



Planning circular

PLANNING SYSTEM

Circular	PS 21-006
Issued	14 July 2021
Related	Replaces PS07-003

Considering flooding in land use planning: guidance and statutory requirements

This circular replaces Planning Circular PS07-003 and provides information on how to consider flooding in land use planning. This circular also discusses changes to requirements for planning certificates issued under section 10.7 of the *Environmental Planning and Assessment Act 1979* and local planning direction 4.3 on flooding, which affects planning proposals.

Introduction

The NSW Government's Flood Prone Land Policy (the policy) is set out in the *Floodplain Development Manual: the management of flood liable land*, April 2005 (the manual).

The policy provides that councils are primarily responsible for managing flood risk to reduce the risk to life, property damage and other impacts in their local government areas. It also recognises that flood-prone land may be able to support some types of development.

The manual helps councils make informed decisions about managing flood risk through the development and implementation of floodplain risk management (FRM) plans through the FRM process.

Section 733 of the *Local Government Act 1993* protects councils from liability if they have followed the principles of the manual. This circular is consistent with the principles of the manual.

The manual sets out key issues relating to protecting existing and future occupants of flood-prone land that need to be considered in land use planning. These include the:

- safety of people including evacuation considerations
- management of flood risk, to reduce flood damage to public and private property and infrastructure
- management of the impacts of development, including cumulative impacts of development
- application of development controls
- management of the impacts of development on emergency services.

This circular provides advice on a package of changes regarding how land use planning considers flooding and flood-related constraints.

The package includes:

- an amendment to clause 7A of Schedule 4 to the *Environmental Planning and Assessment Regulation 2000* (the Regulation)
- a revised local planning direction regarding flooding issued under section 9.1 of the *Environmental Planning and Assessment Act 1979* (the Act)
- two local environmental plan (LEP) clauses which introduces flood related development controls
- a new guideline: *Considering Flooding in Land Use Planning (2021)*
- revoking the *Guideline on Development Controls on Low Flood Risk Areas (2007)*.

The manual and its supporting guides, the *National Best Practice Guidance Australian Institute of Disaster Resilience (AIDR) Handbook 7* and its supporting documents, the *AIDR Guideline 7.5 and AIDR Practice Note 7.7*, all encourage the full range of flood risk to be considered in land use planning.

Understanding the constraints that flooding places on development of land can assist in identifying areas suitable for different types of development, as well as risk-appropriate controls that should apply to different types of development in LEPs. Development control plans (DCPs) may provide details of more specific controls relating to the varying constraints in different areas of the floodplain.

Effective consideration of flood risk in land use planning involves developing an understanding of the full range of flood behaviour up to the Probable Maximum Flood (PMF) and considering this in management of flood risk.

Section 10.7 planning certificates— Amendment to the EP&A Regulation

The *Environmental Planning and Assessment Amendment (Flood Planning) Regulation 2021* amends Schedule 4 to the Regulation to revise the matters to be specified in a planning certificate issued under section 10.7 for land subject to flood-related development controls.

Councils will continue to be required to distinguish between land where different categories of flood-related development controls apply.

Flood-related development controls are not defined but would include any development controls relating to flooding that apply to land, that are a matter for consideration under section 4.15 of the Act.

Clause 7A(1) of Schedule 4 to the Regulation will require councils to include a notation on section 10.7 planning certificates if the land or part of the land to which the certificate relates is within the flood planning area (FPA) and subject to flood related development controls.

Clause 7A(2) of Schedule 4 to the Regulation will require councils to include a notation on section 10.7 planning certificates if the land or part of the land to which the certificate relates is between the FPA and the probable maximum flood (PMF) and subject to flood related development controls. The FPA and the PMF have the same meaning as they have in the manual.

The amendment to the Regulation will commence on **14 July 2021** to allow councils time to prepare for the new requirements when issuing section 10.7 planning certificates.

If councils do not have this information, then an 'unknown' response should be provided in the planning certificate until such time as the information is made available to councils and councils have updated its flood-related development controls.

Unmapped locations may also be subject to flood related development controls and these areas should be noted in the planning certificate.

Where known, councils should include any additional information on flooding and flood risk in the planning certificate, under section 10.7(part 5) of the Act, outlining if the land is located within the floodplain.

Local planning direction 4.3—Flooding

Planning proposals are required to be consistent with directions issued under section 9.1 of the EP&A Act. Local Planning Direction 4.3—Flooding

requires, among other matters, a planning proposal to be consistent with the principles of the manual.

The direction has been revised to remove the need to obtain exceptional circumstances to apply flood-related residential development controls above the 1% Annual Exceedance Probability (AEP) flood event. It also ensures planning proposals consider the flood risks and do not permit residential accommodation in high hazard areas and other land uses on flood prone land where the development cannot effectively evacuate.

The direction also makes provision for special flood considerations where councils have chosen to adopt the optional Special flood considerations clause in an LEP.

The revised direction will apply to planning proposals that have not been issued with a gateway determination under section 3.34(2) of EP&A Act.

Considering Flooding in Land Use Planning Guideline

The guideline supports the principles of the manual and provides advice to councils on land use planning on flood-prone land. It provides councils with greater flexibility in defining the areas to which flood-related development controls apply, with consideration of defined flood events, freeboards, low-probability/high-consequence flooding and emergency management considerations.

The manual states that a defined flood event (DFE) of 1% AEP, or a historic flood of similar scale, plus a freeboard should generally be used as the minimum level for setting residential flood planning levels (FPL). Choosing different DFEs and freeboards requires justification based on a merit assessment that is consistent with the FRM process and principles of the Floodplain Development Manual.

Special Flood Considerations apply to sensitive and hazardous development in areas between the FPA and the PMF and to land that may cause a particular risk to life and other safety considerations that require additional controls. These controls relate to the management of risk to life and the risk of hazardous industry/hazardous storage establishments to the community and the environment in the event of a flood.

Revised LEP clauses

To reflect the changes to the Regulation for flood-related development, two LEP clauses have been developed to apply to local government areas with flood prone land.

The LEP clauses relate to:

- Flood Planning
- Special Flood Considerations.

Further information

The revised local planning direction is available on the department's website at

www.planning.nsw.gov.au/flooding

The Regulation is available from the NSW Legislation website at www.legislation.nsw.gov.au in the 'As Made' section.

The NSW Government's Floodplain Development Manual (2005) and supporting documents are available online at

environment.nsw.gov.au/topics/water/floodplains/floodplain-manual

and

environment.nsw.gov.au/topics/water/floodplains/floodplain-guidelines

Australian Institute of Disaster Resilience (AIDR) 2017 Managing the Floodplain Handbook and supporting documents are available online at

knowledge.aidr.org.au/resources/handbook-7-managing-the-floodplain/

For more information, please contact the relevant Department of Planning, Industry and Environment regional planning team.

Office contact details are available at www.planning.nsw.gov.au/Contact-Us

Department of Planning, Industry and Environment circulars are available at:

planning.nsw.gov.au/circulars

Authorised by:

Alex O'Mara

Group Deputy Secretary

Place, Design and Public Spaces

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.

© State of New South Wales through the Department of Planning, Industry and Environment planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.