



Our reference: InfoStore
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28 February 2023

Resilience Planning Team
Resilience and Urban Sustainability
NSW Department of Planning and Environment
Via email: resilience.planning@planning.nsw.gov.au

Dear Resilience Planning Team,

Explanation of Intended Effect: Special Flood Considerations Clause and Draft Shelter-in-Place Guidelines

Thank you for the opportunity to provide comments on the Draft Shelter-in-Place Guidelines and Explanation of Intended Effects for a proposed Special Flood Consideration clause.

As emphasised in our previous submission to the Flood Prone Planning Package dated 3 August 2020 (attached), Flooding matters are of great significance to Penrith due to the nature of our location, being a river city and erratic flood behaviour in recent years. Therefore, it is imperative we brief Council on all proposed amendments that may present risk in how we manage our response to flood events.

Of particular concern to Council is that these Guidelines pre-empt other key flood related investigations for the Hawkesbury-Nepean. A meaningful assessment of these guidelines and the other outstanding investigations can only occur once all the relevant information is available.

Please find attached our submission that was endorsed by Council at its Ordinary Meeting of 27 February 2023.

If you have any questions, please contact Abdul Cheema, City Planning Coordinator on 4732 8120 or abdul.cheema@penrith.city.

Yours sincerely,

Natasha Williams
City Planning Manager

Draft Shelter-in-Place Guideline

We generally support the majority of the guideline and its overall purpose. This approach to emergency management is considered suitable in certain circumstances. However, as flooding is a particularly significant matter in Penrith, we have raised the below concerns to be taken into consideration:

- Penrith's Flood behaviour in recent years has proven that it is unlikely that we could effectively use SIP. The majority of Penrith, including the entire Hawkesbury-Nepean Catchment, cannot satisfy the flood inundation timeframes due to majority of flood affected lands being considered high hazard.
- We feel the criteria needs a broader definition and in addition a simplified explanation so we form an in depth understanding of whether it can be applied in Penrith in certain circumstances.
- The guideline appears to have been completed in isolation to the broader flood planning policy framework.
- The guideline is pre-emptive of an extensive host of work that is required in the Hawkesbury-Nepean River including:
 - The Regional Land Use Planning Framework (to be completed by DPE and Infrastructure NSW) to consider the existing and future planned population to determine the risk to life and evacuation capacity.
 - Developing a fit-for-purpose regional evacuation model that identifies evacuation capacity constraints for different areas in the Valley (to be prepared by Roads and Maritime Services). It is noted that the FEM2 is currently being undertaken by the State Emergency Services (SES). A Geographical Information Services (GIS) layer will be required by councils to assess any proposal as required by the proposed changes.
 - Undertake a contemporary regional flood study to identify the current flood hazards from riverine flooding based on a new fit for purpose and accessible regional flood model (to be prepared by Hawkesbury-Nepean Valley Flood Risk Management Directorate – the Directorate). This is currently being drafted and not yet finalised.

- Review of the NSW Floodplain Development Manual (to be undertaken by DPE). This is currently being drafted and not yet finalised.
- The utilities and services available to land above the PMF are limited. We request further clarification on what a temporary sewerage solution would look like for land within the PMF.
- If the guideline criteria were embedded into the Development Control Plan (DCP), will it become a matter for consideration in all developments. Developers' preference will be for SIP even though evacuation is the primary response strategy for flooding.

Explanation of Intended Effect (EIE): Special Flood Considerations Clause

Council does not support the proposal to insert 'special flood considerations' clause into our LEP. The following is provided for your consideration:

- The EIE's overall intention of the proposal to amend the Resilience and Hazards State Environmental Planning Policy (SEPP) is confusing.
- We feel that there is extensive reliance on the support of the EIE for DPE to push through with making the initial 'optional' CI5.22 clause now mandatory for all Council LEPs. Furthermore, it seems that the Department is relying on this Recommendation 21 of the NSW Independent Flood Inquiry to push through with making the optional CI5.22 now mandatory.
- We feel as though the pursual of the amendment is contradictory to the initial response to the intended recommendation 21 from the flood enquiry being for further work and consultation required by DPE and INSW in relation to land-use planning in the Hawkesbury-Nepean Catchment.
- Council's previous submission to the Flood Prone Land Package dated 3 August 2020 which proposed the introduction of the CI5.22 Special Flood Consideration clause was that we would not support the package until further work was undertaken as outlined above in the comments under the SIP section. Our position on this remains unchanged until all broader flood work has been completed and evidence-based decisions can be made.

- Our position remains strong that clause CI5.22 should only be an opt-in proposition as previously proposed. However, if clause CI5.22 is indeed made mandatory, our preference is to for it to be inserted into LEPs rather than the SEPP so council can have control to better manage the intention of the clause along with other clauses in our LEP and the flow on effect of development controls in respective DCPs.
- Council currently applies flood related controls on land below the flood planning level (1% AEP plus freeboard). The introduction of clause 5.22 would impose flood related development controls for those listed landuses on land above the flood planning level up to the PMF. The special clause will in effect prohibit development that is currently permissible on land, and the effect of which would not be clear on 10.7 certificates.
- The EIE introduces development controls to land between the flood planning area and the PMF, requiring Council to undertake a significant review of notations provided on 10.7 Planning Certificates.
- We feel the EIE has not provided a clear explanation on the proposal to amend the 32 listed LEPs if the intention is to insert the clause into the SEPP or LEP irrespectively.