

NSW Department of Planning and Environment
c/o NSW Planning Portal

resilience.planning@planning.nsw.gov.au

6 March 2023

Dear Sir/Madam,

**WOLLONDILLY SHIRE COUNCIL SUBMISSION TO EXPLANATION OF INTENDED EFFECT:
SPECIAL FLOOD CONSIDERATIONS CLAUSE**

Thank you for the opportunity to provide feedback on the *Explanation of Intended Effect: Special Flood Considerations Clause* dated January 2023.

Reducing the impacts of flooding and increasing resilience to flood events is a particularly important issue in the Wollondilly Local Government Area. This is clearly outlined as a priority in Wollondilly 2040.

Wollondilly Council recognises that the role of land use planning in managing the flood risk to future developments is becoming increasingly important.

As a summary, it appears that the significant range of matters raised by Wollondilly Council from the July 2021 exhibition have not been addressed by the Department. These concerns are again highlighted in this submission.

Background - Flooding in Wollondilly

The background information below provides an overview of the areas where Wollondilly Shire Council currently has flood related development information (including flood mapping) available through an adopted Floodplain Risk Management Study or Plan, as well as other work that is currently being progressed, either to update existing flood data and mapping or to provide new flood data in areas where no flood study or other work has previously been undertaken.

We consider the Special Flood Consideration clause would be premature without the completion of this work, and the clause is not necessarily a one size fits all approach as various councils would be at different stages in terms of the information that they have available relating to flooding.

In Wollondilly, there are two areas where a Council or Government endorsed Flood Study with associated flood mapping currently applies:

- **Stonequarry Creek Floodplain** – The Stonequarry Creek Floodplain Risk Management Study and Plan (FRMS&P) were adopted in June 2020. The FRMS&P includes mapping which delineates both Mainstream and Overland Flood Planning Areas as well as the Probable Maximum Flood (PMF) extent;
- **Hawkesbury Nepean Flood Affected Area** – The Hawkesbury Nepean Flood Study (1996) included a detailed analysis of primary flood data and used the most up to date technology at the time. The only flood mapping currently available for the Hawkesbury Nepean Floodplain from the 1996 Flood Study is the 1% Annual Exceedence Probability (1 in 100 flood extent) and the Probable Maximum Flood extent. No mapping of the Flood Planning Area is available and this typically needs to be determined through further studies, normally carried out by or on behalf of an applicant when carrying out development on land within the floodplain.

Two other key projects are also currently underway which will improve understanding of flood events and the application of flood planning controls in Wollondilly:

- **Wollondilly Shire Wide Flood Study** – Whilst flood information is available for the Stonequarry Creek Floodplain and the Hawkesbury Nepean River, flood related information and mapping for the remainder of the Shire is quite scarce. Recognising this, a Shire Wide Flood Study was initiated following a successful application for a grant under the NSW Floodplain Management Program. The Study has not yet been adopted.
- **Hawkesbury Nepean Valley Regional Flood Study (2019)** – The Hawkesbury Nepean Valley Regional Flood Study Final Report was completed in 2019, however, it has not been formally adopted. The Regional Flood Study was intended to update the 1996 Flood Study. The Study will need to be updated to factor in rainfall and other data from the 2021 and 2022 flood events before being considered for adoption. This Regional Flood Study focuses on flood behaviour downstream of Warragamba Dam and Bents Gorge on the Nepean River upstream of Wallacia, which only includes part of the Nepean River Floodplain as it applies to Wollondilly.

As noted further above, it is considered that the application of the Special Flood Considerations clause would be premature without the completion of the Wollondilly Shire Wide Flood Study and the Hawkesbury Nepean Valley Regional Flood Study (and related projects such as a Regional Evacuation Model), as much of this information would form the basis of the assessment of any development proposed on flood prone land against the Special Flood Considerations Clause.

It is also important to note that we are currently progressing a Planning Proposal to introduce a local flood clause in the Wollondilly Local Environmental Plan 2011 which is more tailored to local conditions and requirements. This place-based approach builds on a model special flood considerations clause and is considered to be more effective than a mandatory generic provision.

The proposed clause would apply up to the PMF. The intent of the Planning Proposal and proposed clause is to give weight to the findings of the Stonequarry Creek FRMS&P (and any further FRMS&P which may be undertaken in the future), particularly in regards to limiting sensitive types of uses in higher risk areas and ensuring that development is consistent with the requirements of any FRMS&P. This is considered a more suitable approach than adopting the Special Flood Considerations Clause. This highlights the need for the Special Flood Considerations Clause to remain optional as there needs to be flexibility around adopting any relevant clauses to local conditions and requirements.

General comments

Proposal to make the Special Flood Considerations Clause Mandatory

Whilst Council agrees with the principal of the Special Flood Considerations Clause, it is considered that at the present time it would be premature in the absence of other related work being completed, particularly within the Hawkesbury Nepean Catchment.

In particular, at the present time there is insufficient information available for Council to determine how a proposed development would impact the safe evacuation of people in a flood event, particularly on a regional scale.

In Council's view, the following work should be fully completed before the Special Flood Considerations Clause is imposed on Council's through the Standard Instrument LEP or a SEPP:

- The Regional Land Use Planning Framework (to be completed by DPE and Infrastructure NSW) will, among other matters, consider the existing and future planned population to determine the risk to life and evacuation capacity;

- Develop a fit-for-purpose regional evacuation model that identifies evacuation capacity constraints for different areas in the Valley (to be prepared by Transport NSW);
- 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);
- Review of the NSW Floodplain Development Manual (to be undertaken by DPE).

Councils will need to take advice from specialist agencies such as SES, Infrastructure NSW and DPE to be able to make informed and responsible decisions about flood planning and the assessment and determination of development applications (and by extension, planning proposals).

The Department is yet to confirm the referral agency responsibilities and framework for receiving such advice. There are also no mandated concurrence role for these agencies that can and should provide advice to councils.

Clause 5.22(2)(b) states that the clause applies to:

*(b) for development that is considered to be non-sensitive development - land the consent authority considers to be land that, in the event of **a flood**, may:*

- (i) cause a particular risk to life, and*
- (ii) require the evacuation of people or other safety considerations.*

Council has concerns that the clause does not define or clarify what constitutes a flood. For the terms ‘flood planning area’ and ‘probable maximum flood’, the clause refers to the definitions contained in the Floodplain Development Manual, however, no such reference is included for the term ‘flood’. This should be included for certainty, so that Council’s apply the clause correctly.

Previous Comments Made on Flood Prone Land Package (July, 2021)

The implications of the Special Flood Considerations Clause were considered as part of the release of the NSW Government’s Flood Prone Land Package in July 2021. Wollondilly co-signed a submission with Penrith, Blacktown, Hawkesbury and Liverpool Council’s outlining a number of concerns with the Flood Prone Land package and called for a deferral. A copy of that letter is attached to this submission.

The letter raised a number of concerns with the Special Flood Considerations Clause, in particular, the lack of information available in order for Council's to be able to make an assessment under the clause in relation to the safe evacuation of people in a flood event. In Council's view the concerns raised in that letter have still not been resolved and as such the Special Flood Considerations Clause should not be imposed on all Council's at this time.

A copy of the letter is provided with this submission.

Summary of comments

- The special flood considerations clause (clause 5.22) should remain as an optional clause for standard Instrument local environmental plans.
- Standard Instrument local environmental plans are the preferred option for state-wide application of clause 5.22 into strategic land use frameworks,
- Effective implementation of the clause is contingent on and premature in the absence of further work to determine hazards and establish a more robust planning framework,
- The concerns raised by Western City Councils, including Wollondilly, in response to the release of the *Flood Prone Planning Package* in 2021 remain,
- Our preference is to pursue the inclusion of a special flood considerations clause (referred to above) independently, as part of a council-led planning proposal once the necessary studies have been completed to justify and support its implementation. This is on the basis that Wollondilly is currently progressing a council-led planning proposal for the Stonequarry Creek Floodplain that can be extended to other areas once the necessary studies have been completed.

If you would like to discuss any of the information contained within this submission please contact Mark Ruddiman, Senior Strategic Planner on (02) 4677 9592 or mark.ruddiman@wollondilly.nsw.gov.au

Yours faithfully,



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Shire Futures