



14 February 2023

Department of Planning and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Our Ref: FP85 & FP100

Dear Sir/Madam,

SUBMISSION ON EXHIBITION OF SPECIAL FLOOD CONSIDERATIONS CLAUSE & DRAFT SHELTER-IN-PLACE GUIDELINE

Thank you for the opportunity to comment on the Explanation of Intended Effect: Special Flood Considerations (SFC) Clause and draft Shelter-In-Place Guideline that are on exhibition until 14 February 2023.

The comments within this letter outline some key concerns and matters to be considered as part of your finalisation of the draft Clause and Guideline. The comments herein have been prepared by Council officers and have not been reported to the elected Council for an adopted position due to the time constraints of the exhibition period. However, the comments are generally reflective of the Council's position provided as part of previous submissions relating to the Government's Flood Prone Land Package.

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

It is understood that the Explanation of Intended Effect (EIE) is seeking feedback on the inclusion of the SFC Clause into the LEPs of the Councils which nominated to include the clause during the exhibition of the Flood Prone Land Package in 2021. **It is noted that The Hills Council did not nominate to include the SFC clause within its LEP.**

It is further understood the EIS is seeking feedback on whether to apply the Special Flood Considerations clause to all NSW Councils by inserting it into:

- NSW Council LEPs; or
- State Environment Planning Policy (Resilience and Hazards) 2021 ('Resilience and Hazards SEPP').

a) Application of Special Flood Considerations Clause

In its submission to the Department regarding the Flood Prone Land Package (the Package), Council strongly recommended the SFC clause continue to be optional as the preparation of additional mapping would be required within The Hills to effectively implement the clause.

Since the release of the package in 2021, Council has allocated funds to prepare the necessary modelling and mapping to define the Flood Planning Area (FPA) and the Probable Maximum Flood (PMF) across The Hills Shire. Modelling and mapping are progressively being prepared under a staged program.

It is further noted that the 'Considering Flooding in Land Use Planning Guideline' states that Councils should have discretion whether to adopt the SFC clause and apply the SFC in their LGA, provided appropriate information and justification to support the flood related development controls is available. In this regard, and in the absence of flood modelling and mapping covering all areas of this LGA, it is requested that SFC clauses remain optional rather than mandatory.

b) Development Controls Regarding Special Flood Considerations

In accordance with the 'Considering Flooding in Land Use Planning Guideline', amendments to Council's Development Control Plan (DCP) will also likely be required if this clause is mandated in the LEP. In the absence of appropriate mapping, the application of development controls will be ineffective.

Additionally, should DPE progress its plans for a standard Development Control Plan template, it is recommended that controls related to Special Flood Considerations be included within this template. This would provide consistency as well as certainty and transparency for landowners, developers and planning authorities.

c) Consistency and Clarity in the Definition of Planning Terms

As raised within previous submissions on the flood prone land package, it is considered that some of the terms in the clause are subjective and open to interpretation.

The scope of the special flood considerations may inadvertently apply to a broad range of land uses beyond those listed in subclause 5. Even though a property may not have specific 'risk to life' issue up to the PMF, the PMF may cut off major egress paths. Inherently, there is a 'risk to life' through evacuation or lack thereof. Therefore, before mandating this clause State-wide, the Department should provide additional guidance as to which scenarios the draft clause is intended to apply, and until then, the clause should be optional.

Additionally, some key terms require more clarification to avoid ambiguity. It is requested that it include more clarification and define the term 'rarer flood events'. The term 'rare' is subjective and is too open to interpretation. We appreciate that the intent of this may be to enable Councils to make a merit-based assessment as to the appropriateness of a development on a case-by-case basis. However, the lack of definitive language will create uncertainty for landowners, developers and consent authorities, will create delays in the assessment process and potentially lead to lengthy and costly court action to determine whether a development is likely to have an impact from 'rarer flood events'. Further, terminology such as 'will not adversely affect' does not support the clause position of preventing change to the flood risk because it is too open to interpretation, is not measurable and makes it very difficult to assess the cumulative impact of development.

d) Greater Certainty in the Application of the Clause

A significant amount of development is completed across the State under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Such development, by nature, attracts less scrutiny and is fast-tracked for completion. Careful consideration must be given prior to mandating this clause to ensure that the management of flood-prone land is not compromised. The current open wording of key terminology in the clause does not support consistent interpretation in a fast-tracked assessment environment.

In addition, if this clause is applied state-wide, the clause should clarify the circumstances under which this clause will apply. For example clarification is required as to whether the clause would apply to all new development or whether some minor development, such as an extension to an existing dwelling, will be excluded.

Recommendations:

- The Special Flood Considerations clause should remain optional, in the absence of necessary mapping, and should not be mandated state-wide.
- If however the Government does mandate the clause state-wide, funding should be allocated to Councils to assist in the preparation of flood studies and mapping along with reasonable timeframes for the completion of this necessary work.

- If the clause is mandated state-wide it should be further refined to avoid ambiguity in the language.
- If the clause is mandated state-wide it should be further refined to provide greater certainty regarding the circumstances under which this clause will apply.
- Controls related to Special Flood Considerations should also be included in the standard Development Control Plan template.

Draft Shelter-In-Place Guideline

It is understood that the intended effect of the draft Shelter-In-Place (SIP) Guideline is to provide clear and consistent guidance to Councils and consent authorities about when shelter-in-place can be used as an alternative to off-site evacuation for emergency management in flood events.

The Guideline suggests that SIP related controls should be inserted into development control plans and applied when assessing development applications. However, Council requires significant time and resources to complete the necessary additional flood mapping or studies. Therefore, in the absence of additional flood mapping Council will not be able to adhere to the Guidelines or accurately identify developments that require shelter-in-place locations.

It is noted that the Guideline is a preamble. Therefore, the exhibited draft document does not include any specific guidance or formal advice on the issue of vertical evacuation to enable greater clarity and certainty for Councils that have to apply vertical evacuation.

a) Insufficient Information

Concern is raised regarding the content of the "Where to apply SIP" section. It states that "*SIP is a refuge occurring above the PMF level. Thus, the height of PMF would determine the application of SIP regardless of development types, i.e. infill or greenfield development*". SIP should not be an option for certain developments where the movement and mobility of the occupants can be difficult, either horizontally or vertically, e.g., nursing homes and hospitals. Furthermore, SIP should not be an option for development that can be isolated by flood events up to the PMF for more extended periods and where access by emergency/medical crews can be a challenge during other emergency events such as fire, earthquake or a medical condition requiring a specialist's attention. These developments include but are not limited to hospitals, sanatoriums, nursing homes and childcare facilities.

The Guideline states, "*SIP should not determine development scale or density. Rather, the height of PMF in a location is used to inform where SIP could be applied*". This statement should be elaborated on. Whilst SIP should not determine the development's scale or density, the development's scale and density should determine the SIP level's scale and design. The Guideline should include details regarding floor area and storage of food, water, and medical emergency requirements for SIP in comparison to the occupancy levels of a development to ensure the safety of the occupants.

The Guideline should also include a section that provides information regarding the design guidelines for SIP levels. This section should include design details regarding roof structures and amenities (i.e. bathrooms, covered spaces) required on SIP levels. Roofs or roof decks should not be the only level available for SIP in a development. These areas are exposed to the full effects of external weathering and could be unsafe for people to use as SIP areas. If a roof deck is nominated as a SIP area, the Guideline should provide directions regarding the amenities such an area must include (i.e. bathrooms and covered spaces). The Guideline should also clearly identify the type of development and type of designs where SIP is not permissible.

The Guideline should include information regarding Flood Emergency Response Plan (FERP) when a SIP is included in a development. The following should ideally be included in the FERP:

- Vertical flood evacuation plans available and posted in each residence/unit;
- Flood evacuation warning/alarm system;
- Building managers to serve as flood wardens during the SIP activity;
- Lifts to automatically shut down and not be operational during a flood event;
- Emergency contact numbers must be regularly updated and posted in each residence/unit;

- Standby water vessels (e.g. dinghy, small boat) available for emergency transport; and
- Flood evacuation kits must be required for residents below the PMF levels.

Addressing the flood risk problems at the strategic planning stage requires a whole-of-government approach, and Council officers would welcome being part of Government discussions on these issues and development of an integrated Guideline.

b) Development Controls Regarding Special Flood Considerations

The Guideline should provide sample controls regarding SIP. This would allow the gradual application of flood-related development controls when appropriate maps are available. Additionally, controls regarding SIP should also be included in the standard Development Control Plan template that the Department of Planning and Environment is currently preparing. This would provide greater certainty and transparency for landowners, developers and planning and consent authorities.

Recommendations:

- The Department should seek further advice from Councils and experts to develop an integrated Guideline that includes specific guidance and formal advice regarding SIP.
- The Guideline should be further developed to include developments and design criteria permissible for SIP levels.
- The Guideline should include sample development controls regarding vertical evacuation.
- Upon attending to the above recommendations, the Guideline should be re-exhibited.

For further information or to discuss this submission, please contact Ishara Warakagoda, Senior Planner, on 9843 0445.

Yours faithfully



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