

3 June 2022

Professor Mary O'Kane AC
Michael Fuller APM
Chairs
NSW Independent Flood Inquiry
Sydney NSW 2001

Via email: inquiry@floodinquiry.nsw.gov.au

Dear Professor O'Kane and Mr Fuller

2022 NSW Flood Inquiry

I write in relation to the 2022 flood events across the state of NSW and the work of the 2022 NSW Flood Inquiry.

Establishing the Facts

Urban Taskforce members believe that it is critical that the work of this independent expert inquiry uses a scientifically sound empirical base to provide guidance on current and future land use planning and management in flood prone locations across NSW. We warmly welcome your appointment to this task.

Urban Taskforce and this submission will not be making comment on the preparedness and efficacy of the work undertaken by Resilience NSW, the Bureau of Meteorology, the SES or any of those involved in the emergency recovery. Our submission related to matters of planning, rezoning, permissible uses, and flood mapping.

To deal with some of the politically motivated policy statements made in the immediate aftermath of the floods, it is important that this Inquiry accurately portrays the flood event in context, explains the causes of the event, and maps a pathway for policy moving forward.

The immediate reaction from some politicians, sections of the media and the public – as during most natural disasters – has been varied.

From the Property industry's perspective, it is essential that it is possible to secure insurance to cover flood risk. But importantly, it is also critical that decisions are made on the basis of consistent analysis. This is critical for insurers and developers. Where flood risk is analysed from a helicopter view, there must be the option of a merit-based analysis with objective assessment in more detailed studies. We can not be put in a position where we face a "talk to the hand ... computer says no" scenario where the detail of decision making on a site by site basis is so important.

This Insurance Council of Australia have advised us that they are legislatively prohibited from "colluding" or even meeting to discuss what might be insurable or not insurable. This is an important aspect of competition law. The probity and anti-collusion laws governing their industry insist that each insurer undertake their own assessment and price the insurance product, independently.

The Inquiry report needs to present a set of facts that put the recent floods into the context of the planning system.

Where exactly do we have a problem? Is this a legacy problem which has implications for re-builds (or restrictions on future land use)? Is the current suite of planning regulations sufficient for managing flood risk? If not, how might it be improved?

An evident pattern in the flood events in 2022 is that damaged properties were predominantly legacy developments that were built prior to flood risk regulations.

Much of the NSW flood exposed housing stock is located in historic development locations, some going back to the turn of the 19th century. The fact that many legacy developments have been destroyed can distort the picture of what the problem is in the current NSW flood risk management system.

The Inquiry should note that current policies applicable to rezonings ensure that thorough assessment and engineered mitigation solutions are in place. Current Local Environmental Plans (LEPs) and the principles they are based on are implemented well across NSW. The new LEP making guidelines, published by the NSW Government in December 2021, include mandatory consideration for natural hazards. In particular, the site-specific merit test includes an assessment criterion which gives regard and assesses impacts to the natural environment on the site, including an explicit consideration of the flood risk.

While, in Urban Taskforce's view, the current system provides sufficient protection to new homes and residents, to instil further confidence in the NSW flood risk management system on regional and local level, more needs to be done. These provisions are most clearly spelt out in the recently commenced Ministerial Directions (Section 9.1 – Focus Area 4.1). This Direction emphasises the centrality of the Floodplain Development Manual 2005 and the various studies and plans required to be prepared under that Manual and Policy framework. We support this consistent approach.

Flood zones

Urban Taskforce is not suggesting that the State Government takeover all floodplain management rules – because this would risk a one-size fits all outcome without considering the nuance of each creek and river system. There are significant differences between most creek/rivers - topography and development patterns and forms and therefore is it important that Councils with local expertise set the local rules under the guise of the Floodplain Development Manual 2005.

Urban Taskforce suggests that the Inquiry consider a traffic light system for flood management. There are risks associated with adopting such an approach. Those risks arise from the very “computer says no” scenario referred to above. Just as insurers want the option of providing insurance for development in any location, so too, developers want the option for detailed assessment studies and well thought through mitigation measures to be considered. Nonetheless, mindful of these risks and the need for flexibility, Urban Taskforce suggests:

For those areas which are flood free, a clear “green light” should apply.

For areas where there may be further engineering work needed, or restrictions on land use or building type applied, or where further, more detailed work is needed, an “amber light” should apply.

For areas where there is a known flood risk that effectively precludes all development potential, a “red light” should apply.

In developing such a framework, a different traffic light regime might apply to each broad but different land use type (residential, commercial, industrial, recreational, infrastructure, or environmental).

Working groups should be established with members of State and Local government members and a range of relevant private sector and community representatives. This should be a forum for establishing facts, not pushing any political agenda.

Early identification of “no-go” and high-risk areas is key for successful land use planning

The implementation of a standardised and structured flood risk assessment would enable councils to do an early identification of no-go and high-risk areas for development. Flood risks maps should be a standard component of any early plans for development of regions or precincts. This is the responsibility of the NSW government and local councils. While this work is now mandated for all land being re-zoned (and has been for many years) even recent examples result in some very random results.

For example, in the Aerotropolis area in 2019, the NSW Government released the Western Sydney Aerotropolis Planning Package. The Draft SEPP (Western Sydney Aerotropolis) 2019 included a Flood map which outlined the 1 in 100-year flood affected area. This information was published early in the development of the Aerotropolis providing some certainty around developable land to those landowners within the floodplain. However, it fell down when it came to the detail and DPE have, to date, steadfastly maintained the reliance on the higher-level mapping in some Aerotropolis LGAs.

Different flood mapping methodologies have produced significantly different results by different LGAs – particularly when it comes to the designation of “flood affected land”. This highlights the need for a consistent methodology and the importance of detailed on the ground proofing and merit assessment. With a housing supply crisis, we can not afford to be alienating developable land because of an error in mapping methodology. Where so much is at stake, it is critical that careful expert interpretation of flood maps is applied and a genuine site-specific merit based assessment is strongly preferred.

Consistent and reliable data on flood risk is needed

Accurate and easily accessible information on flood data and events will support the insurance industry in providing adequate insurance for communities at various levels of flood risk.

According to a recent report, published by the Insurance Council of Australia, there are several data and risk assessment gaps that need to be addressed. A lot of the current flood studies are not available and often data is tied up in licencing issues.

The same report also notes that there is a lack of consistency in approaches in flood studies undertaken by local governments and that the data used for those flood studies needs to be up to date and easy to access.

These local studies are particularly valuable due to their detailed analysis of the flood areas in the LGA. State documents simply do not contain that level of detail.

Urban Taskforce notes that there is a significant database of flood studies and reports (but not all are included). <https://floodata.ses.nsw.gov.au/>.

New planning and reporting requirements for councils should not slow down development

If any recommendations from the 2022 NSW Flood Inquiry mandate additional strategic flood plans and documents, consideration must be given to how each recommendation will affect councils' capacity to implement those recommendations. Where they require financial support or expertise, this should be provided by the State Government otherwise work on existing rezonings will cease.

The strain on outer suburban Councils comes, in part, from the recent trend towards the development of Greenfield development. All these options for housing supply should be pursued as a priority to assist in alleviating the housing supply and affordability crisis.

Consideration should also be given the restoring the balance between infill and greenfield development in the Greater Sydney context. For over 30 years in Greater Sydney, the balance of development of new homes has been circa 65% infill (brownfield) Intensification of urban densities and 35% greenfield.

All areas that are not subject of flooding should be examined with a view to their potential to contribute to meeting or over-achieving against housing targets.

Permission of above-ground parking in residential flat buildings in areas which may be subject to flood/drainage issues as a direct and acceptable response to the recent flood events. Not only is this resilient means of dealing with flooding/drainage issues, it is more efficient (cheaper) to construct, avoids groundwater, contamination, mechanical ventilation, conflicts with services/utilities and the carbon-intensive process of transporting excavated material to landfill.

Above ground car parking has been shunned based on some poor experiences of this building type from the 1960s and 1970s. The planning rules and regulations around this area need to be reconsidered to allow for this sensible cost reducing flood mitigation opportunity.

Better risk mitigation is needed by management of waterways

While waterway management is expensive, it has the highest positive impact on flood risk management.

Dams are efficient flood mitigation measures. Upstream management and purpose-built dams with appropriate capacity can reduce downstream flood levels by temporarily storing and later releasing floodwaters. Specifically the Urban Taskforce generally supports the significant flood benefits that arise within the Hawkesbury Nepean Valley from the proposed raising of Warragamba Dam for flood mitigation purposes.

Local measures also have an impact. Cleared waterways and building levees is key to addressing flood risks in developed areas. Waterway modifications can improve the downstream flow and reduce the likelihood of blockage. Measures include widening, deepening, realigning or cleaning rivers. However, some measures may not be sustainable in the long term. There needs to be a thorough assessment of both the feasibility and the cost-to-benefit ratio for waterway management.

Ministerial Directions require that in areas where the cost is too high or, due to the changing weather patterns, the measures would be ineffective in the near future, new development should not be encouraged and should not be zoned for housing unless it can be shown that up-stream, on site and down-stream flood mitigation can mediate the risk, along with restrictions on land use and utilisation of flood resilient building designs and materials.

<https://www.planning.nsw.gov.au/-/media/Files/DPE/Directions/Ministerial-Directions-commenced-on-1-March-2022.pdf?la=en>

The real work now is to deal with the legacy developments which occurred well prior the enactment of the current legislative and regulatory framework.

The Urban Taskforce is willing to work closely with the NSW Government to improve policies that enable safe and sustainable development in flood prone areas and remove barriers to development in areas without flood risk.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tom Forrest', with a long horizontal flourish extending to the right.

Tom Forrest
Chief Executive Officer