

**Submission
No 67**

REVIEW OF THE NSW RECONSTRUCTION AUTHORITY ACT 2022

Organisation: Lismore City Council

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Mr Clayton Barr MP, Chair

Joint Select Committee on the NSW Reconstruction Authority

NSW Parliament House

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To Members of the Joint Select Committee,

Lismore City Council thanks you for the invitation to provide a submission to the Joint Select Committee on the NSW Reconstruction Authority's review of the *NSW Reconstruction Authority Act 2022* ('the Act').

Since the catastrophic floods of 2022, Lismore City Council (LCC) have had extensive interaction with the NSW Reconstruction Authority ('the Authority'), and its predecessor, the Northern Rivers Reconstruction Corporation (NRRC). Our submission is informed by our 'lived experience' of working with a newly formed State Government Agency established in response to the flood event. While some may criticise this approach and point to the Act only coming into play in late 2022, the fact is the communities' reconstruction expectations, both prior to and since the Act commenced, have not been met. Highlighting these challenges, and highlighting what has not occurred, provides a full assessment of whether the State Government and the Act have met their objectives.

Prior to the completion of our submission, we were privy to submissions from other invitees and interested parties. We note that a number of submissions echo both our sentiments regarding the Act, and our experiences with the Authority itself. However, where our submission varies from the majority, is that we are able to provide a direct firsthand account of dealings with the practical operation of the Act and the operation of the Authority itself. As discussed below, the City of Lismore is one of only seven local government areas to be declared a reconstruction area under the Act. We, along with our six neighbouring LGAs are in a unique position to present this submission to the Joint Select Committee.

Terms of reference

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Lismore City Council acknowledges the people of the Bundjalung Nation, traditional custodians of the land on which we work.

The terms of reference are adopted from section 93(3) of the Act:

(3) The Joint Select Committee is to review-

(a) the Act to determine whether-

(i) the policy objectives of the Act remain valid, and

(ii) the terms of the Act remain appropriate for securing the objectives.

Objectives of the Act

The objectives of the Act under section 3 are identified as follows:

The primary object of this Act is to promote community resilience to the impact of disasters in New South Wales through—

(a) disaster prevention, preparedness and adaptation, and

(b) recovery and reconstruction following disasters.

With the methodology to be utilised in achieving these objectives outlined in section 4:

(a) establishing the NSW Reconstruction Authority to facilitate community resilience to the impact of disasters in New South Wales through prevention, preparedness and adaptation, and

(b) providing for the functions and powers of the NSW Reconstruction Authority, including functions and powers to—

(i) facilitate the protection, recovery and reconstruction of affected communities, and

(ii) mitigate against the impact of potential disasters on communities, and

(iii) improve the resilience and adaptability of affected communities in relation to potential disasters, including, for example, by the betterment of affected communities, and

(c) providing for the exercise of functions by the chief executive officer of the NSW Reconstruction Authority, subject to the Minister's control and direction, including ensuring the Authority exercises its functions effectively and efficiently.

Review of the Authority's Operations

Although it is not identified as a specific term of reference for this review, section 93(3) of the Act also requires that the Joint Select Committee review:

(b) the operations of the Authority regarding any disaster in relation to which the Authority exercises functions (emphasis added).

Therefore, in addition to considering the appropriateness of the Act's terms in securing the Act's objectives, this submission will provide reference to LCC's experiences with the operations of the Authority. Once the Joint Select Committee formally commences the review under section 93(3)(b), LCC requests that its experiences with the operations of the Authority and Lismore LGA's experiences as a whole are considered as part of a case study on the operations of the Authority.

Do the policy objectives remain valid?

In response to the first term of reference, LCC's position is that the objectives of the Act remain valid and highly necessary. There is a definite and continuing need to promote community resilience through preparation, adaptation, prevention, recovery and reconstruction. With extreme rainfall events predicted to increase in intensity and frequency, resulting in an increase in flood risks,¹ these objectives need to be met. The Royal Commission into National Natural Disaster Arrangements Report identifies that, 'Australia's disaster outlook is alarming', with disasters expected to become more complex, unpredictable, and difficult to manage, citing the CSIRO's conclusion that, 'climate and disaster risks are growing across Australia.'²

The likelihood of an increase in the frequency and severity of disasters is magnified by the omnipresent threat of compounding disasters. Lismore LGA experienced its first serious flood in nearly thirty years in March 2017. This flood caused enormous damage throughout the community and was the first time the levee had been topped since its construction in 1999. The bushfires of 2019-2020 were unprecedented and devastating, and at the height of recovery efforts, Australia was experiencing its first cases of COVID-19. Although COVID was not natural disaster, it was a global health disaster, with its implications compounding social stress, fear, confusion as well as social, economic and business disruption. As Australia was beginning to 'open up', in February

¹ Commonwealth of Australia. (2022). *Royal Commission into National Disaster Arrangements Report* Retrieved from <https://naturaldisaster.royalcommission.gov.au/system/files/2020-11/Royal%20Commission%20into%20National%20Natural%20Disaster%20Arrangements%20-%20Report%20-%20%5Baccessible%5D.pdf> pp 22 and 68.

² CSIRO Australia. (July 2020). *Climate and Disaster Resilience: Technical Report*. Retrieved from <http://hdl.handle.net/102.100.100/367984?index=1> pp 47, 49 and 72.

and March 2022, the NSW Northern Rivers region experienced the catastrophic flood event. In Lismore, this event consisted of a record flood where the Wilsons River reached a peak of 14.4 m, some 2.3 m higher than the previous record of 12.11 m and 2.0 m higher than the predicted 1% AEP flood level of 12.38 m. There was then the second flood on 30 March, where the river reached 11.4 m. To have a second major flood that also overtopped the levee less than a month later delivered a second blow to our community, who were still coming to terms with the first event.

The risks and the direct and indirect costs associated with these disasters is not going to dissipate. But to lessen the impact, there needs to be an efficient and effective mitigation tool that can be utilised before, during and after a disaster event. With some additional guidance and clarity, it is hoped the Act may become this tool.

Do the terms of the Act remain appropriate for securing the objectives?

The Act requires some refining and clarity to make it a tool that is fit for purpose. To date, our experience is that the Authority is largely ineffectual, with unclear accountabilities. However, rather than being the result of any deficiencies within the terms of the Act, LCC's experience is that this is more likely an operational issue for a new agency that still lacks clarity in its role and function. As the majority of the issues that have arisen for LCC are consequential to the Authority discharging/not discharging its functions under the Act, LCC's submission comments directly on the operations of the Authority for the Joint Select Committee's consideration.

Our experience is that, when faced with making decisions, the Authority has lacked the appropriate urgency, direction, and conviction to deliver the actions that could provide timely and meaningful benefit to our impacted communities. This has caused high levels of frustration for both LCC and for the wider community.

Exercising powers

Sections 10 and 11 of the Act lay out the Authority's functions and powers and provides an extensive range of powers that enable the Authority to undertake specific actions to provide services and infrastructure and to fast track a range of processes to support recovery from natural disasters. LCC's experience is that there is an unwillingness from the Authority to utilise these powers.

The most significant criticism of the Act and the operation of the Authority is that there is a discernible reluctance by the Authority to act following a ministerial declaration under Part 5. Under Part 5, the Minister has the power to:

- declare a project;³
- declare a reconstruction area;⁴ and,
- to declare a disaster prevention area.⁵

Any one of these declarations provides a trigger for the suite of powers contained in Part 6. These powers are available to be utilised exclusively by the Authority and enables the Authority to acquire land and give notices to relevant decision-makers.⁶ To date, only one declaration has been made; the declaration of the Northern Rivers as a reconstruction area.⁷ Following the declaration, none of the powers have been utilised, despite the 2022 flood being the third largest disaster in dollar terms in Australian history.

The Act was drafted following the compilation of the Full Report of the NSW Floods Inquiry ('the Report').⁸ This submission provides detailed background on the events that transpired before, during, and after the floods of 2022.

Recommendation 15 of the Report was to establish and maintain a permanent state-wide agency, the NSW Reconstruction Authority. The establishment of this body (initially established as the NRRC) was staunchly supported by LCC. The purpose of the Authority was clearly identified in the recommendation: '...to provide *rapid and effective recovery* from floods (and other disasters) and to provide *maximum mitigation* of the impacts of future floods (and other disasters).'⁹ (emphasis added)

As a consequence of the Authority being reluctant to exercise its powers under Part 6, the recovery efforts in the Lismore LGA have been neither rapid nor effective. In February 2024, the Auditor General's report into the flood housing response identified 724 households still on the wait list for temporary housing.¹⁰ At the time of submission, LCC has received less than 10 % of the asset rebuilding funding we are eligible for. Section 4(c) of the Act stipulates that the Authority can achieve its objective through exercising 'its functions effectively and efficiently.' Whilst what

³ *NSW Reconstruction Authority Act 2022* s 39 ('NSW RA Act')

⁴ *Ibid* s 40.

⁵ *Ibid* s 41.

⁶ *Ibid* s 45.

⁷ Paul Scully MP. (23 June 2023). *Reconstruction Area (Northern Rivers) Order 2023*. Retrieved from https://www.gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2023_2023-285.pdf.

⁸ NSW Government (2022). *2022 Flood Inquiry Volume Two: Full Report, 29 July 2022*. Retrieved from https://www.nsw.gov.au/sites/default/files/noindex/2022-08/VOLUME_TWO_Full%20report.pdf

⁹ *Ibid* p 241.

¹⁰ Auditor General for NSW. (22 Feb 2024). *Flood Housing Response*. Retrieved from <https://www.parliament.nsw.gov.au/tp/files/187631/Tabling%20report%20-%20Flood%20housing%20response.pdf>.

is considered 'effective and efficient' is highly subjective, LCC's experience is that the Authority would not meet a community 'pub test' of what would be considered 'effective and efficient'.

In the second reading speech, the then Minister for Planning and Homes, Anthony Roberts made it clear that the Authority would '...provide a single point of reference for reconstructing infrastructure, strengthening government's recovery response and building our communities to be stronger and more resilient.'¹¹ The Authority was to be allocated the responsibility for the protection, reconstruction and recovery of communities following a disaster and they were also to be provided the powers to meet this responsibility. The powers were '...to ensure that the authority (sic) is well equipped to exercise its functions under the [Act]'.¹² They were also designed to ensure the Authority would be able to 'expedite decision-making processes' and to 'step in to manage projects and development where necessary to avoid delays.'¹³ The object was to provide powers to enable efficient and necessary change, but significant curtailment of situations where this power could be exercised was necessary. Despite this function in the Act, LCC is currently dealing with the Authority, the NSW Department of Regional NSW primarily via NSW Public Works ('NSWPW'), Transport for NSW ('TfNSW'), the NSW Environmental Protection Authority, the NSW Department of Environment Climate Change and Water, the NSW Department of Planning Housing and Infrastructure, and the Office of Local Government, on our recovery and restoration activity.

The Report also noted the key characteristics of successful reconstruction authorities as outlined in the Johnson and Olshansky study.¹⁴ An additional characteristic identified by the Report was 'not letting the perfect be the enemy of the good.' This characteristic identifies the need to make 'early calls, hard choices and compromises' and recognises that these decisions will be contested, but providing there has been adequate consultation and collaboration, these decisions should be made with 'no-regrets'.

The Authority has not made these early calls, hard choices or compromises in the exercise of their powers, and until recently, did not make any concerted effort to ensure collaboration and consultation with LCC as a relevant entity.

Lack of clarity, collaboration and communication

¹¹ Anthony Roberts. (9 Nov 2022). *Legislative Assembly Hansard*. Retrieved from <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-129051>.

¹² Ibid.

¹³ Ibid.

¹⁴ Johnson, A & Olshansky, R B. (2013). *The Road to Recovery: Governing Post-disaster Reconstruction*. Retrieved from: <https://www.lincolinst.edu/publications/articles/road-recovery> cited in NSW Government (2022), n8 pp 239-41.

LCC has experienced a lack of clarity, collaboration and communication from the Authority. There is also a lack of clarity within the legislative instruments. The wording in the Act has been described by staff as 'aspirational', with particular concern raised around the meaning of, and the application of, the word 'leading'.¹⁵ The Authority is the agency with the majority of the power. The Authority controls the funding and the implementation of various schemes, as well as the ability to utilise the powers provided under the Act. However, our experience, until recently, is that the Authority is not leading 'with' LCC, they are dictating and doing things 'to' LCC, rather than 'with'.

Communication inconsistencies

Whilst it is apparent that recently the Authority is making a more concerted effort to maintain open communications, their lack of transparency with LCC remains discouraging and a point of operational frustration. The Authority can build trust with LCC through the efficient provision of information. An example is when the Authority made announcements regarding the MoU with Landcom and Southern Cross University for the Crawford Road site and also the acquisition of the Mt Pleasant Estate for the Resilient Lands Program. LCC had previously requested advance notice of these sorts of public announcements in order to both support and prepare. On both occasions, no advance notice was provided and LCC frontline staff were unprepared and unable to appropriately respond to residents' questions. Crucially, the Authority did not consider, nor consult with, LCC on enabling infrastructure requirements, meaning the publicly committed timeframe for development of these sites was not realistic and could not practically be met. Forewarned is forearmed, and a collaborative approach is what is needed from both LCC and the Authority. If we can work together on simple things like planning and public announcements, both LCC and the Authority will be afforded greater public respect and tolerance.

Our community is still struggling under the weight of uncertainty. During the Prime Minister and Premier's visit to North Lismore in October 2022, the then Premier stated, 'It's 2000 homes we're talking about...Some will be for buyback, some will be for raising and some will be for retrofitting. Now as we go through that process, we will be able to work out how many fall within each category.'¹⁶

While LCC acknowledges the complexity in this, consistency has been hard to obtain. In November 2022, the NRRC provided initial information at a public forum in Lismore on the Resilient Homes Program. At this forum, NRRC made comments that the \$800 million scheme

¹⁵ NSW RA Act (n 3) ss 10(1)(a)(ii), (h) and (j).

¹⁶ Prime Minister of Australia, Anthony Albanese. (20 Oct 2022). *Doorstop – Lismore*. Retrieved from <https://www.pm.gov.au/media/doorstop-lismore>

would cover approximately 6,000 affected houses. It was estimated at this time that 2,000 of these homes would be eligible for a pre-flood market value buy back.¹⁷ This number was echoed again by the NRRRC in a public forum in Woodburn, held late January 2023. Then, in late June 2023, the NSW Government announced that the NRRRC would be merged into the New South Wales Reconstruction Authority and that the goal was always to financially support 2,000 [homes] in total,¹⁸ and that rather than there being 2,000 homes in each of the three remedies, ‘...there were 2,000 homes across all of those remedies, home buybacks, raisings, and retrofits.’¹⁹

This is a well-documented and widely discussed example of communication by different governmental departments and agencies, making inconsistent and unreliable commitments to the people directly impacted by the floods. This lack of clarity and uncertainty understandably created a climate of distrust and scepticism. People’s expectations had been unfairly mismanaged, which inevitably fed into false expectations and ultimately the denial of hope for those who needed it most. The creation of the Authority as a new entity has enabled a pass off of accountability, justifying potential backtracking with, ‘[We] can’t speak to what others said, but when [we] look at the documents that were released at that time, 2,000 homes was across all of those treatments.’²⁰

Resilient Lands and Resilient Homes

At a program level, the Resilient Lands Program, with an allocated \$100 million to accelerate the delivery of new land and housing to assist with relocation options, has had significant staff turnover in the less than two years the program has been in operation. Since the release of the draft Resilient Lands Strategy in June 2023, all staff involved in the selection process and preparation of that document have left the Authority. The EOI process, requiring the Authority to analyse 322 submissions, was an inefficient use of time, money and resources and in complete contrast with the NSW Floods Inquiry’s recommendation to provide *rapid and effective recovery*. The EOI process did not identify a single new site that the Authority now considers worth pursuing as part of the Resilient Lands Program. The team now tasked with delivering this project appear under-resourced to deliver a project of this scale and magnitude. Despite the public

¹⁷ ABC North Coast. (4 Nov 2022). *House Relocations ‘First Preference’ for Flood Recovery Agency as Buyback Process Begins*. Retrieved from <https://www.abc.net.au/news/2022-11-04/lismore-residents-attend-flood-buyback-information-session/101618018>

¹⁸ Susanna Freymark, Richmond Valley and Kyogle News. (June 27 2023). *Slap in the Face for Residents Getting no Money for Flooded Homes*. Retrieved from <https://indvnr.com/slap-in-the-face-for-residents-getting-no-money-for-flooded-homes/>

¹⁹ Aslan Shand, The Echo. (28 June 2023) *NSW Reconstruction Authority CEO Denies Commitment to Buying Back, Raising and Retrofitting 6,000 Homes*. Retrieved from <https://www.echo.net.au/2023/06/nsw-reconstruction-authority-ceo-denies-commitment-to-buying-back-raising-and-retrofitting-6000-homes/>

²⁰ Simon Draper, cited in Bruce MacKenzie, ABC News. (27 June 2023). *Flood Recovery Body says just 2,000 Northern Rivers Properties Eligible for Resilient Homes Program*. Retrieved from <https://www.abc.net.au/news/2023-06-27/flood-buyback-fears-nsw-northern-rivers-homes/102529544>.

announcements regarding the Crawford Road and Mt Pleasant sites, no discernible progress has been made and no timelines have been provided to either Council or the community. At this stage, it is likely it will be many years before any land is available to support relocation of residents who have accepted buybacks in the Resilient Homes Program.

The lack of coordination between the Resilient Homes and Resilient Lands Programs has been a source of ongoing frustration for LCC and our flood-affected community, as has the lack of genuine input into the design and delivery of these programs.

The Resilient Homes Program offers homeowners participating in the buyback scheme an opportunity to enter into an occupancy arrangement, allowing eligible homeowners to remain in their homes following settlement, whilst they undertake relocation of their existing home, or the construction of a new home.²¹ The occupancy arrangement has a time limit of 12 months for homeowners and 6 months for tenants.²² This occupancy arrangement provides a welcome reprieve for those eligible. However, a key aspect of the Resilient Homes Program is that participants who accepted buybacks would be provided with the first opportunity to purchase new land at the Resilient Lands Program sites, to either relocate their existing homes or build a new home. As at 14 June 2024, 465 homeowners in the Lismore area have accepted a buyback under the Resilient Homes Program. This number is expected to reach over 500. Whilst this represents significant progress in the Resilient Homes Program, it fails to align with the Resilient Lands Program. The majority of these homeowners are waiting for information on where and when they will be able to buy land and/or relocate their homes. Lismore Council staff meet regularly with the Authority for updates on the delivery of the Resilient Lands Program and have very real concerns that despite public announcements regarding the Mt Pleasant Estate and Crawford Road sites, the delivery of vacant land for relocation or new housing opportunities is still many years away. Subsequently, the twelve-month period allowed for occupancy arrangements will be futile and it is inevitable those people who have entered into arrangements could soon find themselves homeless.

Section 12(1)(b) of the Act provides a number of criteria where, if each one is satisfied, the Authority may carry out development on land. Each criterion would be satisfied by the development of the North Lismore site and the development would be specifically for the purpose described in the example. Yet for reasons that are unclear to LCC, there has been no progress on this project, contributing to the uncertainty for those that have accepted buybacks and left

²¹ NSW Reconstruction Authority. (Dec 2023). *Resilient Homes Program Occupancy Arrangement Fact Sheet*. Retrieved from https://www.nsw.gov.au/sites/default/files/noindex/2023-12/Resilient_Homes_Program_Occupancy_Arrangements_Factsheet.pdf

²² Ibid.

wondering what their future options may be. Further, the opportunity for the Authority to work with Schools Infrastructure NSW to plan and deliver an entirely new residential precinct with a new high school at North Lismore is one that requires a high degree of inter-departmental coordination.

There is also the question of development of organisational capacity within the Authority to carry out development. There has been an extraordinary turnover of staff working within the Resilient Lands Program area in two years since the NRRC/the Authority came into being. The current staff have experience in planning and land economics, yet the actual project management and delivery of infrastructure services required to deliver new residential land is not evident, and Council has concerns that this gap will lead to further delays.

Lack of accountability

The Authority, and the NRRC previously, have struggled to articulate what they are accountable for in the flood recovery space. To counter this and drive momentum, LCC staff have been responsible for setting up and implementing the Flood Restoration Portfolio Steering Committee (FRPSC), which was created out of necessity to provide strategic oversight and direction for the flood restoration projects and programs within the Northern Rivers region. The FRPSC provides a much-needed conduit for information to flow between TfNSW, NSWPW the Authority and LCC. The FRPSC established performance targets, such as specific timelines for restoration and delivery, and specific funding amounts to be secured, to ensure timely restoration of council services and efficient project initiation and delivery. The FRPSC also ensures compliance with funding requirements as per the NSW Disaster Assistance Arrangements. These initiatives should have started with the Authority as the leading state body, not created out of urgent need by a local council.

This lack of cohesion and no clarification of accountability has been amplified by the fact that current governance arrangements do not provide for 'one source of truth' for the Northern Rivers. The NRRC was focussed on our region, but now this focus has been swept up into the statewide efforts via the Authority, which has reduced capacity. The Resilient Lands Program is separate from the Resilient Homes Program; they are programs that should be running parallel to one another, but from the LCC perspective they act in isolation, and have largely been administered without meaningful or significant input of LCC. There appears to be a general disconnect between the programs and a lack of internal communication without any form of overarching governance.

Lack of clarity in legislative instruments

In addition to the lack of clarity in the Act, the Regulations²³ in their current form, are ineffective; there is no structure or guidance provided in the Regulations, which are, in their entirety, less than two pages in length. Regulations are intended to provide definition, control and guidance on how an authority operates to implement an Act. The Regulations need to provide much greater detail regarding the key obligations in achieving the functions under section 10 of the Act. They should provide the Authority with a clear, coherent and transparent process for the application of the Authority's powers; for example, a matrix that identifies and specifies thresholds and requirements that must be met prior to exercising a power. There should also be a stipulation that mandates the use of a power in certain situations. This would provide a highly risk averse governmental agency with certainty and assurance when electing to utilise powers.

Throughout the Act, there are ambiguous word choices and that do not provide sufficient guidelines or checkpoints for the Authority. An example is in section 10(1)(b)(iii), which stipulates that one of the functions of RA is:

*(c) reconstruction and recovery following disasters and other emergencies, including—
... (iii) balancing constraints to enable a **focused, timely and expedited** recovery of affected communities.*

The lack of specificity around these emboldened terms enables the subjective interpretation of what constitutes 'timely'. However, regardless of the interpretation, no reasonable person would consider two and a half years 'timely'. The degree of delay is a universal concern.

Mitigation, resilience, betterment

The Authority has been unable to realise its goal of rapid and effective recovery through exercising its functions effectively and efficiently. The recovery efforts to date have also failed to provide the recommended 'maximum mitigation'. The 'Build Back Better' mantra has been subsumed into a nonsensical 'like-for-like' approach to reconstruction, almost entirely driven by the Disaster Recovery Funding Arrangements ('DRFA') funding guidelines that have not been fit for purpose for a rebuild and recovery of such scale. Mitigation methods implemented by LCC have been questioned; one of the more disappointing, albeit minor, examples, was being challenged about the instillation of flood resilient aluminium skirting boards in a flood damaged council asset as there had been timber skirting in the building pre-flood. Other attempts at restoration have resulted in seemingly ludicrous outcomes, such as: an administering agency indicating that a wall in the

²³ NSW Reconstruction Authority Regulations 2023 (NSW).

terminal of the Lismore Airport could not be restored and painted to the ceiling as the flood waters rose only halfway up the wall; the rejection of funding for the replacement of the dive board at the Lismore Memorial Baths because, according to an Administrating Agency representative, 'the one that was damaged in the flood was old and didn't work properly' and to replace it with 'like-for-like', would require the instillation of one that was in a comparable state of repair; and, the roof of a building at the pool was also deemed ineligible for funding because although the building itself was subsumed in the flood, the existing roof was not engulfed and therefore, we could replace the building but had to keep the old roof.

Whilst the Authority has to work under the funding framework established by the Commonwealth, a key function of the Authority is to 'implement funding schemes to provide financial support in relation to disaster prevention, recovery and reconstruction.'²⁴ The Authority should ideally position itself as a bookend between the funding source and LCC. There needs to be clear and authoritative guidance provided on how each bespoke response measure is to be applied in practice. The Authority needs to adopt a position of leadership. Despite recent good progress in this regard, had this leadership been exercised and clear guidance in place, it would have provided a clear process for the various agencies, as well as LCC, when recovery efforts commenced. While the recent tripartite agreement approach has been a large step in the right direction, the overall LCC experience has been one of the State managing their risk first, rather than letting funding flow to where it is most needed.

LCC, NSWPW and the Authority

NSW Severe Weather and Flooding (22 February 2022 onwards) Clean-Up Program Guidelines ('the AGRN1012 Guidelines') were issued in March 2022.²⁵ The AGRN1012 Guidelines are fit for the purpose of building restoration. Unfortunately, because no clear model was provided to NSWPW, the Authority have permitted NSWPW to dictate to LCC that our flood restoration portfolio buildings program is to follow the Essential Public Asset Restoration ('EPAR') process. This is highly problematic, as the buildings program is closely aligned with Category D under the DRFA and the subsequent AGRN1012 Guidelines, whereas the EPAR guidelines are fit for Category B Essential Public Assets, such as roads and other transport related infrastructure. The AGRN1012 Guidelines provide a more flexible approach to the restoration of non-essential public assets. Adhering to the EPAR guidelines required LCC to obtain NSWPW approval on the scope of the works to be completed as well as obtaining estimates prior to the commencement of the works. This was compounded by the inability to provide a 'Build back better' approach to the

²⁴ NSW RA Act (n 3) s 10(1)(m).

²⁵ NSW Government and Australian Government (March 2022). *NSW Severe Weather and Flooding (22 February 2022 onwards) Clean-Up Program Guidelines*.

buildings program, as EPAR required a 'like-for-like' restoration model. This issue has been raised with both the Authority and NSWPW on numerous occasions throughout the buildings restoration program. Following a meeting with the Authority in February 2024, LCC understood that the Authority would provide written directions to NSWPW that the eligibility criteria for LCC's flood restoration buildings projects was as stipulated in the AGRN1012 Guidelines as opposed to the inapplicable EPAR Guidelines.

Between mid-2022 and late 2023, LCC's dealings with the Authority and NSWPW suggested that the Authority possessed a very introspective approach to both social and asset-based issues. As identified earlier, section 10 stipulates a function of the Authority is to 'lead'. This function has not manifested, although in recent times LCC have experienced a refreshed attitude to our rebuild from the Authority and administering agencies. For example, the AGRN1012 Guidelines merely stipulate that, 'Local councils may claim for the reimbursement of costs from Public Works Advisory' and that local councils are responsible for 'clean-up', 'restoration' and 'removal'. Despite over 18 months of LCC advising both the Authority and NSWPW of the lack of clarity, we still have many current examples of funding uncertainty. It is only recently that LCC have been invited into discussions of either how or when we will be reimbursed for expenditure to date.

LCC, TfNSW and the Authority

The Authority has had little direct involvement in the restoration efforts within the Lismore LGA and the same lack of direction and leadership is evident in LCC's interactions with TfNSW and the Authority. The stagnated flow of information experienced with NSWPW and the Authority is evident between the Authority and TfNSW. Roads and bridges are required to adhere to the EPAR Category B guidelines and eligibility issues caused by the repetitive 'like-for-like' approach are obvious. Funding blockages have been created due to the incompatible concepts of pre-existing condition and pre-existing function. It is expected that a destroyed single lane road would be replaced by a single lane road. The pre-existing function is able to be realised and LCC has no issue with applying the funding guidelines in this manner.

However, similar to the example of the Memorial Baths diving platform, if a road was old or in a poor condition pre-flood, in order to be eligible for reimbursement, administering agencies have stated that the road is required to be returned to the same old or poor pre-flood condition. This is another example of nonsensicality in the application of funding guidelines, and does not enable reconstruction that is timely or based on asset function. The construction specifications require a

newly constructed road to be built with a twenty-year design life.²⁶ If the damaged asset was evaluated as having only a pre-existing flood design life of seven years, then for the reconstructed asset to be eligible under the EPAR guidelines, there are effectively three options for LCC. The first is that the road is reconstructed to an intentionally sub-par level; the second is that the road be built according to the construction specifications and then, upon completion, intentionally damaged; or, third, LCC provide a funding co-contribution that covers the deficit between a road with a design life of seven years and one with a design life of twenty years. When the reconstruction costs associated with repairing the roads within the Lismore LGA is estimated to be over one billion dollars, LCC does not have the available capital to meet this deficit.

LCC has experienced severe delays in in the Roads and Bridges restoration space due to indecision, the absence of definitive processes and hyper-risk aversion from both TfNSW and the Authority. Until recently our experience was that both organisations blamed each other for the lack of progress, but ultimately, as TfNSW are sub-contracted to the Authority to deliver an administrative service, the Authority is the agency that ultimately should be accountable for the performance of TfNSW.

Funding obstructions

The DRFA guidelines requiring costs incurred by the restoration works be attributed to individual projects has hindered LCC's progress. These administrative policies do not consider the unprecedented scale of the disaster and make it impractical to attribute all costs transparently at the project level. Consequently, LCC has been unable to seek reimbursement for costs incurred to date, severely impacting its cash flow position. Although these complexities have been acknowledged, a feasible mechanism for cost reimbursement has not been provided, making it difficult for LCC to obtain the funding necessary for successful project delivery.

These difficulties have required LCC to seek political intervention in securing real funding outcomes. Such interventions can cause angst and may lead to behaviours that undermine the collaborative environment essential for effective disaster recovery. Instead of fostering trust and cooperation, this approach encourages stakeholders to disengage, further hindering progress and damaging working relationships.

The Authority's current funding model, which relies heavily on administering agencies such as TfNSW and NSWPW, is a barrier to effective disaster recovery. In LCC's experience, these

²⁶ Northern Rivers Local Government. (Nov 2020). *Northern Rivers Local Government Development Design and Construction Manual*. Retrieved from <https://www.lismore.nsw.gov.au/Building-and-planning/Development-Applications/Development-and-design#section->

agencies default to an obstructionist position rather than facilitating progress, as evidenced by examples provided above, where agency representatives appear to search for reasons to deem projects ineligible rather than supporting their advancement.

Overall, the state government places the burden and risk of rebuilding on local councils without assuming any risk itself. This is compounded by withholding necessary funding for both construction and management resources, forcing councils like Lismore to navigate through excessive bureaucratic hurdles to access funds. The lack of certainty needs to be addressed if effective disaster recovery and community resilience are to be achieved. Without prompt resolution, the ongoing inefficiencies and financial strain will continue to impede progress, leaving affected communities vulnerable and delaying restoration efforts.

A more efficient method would involve the Authority providing funding directly to councils and use competitive tension to establish independent verification contractors to replace the administrative agencies. These contractors would work with councils to deliver and verify funding for rebuild projects and be incentivised to realise flood restoration outcomes within a genuinely timely manner. As discussed above, the current agencies have proven inadequate due to their indecision, lack of process, and appearing to be incentivised to stop things from happening rather than progressing them, which is not in keeping with the intent of the Act nor in the spirit of the necessary all agency partnership approach required to achieve the necessary outcomes for community.

Disaster Adaptation Plans

The Act requires the Authority to prepare disaster adaptation plans (DAPs) to prevent or minimise the impacts of disaster and that these be developed with regard to the State Disaster Mitigation Plan (SDMP). LCC commends the Authority on the recent publication of the country's first SDMP, as required by section 30 of the Act. Regarding the creation of the DAPs, section 37 identifies that the Authority may issue guidelines on preparing, making and implementing DAPs, and the SDMP identifies that this should be done by mid-2024. Council understands that this is now likely to be by September 2024.

The statutory weight of the DAPs is weak, and LCC is concerned there is a high-risk the DAPs will be unenforceable and will become nothing more than an ineffective and sanguine response to disaster preparation and planning. Section 37(2)(c)(iii) outlines that the guidelines should include information about the application of DAPs, comprising relationships with other policies, including strategic plans under the *Environmental Planning and Assessment Act 1979* (NSW) ('EP&A Act'). Having a set of guidelines that requires DAPs to be 'considered' in the preparation

of regional plans and Local Strategic Planning Statements is a very indirect and weak mechanism for the delivery of what is intended to be a significant reform in risk reduction and preparedness.

Section 38 regarding the implementation of DAPs is equally vague, stating only that a local council must “have regard” to a relevant DAP in carrying out its functions under the *EP&A Act* and the *Local Government Act 1993*. Consequential amendments to both of these Acts is likely to be required to ensure due consideration is given. For example, amending Section 4.15 of the *EP&A Act* such that DAPs become a consideration when determining development applications. In addition, a new Ministerial Direction under S9.1 of the *EP&A Act* is recommended so that DAPs must be considered when Councils are considering a planning proposal to amend their Local Environmental Plan (LEP). Without these additional statutory requirements, there is nothing that requires specific consideration of a DAP at these crucial phases of the planning process.

As stated in the opening of this submission, LCC thanks the Committee for the invitation to make a submission into this review. We trust our key insights, suggestions and candid reflection on our experiences to date prove both insightful and valuable in informing how to strengthen the Authority. We look forward to seeing these changes endorsed and actioned to support the Authority to become a high functioning and high performing champion for statewide disaster recovery, making the post-disaster restoration process less problematic and more collaborative for all involved.

Should you have any further queries regarding our submission, or wish to utilise LCC as a case study when considering the Authority’s operations, please contact [REDACTED] on [REDACTED] or [REDACTED].

Yours sincerely,

[REDACTED]

Cr. Steve Krieg

Mayor - Lismore City Council

