

18 October 2023

Ms Catherine Van Laeren  
Director, Sydney Region West  
Planning Services  
NSW Department of Planning and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

**Finalisation of Fairfield LEP 2013 (Amendment No.46) – Accelerated LEP Review  
Stage 2 Planning Proposal**

Dear Catherine

Council at its Outcomes Committee meeting on Tuesday 10 October 2023 considered a report concerning the recent flood advice provided by the NSW DPE in relation to finalisation of Fairfield Accelerated LEP Review – Stage 2 Planning Proposal.

As you are aware, the advice provided is based upon the recommendations of the NSW Flood Advisory Panel (FAP) which covered a broad range of procedural and technical flood related issues. Of critical consequence, the FAP recommends deferral of all properties from Council's Stage 2 PP classified with any form of flood hazard (regardless of whether the hazard level is minor or only partially affects a property), until such time as Council has undertaken further flood studies and modelling that address a range of issues raised by the FAP. This includes the impacts of climate change and evacuation of areas affected by very large floods above the 1 in 100 year flood up to the probable maximum flood (PMF).

At this stage, while it is unclear exactly how many properties are affected by the FAP advice, it will be a substantial number given the high number of properties that are partially or moderately affected by low-risk flood hazards above the Flood Planning Area (FPA).

Moreover, it is understood that the entire town centres of Fairfield and Carramar will be removed and the majority of Canley Vale town centre will also be excluded from the planning proposal. This decision will significantly impact Council's ability to meet its housing targets and projected population growth in areas of the City located in close proximity to major public transport infrastructure, community facilities and commercial services.

As Council has consistently conveyed, it already has complete and up-to-date flood studies for the affected catchments within the broader Georges River Catchment. These studies already address the majority of issues raised by the FAP. In particular, climate change has been modelled based on best available information including sensitivity analysis of increased rainfall intensities.

In this regard, Council contends that the FAP advice contains oversights, incorrect assumptions and exaggerated conclusions regarding the flood studies supporting the proposed rezonings and changes to planning controls included in the proposed amendments.

In addition, Council understands the FAP has based its advice on recommendations made by the NSW Flood Inquiry, several which have only received 'in principle support' from the NSW Government and/or are subject to further investigations or programs (e.g. in relation to evacuation studies) at a regional scale that are yet to commence or be completed.

As mentioned in our recent meeting, the Stage 2 Planning Proposal was drafted, exhibited and finalised under the former Section 9.1 Ministerial Direction 4.3 Flood Prone Land which was in force prior to February 2023 and which did not require Council to consider the full extent of flood risk beyond the FPA up to the PMF.

Notwithstanding, in order to progress the planning proposal, Council undertook a detailed analysis of all land within the planning proposal area that is affected by flood hazards. As a result of this analysis and the findings of the recently completed Cabravale Overland Flood Study, Council officers consider that only 50 properties (located in Carramar and Villawood) warrant deferral from the Stage 2 PP until further investigations into flood mitigation measures are undertaken.

The majority of areas associated with the Stage 2 PP affected by potential flooding is the result of overland flooding. As advised to the FAP, the duration of overland flooding is much shorter (generally less than 2hrs) than mainstream flooding. Under State flood planning guidelines the majority of areas associated with the Stage 2 PP affected by this type of flooding have a low hazard rating (i.e. low velocity and depth) where flood conditions are "*generally safe for people, vehicles and buildings*".

In areas affected by overland flooding, there is also scope to mitigate the impacts of overland flooding through improvements with stormwater infrastructure, as well as constructing new buildings to standards contained in Council's City Wide Development Control Plan (DCP) which results in buildings being built with flood resilient materials and having habitable areas located above the height of potential flood waters in a 1 in 100 year flood + 500mm freeboard.

Council's existing *Clause 6.4 Floodplain Risk Management* of Fairfield LEP 2013 and proposed inclusion of *Standard Clause 5.22 Special Flood Considerations* contain provisions that require Council to consider the risk to life and safe evacuation of people and other safety considerations for all land up to the PMF. These provisions will provide the safeguard for Council to ensure that future development of land affected by low flood risk is compatible with the land's flood behaviour.

Through the use of these provisions at development application stage Council can consider on a case-by-case basis the impacts of redevelopment and ensure that proposals incorporate appropriate measures to manage flood risk. Simply removing entire town centres where existing development standards already allow for significant increases in residential density, will not only significantly reduce housing supply but will also limit Council's ability to facilitate future strategic development outcomes which will potentially reduce flood risk in the future.

For the reasons outlined above, Council at its meeting of 10 October 2023, resolved as follows:

***"That in consideration of the advice provided by the Flood Advisory Panel, Council request the NSW Department of Planning and Environment to proceed with implementation of the Stage 2 Planning Proposal, subject to deferral of 50 properties in Carramar and Villawood from the proposed amendments to the Fairfield Local Environmental Plan (LEP) 2013".***

Accordingly, I reiterate Council's formal request to proceed with the finalisation of the Stage 2 Accelerated LEP Planning Proposal subject to the deferral of 50 identified properties affected by high, medium or low flood risk within the Flood Planning Area (FPA) being the 1:100 year ARI plus 500mm freeboard.

Your support in this matter is sought to ensure that the significant strategic planning and urban design work that has been completed is not unnecessarily postponed and significant areas of potential developable urban land sterilised by the inappropriate application of the recommendations of the former FAP.

I look forward to hearing from you and please contact me on 9725 0278 if you wish to discuss this matter further.

Yours sincerely



**Marcus Rowan**  
**MANAGER – STRATEGIC LAND USE PLANNING**

## OUTCOMES COMMITTEE

Meeting Date 10 October 2023

Item Number. 99

**SUBJECT:** Fairfield Accelerated Local Environmental Plan (LEP) Review - Stage 2 Planning Proposal - Flood Considerations

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**FILE NUMBER:** 20/22496

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**PREVIOUS ITEMS:** 97 - Information Report - Fairfield Accelerated LEP Review - Stage 2 Planning Proposal - Outcomes Committee - 12 Sep 2023

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**REPORT BY:** Andrew Mooney, Executive Strategic Planner; Leonie Gray, Manager Catchment Planning

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### RECOMMENDATION:

That in consideration of the advice provided by the Flood Advisory Panel, Council request the NSW Department of Planning and Environment to proceed with implementation of the Stage 2 Planning Proposal, subject to deferral of 50 properties in Carramar and Villawood from the proposed amendments to the Fairfield Local Environmental Plan (LEP) 2013.

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### SUPPORTING DOCUMENTS:

There are no supporting documents for this report.

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### CITY PLAN

This report is linked to *Theme 2 Places and Infrastructure* in the Fairfield City Plan.

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### SUMMARY

At the Ordinary Council meeting of 26 September 2023, it was resolved *that the matter be referred to the Outcomes Committee to be held on Tuesday 10 October 2023.*

### Background

As previously reported to Council, following release of the NSW Flood Inquiry 2022, progress in implementation of the Stage 2 Accelerated Stage Planning Proposal (PP) (referred to the Department of Planning and Environment (DPE) in July 2022 for finalisation), has been delayed. This is due to the fact that the Flood Inquiry classified the Georges River Catchment, incorporating all the urban areas in Fairfield City east of the Western Sydney Parklands, as a “high risk” flood catchment.

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As a result of this announcement in December 2022, the DPE referred the Stage 2 PP to an internal Flood Advisory Panel (FAP) for review against the findings and recommendations of the Flood Inquiry.

The FAP advice on the Stage PP covers a broad range of procedural and technical flood related issues and recommends deferral of all properties from the Stage 2 PP classified with any form of flood hazard (regardless of whether the hazard level is minor or only partially affects a property), until such time Council has undertaken further flood studies and modelling that address a range of issues raised by the FAP. This includes the impacts of climate change and evacuation of areas affected by very large floods above the 1 in 100 year flood up to the probable maximum flood (PMF).

At this stage, it is unclear exactly how many properties are affected by the FAP advice, as DPE is yet to provide clarification on this and there are many properties included in the Stage 2 PP that are only partially or moderately affected by low-risk flood hazards. Council Officers estimate that the total number of properties affected by this issue potentially exceeds 1,000 of the approximately 5,000 properties covered by the Stage 2 PP.

As a result of the recently completed Cabravale Overland Flood Study, Council Officers consider that only 50 properties (located in Carramar and Villawood) warrant deferral from the Stage 2 PP until further investigations into flood mitigation measures are undertaken.

As detailed in this report, after preliminary review, Council Officers consider that the FAP advice contains oversights, incorrect assumptions and exaggerated conclusions reached regarding the flood studies supporting the proposed rezonings and changes to planning controls included in the Stage 2 PP. Council Officers are currently seeking further clarification on these matters from a specialist, independent flood consultant who has been involved with several flood studies prepared by Council.

In addition, the FAP has based its advice on recommendations made by the NSW Flood Inquiry a number of which have only received 'in principle support' from the NSW Government and/or are subject to further investigations or programs (eg. in relation to evacuation studies) at a regional scale that are yet to commence or be completed.

It is also recommended that the above matters be discussed further with the DPE, with the aim of implementing the Stage 2 PP subject to removal of the 50 properties located in Carrarwood and Villawood.

The latter section of this report also includes background information on the position of other neighbouring councils dealing with advice from other FAPs or State agencies in relation to flooding issues.

### REPORT

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The Stage 2 PP proposes to rezone land or increase floor space ratios (FSR) and height allowances in and around the main town centres of Cabramatta, Canley Vale, Carramar and Fairfield, as well increase FSR and height allowances in the R3 - Medium Density Areas in the eastern part of the City.

These amendments to the Fairfield LEP 2013 would create capacity for an additional (approximate) 10,000 dwellings located in close proximity to major public transport infrastructure, community facilities and commercial services to meet State government housing targets and projected population growth in the City over the next 20 years.

The advice from the FAP covers a range of policy and technical flood related matters. The critical issues are outlined below with a Council Officer response also provided.

### KEY ISSUES:

#### 1. Recommendations from NSW Flood Inquiry – Larger Scale Floods and Flood Evacuation Issues

The DPE's 'terms of reference', for the FAP required it to have regard to the recommendations (total of 28) contained in the NSW Flood Inquiry 2022. At this stage the NSW Government has only formally endorsed 6 of the recommendations, none of which are directly relevant to or constrain further progress of the Stage 2 PP, subject to Fairfield City Council (FCC) staff recommending deferral of 50 properties in Carramar until further investigations into flood planning issues have been carried out.

The FAP advice includes a range of comments and concerns in relation to flood studies undertaken by Council. A recurring issue is that flood studies and supporting information prepared by Council for the Stage 2 PP do not adequately take into account flood evacuation issues for floods greater than the 100-year flood event up to the PMF flood, including evacuation routes and cumulative flood evacuation capacity.

### OFFICER RESPONSE

At this stage, in response to the Flood Inquiry, the NSW Government has resolved to give consideration to flood evacuation issues via pilot projects. In addition, both the Flood Inquiry and State Government acknowledged that consideration of major evacuation measures/schemes in existing urban areas needs to be subject to:

*“evaluation of the cost and effectiveness of risk mitigation efforts, including land preparation, planning use and management, to enable a better understanding of what works”.*

### Technical Considerations

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The FAP's advice on evacuation issues relates to potential major floods in the Georges River Catchment above the 1 in 100-year flood. In the event of such a flood there would be major implications for the whole of the region that requires a response from State Government lead agencies who have responsibility for coordinating regional evacuation. To this end, Council Officers have already been working with other councils within the Georges River Catchment and State Agencies on regional evacuation issues.

Given the findings of the Flood Inquiry, this work will require major resourcing at the State level and require a cost benefit assessment of evacuation options (eg. upgrade of regional roads) to *“enable a better understanding of what works”* as referred to in the NSW Governments response the Flood Inquiry.

The majority of areas associated with Stage 2 PP affected by potential floods is the result of overland flooding. As advised to the FAP the duration of overland flooding is much shorter (generally less than 2hrs) than mainstream flooding. Under State flood planning guidelines the majority of areas associated with the Stage 2 PP affected by this type of flooding have a low hazard rating (ie. low velocity and depth) where flood conditions are *“generally safe for people, vehicles and buildings”*.

In areas affected by overland flooding, there is also scope to mitigate the impacts of overland flooding through improvements with stormwater infrastructure, as well as constructing new buildings to standards contained in Council's City Wide Development Control Plan (DCP) which results in buildings being built with flood resilient materials and having habitable areas located above the height of potential flood waters in a 1 in 100 year flood + 500mm freeboard.

### Policy Considerations

Under the Ministerial Direction 4.3, relevant to the Stage 2 PP, procedurally Council was only required to take into account flood considerations below the Flood Planning Area which incorporates the area below the 1 in 100-year flood, plus 500mm freeboard. Most importantly, the Ministerial Direction does not require Council to have regard to the implications of flooding for larger floods above the Flood Planning Area (FPA) up to the PMF.

Notwithstanding, as a matter of course, detailed analysis of potential risks for the community and evacuation issues is considered in all flood studies undertaken by Council. In particular, evacuation issues are considered in the 1 in 100-year flood in areas that are classified as a high flood risk precinct. In general, none of the areas included in the Stage 2 PP affected by mainstream flooding are located within a high flood risk precinct.

The exception to this is a number of properties located in Carrawood (44) and Villawood (6) that as a result of a more recent overland flood study have been identified in a high-risk precinct. As per the recommendation to this report, it is proposed to defer these properties from the Stage 2 PP until such time further investigations are carried out to determine the potential to mitigate the impacts of flooding on these properties.

There is also a small number of properties located in the R3 Zones (where changes to height and FSR controls are proposed) in Canley Vale and Fairfield Heights affected by overland flooding in high-risk flood precincts. However, the majority of these sites (including the front section) of these properties are not restricted by flooding and have direct access to roads to facilitate evacuation in the event of a 1 in 100-year flood.

## **2. Georges River Floods – 2021 and 2022**

The FAP advice includes numerous references to the flood events that occurred on the Georges River in 2021 and 2022, with FAP advice relevant to the Stage 2 PP as follows:

*“The flood studies informing the Proposal do not include data from the recent 2021 and 2022 floods for Orphan School Creek, Prospect Creek, or Georges River”; and*

*“Relies on the Georges River FRMS&P, which is now two decades old”.*

### **OFFICER REPONSE**

As referred to previously, areas included in the Stage 2 PP are predominantly affected by overland flooding. In addition, *Volume 2 of the NSW Flood Inquiry* states that the Georges River (including areas of Fairfield City) *“were not impacted by the 2021 floods”* and that the 2022 floods were classified as either *“minor” or “moderate”*.

In addition, Council has not been provided with any data or evidence from the NSW Government Agencies responsible for overseeing the NSW floodplain policy and flood guidelines that suggests that Council flood studies relevant to the Stage 2 PP are ‘out of date’.

Rather, the FAP advice assumes that flood levels in the City have potentially increased due to the Georges River being classified as a “high risk catchment”. In this regard, Council Officers question the validity of the FAP advice in relation to this matter and will be seeking further independent advice from an expert who specialises in the preparation of flood studies.

## **3. Council flood studies and consideration of climate change**

A critical matter in the FAPs advice is that the Stage PP and supporting flood studies do not take into account the impacts of climate change on in previous flood modelling undertaken for the City, with a statement being provided that flood hazard risks, *“are likely to increase with updated flood modelling”*.

No evidence or data is provided to corroborate the Panel’s advice, that is based largely on a view that Council flood studies do not take into account or have regard climate change.

### **OFFICER RESPONSE**



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As referred to above, as well as stating that the 2021/22 floods did not impact or had a “minor or moderate” impact along the Georges River, Volume 2 of the NSW Flood Inquiry includes the following statement in relation to the flood events experienced in the Georges River Catchment and climate change:

*“It is impossible to determine the degree to which there is a climate change signal in this event. There are possible links (the sea surface temperatures are relatively warm off New South Wales which tends to increase the amount of water evaporated from the ocean) but whether this affected the east coast low is unknown. In the absence of evidence to the contrary, the best assessment possible at this time is that there is no significant climate change signal in the July 2022 flooding event”.*

Regardless of the above, all the flood studies supporting the Stage 2 PP included sensitivity analysis for potential increases in rainfall intensity (up to 30%) above the rainfall projections issued for the Georges River Catchment by State Agencies. This addresses the issues raised in the FAP’s consideration of the Stage 2 PP, but is disregarded in their final advice.

The FAP also indicates that the Council flood studies do not have regard to the latest rainfall projections issued for the Sydney Region in 2019. Council’s Catchment Branch are aware of the 2019 projections, that indicate average rainfall intensity levels in 2019 have decreased from the historic rainfall levels utilised in the flood studies supporting the Stage 2 PP.

This means that the current projected level of floods (including 1 in 100 and PMF floods) identified in Council’s existing flood studies could potentially be lower if Council applied the 2019 rainfall projections for the Georges River. This issue is subject to ongoing discussions between Council Officers and the State Agency that oversees the guidelines informing preparation of flood studies in the region.

### **Position of other Western Sydney Councils**

Council Officers have been in contact with other Western Sydney Councils that are potentially affected by similar advice from other FAPs or state agencies. In general, none of the other councils are dealing with major planning proposals for increased residential densities that are in the final stages of consideration, that are either heavily impacted or could face major alteration, as a result of FAP advice.

Notwithstanding, it is clear other councils are trying to come to terms with similar issues referred to in this report, including consideration of floods up to the PMF, evacuation issues and climate change.

As stated by 1 council, it appears that the PMF has now become the new ‘benchmark’ for determining whether planning proposals can proceed. Below is a brief summary of the position and issues for a number of other Western Sydney Councils:

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### Liverpool City Council

The NSW DPE is questioning progress of a planning proposal (post public exhibition), for an existing private hospital near Liverpool City Centre, because the site is partially affected by the PMF associated with overland flooding. The matter is still being assessed and soon to be referred to Council for consideration.

### Campbelltown City Council

Is in the early stages of preparing a planning proposal for rezoning of land in Ingleburn and has been required to undertake extensive technical investigations into flood evacuation issues in the event of a PMF. The Council estimates that the potential costs of implementing evacuation measure (eg. raising height of roads) is in the vicinity of \$30m. Campbelltown Council is yet to receive a report on the PP for a decision.

### Penrith City Council (Hawkesbury Nepean Catchment)

Has had a private planning proposal for increased residential densities, (partially affected by the PMF), rejected by the DPE at Gateway Stage. The applicant is lodging an appeal with the NSW Independent Assessment Panel. Council is awaiting the results of the appeal to determine the implications for future planning proposals in the City.

### Other Council in Georges River Catchment

Neither Cumberland nor Canterbury Bankstown Councils are dealing with planning proposals that are affected by advice from the FAP. This is based largely on the fact that the main town centres and higher density residential areas are not located in close proximity to areas affected by overland flood events or mainstream flooding from the Georges River.

## CONCLUSION

The FAP advice on the Stage 2 PP and Council's supporting flood studies raises a number of matters that Council Officers consider are unwarranted and beyond the scope of the recommendations of the NSW Flood Inquiry 2022, that had particular focus on other areas of the State where major flood events occurred.

At this stage the implications of the Georges River Catchment being classified as a "high-risk" catchment are yet to be fully understood, particularly in relation to potential changes in rainfall patterns which were not at the scale experienced in other areas of the State in 2021-2022 as considered by the Flood Inquiry.

It is recommended that Council endorse the recommendation of this report as the basis for further discussions with the NSW DPE in order to finalise the LEP Stage 2 planning proposal.

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Andrew Mooney  
**Executive Strategic Planner**

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Leonie Gray  
**Manager Catchment Planning**

**Authorisation:**  
Director City Planning

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File Name: **OUT10102023\_12.DOCX**

\*\*\*\*\* END OF ITEM 99 \*\*\*\*\*

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- 99:** Fairfield Accelerated Local Environmental Plan (LEP) Review - Stage 2 Planning Proposal - Flood Considerations  
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**A Confidential Memorandum was circulated by the Executive Manager (S Drca) to Councillors prior to the meeting providing further information on this matter.**

<b>Councillor</b>	<b>Type of Interest</b>	<b>Nature of Interest</b>	<b>Action Taken / Explanation Given</b>
Barkho	Special Disclosure of Pecuniary Interest	I have a pecuniary conflict of interest in relation to some of the properties under consideration, however, I have completed a Special Disclosure under Schedule 3 of the Code of Conduct that allows me to participate in discussion, debate and to vote on matters pertaining to the Fairfield Accelerated LEP Review – Stage 2 Planning Proposal – Flood Considerations.	This will not influence my decision.
Le	Special Disclosure of Pecuniary Interest	I have a pecuniary conflict of interest in relation to one of the properties under consideration, however, I have completed a Special Disclosure under Schedule 3 of the Code of Conduct that allows me to participate in discussion, debate and to vote on matters pertaining to the Fairfield Accelerated LEP Review – Stage 2 Planning Proposal – Flood Considerations.	This will not influence my decision.
Ly	Special Disclosure of Pecuniary Interest	I have a pecuniary conflict of interest in relation to one of the properties under consideration, however, I have completed a Special Disclosure under Schedule 3 of the Code of Conduct that allows me to participate in discussion, debate and to vote on matters pertaining to the Fairfield Accelerated LEP Review – Stage 2 Planning Proposal – Flood Considerations.	This will not influence my decision.

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Rohan	Special Disclosure of Pecuniary Interest	I have a pecuniary conflict of interest in relation to some of the properties under consideration, however, I have completed a Special Disclosure under Schedule 3 of the Code of Conduct that allows me to participate in discussion, debate and to vote on matters pertaining to the Fairfield Accelerated LEP Review – Stage 2 Planning Proposal – Flood Considerations.	This will not influence my decision.
M Saliba	Pecuniary	I have a significant pecuniary conflict of interest in relation to this matter as members of my family own property in the Fairfield LGA. I have not sought any exemption relating to pecuniary interest therefore, will not participate in this item.	Councillor M Saliba left and took no further part in debate or discussion.

**Councillor M Saliba left (6.34pm) the meeting.**

**MOTION:** (Rohan/Barkho)

That in consideration of the advice provided by the Flood Advisory Panel, Council request the NSW Department of Planning and Environment to proceed with implementation of the Stage 2 Planning Proposal, subject to deferral of 50 properties in Carramar and Villawood from the proposed amendments to the Fairfield Local Environmental Plan (LEP) 2013.

A division was taken with the following results:

Aye	Nay
Councillor Barkho	
Councillor Le	
Councillor Ly	
Councillor Rohan	
Total=(4)	Total=(0)

**CARRIED UNANIMOUSLY**

**Councillor M Saliba returned (6.37pm) to the meeting.**

**100:** Cabravale Overland Flood Study  
File Number: 15/09613