach to new developments is needed to ensure that flood risk from new developments is minimised.

“Key elements of such an approach include:

- a comprehensive and up to date understanding of risks on a catchment-wide scale informed by modelling that is relevant now and into the future
- a well-developed and clearly understood line of sight between relevant strategic planning instruments that inform decisions on the ground
- a system where anyone seeking to develop new areas is provided with greater clarity and early advice to plan flood-resilient communities
- a credible evacuation strategy if required, with decision makers able to integrate this into decisions at the strategic planning and development level
- flexibility to adapt and change course in establishing as yet unbuilt towns and suburbs, in order to mitigate risk.<sup>3</sup>”

“The framework established in 2021 by the NSW Government begins to address serious deficiencies with state-wide policy in the mid-2000s, which did not fully encourage a risk-based approach to land use planning in floodplains. The old approach has overly relied on a 1% Annual Exceedance Probability (AEP)<sup>4</sup> with insufficient focus on safe evacuation capacity, other cost-effective mitigation, and the changing risk due to climate change.<sup>5</sup>”

The Flood Inquiry Report then makes a suite of interdependent recommendations to simplify the planning system disaster provisions.

### **Recommendation 21 – simplify the planning system disaster provisions<sup>6</sup>**

That, to simplify and improve the state planning processes especially when anticipating and recovering from a disaster, Government:

- ensure there is a clear line of sight directing councils and planning authorities to include disaster response and resilient settlement outcomes in long term strategic plans (Regional and District Plans as well as Local Strategic Planning Statements). This may require more prominence to be given to *Planning for a more resilient NSW: A strategic guide to planning for natural hazards* (Department of Planning, Industry and the Environment) as well as a clear link to the risk-based approach to hazard identification and the disaster adaptation plans

<sup>2</sup> Ibid page 252

<sup>3</sup> Ibid page 253

<sup>4</sup> A flood with 1% AEP has a one in a hundred chance of being exceeded in any year.

<sup>5</sup> Op Cit page 270-271

<sup>6</sup> Ibid pages 295-296



- ensure the NSWRA provides the necessary tools and advice to enable planning authorities to incorporate cumulative impacts of potential natural disasters into strategic plans. These tools should ensure the disaster adaptation plans can be given real effect in strategic plans for settlement and local planning controls
- ensure that Ministerial Directions on hazard and natural disasters (directions 4.1 and 4.6 inclusive) are updated to reflect the new risk- based approach to flood planning levels and deliver the disaster adaptation plans to the zoning process
- create specific flood planning provisions as a new chapter in the SEPP (Resilience and Hazards). These provisions would draw the existing flood planning clauses (5.21 and 5.22 in the standard instrument) up into the SEPP
- **put the natural disaster clause (5.9 in the standard instrument) into a new chapter in the SEPP Resilience and Hazards, along with objectives to assist councils to use the clause to build back to more resilient standards** (this submission's bolding)
- update planning guidance so that wherever possible community facilities, such as might be used for evacuation centres, are located above the probable maximum flood and essential services are located above the flood planning level
- ensure that the strategic land use frameworks and related controls permit new developments only in line with the evacuation capacity both individually and cumulatively
- ensure that the strategic land use frameworks enable higher density flood resilient precincts to locate more development at or above the PMF and use a higher flood planning level to avoid catastrophic costs from extreme flooding, as well as deliver cost-effective controls for individual structures.

### *NSW Government response to the Independent Flood Inquiry recommendations*

In response to this Inquiry recommendation 21 about simplifying the planning system disaster provisions, the NSW Government supported these recommendations in principle, noting that further work was required on implementation. Further consideration was needed to be given to the implications of these recommendations and the appropriate timeframes for delivery, in consultation with communities to be impacted<sup>7</sup>.

#### **1 Our understanding of the proposed changes outlined in the EIE**

The Department is exhibiting an explanation of intended effect (EIE), outlining proposed changes to strengthen planning rules to better protect and manage new development in areas that could be at risk during floods, through a special flood considerations clause (clause 5.22 of the Standard Instrument—Principal Local Environmental Plan).

The special flood considerations clause would apply to:

- sensitive and hazardous development, such as caravan parks, hospitals and seniors housing, between the flood planning area and the probable maximum flood level

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<sup>7</sup> NSW Government Response to the NSW Independent Flood Inquiry, page 9



- development that is not sensitive or hazardous on land that the consent authority considers that, in a flood, may pose a particular risk to life and where people may need to evacuate or there are other safety concerns.

In 2021, 32 councils self-nominated to amend their LEPs by inserting the special flood considerations clause. The EIE is seeking feedback on whether to include this clause in the LEPs of these identified councils.

The EIE also proposes updating 11 councils' LEPs with minor housekeeping changes.

In response to the recommendations of the 2022 NSW Flood Inquiry conducted by Mary O'Kane and Mick Fuller, the Department is also seeking feedback on applying the clause to all NSW councils, by inserting the clause in either:

- **all NSW council LEPs; or**
- **the State Environment Planning Policy (Resilience and Hazards) 2021.**

The changes will apply additional planning controls to land at risk of flooding. This will help reduce the extent of property damage and potential loss of life and build greater resilience into our communities.

## 2 General Application of the Special Floods Consideration Clause

This submission is focussed on proposal to insert the special floods consideration clause in in all LEPs or in the SEPP (Resilience and Hazards) 2021.

### *Benefits from integrated planning controls around flooding*

SSROC acknowledges that significant flood events, such as those experienced recently across NSW in 2021 and 2022, have shown how important it is to consider flood risk up to and beyond the 1% annual exceedance probability (AEP) flood.

Better, risk-based consideration of flooding would build resilience in communities located on floodplains. It would reduce the extent of property damage and potential floodplain, but may require a stronger role for regional planning in order to achieve a balanced risk outcome.

As the Flood Inquiry noted, floodplain planning needs to be consistent with principles governing the use of floodplains and sit within at least two (ideally connected) hierarchies of plans – for emergency management planning and for land use planning. It should *inform* broader strategies and be *integrated* into local strategies across the range of activities that affect the floodplain, whilst still advancing such strategic state-wide aims as the provision of infrastructure and housing, development to improve community amenities and placemaking, the application of environmental and catchment management policies, and emergency management, as well as more general economic and social improvement.



This means that risk must be accounted for at a catchment scale – for the very simple reason that floodplains can operate beyond the spatial bounds of a community of interest, a local government body or a planning authority.

As floodplain planning sits within a hierarchy of plans, it should both respond to and inform the contents of other plans to ensure that floodplain risk management is integrated. This ensures that floodplain planning is *iterative*, with periodic review establishing an effective feedback loop within that hierarchy of plans.

The proposed clause will implement and support at LEP level floodplain studies and management plans, policies and development control plan and result in reduced risk to life, reduced rate of development applications for inappropriate development. It should reduce the risk and cost of flooding throughout the local government area.

### **Recommendation 1**

- To ensure that flood planning is integrated and strongly evidence based, any implementation of a state-wide application of the ‘special flood considerations’ clause in the metropolitan area should wait until the Greater Cities Commission delivers its draft Greater Cities resilience plans in 2023. This will help to ensure consideration of catchments and strategic alignments with LEPs, improve clarity and deliver greater transparency and consistency for all stakeholders.

### **Clarifying whether the proposed amendments will still be optional for councils**

One of the aims of the proposed amendments is to make individuals and communities more resilient to floods. The changes proposed aim to make the standard instrument LEPs and state planning instruments more consistent with each other.

As an optional clause under the Standard Instrument, it is open to councils to amend their LEPs and include the clause. However, it is unclear in the EIE whether the proposed state-wide application of the clause is to still remain optional for councils to opt into. Option one is inserting clause 5.22 into the Resilience and Hazards SEPP or option two is inserting the standard instrument clause 5.22 into all council LEPs. Unfortunately, the EIE provides little detail at this point. However, continued optionality is strongly implied.

The two options proposed focus on the planning mechanisms with scant detail of any triggers. The merits of each of the planning mechanism options are not fully canvassed.

Furthermore, the Flood Inquiry recommendations note that the changes should be facilitatory and assist councils.

### **Recommendation 2**

- In the next phase of consultations, the Department clarify that both of the available options (Standard LEP clause and the SEPP) are not mandatory and whether they have triggers for activation apart from council. SSROC is of the



view that activation of the clause should remain optional for councils to self-nominate.

### **Assisting councils to understand the full implications of adopting the ‘special flood considerations’ clause**

Knowledge about flooding is continuing to change with a warming climate, in ways that are increasingly hard to predict accurately. Commonwealth and State agencies are the key holders of this changing knowledge and evidence base (BoM, DPE flood mapping etc etc).

Previously primary responsibility for data bases and regulatory oversight was vested in the state government agencies, such as the Department of Planning and Environment, including the EPA. Their advice, rules and regulations, has informed and directed the making of local council LEPs and planning and building controls around, flooding and fire mitigation and appropriate land uses.

With a changing climate, properties and people in established areas such as that covered by SSROC with its many riverine environments, previously not at risk may become threatened. Progressively adapting and changing controls to mitigate this emerging risk will be in ongoing challenge for many councils.

A risk-based approach may expose councils thought to have a low-risk exposure to emerging unexpected liabilities in the future, as growing flood risks are better identified and understood.

### **Recommendation 3**

- The Department detail the current flooding information, advice and support that can be provided to councils, once a council opts to adopt the ‘special flood considerations’ clause.

### **A transition period and resourcing to enable council to prepare to meet its new responsibilities and obligations arising from the adoption of the ‘special flood considerations’ clause**

Landholders have expectations about the value and use of their land and property that may well change with new information about property and safety risks and the imposition of new planning controls that respond to the flooding risks.

Landholders, land purchasers, and developers have relied on the planning system for making judgements about land use suitability and land values.

Following severe weather and flooding across NSW in 2022, the Valuer General NSW monitored and reviewed the impact of flooding on land values. It was established that there were sufficient sales in flood affected locations for valuations to be based on market evidence. For example, in Hawkesbury, most areas saw an increase in land values while the more significantly impacted areas along the Hawkesbury River between



Richmond and Wilberforce had a 20% reduction applied compared to prior 1 July 2021 land values<sup>8</sup>. Accordingly, council rate revenue calculations would be affected.

The proposed changes from the EIE about floods (and other natural hazards in future) could rapidly transfer new responsibilities, risks, and some major additional costs to affected local councils to manage (often from the State Government) if there are triggers which activate the adoption of 'special flood considerations' clause.

Councils will need additional resources to quickly adapt their planning controls and potentially plan, fund and undertake drainage related civil works to meet the new expectations for adaptive flood management.

It is entirely appropriate that the state government provide grants to enable local councils to make these changes to their planning controls as quickly as possible based on local technical studies and the best evidence available where the risks are now deemed to be high and significant. New resilience mapping may prove to be very controversial and difficult for local communities and affected land holders.

Given the immediate effect of the proposed changes, either through the SEPP or the standard LEP clause amendment, some transitional period will be required to help councils manage new responsibilities.

While the EIE changes are focussed on flooding, other climate related events and risks like fires and rising sea levels will often intersect and exacerbate flooding risks. A holistic resilience approach will be required.

#### **Recommendation 4**

- The Department provide a significant transition period, determined in consultation with local councils, together with funding for councils to assist them to meet new responsibilities and obligations arising from the adoption of the 'special flood considerations' clause.

#### **Conclusion**

SSROC member councils cover a large part of Greater Sydney, including areas exposed to risks of flooding. They have a direct interest in supporting and advocating for changes to improve and sustain resilient place-making in relation to flooding.

Therefore, the SEPP amendments should continue to be developed with extensive participation by local councils to correctly navigate all the intersections of the SEPP with local plans, so that important flooding considerations are well integrated. It will be

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<sup>8</sup> Review of the impact of flooding on the 1 July 2022 land values, Valuer general NSW, November 2022  
[https://www.valuergeneral.nsw.gov.au/\\_data/assets/pdf\\_file/0018/231444/Review\\_of\\_the\\_impact\\_of\\_flooding\\_on\\_the\\_1\\_July\\_2022\\_land\\_values\\_-\\_November\\_2022.pdf](https://www.valuergeneral.nsw.gov.au/_data/assets/pdf_file/0018/231444/Review_of_the_impact_of_flooding_on_the_1_July_2022_land_values_-_November_2022.pdf)



important that the implications of the proposed changes are more fully detailed and explained.

In order to make this submission within the timeframe for receiving comments, it has not been possible for it to be reviewed by councils or to be endorsed by the SSROC. I will contact you further if any issues arise as it is reviewed. If you have any queries, please do not hesitate to contact me or Mark Nutting, SSROC Strategic Planning Manager on 8396 3800 or [ssroc@ssroc.nsw.gov.au](mailto:ssroc@ssroc.nsw.gov.au).

Thank you for the opportunity to comment on the Explanation of Intended Effect: Special Flood Considerations Clause.

Yours faithfully

A handwritten signature in black ink that reads 'H Sloan'.

Helen Sloan  
Chief Executive Officer  
Southern Sydney Regional Organisation of Councils