

In reply please quote: 22/18335

7 February 2023

NSW Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam,

PUBLIC EXHIBITION: EIE - SPECIAL FLOOD CONSIDERATIONS CLAUSE AND SHELTER-IN-PLACE GUIDELINE

This letter provides Council's response to the current public exhibition of an Explanation of Intended Effect relating to the Special Flood Considerations clause (5.22). It is noted that the Special Flood Considerations clause is already included within the Standard Instrument LEP and Council has consistently advocated for the inclusion of this clause within its LEP for several years. Further comments are included below.

Special Flood Considerations Clause

As noted in the EIE, Fairfield LEP 2013 already includes a special flood considerations clause (clause 6.4 Floodplain Risk Management) which imposes controls on certain development above the flood planning level (FPL) up to the probable maximum flood (PMF). The objectives and contents of Clause 6.4 are also very similar to those contained in Cl.5.22 of the NSW Standard LEP. Council's existing clause relates to some sensitive and critical land uses and all residential, commercial and industrial development above the FPL up to the PMF. Council has long advocated for the review of this blanket approach and welcomes the application of a more refined list of critical and sensitive land uses as listed in the draft standard clause 5.22.

The EIE also seeks feedback on the preferred pathway for facilitating application of the clause: either via inserting the clause into the Resilience and Hazard SEPP or through amendment to individual Council LEPs. It is Council's preferred approach that the clause be inserted into individual LEPs after the existing clause 5.21 relating to Flood Planning. As is evident in Appendix A of the EIE, there is considerable variation between local government areas regarding the land uses to be included/excluded under application of the clause. It is unclear how this variation would be accommodated if the clause was included within the SEPP Resilience and Hazard?

In addition, in light of provisions contained in other planning legislation, there are a number of considerations that mean the Council LEP pathway represents a more streamlined and less complicated pathway for implementation of clause 5.22 as follows;

1. Environmental Planning & Assessment Regulation – Schedule 2 Planning Certificates

Parts 9 (1) & (2) – Flood related development controls of the above schedule of the EP&A Regulation, requires Councils to provide a response on planning certificates on whether flood related development controls apply to land or part of land within the flood planning (FPA) as well as from the FPA extending up to the probable maximum flood (PMF).

Accordingly, Fairfield Council includes comprehensive information on planning certificates (including flood type of flood risk precinct and flood levels) relating to the above, as Chp.11 – Flood Risk Management of the Fairfield DCP 2013 contains a range detailed flood related development controls for various forms of development located in the floodplain (up to and including the PMF flood). These controls supplement the general objectives and heads of consideration associated with the flood clauses contained in Fairfield LEP 2013.

It is Council's understanding that inclusion of clause 5.22 in the SEPP would not automatically trigger the need for information to be included under either Part 9(1) & (2) of planning certificates, unless a Council also had flood related DCP controls (as specifically referred in the EP&A Regulations) in place.

From this perspective, inclusion of the clause 5.22 in Council LEP's is considered a more desirable pathway for implementation as this step:

- Results in a more centralised location of flood clauses and flood related development controls within the current framework of Council LEP provisions and DCP controls, creating greater certainty and ease in understanding the planning system for both the general community and developers.
- Facilitates more orderly and structured implementation of flood related development controls aligned to the principles and objectives of the NSW Flood Risk Management Manual that is supported by flood risk management studies and plans prepared by NSW Councils.

Most importantly, implementation of cl.5.22 under the LEP pathway also provides for greater consistency with the NSW Flood Policy 2022 which states as follows:

“The management of flood prone land is, primarily, the responsibility of local councils

This involves councils understanding and managing flood risk, effectively considering flood risk in their decisions, and making flood information available so that others can make informed decisions. It emphasises the importance of cooperative FRM efforts between local councils in the same catchment”

2. SEPP (Exempt & Complying Development Codes) 2008

As a result of provisions contained in the above SEPP, Council's include information on planning certificates on whether land comprises a 'flood control lot' defined as;

“flood control lot means a lot to which flood related development controls apply in respect of development for the purposes of industrial buildings, commercial premises, dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (other than development for the purposes of group homes or seniors housing)”

Notification of a flood control lot on planning certificates is dependent on whether a Council has adopted DCP controls relating to the above forms of development and is not linked to the provisions or a clause contained in a SEPP. As detailed previously, pursuant to the provisions of the NSW Flood Manual and Policy 2022, the process of preparing flood related development controls and identification of flood control lots is a component of flood risk management studies and plans prepared by Councils.

In this respect, the LEP pathway for implementation of cl.5.22 is the least complex process and best fit in terms of addressing the requirements of existing legislation relating to exempt and complying development. It is noted the provisions relating to flood control lots also applies under a number of other SEPPs such as the SEPP (Housing).

Shelter in Place Guideline

Council would also like to take this opportunity to provide feedback on the related Shelter-In-Place Guideline currently on public exhibition. Council supports clear and consistent Guidelines that provide Councils with the parameters of when and where shelter-in-place can be used as an alternative to off-site evacuation for emergency management in flood events.

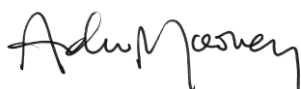
Council would like to ensure there is flexibility in any future guideline when specifying areas where Shelter-In-Place may apply. There are many areas within the Fairfield LGA where land is already zoned for increased residential density however re-development has not yet occurred. Some of these areas are within the low or medium flood risk precincts where warning times are short and evacuation routes are cut early in floods, particularly on areas affected by overland flooding. A ban on sheltering in place for any new development in these areas would not be practical in Fairfield LGA as such a prohibition would sterilise large areas of the LGA and particularly the Fairfield City Centre from future redevelopment.

Effective development controls (such as those proposed in the Guideline) applied to future development proposals would ensure that Council can meet its housing targets and new development can be designed and built in such a way as to keep the residents safe during future flood events. Furthermore, future redevelopment actually presents an opportunity to reduce the risks of isolation by floodwaters by ensuring features are incorporated into new developments which reduce the risk to individuals as well as providing opportunities for improvements in flood related infrastructure.

Thank you for providing Council with the opportunity to comment on the proposed clause and guideline and for taking the time to consider the issues raised above. Council maintains its support for inclusion of the Special Flood Considerations clause and would welcome finalisation of the clause as soon as practicably possible.

Should you require any additional information in respect of this matter, please do not hesitate to contact Elizabeth Workman on 9725 0292. Council looks forward to hearing from the Department in the near future.

Yours faithfully



Andrew Mooney

EXECUTIVE STRATEGIC PLANNER - STRATEGIC LAND USE PLANNING