



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: EP&D:CB1b140223

14 February 2023

Planning Policy  
Department of Planning and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Dear Sir/Madam,

### **Special flood consideration clause EIE**

The Law Society appreciates the opportunity to comment on the Explanation of Intended Effect (EIE), which sets out an explanation of proposed amendments designed to simplify and improve state planning processes by incorporating better, risk-based consideration of flooding. The Law Society's Environmental Planning & Development Committee contributed to this submission.

We note that feedback is sought on two options in response to recommendations of the Independent Flood Inquiry, conducted by Mary O'Kane and Mick Fuller. Recommendation 21 identified the need to simplify and improve state planning processes, especially when anticipating and recovering from a disaster, and to ensure that the strategic land use frameworks and related controls permit new developments only in line with evacuation capacity, both individually and cumulatively.

We support option two, that is, inserting clause 5.22, the 'special flood considerations' clause of the *Standard Instrument-Principal Local Environmental Plan*, into all council Local Environmental Plans (LEPs). Although implementing option one, inserting clause 5.22 into the *State Environmental Planning Policy (Resilience and Hazards) 2021*, would be of similar effect, option two provides a clearer and more user-friendly guide to planners. We also note that LEPs are generally more likely to be accessed by local residents and other relevant stakeholders.

We suggest that this option will also allow all councils flexibility in their LEPs to recognise land that is more flood prone, and to differentiate the treatment of sensitive and non-sensitive land uses in flood affected/liable land with high risk to life.

While we support the proposals in the EIE, we would welcome the opportunity to review the draft legislation.

The Law Society appreciates the opportunity to participate in the reform process. If you have any questions about this submission, please contact Liza Booth, Head of Commercial and Advisory Law Reform, at [liza.booth@lawsociety.com.au](mailto:liza.booth@lawsociety.com.au) or on (02) 9926 0202.

Yours faithfully,

Cassandra Banks  
**President**