

28 February 2023

Department of Planning and Environment
resilience.planning@planning.nsw.gov.au

To whom it may concern,

PIA Submission to Special Flood Considerations Clause EIE

Thank you for the opportunity to comment on the Special Flood Considerations Clause proposals ('Clause 5.22') as set out in the Explanation of Intended Effects (EIE) ([link](#)).

The Planning Institute of Australia's submission is consistent with our input to both the NSW Flood Inquiry ([link](#)) and the Floodplain Development Manual and Guideline ([link](#)). PIA seeks to address the intent of Recommendation 21 of the Inquiry, which identified the need to "simplify and improve the state planning processes especially when anticipating and recovering from a disaster".

PIA generally supports the intent of the proposed Clause 5.22, however:

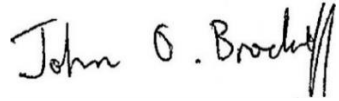
1. PIA seeks further information on the technical /legal differences between placing the proposed Clause 5.22 in the Resilience and Hazards State Environmental Planning Policy (SEPP) as opposed to placing it as a mandatory clause in each Local Environmental Plan (LEP).
2. PIA advocates that the proposed clause 5.22 be applied equally to all councils in NSW to ensure consistency, clarity and the best outcomes for management of the floodplain. (see further information at no 5 below).
3. The option of inserting Clause 5.22 into 32 different LEPs, each with different exclusions of land uses, is not supported. This option does not promote consistency or clarity in either the NSW planning system or in the equitable application of floodplain management policy. Pages 10-17 of the EIE demonstrate a troubling inconsistency in the types of land uses that 'will ' or 'won't' be subject to the Clause in each council area.
4. Irrespective of 1 above, and considering 2 and 3 above, PIA strongly advocates that the proposed clause 5.22 be applied as a mandatory clause to all LEPs rather than being placed in the SEPP or only being added to selected LEPs. LEPs are the local repository of planning issues applying to a local area, and the proposed Clause 'belongs' to the LEP, alongside current Clause 5.21 also relating to flooding. If placed in the SEPP, it will be 'lost' in the collection of various 'resilience and hazard' issues included in the SEPP, and too 'remote' from the consolidated list of local issues included in a LEP.

In addition:

5. As previously communicated strongly by PIA, all councils must be given equal opportunity to have the clause applied to their LEP. At present, only 32 of 128 NSW councils have 'signed up' to join this proposed amendment. PIA recognises that many councils not on this list are likely to be unaware of the full implications of the Clause and its relevance to their areas. Making the Clause mandatory will ensure equity and will also ensure that this important issue is dealt with by all councils no matter their circumstances. Under no circumstances should individual councils be left to deal with this issue under their own (expensive and resource-hungry) Planning Proposal process.
6. PIA appreciates that some councils do not have sufficient mapping to inform the identification of the Probable Maximum Flood (PMF) and Flood Planning Area (FPA) referred to in the proposed Clause. PIA asks that as a priority, the NSW Government either invests in a central program of mapping (see Flood inquiry Commitment) or gives councils immediate support and resources to complete this mapping, make it publicly accessible and understandable and to ultimately place it into their Development Control Plans (DCPs). This is especially urgent since flood mapping was removed from LEPs in a previous Standard LEP amendment. As a result, partly because of this, many councils now have no publicly available mapping to inform Clause 5.21 or proposed Clause 5.22, making the application of these clauses at the least problematic, and at worst, incomprehensible.
7. PIA further asks that councils be given support and resources to produce complementary Development Control Plan (DCP) provisions that will be required to effectively implement the proposed LEP Clause 5.22. Without this support, the practical application of the Clause will simply not happen effectively in most councils, particularly those with limited staff and resources. This situation will lead to understandable frustration by the community and development industry, no matter the intent of the LEP Clause.
8. PIA suggests that Clause 5.22 be modified to take into account circumstances where mapping is not available to support Clause 5.22. It should be made clear that only mapping identified in an adopted Study undertaken through the NSW floodplain risk management (FRM) process is to be used to identify the FPA and PMF.
9. PIA recognises that the finalisation of the NSW *Floodplain Development Manual (FDM)* and accompanying *Guidelines* will assist councils to implement this Clause more effectively (especially through the use of detailed information expected in the Guidelines, some of which can be transferred into DCPs). As such, PIA asks that a mandatory Clause not be gazetted until the final FDM and Guidelines are published. This will also support Point 8 above.
10. PIA would have appreciated being engaged alongside other stakeholders over the last year, since PIA asked in March 2022 for this issue to be paused while the NSW Flood Inquiry was underway. The EIE in its current format does not fully explain the differences and implications between regulatory options, and PIA is aware of many members not being fully aware of it or its implications, although PIA does appreciate that each council was notified. This is a reflection of the complexity of the planning system generally, rather than a criticism of this particular process.

PIA would be pleased to continue to be engaged in the development of this policy. If you have any queries about our draft submission, please don't hesitate to contact me or our member Jan Fallding (RPIA, Fellow) by email via john.brockhoff@planning.org.au.

Yours sincerely



John Brockhoff

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