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Department of Planning and Environment
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PARRAMATTA NSW 2124
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Exhibition of Explanation of Intended Effect - Special Flood Considerations Clause

Thank you for the opportunity to review and comment on the Special Flood Considerations Clause Explanation of Intended Effect (EIE).

The EIE is proposing:

- to insert the special flood considerations clause into the LEPs of those councils who have requested it; and
- housekeeping amendments to a further 11 councils in relation to flood information made redundant by the state-wide introduction of a new flood clause in July 2021.

The EIE is also seeking feedback on whether the clause should apply to all councils in NSW by:

- including the clause in all council LEPs; or
- through an amendment to State Environmental Planning Policy (Resilience and Hazards) 2021.

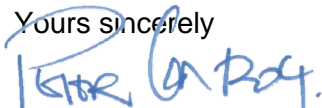
Blacktown City has no objection to the proposal to insert the special flood considerations clause into the LEPs of those councils who have requested it, or to the proposed housekeeping amendments.

We do not support the proposal contained in the EIE for state-wide application of Clause 5.22 Special flood considerations in its current form.

Our submission is included as Attachment 1 to this letter.

If you would like to discuss this matter further, please contact Helen Budd, Acting Manager Strategic Planning on 9839 6206.

Yours sincerely



Peter Conroy

Director City Planning and Development

Blacktown City Council submission on Special Flood Considerations Clause EIE

Flood-prone land package – July 2021

The NSW Government's flood-prone land package commenced on 14 July 2021 and was intended to ensure development is designed to minimise impacts of probable flooding and to increase community resilience.

The flood-prone land package inserted a new mandatory Clause 5.21 Flood Planning in all LEPs across NSW by means of the Standard Instrument – Principal Local Environmental Plan. The flood planning controls in all State Environmental Planning Policies, such as in the North West Growth Area, remained unchanged.

At the same time, an optional clause was introduced (Clause 5.22 Special Flood Considerations) and Councils were given the option to adopt the special flood considerations clause. Councils that did not nominate to adopt Clause 5.22, still had the option to include the clause at a future time, by amending their LEP as part of a council-led planning proposal.

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; and
- 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 Local Environmental Plans by inserting the special flood considerations clause. Blacktown City did not self-nominate to have the special flood considerations clause included in the Blacktown LEP.

The EIE is proposing:

- to insert the special flood considerations clause into the LEPs of those councils who have requested it; and
- housekeeping amendments to a further 11 councils in relation to flood information made redundant by the state-wide introduction of a new flood clause in July 2021.

Blacktown City raises no objection to the proposal to insert the special flood considerations clause into the LEPs of those councils who have requested it, nor to the

housekeeping amendments to a further 11 councils in relation to flood information made redundant by the state-wide introduction of a new flood clause in July 2021.

The EIE is also seeking feedback on whether the clause should apply to all councils in NSW by:

- including the clause in all council LEPs; or
- through an amendment to State Environmental Planning Policy (Resilience and Hazards) 2021

We do not support the proposal contained in the EIE for state-wide application of Clause 5.22 in its current form and consider that further investigation is required into:

- how the clause will impact councils in the Hawkesbury-Nepean Valley due to its unique flooding characteristics
- application of the clause to areas which are not covered by a council LEP
- development of supporting controls such as a Development Control Plan in the context of state-wide application, particularly through State Environmental Planning Policy (Resilience and Hazards) 2021.

Clause 5.22 Special Flood Considerations

Blacktown City supports the underlying concept of clause 5.22 and recognises that the clause is intended to support managing the flood risk between the flood planning level and the probable maximum flood. It aims to build greater resilience in communities during and after flood events, reduce property damage and loss of life as a result of flood events, manage and mitigate flood events, and create better management of flood risk by limiting certain types of development in the floodplain.

Significant flood events, such as those experienced recently across NSW in 2021 and 2022, have shown how important it is to consider flood risk beyond the flood planning level, which is equivalent to the 1 in 100 chance per year flood plus freeboard (1% AEP). Better risk-based consideration of flooding will build resilience in communities located on floodplains and will reduce the extent of property damage and potential loss of life from severe to extreme flooding.

Consistency in planning controls

Blacktown City supports the principle of consistent flood planning controls which are applied equitably across catchments. Floods occur irrespective of local government or legislative boundaries. The provisions for managing flood-prone land should be based on a catchment-wide basis, with consistent provisions applying within each catchment, regardless of which local government area the affected land is located in.

Hawkesbury – Nepean Valley

The Hawkesbury Nepean Valley has the highest flood exposure in NSW because of its unique landscape and large existing population. Floods in the Hawkesbury Nepean Valley can be very deep and the difference between the flood planning level and the probable maximum flood is much larger than any other river system in NSW.

Because of this large difference, there is a much greater area in the Hawkesbury Nepean Valley where these controls would apply compared to other river systems in

NSW. Limiting certain types of development in these areas could have unforeseen consequences due to the amount of land affected. For example, limiting the location of essential services in an area subject to the probable maximum flood could impact the location of fire stations, police stations, childcare centres, schools or telecommunications in the Riverstone Town Centre or the future Marsden Park North Precinct.

Infrastructure NSW has draft flood level information for the Hawkesbury Nepean Valley and we consider that Government awaits the release of this data before considering state-wide application of the special flood considerations clause. This will also allow us to understand what impact this information would have on existing flood planning levels and is the preferred approach being taken by both Penrith City Council and Hawkesbury City Council.

Independent Flood Inquiry 2022

The NSW Government commissioned an independent inquiry into the preparation for, causes of, response to and recovery from the 2022 floods across NSW.

Recommendation 21 of the Inquiry identified the need to update planning guidance and controls to better manage development in flood-prone areas. Therefore, the NSW Government is seeking feedback on introducing clause 5.22 Special flood considerations state-wide through 1 of 2 options:

- insert clause 5.22 Special flood considerations into all council LEPs by making the existing clause mandatory instead of optional in the Standard Instrument – Principal Local Environmental Plan.
- insert clause 5.22 Special flood considerations into State Environmental Planning Policy (Resilience and Hazards) 2021

Concerns with a state-wide application of clause 5.22

We do not support the state-wide application of clause 5.22 in its current form under either option proposed. This is because:

- the unique situation in the Hawkesbury-Nepean Valley of both the large difference between the flood planning level and the probable maximum flood, and the high number of people living and working within the probable maximum flood, means that applying clause 5.22 in its current form will affect a very large area
- the large area of land affected may result in unintended consequences, such as limiting the location of essential services where they are needed
- the option to insert clause 5.22 into the State Environmental Planning Policy (Resilience and Hazards) 2021 will create difficulties in implementing the clause, as it will not be supported by development controls
- the option to insert clause 5.22 into all council LEPs is inequitable because there are numerous environmental planning instruments that apply within and across local council boundaries, which will not be captured by amending the Standard Instrument – Principal Local Environmental Plan. Of particular concern to Blacktown City is the North West Growth Area, a large part of which is significantly impacted by flooding. The North West Growth Area will not be

affected by inserting clause 5.22 into the Blacktown LEP because this land is covered by State Environmental Planning Policy (Precincts – Central River City) 2021.

A variation to clause 5.22 is required which considers the unique flooding characteristics of the Hawkesbury-Nepean Valley.

We will investigate adopting clause 5.22 in the future

Blacktown City will investigate adopting Clause 5.22 Special flood considerations in the future as a council-led planning proposal. This will follow a strategy which will include:

- consideration of updated flood information on the Hawkesbury-Nepean Valley from Infrastructure NSW
- updated local catchment flood information across Blacktown City
- investigation of flow-on and potential unintended consequences arising from the application of clause 5.22
- coordination with other councils in the Hawkesbury-Nepean Valley for a consistent approach
- extensive community consultation reflecting the large area and number of people potentially affected, particularly in the Hawkesbury-Nepean catchment.