



28 February 2023

Office of the Chief Executive Officer

Reference File: F00678 (23/41252)

Department of Planning and Environment
Via [Have Your Say Portal](#)

Dear Sir/Madam

**SUBJECT Submission on Explanation of Intended Effects: Special
Flood Consideration Clause**

Thank you for the opportunity to provide feedback on the Explanation of Intended Effects: Special Flood Consideration Clause exhibited by the Department of Planning and Environment.

In 2021, a mandatory **flood planning** clause (5.21) and an optional **special flood consideration** clause (5.22) was exhibited by the Department, with 32 Council's in NSW opting into Clause 5.22. At the time, Council sought legal advice, to assist in determining the suitability of this optional clause in Blue Mountains Local Environmental Plan 2015.

Of significance, the Blue Mountains finds itself in an unusual circumstance in relation to flood planning. The Blue Mountains does experience flooding events. However, in contrast to areas such as the Hawkesbury LGA or Penrith LGA, the Blue Mountains LGA does not include any broad flood plains that are subject to widespread and regular inundation. Instead, many of the catchments within the City are small, steep and narrow, often resulting in significant overland flow in certain areas.

As a result of the unusual topography of the City, the Council's adopted flood planning level in a particular catchment, being the level of the 1:100 year flood plus 500mm (FPL), could be located and mapped (when data becomes available) above the Probable Maximum Flood (PMF) for that catchment. That circumstance could arise because of the limited and steep catchments within the City.

Consequently, Council does not hold comprehensive PMF data or FPL data for many catchments and watercourses in the City. The complexity of the studies required and breadth of the analysis across multiple catchments are such that this work can only reasonably occur incrementally, as budgets and resourcing allow. Therefore, Council



communicated to, and it was accepted by, the Department of Planning in December 2021 that we would not be seeking to incorporate the then optional Clause 5.22.

It is understood that the proposed SEPP amendment in the EIE is following the recommendations of the 2022 NSW Flood Inquiry that recommended clause 5.22 be made mandatory State-wide. As a result of this recommendation, the Department is seeking feedback from Councils regarding whether the clause should be placed into councils LEP's as a mandatory clause or in the Resilience and Hazards SEPP. For the intent of the clause to have relevance, accurate data concerning flood planning levels and flood behaviour in the catchment within which development would take place would be required. Therefore, for the avoidance of risk or unintended consequences, and in line with legal advice received, Council's position remains that Clause 5.22, in any iteration (through the Standard Instrument or a SEPP), is not suitable for the Blue Mountains at this time.

Should you require clarification regarding any matters raised in this submission, please contact Kim Barrett – City Planning Manager on kbarrett@bmcc.nsw.gov.au.

Yours faithfully

A handwritten signature in black ink, appearing to be 'WILL LANGEVAD', written in a cursive style.

WILL LANGEVAD
Director Environment and Planning