



Planning circular

PLANNING SYSTEM

Update on addressing flood risk in planning decisions

Circular	PS 24-001
Issued	1 March 2024
Related	Supplement to PS 21-006

Update on addressing flood risk in planning decisions

This circular supplements PS 21-006 *Considering flooding in land use planning: guidance and statutory requirements* and provides additional information to planning authorities in relation to addressing flood risk in land use planning and development assessment under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The circular outlines existing flood-related planning policies and provides further information and advice on their application in planning. The circular also provides updates on flood-related policy initiatives underway, including action taken in response to the *2022 NSW Flood Inquiry*.

2022 NSW Flood Inquiry

An independent expert inquiry (the NSW Flood Inquiry) led by Professor Mary O'Kane AC and Michael Fuller APM was undertaken into the preparation for, causes of, response to, and recovery from the significant flood events experienced in NSW in early 2022.

The NSW Flood Inquiry Report (released July 2022) included 28 recommendations for change and highlighted the importance of taking a more proactive, risk-based approach to flooding in planning decisions, including greater consideration of climate change.

The NSW Department of Planning, Housing and Infrastructure (the department) is working with councils, government agencies and key stakeholders to implement the NSW Government's response to the NSW Flood Inquiry.

As part of this work, this circular provides advice to councils and other planning authorities about land use planning and development assessment on flood prone land. This includes information on:

- existing flood-related planning policies that planning authorities should continue to apply to address flood risks
- further advice on flood matters for planning authorities to consider when making decisions for planning proposals, local and regional development applications, and State significant development and State significant infrastructure.

Consistent with the findings of the NSW Flood Inquiry, the department recommends applying a risk-based approach when addressing flooding in planning decisions. This includes ensuring that:

- the level of assessment undertaken for a planning proposal or development proposal is proportionate to the likely impacts of the proposal, including taking into account the relative flood risk of the proposal
- planning decisions are based on a balanced consideration of the merits, risks and impacts of a given proposal, and that appropriate measures are in place to limit impacts to an acceptable level and achieve a tolerable flood risk level for flood-affected proposals.

The following information sets out the key existing flood-related planning policies in NSW and provides advice on how they are applied using a risk-based approach.

Flood risk assessment and management

Councils are primarily responsible for managing flood risk in their local government areas (LGAs). These risks are managed through the development and implementation of floodplain risk management plans under the flood risk management (FRM) process.

Existing guidance for councils on managing flood risks through the FRM process includes:

- **NSW Flood Prone Land Policy and Flood Risk Management Manual: the management of flood liable land (2023)**
- **Flood Risk Management Toolkit**
- **Local Government Act 1993** (LG Act), section 733 – exemption from liability

Council flood studies and floodplain risk management studies and plans provide flood maps and information

on flood behaviour and constraints (including flood hazard). These studies form the basis for setting flood planning levels to use in planning decisions.

Councils should continue to work closely with the Department of Climate Change, Energy, the Environment and Water's (DCCEEW) on managing flood risk in their LGAs through the FRM process. Councils can seek technical and financial support from DCCEEW through the Floodplain Management Program to support this work.

Proposed changes to Floodplain Development Manual and guidelines

In June 2023 the Flood Risk Management Manual 2023 was gazetted. This replaced the Floodplain Development Manual 2005. The new version of the manual and associated toolkit continues to include advice for councils to consider when reviewing and determining flood planning levels.

NSW Reconstruction Authority

Under the recently commenced *NSW Reconstruction Authority Act 2022*, the NSW Reconstruction Authority (the Authority) must prepare a **State disaster mitigation plan** (SDMP) and may require the relevant entity to prepare a **disaster adaptation plans** (DAP) in consultation with councils and other relevant planning authorities or prepare a DAP itself. Once these plans are made, councils must have regard to them when exercising relevant functions under the EP&A Act and LG Act.

The Authority may also undertake work related to flood modelling and determining flood planning levels, particularly for priority high-risk catchments¹.

For further information visit the [NSW Reconstruction Authority webpage](#)

Land use planning

In line with the department's 2021 **Flood Prone Land Package**, planning authorities are required to assess planning proposals in accordance with **Section 9.1 Ministerial Direction - 4.1 Flooding** - for planning proposals that create, remove or alter a zone or a provision that affects flood prone land.

The **Considering flooding in land use planning guideline** (2021) provides further guidance to councils on flood-related land use planning and the areas where flood-related development controls should apply.

The **Planning Circular PS21-006 - Considering flooding in land use planning: guidance and statutory requirements** is still current and provides information on the application of **Ministerial Direction - 4.1 Flooding** (which was previously referred to as Local Planning Direction 4.3 - Flooding) and the

application of the **Considering flooding in land use planning guideline**.

As outlined in the **Considering flooding in land use planning guideline**, councils should also update their development control plans (DCPs) to indicate the relevant flood planning levels and flood planning areas that have been identified through the FRM process and where they apply.

Further advice on assessing flood-affected planning proposals is provided below (under the heading **Supporting information and advice**) and in **Attachment A**.

Flood notations on planning certificates

The *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) sets out matters required to be specified in a planning certificate (see s 290, and Sch 2).

A council must specify the following information on a planning certificate:

- a) If the land or part of the land is within the flood planning area and subject to flood-related development controls (EP&A Regulation, s 9(1) of Sch 2),
- b) If the land or part of the land is between the flood planning area and the probable maximum flood (PMF) and subject to flood-related development controls (EP&A Regulation, s 9(2) of Sch 2).

These planning certificate requirements were introduced in 2021 as part of the department's Flood Prone Land Package and they support broader public awareness of flood development controls applying to land in each LGA.

Note. The above requirements were previously set out in clauses 7A(1) and (2) of Sch 4 of the repealed *Environmental Planning and Assessment Regulation 2000*.

Development assessment

Before determining a development application (DA), the consent authority is required to undertake an evaluation of the proposed development in accordance with relevant legislation, plans, development controls, policies and guidelines. Provisions that may be applicable to flood-related planning assessment include:

- **section 4.15 Evaluation** (EP&A Act) – Identifies matters to consider when determining DAs, including associated LEP and DCP requirements that may include flood-related development controls
- **clause 5.21 Flood Planning** (Standard Instrument – Principal Local Environmental Plan (SILEP)) – Compulsory LEP provision with considerations and requirements for development proposed within the

¹ **NSW Flood Inquiry 2022 (Vol 2 Full Report)** identifies high-risk catchments: Northern Rivers, Hawkesbury–Nepean, Georges,

Wilsons, Tweed, Macleay, Richmond, Hunter, Clarence and Shoalhaven

flood planning area

- **clause 5.22 Special Flood Considerations** (SILEP) – Optional LEP ² provision with requirements for sensitive and hazardous development on land between the flood planning area and the PMF, and other development on land that may present a flood safety risk.

DAs are assessed and determined on their merits, having regard to potential economic, environmental and social impacts and the principles of ecologically sustainable development, including factoring in any flood risks or flood impacts associated with the development.

Further advice on assessing flood-affected development proposals is provided below (under the heading **Supporting information and advice**) and in **Attachment A**.

Complying development on flood control lots

Flood control lots are those properties that have been identified as being within Council's flood planning area. Certain State Environmental Planning Policies (SEPPs) set out rules relating to complying development on flood control lots, including:

- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 for residential, commercial and industrial, and agritourism development
- State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP) for schools, TAFEs and universities
- State Environmental Planning Policy (Housing) 2021 for secondary dwellings and group homes.

Under these SEPPs, complying development cannot be carried out on flood control lots without certification from the relevant council or a professional engineer specialising in hydraulic engineering that the part of the lot being used for development is not a flood storage area, floodway area, flow path, high hazard area, or a high risk area.

Additional provisions for certification are set out in each SEPP, such as additional certification requirements, minimum finished floor levels and the use of flood compatible materials.

Supporting information and advice for flood-affected proposals

While further work is being undertaken in response to the findings of the NSW Flood Inquiry, the department

recommends that planning authorities apply a risk-based approach to the assessment of flood-affected proposals, including planning proposals, local and regional DAs, State significant development applications and State significant infrastructure applications.

This risk-based approach should take into account the **flood risk profile** of each proposal which considers the flood characteristics for the location, the nature and type of development and any impacts on the existing community and surrounding properties. Matters to consider when determining the flood risk profile should include:

- whether the proposal is in a high-risk catchment
- the location of the proposal in relation to flood behaviour and constraints including:
 - floodway, flood storage area or flood fringe area
 - the hazard vulnerability classification of the land³
 - frequency of inundation
- whether the proposal provides for safe occupation and efficient and effective evacuation in flood events and how it is to be achieved
- in high-risk catchments, whether the proposal is likely to result in a significant increase to the risk to life in other parts of the catchment in a PMF flood event
- any known evacuation constraints such as the flood emergency response classification⁴ for the area and available warning times (including rate of rise and when the evacuation route is cut off by floodwater)
- whether the proposal is for a sensitive or hazardous land use⁵, or other higher risk uses⁶ and what mitigation strategies (if any) are proposed to reduce any identified risks
- whether there may be adverse flooding impacts on surrounding properties
- potential impacts of cut and fill and other building works on flood behaviour
- ability of proposed development to withstand flood impacts.

The above matters should be considered across a range of flood scenarios for high risk proposals. The typical events examined may include the 10% Annual Exceedance Probability (AEP), 5% AEP, 1% AEP, 0.5% or 0.2% AEP, the PMF event, and in relation to the flood planning level (if available). The Department of Climate Change, Energy, the Environment and Water's **Flood Impact and Risk Assessment – Flood Risk Management Guide LU01** (2023)

² This clause may not be included in the LEP that applies to a particular DA, in which case, it will not be necessary to consider.

³ The **Australian Disaster Resilience Guideline 7-3 Flood Hazard** (AIDR, 2017) defines flood hazard categories.

⁴ Refer to **Flood Emergency Response Planning Classification of Communities** (DECC, 2007)

⁵ **Clause 5.22 Special flood considerations** (SILEP) defines sensitive and hazardous land uses, which include boarding houses, caravan parks, correctional centres, early education and care

facilities, eco-tourist facilities, educational establishments, emergency services facilities, group homes, hazardous industries, hazardous storage establishments, hospitals, hostels, information and education facilities, respite day care centres, seniors housing, sewerage systems, tourist and visitor accommodation, and water supply systems.

⁶ Higher risk uses on floodplains may include hospitals, medical centres, correctional centres and complexes, residential development and educational establishments.

provides advice on flood impact and risk assessments (FIRA) for flood-affected planning proposals and DAs.

Consistent with the NSW Flood Inquiry, extreme flood events such as the 0.05% or 0.02% AEP should also be considered, particularly for higher risk proposals and when setting flood planning levels to support land use planning.

The impacts of climate change on future flood frequency and levels should also be considered. Advice on the consideration of climate change in understanding flood behaviour is available on [DCCEWW's website](#).

Based on these factors, planning authorities may require more information from proponents on flood risk and mitigation measures, especially for higher risk proposals. Higher risk proposals may also require technical advice from flood experts on flood risk, mitigation measures, impacts on surrounding properties, cumulative impacts on flood behaviour and evacuation capacity.

For lower risk proposals, it would generally not be necessary to require further flood information as part of the assessment. This may include where proposals are located outside floodways or flood storage areas and within low hazard areas of the floodplain, particularly for proposals that do not involve sensitive, hazardous or higher risk land uses, or where evacuation constraints are minimal.

Planning authorities should also refer to any relevant strategic plans or studies that may provide broader local or regional context for considering flood risks (including cumulative impacts), along with other strategic considerations. This may include consideration of regional and district plans, infrastructure plans, as well as any publicly available documents such as regional flood studies or local/regional evacuation capacity studies.

Risk-based assessment and decision-making

The matters to consider outlined above are intended to support well-informed decisions regarding development on flood prone land, particularly where flood risks and impacts are potentially significant. These matters build on the standard assessment considerations outlined under the headings **Land use planning** and **Development assessment** above.

Consistent with a risk-based approach, the level of flood assessment carried out for a given proposal should be proportionate to the relative flood risk and likely flood impacts of the proposal. Planning authorities should consider whether the amount and detail of flood information accompanying the application is commensurate with the flood risk level of the proposal, whether the existing flood information is adequate, and/or whether further flood information is needed to support the application.

Decisions on planning proposals and development

proposals are merit-based and involve the weighing up of the benefits of the proposal (such as the strategic merits, or local/regional economic or social benefits) against the costs (including any potential risks or impacts of the project).

For higher risk proposals, project variations, mitigation measures or flood conditions of consent may be necessary in order to limit impacts to an acceptable level and achieve a tolerable flood risk level.

Further information

Attachment A to this circular summarises matters planning authorities should consider when addressing flood risk in planning decisions.

For more information about flooding and land use planning visit www.planning.nsw.gov.au/flooding

The department has also developed **Planning for a more resilient NSW - A strategic guide to planning for natural hazards** (November 2021) and a supporting resource kit to help planning authorities make decisions that more effectively consider natural hazard risk and build sustainable, hazard-resilient communities. The guide promotes the adoption of an 'all-hazards' approach to land-use planning, including requiring careful consideration of all hazards in collaboration with relevant natural hazard and emergency managers. For more information visit <https://www.planning.nsw.gov.au/policy-and-legislation/resilience-and-natural-hazard-risk/natural-hazards>

Please email questions to stakeholder.engagement@planning.nsw.gov.au

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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ATTACHMENT A – Summary of guidance and resources for addressing flood risk in planning decisions

	Addressing flood risk in planning decisions – Current framework	Further guidance and matters to consider
Flood impact and risk assessment and management	<p>Guidance for councils on managing flood risk through FRM process:</p> <ul style="list-style-type: none"> • NSW Flood Prone Land Policy and Flood risk management manual: the management of flood liable land (2023) • Floodplain Risk Management Toolkit • s733 Local Government Act 1993 (LG Act) – exemption from liability 	<p>NSW Reconstruction Authority must develop SDMP and may prepare a DAP or require a DAP from the relevant entity. Councils are to have regard to disaster plans when exercising functions under the EP&A Act and LG Act.</p>
Land use planning	<p>Planning authorities assess planning proposals in line with existing flood-related land use planning provisions:</p> <ul style="list-style-type: none"> • s 9.1 Ministerial Direction - 4.1 Flooding – for planning proposals affecting flood prone land • Planning Circular PS21-006 – Considering flooding in land use planning • Considering flooding in land use planning guideline (2021) <p>Councils update DCPs to ensure FPLs, FPAs and related development controls remain current and effective.</p> <p>Councils to provide notations on planning certificates to indicate whether land is subject to flood-related development controls within the FPA or between the FPA and PMF.</p>	<p>Department recommends planning authorities adopt a risk-based approach to the assessment of planning proposals, local and regional DAs, and SSD and SSI applications. This should include taking into account the flood risk profile of each proposal. Matters to consider include:</p> <ul style="list-style-type: none"> • whether the proposal is in a high-risk catchment • the location of the proposal in relation to flood behaviour and constraints including: <ul style="list-style-type: none"> ○ floodway, flood storage area or flood fringe area ○ the hazard vulnerability classification of the land ○ frequency of inundation • whether the proposal provides for safe occupation and efficient and effective evacuation in flood events and how it is to be achieved • any known evacuation constraints such as the flood emergency response classification for the area and available warning times (including rate of rise and when the evacuation route is cut by floodwater) • whether the proposal is for a sensitive or hazardous land use, or other higher risk uses and what controls (if any) are proposed to reduce any identified risks • whether there may be adverse flooding impacts on surrounding properties • potential impacts of cut and fill and other building works on flood behaviour • ability of proposed development to withstand flood impacts. <p>These matters should be considered across a range of flood events such as the 10% AEP, 5% AEP, 1% AEP, 0.5 or 0.2% AEP, the PMF event, and the FPL (if available), as well as 0.02% or 0.05% AEP events for higher risk proposals. Climate change to also be considered.</p> <p>Flood Impact and Risk Assessment - Flood Risk Management Guide LU01 (2023) provides advice on flood impact and risk assessment for planning proposals and DAs.</p> <p>Planning authorities should also refer to plans or studies that provide broader context for considering flood risks (including cumulative impacts) if available (for example, strategic plans, infrastructure plans, regional flood studies and local/regional evacuation capacity studies).</p>
Development assessment	<p>Consent authorities relevantly assess DAs in line with existing flood-related assessment provisions such as:</p> <ul style="list-style-type: none"> • s 4.15 Evaluation EP&A Act – Matters for consideration when determining DAs, including applicable LEP and DCP requirements • cl 5.21 Flood Planning (SILEP) – mandatory LEP provision for development proposed within the FPA • cl 5.22 Special Flood Considerations (SILEP) – optional LEP provision for sensitive and hazardous development on land between the FPA and PMF, and other development on land that may present a flood safety risk. <p>Special provisions in SEPPs for complying development on flood control lots.</p>	

Abbreviations: **AEP** - annual exceedance probability; **DAP** - disaster adaptation plan; **DA** - development application; **DCP** - development control plan; **FPA** - flood planning area; **FPL** - flood planning level; **FRM** - flood risk management; **LEP** - local environmental plan; **PMF** - probable maximum flood; **SDMP** - State disaster mitigation plan; **SILEP** - Standard Instrument – Principal local Environmental Plan; **SSD** - State significant development; **SSI** - State significant infrastructure.