

**Submission  
No 70**

## **REVIEW OF THE NSW RECONSTRUCTION AUTHORITY ACT 2022**

**Organisation:** NSW Reconstruction Authority

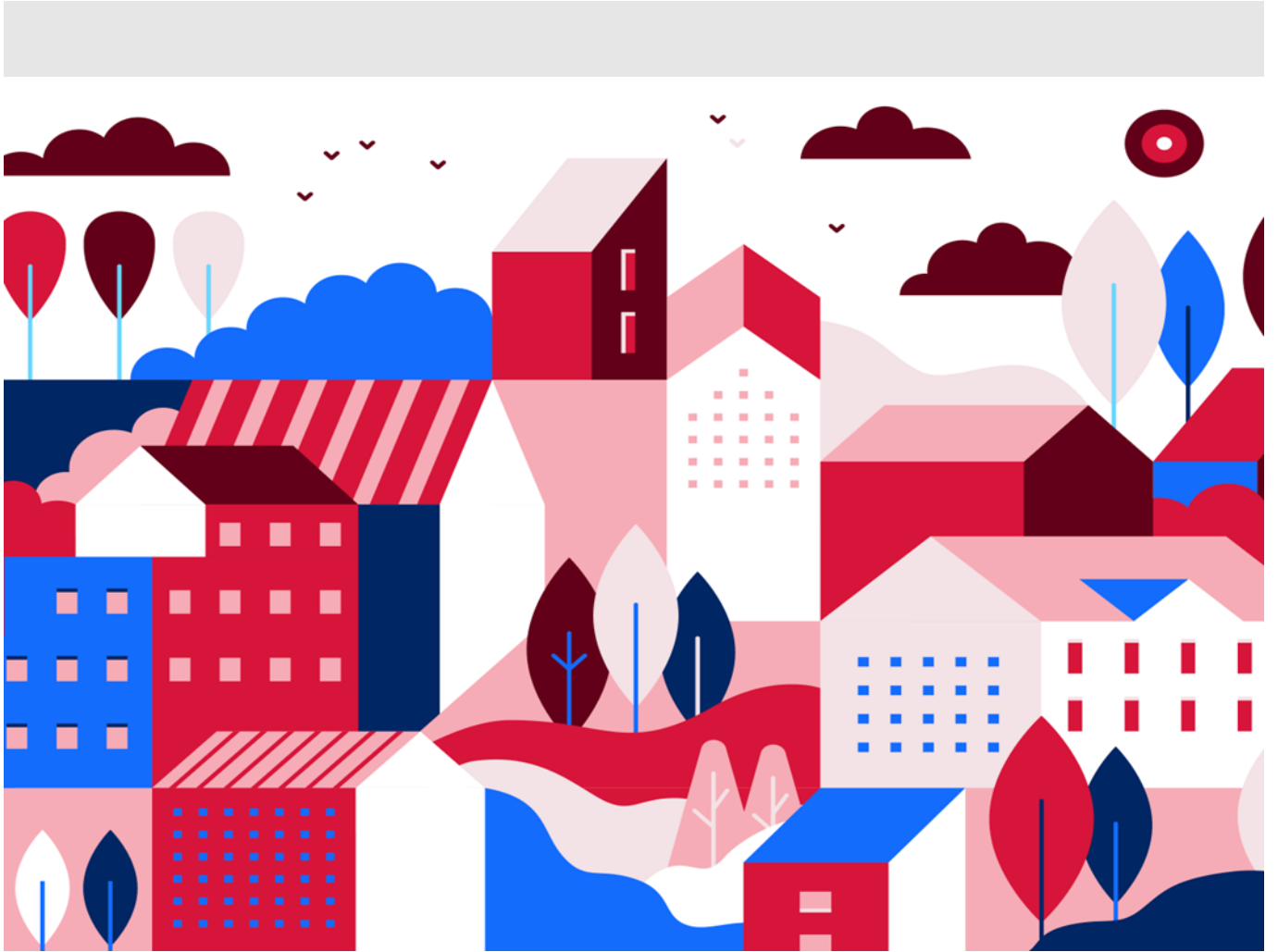
**Date Received:** 25 July 2024

# NSW Reconstruction Authority Submission

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Agency submission to Joint Select Committee  
on the NSW Reconstruction Authority

25 July 2024



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## Acknowledgement of Country

The NSW Reconstruction Authority acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this submission.

NSW Reconstruction Authority Submission

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# 1

## Executive Summary

## 1.1 Executive Summary

The *NSW Reconstruction Act 2022 (RA Act)* was enacted following the recommendations of the NSW Flood Inquiry report into the causes of, planning and preparedness for, response to and recovery from the 2022 catastrophic flood events.

The policy objectives and the terms of the RA Act reflect the recommendations 15 and 18-23 inclusive from the NSW Flood Inquiry (see 3.1.2 and 5.1).

The primary object of the RA Act (set out in section 3) is to:

*promote community resilience to the impact of disasters in NSW through:*

- (a) disaster prevention, preparedness and adaptation, and*
- (b) recovery and reconstruction following disasters.*

The RA Act provides the legal framework for the establishment of the NSW Reconstruction Authority (**RA**) and provides the RA with the necessary authority to coordinate and undertake large-scale programs with far-reaching impacts.

The establishment of the RA marks a significant change in the state's governance framework for disaster management and recovery. With its inception, the RA has emerged as a pivotal institution entrusted with the implementation of various state-level programs, many of which represent pioneering initiatives within Australia.

Disaster risk reduction requires coordination with a central agency to set vision and lead system change to achieve effective outcomes. The RA has played this role in the development of a coordinated State Disaster Mitigation Plan and NSW Recovery Plan. Examples are also provided in this submission of the significant programs being delivered by the RA.

This submission provides details on the use of powers and legislative amendments relevant to the RA Act, and broadly details how elements of the policy objectives of the Act, and other requirements under the act are being met.

This submission does not provide any recommendations for the Joint Select Committee regarding any further amendments to the RA Act.

It is difficult for the RA to make recommendations to improve the legislation at this point in time, noting there has been limited opportunity to exercise the RA Act's powers. The RA is committed to working with the Joint Select Committee, and the Parliament more broadly, to progress legislative amendments as the need arises or opportunities for improvement are identified.

### Since establishment, the Reconstruction Authority;



- Has **facilitated 44 Natural Disaster Declarations**, unlocking funding for 75 Local Government Areas
- Is **coordinating 19 projects** worth \$68.8 million under the Disaster Ready Fund round 1
- Is **overseeing 23 programs and projects** valued at more than \$19 million
- Has **expended over \$3.7 billion** from the Disaster Relief Account



# 2

## The Joint Select Committee on the NSW Reconstruction Authority

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## 2.1 Joint Select Committee

### 2.1.1 Role and scope of the Joint Select Committee

The Joint Select Committee on the NSW Reconstruction Authority, established under section 93 of the RA Act, assumes a central role encompassing two primary responsibilities. Firstly, it is tasked with scrutinising the RA Act to ascertain the ongoing validity of its policy objectives and to evaluate whether the terms delineated within the RA Act remain appropriate to achieving these objectives. Secondly, the Committee is entrusted with reviewing the operational efficacy of the RA subsequent to any disaster wherein the RA exercises its functions.

In accordance with section 93(5)(a) of the RA Act, the Committee is obliged to present a report on the outcome of the review regarding policy objectives to each House of Parliament by 28 November 2024. Additionally, under section 93(5)(b), a report concerning the review of RA operations following a disaster must be tabled in each House of Parliament within 12 months of the event.

### 2.1.2 Briefing to the Committee and Committee members

To foster a deeper understanding of the RA's operations among committee members, an initial briefing was conducted at Parliament House on Thursday, 21 March 2024. The briefing was attended by senior executives of the RA. During this session, a presentation was delivered outlining the work of the RA and committee members had the opportunity to question RA representatives. While the initial briefing yielded positive outcomes, the constrained timeframe of 45 minutes hindered a thorough exploration of the RA's activities, resulting in additional queries from committee members, particularly focused on the agency's operational experiences within the existing parameters of the RA Act.

In response to the need for further engagement, individual briefings with committee members were offered to all committee members. These tailored briefings aimed to provide committee members a wider insight into the RA's operations.

### 2.1.3 Written submission to the Committee

The RA has been asked to provide a written submission to the Committee. This submission provides an explanation of what the RA does, its goals, and how it operates under the RA Act.

This submission provides details on the use of powers and legislative amendments relevant to the RA Act.

3

The NSW Reconstruction  
Authority

## 3.1 Policy objectives of the RA Act

The Committee is responsible for reviewing the RA Act to determine the validity of its policy objectives and whether the terms of the RA Act are appropriate for achieving these objectives.

The primary object of the RA Act (set out in section 3) is to:

*promote community resilience to the impact of disasters in NSW through:*

- (a) disaster prevention, preparedness and adaptation, and*
- (b) recovery and reconstruction following disasters.*

The RA Act outlines not only the establishment of the RA but also elaborates extensively on its powers and functions. Division 2 of Part 2 sets out the general functions of the RA, part 3 provides for the establishment and role of the RA Advisory Board, while Parts 4 to 10 set out detailed functions and powers by reference to specific subject matter, such as the State disaster mitigation plan and disaster adaptation plans. Furthermore, section 4 and Division 4 of Part 2 make clear the powers and functions attributed to the Chief Executive Officer (CEO) of the RA, ensuring clear delineation of leadership responsibilities within the organisation.

### 3.1.1 Risk of disasters in NSW

NSW has always experienced natural disasters. We know from Aboriginal oral history that bush fires, floods and storms have affected our State for thousands of years. The impact and cost of disasters in recent times has increased. NSW has experienced multiple flooding and bush fire events over the past decade. The 2022 flood events alone affected 98 out of 128 local government areas (LGAs), damaged 15,000 homes and caused over \$5.1 billion of insured damages. Our communities continue to bear the social, environmental, and economic costs with communities displaced, critical infrastructure in disrepair, and insurance coverage becoming either unavailable or unaffordable. We know these natural disasters will continue to occur. While some disaster scenarios are too terrible to imagine, they have a realistic probability of occurring over our lifetime.

Two key drivers increasing risk in the future are population growth and climate change. The NSW population is projected to grow to 9.9 million by 2041 with most growth expected in urban centres, particularly along the NSW coast. These areas are already at high risk due to the concentration of homes and infrastructure. Climate change will increase this risk in the future. It is expected natural disasters will increase due to the frequency, duration, and severity of extreme weather events. Average annual losses in the built environment are set to rise by 195% to \$9.1 billion dollars per year in NSW in 2060 under a high emissions scenario.

### 3.1.2 NSW Flood Inquiry recommendations

In March 2022, the NSW Flood Inquiry was established to examine and report on the causes of, planning and preparedness for, response to and recovery from the 2022 catastrophic flood events. The policy objectives and the terms of the RA Act reflect the following recommendations from the NSW Flood Inquiry.

- Recommendation 15 – NSW Reconstruction Authority
- Recommendation 18 – risk-based approach to calculating flood planning level
- Recommendation 19 – disaster adaptation plans for all towns
- Recommendation 20 – floodplains as assets
- Recommendation 21 – simplify the planning system disaster provisions
- Recommendation 22 – relocating communities most at risk with good homes and amenities

- Recommendation 23 – housing and development funding options

Further information concerning these recommendations is contained in 5.1.

### 3.1.3 Establishment and operation of the Reconstruction Authority

The RA was established on commencement of the RA Act. The RA will improve how New South Wales plans for disasters and supports communities to recover from them faster.

The RA has four areas of responsibility:

**Adaptation and mitigation** – the RA will identify and assess disaster risk, and work with communities and councils to reduce their economic, social and environmental impact.

**Preparedness** – the RA will lead public education to help people understand disaster risks, and be better prepared for disasters at a household, business and community level.

**Recovery** – following disasters, the RA provides programs and support to households, businesses and community organisations, including temporary housing.

**Reconstruction** – the RA is responsible for coordinating timely reconstruction works after a disaster. This involves more than just rebuilding what was there already, but working to mitigate future risk and hazards as communities are rebuilt.

The RA has undergone an organisational redesign following the confirmation of agency funding in September 2023. The structure provides resourcing to support the RA's functions and operations and comprises the following key areas:

- Adaptation, Mitigation & Reconstruction Group
- Preparedness and Recovery Group
- Corporate Services Division
- Communications and Engagement Division
- Finance, Funding and Operations Division.

### 3.1.4 RA organisational aims

*Enhance community resilience to disasters through proactive planning and collaboration*

Recognising the imperative of pre-emptive action, the RA is tasked with engaging in critical planning and preparation activities in partnership with communities, businesses, and governmental entities.

*Fostering a culture of preparedness and equipping stakeholders with the necessary tools and resources*

The RA aims to mitigate the adverse impacts of disasters, enhancing the state's overall resilience. Through robust community engagement and strategic partnerships, the RA seeks to cultivate a collective commitment to disaster resilience, laying the groundwork for more effective responses when crises arise.

*Orchestrating swift and coordinated recovery efforts across government agencies, communities and other stakeholders*

When disasters strike, the RA acts promptly, mobilising resources, and leveraging its expertise to facilitate the timely commencement of recovery and reconstruction processes.

*Streamline reconstruction efforts through coordination and collaboration to expedite the recovery process*

By serving as a unifying force across disparate stakeholders, the RA plays a crucial role in facilitating the restoration of community confidence in the aftermath of disasters.

### 3.1.5 The need for the RA's functions and powers

*Primary object (section 3)*

The primary object of the RA Act, as set out in section 3 of the RA Act, encompasses a comprehensive approach to disaster management, incorporating disaster prevention, preparedness, adaptation, as well as recovery and reconstruction following disasters.

Given the breadth and complexity of this primary object, the broad array of powers and functions provided to the RA in the RA Act are considered necessary and appropriate to effectively achieve these goals. The powers and functions of the RA provide the agency with the tools and authority necessary to navigate the stages of disaster management, ensuring a holistic approach to addressing the challenges posed by disasters and enhancing community resilience.

#### *Responsible Ministers*

The RA Act is currently jointly administered by the Minister for Planning and Public Spaces and the Minister for Emergency Services, except Parts 5, 6 and 7 which are administered exclusively by the Minister for Planning and Public Spaces.

#### *Declaration powers including making reconstruction area orders etc (Part 5)*

The Minister for Planning and Public Spaces may declare a project, reconstruction area or disaster prevention area under Part 5 of the RA Act.

#### *Power to issue a notice to decide or a progression notice (Division 3 and 4, Part 6)*

A Part 5 declaration confers additional powers on the RA in relation to the declared project or area. These powers include giving notices to decision-makers to make a decision or undertake a process in the timeframe stated by the RA, as outlined in sections 50 and 51 of the RA Act.

#### *Step-in powers and functions (Part 6 and 7)*

The RA may also step in to carry out the functions of the decision-maker in accordance with Division 5, Part 6 of the RA Act. These powers are intended to expedite the reconstruction and recovery of affected communities and improve disaster resilience across New South Wales. Under Division 1, Part 7 of the RA may also become responsible for the delivery of a declared project in accordance with a project authorisation order by the Minister for Planning and Public Spaces.

#### *General functions of the RA (Division 2, Part 2)*

Division 2, Part 2 of the RA Act sets out the general powers and functions of the RA, specifically addressing disaster prevention and preparedness, as well as reconstruction and recovery following a disaster. These functions, as outlined in section 10 of the RA Act, can be exercised by the RA at any time without the need for a Part 5 declaration. They encompass a wide range of activities aimed at mitigating risks, responding to crises, and facilitating the reconstruction of affected areas in the aftermath of disasters.

#### *Additional functions in relation to land and procurement (Division 2, Part 6)*

RA is authorised to deal with land vested in it or within a declared area, as specified in sections 46-49 of the RA Act, allowing the RA more efficiency in the pursuit of its objectives.

## 3.2 Delivering the policy objectives of the RA Act

The establishment of the RA marks a significant change in the state's governance framework for disaster management and recovery. The RA plays a key role in the implementation of various state-level programs, many of which represent pioneering initiatives within Australia.

This section explores how the RA Act empowers the RA to operate effectively and to deliver projects and programs that contribute to community resilience for the impact of natural disasters in New South Wales.

### 3.2.1 Creation of a centralised agency

Disaster risk reduction requires coordination across many areas of work, including land use planning, infrastructure planning and recovery planning. This requires a central agency to set vision

and lead system change to achieve effect outcomes. The RA has already played this role in the development of a coordinated State Disaster Mitigation Plan and NSW Recovery Plan.

The creation of the RA as a permanent reconstruction agency which begins the reconstruction process as a disaster strikes and thus works to ameliorate community devastation and provides education and infrastructure before a disaster strikes seeking to minimise the harm from a disaster was a finding of the 2022 Flood Inquiry (see 5.1.1). The RA Act establishes the RA as a statutory corporation and NSW Government agency (sections 7 and 8 RA Act) and provides for the staff, CEO and financial matters (sections 16 to 23 RA Act).

### 3.2.2 Improved coordination across government

Following on from the work of the former Northern Rivers Reconstruction Corporation, the RA has continued to facilitate the Northern Rivers Steering Committee and Recovery Committee. Both Committees allow for cross agency collaboration and coordination. The Committees have been instrumental in the establishment and delivery of a wide range of recovery and restoration initiatives across the Northern Rivers region.

The lessons learnt from this level of collaboration are already helping to inform the roll out of more programs and processes across NSW. Recent examples of this include;

- The Central West where the RA, Department of Regional NSW, Transport for NSW and Legal Aid are coordinating the delivery of the \$100 million Central West Recovery and Resilience Package,
- In response to flooding events in April 2024, where the RA has worked with impacted councils, NSW Public Works, Transport for NSW and the Environment Protection Authority to drive recovery and determine future needs, and
- In the Illawarra/Shoalhaven where the RA has established a Regional Recovery Committee that is a cross section of Local Government, NSW Government, Australian Government and non-government organisations to support the ongoing recovery efforts.

The RA Act ensures that the RA can effectively coordinate its disaster prevention, preparedness, adaptation and recovery and reconstruction activities by:

- providing that other government agencies, local councils and State-owned corporations are under a duty to cooperate with the RA in the exercise of the RA's functions (section 14(4),
- providing the RA with the power in certain circumstances to direct other government agencies, local councils and State-owned corporations to provide assistance to the RA in the exercise of the RA's functions (section 13(1)(a)), and
- providing the RA with the power in certain circumstances to direct other government agencies, local councils and State-owned corporations to take certain actions in the exercise of their functions under the *Environmental Planning and Assessment Act 1979* or in relation to provision of essential services (section 13(1)(b), (c) and (d) RA Act).

### 3.2.3 State Disaster Mitigation Plan

Under section 30 and Part 2 of Schedule 3 of the RA Act, the RA must have a State Disaster Mitigation Plan in place within 12 months of commencement of the RA Act.

The RA has developed Australia's first State Disaster Mitigation Plan (**SDMP**). The plan sets out the strategic intent for the state in terms of disaster risk reduction. This supports the NSW Government's commitment to making our communities safer, more resilient and better prepared to face the challenges of disasters caused by natural hazards such as floods, bush fires, storms and cyclones, and coastal erosion and inundation.

The SDMP identifies policy and program gaps that need to be addressed at the state level to enable localised disaster adaptation planning. It is at the local level that effective risk reduction such as land use change or infrastructure mitigation is identified. The SDMP identifies actions to fill these policy and program gaps, such as the lack of a state managed relocation policy and plan.



The plan also:

- identifies the risk of natural hazards including flood, bushfire, coastal hazards, and landslides
- assesses how climate change is likely to impact these natural hazards
- identifies potential risk reduction tools from which options for risk reduction can be identified in disaster adaptation planning.

The SDMP was approved on 17 December 2023 and was publicly launched on 23 February 2024.

Section 38 of the RA Act requires other government agencies, local councils and State-owned corporations to have regard to the SDMP when exercising relevant functions such as functions under the *Environmental Planning and Assessment Act 1979*. The RA must also have regard to the SDMP when exercising the RA's functions (section 38(2) RA Act).

### 3.2.4 Disaster Adaption Plans

Disaster Adaptation Plans (DAPs) are provided for in Division 2 of Part 4 of the RA Act. Section 36 outlines the required contents of the plans.

The impact of natural disasters can be reduced through mitigation and adaptation measures which include improved early warning systems, land use planning, infrastructure resilience, and by supporting community awareness and preparedness. DAPs will include detailed analysis of the natural hazards and unique characteristics of that area and assess which mitigation measures are most effective and appropriate for that area or region. The RA is preparing draft Guidelines to support disaster adaptation planning, which will be released for consultation in 2024. As DAPs are rolled out across the state, prioritised disaster risk investments and policy/other interventions will be identified for the state.

The RA has committed to developing regional DAPs for the Northern Rivers and for the Hawkesbury-Nepean Valley.

The Hawkesbury-Nepean DAP is well underway with the establishment of a cross-agency Options Assessment Working Group (OAWG) and Steering Committee in late 2023. The OAWG has focused on mitigation and evacuation infrastructure, and regional modification options with 36 now progressing for further modelling and analysis.

Stakeholder engagement has been concurrent with workshops held with 8 local councils and community groups, briefings with State and Federal Members of Parliament and peak bodies. A Stakeholder Engagement Advisory group is being established with a focus on delivering engagement for Aboriginal communities and young people in the coming months, and broad community awareness is underway with an electronic direct mail geo-targeted to 400,000 residents across the floodplain. This has been highly successful, with 1200 responses received.

A Community Reference Panel will be selected from these respondents as a representative sample to embed community insights and values onto the disaster adaptation planning process. Other options, including a regional land use planning framework, voluntary purchase scheme, community awareness program and a social cohesion framework, will be analysed over the coming months with a final package of options finalised in early 2025.

Section 38 of the RA Act requires other government agencies, local councils and State-owned corporations to have regard to any relevant DAP when exercising functions such as functions under the *Environmental Planning and Assessment Act 1979*. The RA must also have regard to any relevant DAP when exercising the RA's functions (section 38(2) RA Act).

### 3.2.5 Resilient Homes Program and Resilient Lands Program

In October 2022, the NSW Government commenced the Resilient Homes Fund. It is the largest program of its kind in Australian history. The Fund responds to the increased risk of more frequent and severe flooding because of climate change by removing and reducing the risk of flood impacts on homes in the Northern Rivers region.

The Resilient Homes Fund comprises of:



- \$700 million Australian Government and NSW Government co-funded Resilient Homes Program (RHP) which aims to improve the flood-resilience of communities in the Northern Rivers, through a home buyback, raising or retrofit of eligible residential properties.
- \$100 million Resilient Lands Program (RLP) funded by NSW Government which aims to accelerate the delivery of new land and housing in the Northern Rivers region to support RHP buyback participants to relocate to new, flood free land and housing.

The Fund has been developed in response to recommendations of the NSW Flood Inquiry (see 3.1.25.15.1) and recommendations of the Select Committee on the Response to Major Flooding across New South Wales in 2022.

#### *Central West Resilient Housing Package*

It has also informed early planning and development of the \$100 million Central West Recovery and Resilience package. This package is also jointly funded by the Australian and NSW governments, for administration by the RA. The package is designed to enable recovery and reconstruction in the Central West region of NSW which saw extensive flooding in 2022, nine months after the Northern Rivers flood event. The package will include housing, essential assets and infrastructure, in addition to an assisted relocation program.

The RHP and RLP were initially delivered by the Northern Rivers Reconstruction Corporation (NRRC). Since 1 November 2023, these programs are now being led by the RA.

### **3.2.5.1 Relevance to policy objectives and terms of the RA Act**

The RHP and RLP advance the primary object of the RA Act by promoting community resilience to the impact of natural disasters through both disaster prevention, preparedness and adaptation as well as through recovery and reconstruction following disasters. Communities in the Northern Rivers will be better prepared and adapted for future flood events as a result of:

- land in flood prone areas being purchased by the RA in the RHP buyback stream and rezoned or otherwise dealt with so that the land can no longer be used for residential purposes,
- new, flood free land and housing being made available through the RLP, and
- existing homes being made more resilient to future floods by either home raising or home retrofit with flood resilient building materials and alterations.

The RHP and RLP also contribute to the recovery and reconstruction of the Northern Rivers communities following the 2022 flood events by facilitating residents moving to new homes or improving or relocating their existing homes.

The RA is exercising the following functions in section 10 of the RA Act to deliver the RHP and RLP:

- (section 10(1)(a)) disaster prevention and preparedness, including:
  - identifying, assessing and managing the risks from disasters, and
  - leading disaster resilience, adaptation and mitigation activities, and
  - building community capacity and resilience to disasters, and
  - developing and implementing methodologies for disaster resilience, adaptation and mitigation activities,
- (section 10(1)(b)(ii)) reconstruction and recovery following disasters and other emergencies, including facilitating, coordinating and directing the recovery, planning and rebuilding of affected communities, including repairing and rebuilding land and infrastructure and other development,
- (section 10(1)(h)) to lead the management and coordination of housing and infrastructure renewal and recovery within affected communities,
- (section 10(1)(l)) to enter into joint ventures, project delivery agreements and other arrangements with landowners, developers, State and Commonwealth government agencies and local councils in relation to disaster prevention, recovery and reconstruction, and

- (section 10(1)(n)) to carry out rezoning and land use planning, including exercising the functions of local councils for the purpose of land use planning in relation to disasters.

In addition to these general powers, the Northern Rivers region has been declared a reconstruction area by an order made by the Minister for Planning and Public Spaces under section 40 of the RA Act (see 3.3.4). Declaration of the region as a reconstruction area activates additional powers in Part 6 of the Act to:

- acquire, manage, develop and dispose of land (sections 45 to 49 RA Act),
- issue a notice to decide or a progression notice to a decision maker for a prescribed decision maker for a prescribed decision or prescribed process to make a decision or complete the process within a period specified in the notice (sections 50 and 51 RA Act), and
- if a notice to decide or progression notice is not complied with, step in and make the decision, undertake the process, send the decision back to the decision maker or decide aspects of the decision and send undecided aspects of the decision back to the decision maker (sections 52 to 58 RA Act).

### 3.2.6 Community Leaders Forums

Community Leaders Forums with local MPs and Mayors have been established in the Northern Rivers and Central West regions to help facilitate community led recovery through:

- making sure future decisions about recovery are informed by community needs and led by local community leaders.
- involving local councils in decisions that influence the shape of towns and communities, including future buybacks.
- sharing updates regularly and keep people informed.

#### 3.2.6.1 Relevance to policy objectives and terms of the RA Act

These activities are relevant to the following functions of the RA set out in section 10 of the RA Act:

- (section 10(1)(c)) information provision and exchange and community engagement, including
  - supporting collaboration and coordination between government agencies, local councils, service providers and communities to improve disaster prevention, preparedness, recovery, reconstruction and adaptation and
  - increasing the flow of information and enabling community participation to support the development of strategies for disaster prevention, preparedness, recovery, reconstruction and adaptation,
- (section 10(1)(h)) to lead the management and coordination of housing and infrastructure renewal and recovery within affected communities, and
- (section 10(1)(i)) to work with affected communities to ensure the needs of each community are recognised in the recovery and reconstruction of the community, and to improve the disaster preparedness and resilience of communities.

#### 3.2.6.2 Central West Community Leader's Forum (CW CLF)

The CW CLF oversees the delivery of the \$100 million Central West Recovery and Resilience Package, which is co-funded between the Commonwealth and NSW Governments.

The CW CLF enables community leaders to provide guidance on all region-wide recovery programs, including:

- Housing package
- Public infrastructure reconstruction
- Social recovery needs

- Communication and community engagement
- Future disaster adaptation and mitigation.

The CW CLF is an advisory forum and has no decision-making responsibility.

The CW CLF consists of 9 members comprising:

- Mayors from the four impacted LGAs – Cabonne, Forbes, Lachlan and Parkes
- the State Members of Parliament for Orange (chairs the Forum) and Barwon
- the Federal Members of Parliament for Calare, Parkes and Riverina
- a senior executive from the RA
- a senior executive from the National Emergency Management Agency (NEMA).

Observers to the CW CLF will include:

- General Managers from the four impacted LGAs - Cabonne, Forbes, Lachlan and Parkes
- support staff from RA and NEMA.

### **3.2.6.3 Northern Rivers Community Leaders Forum (NR CLF)**

The NR CLF enables community leaders to provide guidance on all region-wide recovery programs, including:

- Housing package – including the RHP and RLP
- Public infrastructure reconstruction
- Social recovery needs
- Communication and community engagement
- Future disaster adaptation and mitigation.

The NR CLF is an advisory forum and has no decision-making responsibility.

The NR CLF consists of:

- Mayors from the Northern Rivers Councils – Tweed, Ballina, Byron, Lismore, Richmond Valley, Clarence Valley and Kyogle
- the Federal Members for Page and Richmond
- the State Members for Lismore, Ballina, Tweed and Clarence
- Regional Director Northern Rivers, Business NSW
- a senior executive from the RA.

The Parliamentary Secretary for Disaster Recovery, Ms Janelle Saffin MP, is the Chair of the Forum.

## **3.2.7 NSW Recovery Plan**

Following the ascension of the NSW Reconstruction Authority Act 2022 and the establishment of the RA, including its expanded functions; the RA successfully led a major review of the NSW Recovery Plan, as a supporting plan under the NSW Emergency Management Plan (EMPLAN).

The review was coordinated in line with the EMPLAN review led by Premier's Department throughout 2023. The aligned timing of the reviews ensured clarity in defining the roles and responsibilities for emergency management and recovery for natural disasters and other emergencies.

The review was informed by analysis of national and international arrangements, recovery planning literature and thematic analysis of after-action reviews, lesson reports and inquiries arising from recent declared disasters including the 2019/20 bushfires and major flooding events in 2022.

The RA led and coordinated an extensive stakeholder engagement process, holding 132 individual consultations, leading to over 1000 pieces of feedback. This included engagement with government agencies via an inter-agency Reference Group, and non-government organisations, industry peak bodies, councils, community organisations and elected officials groups via targeted one to one session.

The delivery of the NSW Recovery Plan was accompanied by in-house training to increase the capability of RA staff to deliver recovery functions while understanding the governance and statutory requirements of the RA in coordinating recovery. Over 100 RA staff attended the first tranche of training in late 2023, with further modules under development for delivery in 2024.

The NSW Recovery Plan was endorsed by the NSW State Emergency Management Committee (SEMC) in December 2023, and was approved by the NSW Minister for Emergency Services in April 2024 and released publicly thereafter.

The RA is now undertaking comprehensive engagement to communicate the changes of the plan to all key government and non-government organisations involved in emergency management and recovery activities.

### 3.2.8 Preparedness actions

The RA Act enables the Reconstruction Authority (RA) to facilitate the resilience of communities against future disasters through a range of means, including functions related to preparedness.

Stand-up of a dedicated preparedness division within the RA commenced in February 2024. At this early stage, the preparedness functions in the Act appear sufficient to effectively enhance community preparedness in NSW.

#### 3.2.8.1 Relevance to policy objectives and the terms of the RA Act

These activities are relevant to the following functions of the RA set out in section 10 of the RA Act:

- (section 10(1)(a)) disaster prevention and preparedness, including –
  - identifying, assessing and managing the risks from disasters
  - leading disaster resilience, adaptation and mitigation activities
  - building community capacity and resilience to disasters
  - developing and implementing methodologies for disaster resilience, adaptation and mitigation activities,
- (section 10(1)(d)) to coordinate the development and implementation of whole of government policies for:
  - managing the risk of disasters in the State, and
  - improving the preparedness and resilience of communities for potential disasters,
- (section 10(1)(e)) to prepare and implement a State disaster mitigation plan for disasters in the State,
- (section 10(1)(f)) to provide advice and support to local councils to help maximise the effectiveness of councils' disaster preparedness and reconstruction programs,
- (section 10(1)(j)) to lead public education on disaster risks and certain disaster preparations,
- (section 10(1)(k)) to carry out research, and provide advice, proposals, recommendations and reports to the Minister about disaster prevention and preparedness,
- (section 10(1)(m)) to implement funding schemes to provide funding support in relation to disaster prevention,
- (section 10(1)(n)) to carry out rezoning and land use planning, including exercising the functions of local councils for the purpose of land use planning in relation to disasters,

- (section 10(1)(o)) to carry out flood modelling and the determination of flood planning levels, particularly in relation to high-risk catchments,
- (section 10(1)(p)) to assist with the development of flood plans, and
- (section 10(1)(q)) to monitor the cumulative impact of disasters on the State, including by collecting and storing data about the impact, or likely impact, of disasters across the State.

### **3.2.8.2 Drive systemic change as a central coordinating and facilitating agency**

The RA plans to facilitate improved community preparedness by driving systemic change that enables sustainable, local, evidence-based person-centred, multi-actor approaches to preparedness.

Foundational actions include developing a Preparedness Framework to set out a desired future state of preparedness for the state including logic, drivers, and indicators; ensuring community preparedness is measured and monitored; embedding preparedness into existing and emerging priority setting and investment frameworks; and providing policy advice.

Consistent with enabling a devolved model, the RA will work in close collaboration with the emergency service organisations, other government agencies across all levels of government, community sector organisations, community leaders, local businesses, NGOs, academics, and other key stakeholders relevant to community preparedness to develop and deliver through an enhanced systemic approach.

The following functions in the Act are anticipated to support this work:

- coordinating the development and implementation of whole-of-government policies.
- supporting collaboration and coordination between government agencies, local councils, service providers and communities to improve disaster preparedness.
- carrying out research on disaster preparedness
- providing advice, proposals, recommendations, and reports to RA Ministers about disaster preparedness.

### **3.2.8.3 Lead the implementation of state-wide preparedness initiatives**

In addition to its central agency role, it is expected that the RA will continue to directly lead certain state-wide preparedness initiatives where state-wide scope is required, and RA is the most appropriate delivery agency.

The Government has prioritised several state-wide preparedness actions through the State Disaster Mitigation Plan with the RA will deliver, including;

- a 'Get Ready NSW' website that includes natural hazard risk information and guides on how to prepare for individuals, households, and businesses,
- an annual 'Get Ready NSW' multi-hazard public awareness action campaign,
- an update to the 'Get Ready NSW' baseline survey and index to reflect new data requirements to measure LGA-based levels of preparedness, and
- development of a Disability Inclusive Disaster Risk Reduction (DIDRR) policy and relevant tools for supporting the implementation of the DIDRR Framework.

The following functions in the Act are anticipated to support this work:

- leading disaster resilience, adaptation and mitigation activities,
- building community capacity and resilience to disasters, and
- leading public education on disaster risks and certain disaster preparations.

### 3.2.8.4 Partner with communities to build capacity and prepare for disasters

The RA will also directly support communities to prepare for disasters and to help build resilience. This includes facilitating locally driven disaster preparedness initiatives, through trusted and productive relationships with councils, communities, and local partners. By way of example, this may include supporting the development of targeted strategies for high-risk communities and cohorts, including tailored engagement and capacity building.

The following functions in the Act are anticipated to support this work:

- community engagement, and enabling community participation to support the development of strategies for disaster preparedness,
- supporting collaboration and coordination between government agencies, local councils, service providers and communities to improve disaster preparedness,
- information provision and exchange and community engagement, and
- working closely with affected communities to improve the community's disaster preparedness.

### 3.2.9 Disaster Funding Arrangements

The NSW Disaster Relief Account (DRA) administered by the RA consists of an annual provisional budget allocation of \$92 million to fund assistance measures automatically activated following the declaration of a natural disaster event. The activated measures are listed in the NSW Disaster Assistance Guidelines and Categories A and B of the Disaster Recovery Funding Arrangements (DRFA). In the event of significant disasters, additional DRFA funding can be sought through activation of Category C or D measures with agreement from the Commonwealth.

Due to the unprecedented number of recent natural disaster events, the DRA recurrent expenditure budget for 2023-24 is currently \$2.2 billion.

Generally, initiatives funded from the DRA are to provide recovery measures in response to a Natural Disaster Declaration, where the Commonwealth may fund between 50 and 75% of the assistance available to individuals and communities. The RA is responsible for managing the bilateral arrangement with the Commonwealth and oversight of the various NSW State agencies delivering recovery programs. As part of this arrangement, the RA submits an annual claim to the Commonwealth for reimbursement of eligible disaster recovery expenditure, which is subject to an independent State and Commonwealth audit.

#### 3.2.9.1 Relevance to policy objectives and terms of the RA Act

In NSW, disaster recovery funding is managed on a whole-of-government basis by the RA. The RA works with other State agencies and local government to administer funding under the DRFA. The administration of the DRFA contributes to the primary object of the RA Act which is to promote community resilience to the impact of disasters, in particular through recovery and reconstruction following a disaster. The RA implements funding schemes and provides financial support in relation to a range of disaster recovery and reconstruction measures, from individual grants to restore homes to a basic, safe and habitable standard to funding for the reconstruction of essential public assets.

These activities are consistent with the RA's functions set out in section 10 of the RA Act:

- (section 10(1)(m)) to implement funding schemes to provide financial support in relation to disaster prevention, recovery and reconstruction,
- (section 10(1)(b)(ii)) reconstruction and recovery following disasters and other emergencies, including facilitating, coordinating and directing the recovery, planning and rebuilding of affected communities, including repairing and rebuilding land and infrastructure and other development,
- (section 10(1)(h)) to lead the management and coordination of housing and infrastructure renewal and recovery within affected communities, and



- (section 10(1)(l)) to enter into joint ventures, project delivery agreements and other arrangements with landowners, developers, State and Commonwealth government agencies and local councils in relation to disaster prevention, recovery and reconstruction.

### 3.2.9.2 Review of Disaster Recovery Funding Arrangements

As part of the Commonwealth's commitment to recovery funding being fit for purpose, the National Emergency Management Agency (NEMA) have been leading a national review of the DRFA to ensure that Australians impacted by disasters have equitable and timely access to support. The Review includes the development of 'off the shelf' packages and the definitions for programs and measures that can be cost shared under this arrangement with the Commonwealth.

In December 2022, Emergency Management Ministers from all states agreed to expand the scope for the DRFA Review to include broad strategic feedback. In March 2024, 87 stakeholders from 10 NSW Government agencies met with NEMA to share experiences in delivering DRFA programs and possible areas of reform.

This Review coincides with the Colvin Independent Review of the Commonwealth Disaster Funding. The Colvin Review is examining Australia's investment in disaster risk reduction, preparedness, response and recovery, including areas of reform to ensure a scalable and sustainable system. The DRFA Review was expected to be finalised in May 2024, to coincide with the submission of the Colvin Report to the Australian Government.

## 3.2.10 Improved infrastructure coordination

### 3.2.10.1 Infrastructure coordination

The infrastructure coordination efforts of the RA build upon the efforts of the former NRRC established post the February/March 2022 natural disaster across the Northern Rivers region.

The Infrastructure Coordination Office (ICO) was established during this time and has continued as part of the ongoing operations within the RA. The ICO has been working alongside the Northern Rivers Reconstruction Steering Committee, developing delivery and procurement strategies in consultation with local councils aimed at ensuring councils are best placed to leverage market capability and resources required to deliver the reconstruction effort.

The ICO has worked across the region to deliver road condition assessments, compile and analyse infrastructure data from state agencies and councils, assess supply chain constraints including access to quarry materials, and facilitate additional support for project management and essential public asset restoration works.

The RA has successfully piloted the implementation of a new Tripartite Agreement between RA, local councils and the administering agencies of Transport for NSW (TfNSW) and NSW Public Works (PW). These agreements are aimed at providing advanced payments for councils to deliver essential public asset reconstruction (EPAR) works and ensure positive cash flow for the duration of the reconstruction process.

The RA is progressing a state-wide roll out of this approach to improve the timely passage of funding required for reconstruction works. The Northern Rivers councils of Ballina, Byron, Tweed, Lismore, Kyogle, Clarence and Richmond Valley as well as Lithgow were included in the first Tranche of 8 Councils:

- All 8 Councils have fully executed the agreements
- \$178 million in advanced payments made to date.
- \$28 million in payments approved with payment to councils pending.

The RA has prioritised a further 11 councils based on current reconstruction needs following recent disasters. The councils in this tranche are Cabonne, Weddin Shire, Blue Mountains, Forbes, Lachlan, Shoalhaven, Parkes, Armidale, Central Coast, Wingecarribee, Tenterfield. To date, five have fully executed agreements with progress being made on the remaining six agreements in this phase.

There is a backlog of Essential Public Asset Restoration, Development, Assessment and Coordination (EPAR) assessments across the Northern Rivers region. The RA has established a panel of external consultants to assist with assessment, coordination and strategic advice in the assessment of essential public assets. The panel is to be rolled out to help address the backlog of EPAR assessments in partnership with TfNSW and the local councils.

The established collaborative relationships allowed for the development and implementation of a range of infrastructure betterment projects and programs. This included the Community Local Infrastructure Repair Program Community Assets Program (CLIRP CAP), Regional Roads and Transport Recovery Package and Infrastructure Betterment Fund which were council delivered programs developed through cross-agency partnerships and coordination.

The RA has also established several programs for repair and recovery with state led delivery models involving cross-agency and whole of government partnerships. This includes the Northern Rivers Recovery and Resilience Package, Drainage Reset Program and Water and Wastewater Repair and Recovery Program.

### 3.2.10.2 Relevance to policy objectives and the terms of the RA Act

Infrastructure coordination activities are consistent with the functions of the RA set out in section 10 of the RA Act:

- (Section 10(1)(m)) to implement funding schemes to provide financial support in relation to disaster prevention, recovery and reconstruction,
- (section 10(1)(b)(ii)) reconstruction and recovery following disasters and other emergencies, including facilitating, coordinating and directing the recovery, planning and rebuilding of affected communities, including repairing and rebuilding land and infrastructure and other development,
- (section 10(1)(h)) to lead the management and coordination of housing and infrastructure renewal and recovery within affected communities, and
- (section 10(1)(l)) to enter into joint ventures, project delivery agreements and other arrangements with landowners, developers, State and Commonwealth government agencies and local councils in relation to disaster prevention, recovery and reconstruction.

In addition to these general functions, the following specific powers of the RA can be utilised by the RA to facilitate infrastructure renewal and reconstruction:

- The RA may carry out development on land that has been, or is likely to be, affected by a disaster where the development is necessary to give effect to the primary object of the RA Act, carrying out the development immediately is appropriate in the circumstances and the development is authorised by a proposed development declaration made by the Premier (section 12 RA Act).
- The RA may issue a notice to another government agency, local council or State-owned corporation to provide assistance to the RA in the exercise of the RA's functions or to take certain action in the exercise of its functions in providing an essential service or carrying out development under the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (section 13 RA Act). The RA can only give a direction if the RA is satisfied that:
  - the assistance relates to a disaster or likely disaster, and
  - the assistance is necessary to give effect to the primary object of the RA Act, and
  - given the nature of the disaster or likely disaster, and its direct or indirect effect on a part of the State, directing the relevant entity to assist immediately is appropriate in the circumstances.
- In certain circumstances where it is necessary to protect the safety and welfare of the public the RA may request the Minister for Planning and Public Spaces to authorise the undertaking of development without approval or assessment under the *Environmental Planning and Assessment Act 1979 (NSW)* or consent from any person (section 68).



- The Minister may declare a project, reconstruction area or disaster prevention area under Part 5 of the RA Act. A Part 5 declaration confers additional powers on the RA in relation to the declared project or area (see **Error! Reference source not found.**) which can be relevant to infrastructure coordination.

## 3.3 Amendments and use of powers

### 3.3.1 Protocols – exercise of powers and functions under the NSW Reconstruction Authority Act 2022

The RA consulted with its key stakeholders, including other NSW Government agencies, State owned corporations and local councils regarding the scope of the RA Act and the *NSW Reconstruction Authority Regulation 2023* (RA Regulation) in mid-2023.

Those consultations took place in the context of the Regulatory Impact Statement (RIS) for the RA Regulation. The consistent feedback received during that consultation process was that stakeholders were seeking clarification or assurance that the RA would be exercising its powers in consultation and cooperation wherever possible.

In August 2023, the RA published Protocols to guide the exercise of its powers and functions under the RA Act. The Protocols provide that the RA will ensure its powers are exercised to achieve the primary object of the RA Act, and in a manner that is cooperative, transparent and minimises associated risks.

The Protocols – exercise of powers and functions under the NSW Reconstruction Authority Act 2022 are available on the RA website.

### 3.3.2 Amendments to section 13 of the RA Act (and other amendments)

Amendments to section 13 of the RA Act (and other amendments) were necessary to provide clarity and reinforce the original policy objectives envisaged within the legislation.

The amendments, enacted in December 2023 by the *Emergency Services Legislation Amendment Act 2023*, primarily targeted section 13 of the RA Act, aiming to elucidate the scope of the RA's direction power.

Section 13 of the RA Act was amended to clarify that the RA may direct a local council to take certain action either:

- in the exercise of the local council's powers under the *Environmental Planning and Assessment Act 1979*, or
- in the exercise of local council functions specified in the regulations.

The RA Regulation was also amended and specifies those functions as:

- providing an essential service, or
- carrying out development under the *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

The purpose of these amendments was to clarify the operation of section 13 rather than make a substantive change to the effect of the legislation.

In addition to the amendments to section 13, a revision was made to section 26 of the RA Act. This amendment stipulated that at least one member of the RA Advisory Board must possess considerable experience in a senior role within a local council, as determined by the Minister. This modification underscores the importance of local government expertise in guiding the RA's decision-making processes, ensuring that the Advisory Board encompasses diverse perspectives and insights essential for effective governance and decision-making.

### 3.3.3 NSW Reconstruction Authority Regulation 2023

The RA Regulation commenced on 3 February 2023. The RA Regulation complements key provisions of the RA Act, focusing on facilitating effective governance and operational mechanisms. Central to this purpose are provisions addressing directions by the RA, strategic planning initiatives, Ministerial authorisations, and fee structures. These elements collectively contribute to the coherent functioning of the RA in fulfilling its mandate.

An example relates to the RA's direction power in section 13 of the RA Act. The RA Regulation specifies that relevant entities, such as government agencies, State-owned corporations, or local councils, may be directed by the RA to undertake specific functions specified in the RA Regulation. For instance, these actions may include providing essential services under the *Essential Services Act 1988* or carrying out development under the *State Environmental Planning Policy (Transport and Infrastructure) 2021*, as outlined in clause 5 of the RA Regulation.

Furthermore, the RA Regulation plays a pivotal role in supporting strategic planning initiatives mandated by the RA Act. This includes facilitating the implementation of the SDMP and any DAPs. To achieve this, the RA Regulation requires government agencies and State-owned corporations to consider these plans when undertaking certain functions, such as providing essential services or carrying out development, as articulated in clauses 6 and 7 of the RA Regulation.

In addressing exceptional circumstances, for the purposes of section 68 of the RA Act, the RA Regulation provides a framework for interpretation. It defines 'exceptional circumstances' to encompass situations where a disaster has occurred or is likely to occur, resulting in significant and widespread harm to life, property, or the environment. This delineation, specified in clause 8 of the RA Regulation, provides clarity and guidance for the RA in responding effectively to emergent situations.

Overall, the RA Regulation plays a critical role in implementing the mandates outlined within the RA Act, providing clarity, guidance, and regulatory frameworks to support the effective functioning of the RA. Through its provisions, the RA Regulation ensures coherence, consistency, and compliance with statutory requirements, thereby enhancing the RA's capacity to fulfill its responsibilities in promoting disaster resilience and facilitating recovery efforts across NSW.

### 3.3.4 Reconstruction Area (Northern Rivers) Order 2023

The effect of the Reconstruction Area (Northern Rivers) Order 2023 is paramount in facilitating the recovery and reconstruction efforts within the Northern Rivers region, following the devastating floods of 2022.

Initiated by the NSW Government in June 2023, this declaration designated the Northern Rivers as a Reconstruction Area, signalling a concerted effort to address the impacts of the disaster and bolster the region's resilience. Made under section 40 of the RA Act, the Order officially came into effect on 23 June 2023, ushering in a framework to streamline reconstruction activities and enhance community recovery.

Covering the entirety of the Northern Rivers region, including the local government areas of Ballina, Byron, Clarence Valley, Kyogle, Lismore, Richmond Valley, and Tweed, the Order encompasses a vast geographical area directly affected by the disaster. The Minister for Planning and Public Spaces decision to make the Order was contingent upon satisfying specific criteria, including the region's direct or indirect exposure to the disaster's impacts and the necessity of the declaration to facilitate protection, rebuilding, and community recovery. Additionally, the declaration aimed to mitigate future disasters and enhance community resilience through strategic interventions.

Central to the rationale behind the Order was the objective of the RA assisting the former NRRC to lead and coordinate reconstruction activities in the region. While the NRRC possessed broad powers, it lacked specific powers that are available to the RA under the RA Act. With the dissolution of the NRRC and its transition into the RA in the latter half of 2023, the Order remained in force to enable the RA to exercise specific powers contained in Parts 6 and 7 of the RA Act.

Key among these powers is the RA's authority to issue notices to decide or progression notices, as delineated in sections 50-51 of the RA Act. Additionally, the fact that the Northern Rivers region is

declared a reconstruction area allows the RA to issue step-in notices, subject to Ministerial approval and compliance with prescribed procedures, including the issuance of notices to decide or progression notices, using powers in sections 52-58 of the RA Act. These provisions furnish the RA with the necessary tools to navigate the complexities of reconstruction efforts, ensuring a coordinated and effective response to the challenges faced by the Northern Rivers community in its path towards recovery and resilience.

### 3.3.5 Broadwater Public School Ministerial Authorisation

The Minister for Planning and Public Spaces used the enhanced planning powers under the RA Act to make sure students could return to Broadwater Public School by the first term of 2025.

Broadwater Public School was extensively damaged in the 2022 floods that impacted the Northern Rivers, leaving most of the buildings uninhabitable and in need of repair. Since then, local students have had to travel out of the area to attend school.

Planning approval was required by no later than 11 July 2024 to enable the opening of the school in Term 1 of 2025. It was not possible to secure planning approval for the rebuilding of the school in this time frame using the Crown development application process commenced by the NSW Department of Education in January 2024.

With the support of the NSW Department of Education, Richmond Valley Council, the school community, and in response to a request from the CEO of the RA, the Minister for Planning and Public Spaces authorised the school's redevelopment using the power in section 68 of the RA Act on 11 July 2024.

Section 68(1) of the RA Act provides that the Minister for Planning and Public Spaces may, by order (a Ministerial authorisation), authorise the undertaking of development without the need for:

- (a) an approval under the *Environmental Planning and Assessment Act 1979*, or
- (b) consent from any other person.

A Ministerial authorisation may only be given under section 68(3) if:

- (a) the CEO of the RA has asked that the authorisation be given in relation to a reconstruction area (sections 68(3)(a) and (b)(ii)); and
- (b) the CEO of the RA has advised, and the Minister is satisfied that:
  - (i) the authorisation is necessary to protect the safety and welfare of members of the public because of the disaster that resulted in the declaration of the reconstruction area (section 68(c)(i)(B)); and
  - (ii) the development is in a part of the State that has been directly or indirectly affected by the disaster (section 68(c)(ii)).

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## 3.4 Other elements of the RA act

### 3.4.1 The NSW RA Advisory Board

The NSW Reconstruction Authority Advisory Board is established under section 24 of the RA Act. The functions of the Board are set out in section 25 of the RA Act as follows:

- to provide advice to the CEO about the RA's strategic priorities,
- to make recommendations to the CEO about:

- priorities for community infrastructure, other property and community services needed for the protection, rebuilding and recovery of affected communities, and
- the need for the declaration of declared projects, reconstruction areas and disaster prevention areas,
- to provide advice to the Minister and CEO in relation the RA's functions, including:
  - whether the RA is exercising functions in an appropriate, effective and efficient way, and
  - any other matter requested by the Minister or the CEO.

The Advisory Board consists of seven members. Five members are nominated by the NSW Government, with two nominated by the Australian Government.

The first members were announced in early March 2023, including the Chair. The Chair of the Advisory Board has published quarterly reports since March 2023 in accordance with the requirements of section 29 of the RA Act. Additional appointments were made in November 2023 with the first meeting of the full Advisory Board was held on 5 February 2024.

### 3.4.1.1 Current NSW RA advisory board membership

Name	Position	Nominated by	Appointment date	Terms ends
Mr Stephen Murray	Chair	NSW Government	2 March 2023	1 March 2026
Ms Leanne Barnes	Member	Australian Government	29 November 2023	28 November 2026
Mr Charles Glanville	Member	NSW Government	2 March 2023	1 March 2026
Ms Jane Laverty	Member	NSW Government	29 November 2023	28 November 2026
Dr Elizabeth McEntyre	Member	NSW Government	29 November 2023	28 November 2026
Mr Brendan Moon	Member	Australian Government	29 November 2023	28 November 2026
Professor Mary O'Kane	Member	NSW Government	2 March 2023	1 March 2026

### 3.4.2 NSW Reconstruction Authority Fund

Section 22 of the RA Act provides that an NSW Reconstruction Authority Fund is to be established in the Special Deposits Account. Establishment of the NSW Reconstruction Authority Fund reflects recommendation 15 of the NSW Flood Inquiry which states (among other things) that the RA should:

*source and acquit reconstruction funding from state, Australian Government and philanthropic sources and ensure it is distributed and spent efficiently, effectively, and equitably to get the affected communities functioning again in minimum time. A disaster-preparedness funding envelope should be a permanent feature of the state's budget (NSW Adaptation Fund) with specific drawdown arrangements negotiated as soon as a disaster occurs.*

Section 22(2) of the RA Act provides that the following amounts may be paid into the Fund:

- money advanced by the Treasurer or the Commonwealth, or appropriated by Parliament for the purposes of the RA.
- money directed or authorised to be paid into the Fund under the RA Act or any other Act.
- the proceeds of the investment of money into the Fund
- money received from donations, grants, or other contributions from any source approved by the Minister.

In terms of expenditure from the Fund, sections 22(3) and 22(4) of the RA Act set out what payments are authorised. Expenditures from the Fund are authorised for meeting the expenses incurred or to be incurred by the RA in carrying out its functions and activities as specified under the RA Act. This includes funding various projects, initiatives, and programs aimed at facilitating disaster adaptation and mitigation, preparedness, recovery and reconstruction in accordance with the functions and powers in the RA Act.

The provisions regarding the Fund in the RA Act establish a financial mechanism to support the operations and activities of the RA, ensuring there is a facility available to ensure adequate

resources are available to fulfill the RA's in promoting community resilience to the impact of disasters across NSW.

### **3.4.3 Comment on possible enhancements to the RA Act**

It is difficult to make substantial recommendations to improve the legislation as it currently operates, noting there has been limited opportunity to exercise the powers within the legislation. The experience of the RA has shown that the intent of the legislation, which is to establish a new agency with a centralised coordination function that covers the broad spectrum of disaster management from preparedness and mitigation through to recovery and reconstruction, has been achieved. Other agencies and governments at local and federal levels are working with the RA to deliver improved outcomes for communities across the state, recognising the legislated role of the RA.

# 4

## Conclusion

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## 4.1 Conclusion

The RA Act established the RA as an agency empowered to coordinate and implement large-scale disaster management programs, signifying a major change in the state's disaster governance framework. The RA has played a pivotal role in leading several state-level initiatives delivering the policy objectives of, and enabled by the functions and powers in, the RA Act.

This submission does not propose amendments to the RA Act on the basis that there has been limited opportunity to exercise the powers within the legislation to date. As such there is insufficient evidence available to support an argument that the terms of the Act are no longer appropriate for securing the policy objectives of the RA Act. The RA's position is that no changes should be made to the RA Act that enhance and expand, or that reduce or limit, any of the existing powers available to the agency until those changes can be informed by data and practical experience. The existing statutory powers and functions have been provided to the RA for the purpose of, and are essential for, acting swiftly and decisively in the event of a disaster. Any amendments that reduce these powers will hinder the RA's ability to fulfill its functions and responsibilities.

Although the RA does not propose any amendments to the RA Act at this time, it remains committed to working with the Joint Select Committee and the Parliament to identify and implement legislative improvements and amendments as necessary.

# 5

## Appendices



## 5.1 Appendix A Recommendations of the NSW Flood Inquiry

A number of findings and recommendations made by the 2022 NSW Flood Inquiry are directly relevant to the policy objectives of the RA Act. These findings and recommendations, as set out in the 2022 Flood Inquiry Summary Report, are reproduced below.

### 5.1.1 Establishing the NSW Reconstruction Authority

#### Finding – permanent reconstruction agency

*NSW is at significant risk of yet more major disasters. These will be challenging and expensive to prevent and to respond to. The state would benefit from having a permanent reconstruction agency which begins the reconstruction process as the disaster strikes and thus works to ameliorate community devastation and, better still, provides education and infrastructure before a disaster strikes that minimises the harm from a disaster.*

#### Recommendation 15 – NSW Reconstruction Authority

That, 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), Government establish a permanent state-wide agency, the NSW Reconstruction Authority (NSWRA) dedicated to disaster recovery, reconstruction and preparedness.

The NSWRA should:

- source and acquit reconstruction funding from state, Australian Government and philanthropic sources and ensure it is distributed and spent efficiently, effectively, and equitably to get the affected communities functioning again successfully in minimum time. A disaster-preparedness funding envelope should be a permanent feature of the state's budget (NSW Adaptation Fund) with specific drawdown arrangements negotiated as soon as a disaster occurs.
- work with appropriate agencies to ensure disaster relief grants schemes are put into place quickly and ensure rapid and effective distribution of disaster relief grants.
- be the clear lead agency responsible for managing and coordinating Government's program of housing and infrastructure renewal and recovery within disaster-affected communities, with a focus on working with community, business, state and local government partners (particularly planning, infrastructure, water and roads agencies and utilities) to deliver best practice and rapid effective expenditure of public reconstruction funds. For this it should be given appropriate authority to accelerate or override planning arrangements (in particular, local government planning, environmental and land management controls, provisions and regulations) in affected and high-risk areas and, as necessary, compulsorily acquire or subdivide land.
- ensure there is appropriate project management, monitoring, evaluation and reporting of recovery implementation and associated civil engineering and public works at both a state and local level.
- develop effective information flow and consultation mechanisms which ensure a clear voice in crisis but also a broader engagement process during the rebuilding phase, so all those affected in a disaster are supported, consulted and informed throughout the recovery and reconstruction process.
- in line with the Government's vision to build a more disaster-robust state, be the state's lead agency responsible for disaster prevention. In this role, NSWRA would work collaboratively with key stakeholders (at risk communities, local government and the private, research and philanthropic sectors) to improve risk reduction and disaster adaptation particularly in high-risk areas. In particular, it should work with disaster prone communities, local government and agencies across state government to develop a State Disaster Mitigation Plan and scope,

source funding for and lead special disaster-prevention and mitigation projects identified in that Plan.

- contribute to Government's objectives for the community – creating jobs, homes and a strong economy, especially in the regions, protecting the environment and building safe, caring and connected communities by:
  - administering funding under disaster recovery funding arrangements and assisting local governments to achieve value for money outcomes in their reconstruction programs.
  - providing advice and support to local governments to maximise the effectiveness of their disaster preparedness and reconstruction programs.
  - coordinating disaster recovery activities that help communities recover from disasters and build their preparedness for future events.

Further, it is recommended that the NSW Reconstruction Authority be established and function under dedicated legislation [*the NSW Disaster Reconstruction Act*] that is modelled on the Queensland Reconstruction Authority Act.

This legislation should include that:

- the Authority be allocated to a senior portfolio to maximise its convening power and its ability to respond rapidly when disaster strikes.
- its CEO be a statutory appointment and be supported by an Advisory Board (maximum 7 members) comprising community, government and industry leaders with appropriate expertise and experience related to disaster response.
- Special Projects be formal constructs with appropriate links to all other relevant agencies.
- transition provisions transfer the activities and assets of the Northern Rivers Reconstruction Corporation with immediate effect.

## 5.1.2 Risk based approach to calculating flood planning levels

### Findings – risk-based approach to calculating flood planning level

*Most landholders using the 1% AEP for calculation of the flood planning level for planning purposes in NSW is not adequate, especially in the light of changing rainfall patterns including the intensification of intraday rainfall, with the consequent risk of greater flash flooding.*

*To understand risk, especially for major flooding events, knowledge of floods at a catchment-wide scale is needed. Councils are generally not adequately resourced or organised to manage either whole-of-catchment models or high quality, risk-based flood planning level estimations. Responsibility for this matter needs to return to the State Government. Re-determining flood planning levels will be relatively straightforward in some cases with the result remaining close to the 1% AEP but will need substantial adjustment in others depending on local rainfall intensities, catchment shape and other risk factors.*

### Recommendation 18 – risk-based approach to calculating flood planning level

That, to take account of greater knowledge of climate change, Government reinforce its adoption of a risk-based approach to calculating the flood planning level for planning purposes and, through the NSWRA, immediately start a process of revising all flood planning level calculations in the state's high-risk catchments. Flood planning level re-determinations for all high-risk catchments should be completed within 3 years. These revised flood planning levels will need to be factored into all development applications (in-progress and new) in those high-risk catchments. The risk profile of high-risk catchments should be revisited at appropriate time intervals to check that levels are current. A review should take place if there has been a significant trigger event (i.e. changed rainfall, development) or at least every 5 years. As well as reviewing the flood planning level, this 5-yearly review should include reviewing any floodplain lease conditions and adjusting them as necessary in the light of better knowledge of climate change impacts. In working out a tolerable, risk-based flood planning level, consideration should be given to the PMF, 1% AEP, 0.02% AEP, existing development,

approved but not yet constructed developments, and existing and approved but not yet constructed evacuation routes.

In coordinating this flood planning level re-determination process, NSWRA should work closely with local councils, DPE, communities, state water authorities and state and national engineering and research organisations. In doing so, the NSWRA should also:

- extend and then maintain the DPE state-wide flood database and associated visualisation interface. This database, which should link to LandiQ, would support:
  - monitoring of the flood warning and sensing environment
  - monitoring of trends in rainfall activity and impacts, including timing,
  - tracking trends and identifying patterns in associated weather and climate signals that contribute to severe floods
  - 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
  - simulation of extreme rainfall events and resultant flooding
  - identification of ‘at risk’ river and catchment systems for flash flooding
  - rapid and effective deployment of resources during a flash flood event
- act as the main coordination point for all NSW hydrological modelling, working with local government, other state agencies, universities, professional bodies (e.g. Engineers Australia) and the Australian Government (especially the Bureau of Meteorology and CSIRO) to improve future NSW flood risk assessment (and hence accuracy and timeliness of flood prediction) by building more formal connections between the extensive existing physical hydrological modelling (done by various NSW agencies) with the Bureau’s meteorological and climatological research and riverine flood models
- support local councils to improve modelling of and ensure adequate and appropriate alarm systems for flash flooding.

### 5.1.3 Disaster Adaptation Plans

#### Finding – disaster adaptation plans for all towns

*Natural disasters will recur in NSW as we see more extreme climate. NSW will experience more extreme bushfires and larger and more dangerous floods. This means that certain regions and certain areas of cities and towns (notably floodplains associated with major rivers and the parts of cities that are bushfire prone) are increasingly dangerous places to live and will increasingly be a drain on the public purse as people who live there have to be evacuated repeatedly and then re-housed. Particularly good examples include the Hawkesbury-Nepean Valley in the Sydney region, and high-risk flood catchments in regional NSW – notably the Northern Rivers and the Hunter region. The flood risks of these areas are so significant that any further development just increases the burden on current and future communities, and a strategy is needed to adapt to this risk and minimise the number of people who live below the flood planning level.*

#### Recommendation 19 – disaster adaptation plans for all towns

That, to establish realistic expectations of safe spaces to live and deliver much needed housing quickly, Government through NSWRA working with local government:

- build a disaster adaptation plan for each city and town, with planning instruments discouraging (and in many cases forbidding) development in disaster-likely areas. These plans should be developed under the NSW Climate Change Adaptation Strategy. For towns at high risk, this should be completed within 3 years, with the rest of the state to be completed within 5 years. To develop these plans, it will be necessary to prioritise modelling of the impact of and evacuation possibilities from likely potential disasters as well as modelling the direct impact of the potential disasters themselves. For floods this can be done

by continuing and broadening the flood modelling done in NSW to other high-risk catchments. This flood modelling activity should be moved to the NSWRA from the two groups it is currently with (INSW's Hawkesbury-Nepean Valley Flood Risk Management Directorate and the Department of Planning and Environment's Environment and Heritage Group)

- through NSWRA, working with local councils, complete the first sweep of plans including appropriate hazard maps (including but not limited to flood, fire and landslip) and link them to Strategic Plans and LEPs (updating as necessary). An accreditation process should be implemented so local councils with demonstrated capacity can seek accreditation with the NSWRA to maintain their own disaster adaptation plans with oversight (spot audits) by NSWRA
- use the disaster adaptation plans including the disaster/evacuation modelling to resolve existing rezonings currently on hold especially for the North-West corridor of Sydney. Future residential development in the Hawkesbury-Nepean Valley should be increasingly discouraged in favour of rapid development near train stations and other facilities in flood-safe areas.
- use the disaster adaptation plans including the disaster/evacuation modelling and the options spelled out in the Northern Rivers case study to inform town planning, relocation options, buy backs and land swaps for the flood affected Northern Rivers region with the NSWRA (and in the lead up to the NSWRA's creation, the Northern Rivers Reconstruction Corporation) urgently commencing a phased program to migrate people off the highest-risk areas of the Lismore floodplain, and other Northern Rivers floodplains, through a significantly expanded land swap and voluntary house purchase scheme, with priority given to our most vulnerable community members.
- prioritise and incentivise new development in safe areas, noting this will often mean encouraging first home buyers to choose homes in appropriate density developments, including high-rise developments, through siting such new developments in locations with desirable attributes (near train stations, parkland, shopping centres, etc.) In this regard, Government should focus on redeveloping existing Government land in these locations.
- for existing developments which are in disaster-likely areas, ensures evacuation routes are available and of sufficient capacity; the community is well-educated about the risks they face and how and when to evacuate; and any modifications of existing buildings are approved only if they maximally address the relevant risk (e.g. apartment buildings have the first few floors dedicated to parking so residents can shelter in place if necessary) noting that shelter in place only works if the flood waters come up and go down quickly, and if other essential services (water, electricity, sewerage, access to food and medical supplies, etc) are available.
- using the Six Cities Region as an inspiration, consider developing another strategic city cluster in NSW, prioritising safety from fire and flood along with affordable housing; new industries offering well-paid employment; living within 30 minutes of the workplace; and offering access to education and training at all levels.

## 5.1.4 Floodplains as assets

### Finding – floodplains as assets

*At the moment, there is no coherent or principled approach to proactive, appropriate development of NSW floodplains. Practice to this point has created tensions between the urgent need for more housing and keeping people safe. There is pressure on developers to provide housing, and there is pressure on consent authorities to approve the development, whilst ensuring it is safe and appropriate to do so. Climate change, though not yet fully understood, is increasing this tension. The tension particularly affects those who can't afford to live in suburbs out of the floodplain.*

### Recommendation 20 – floodplains as assets



That, to establish the capacity and maximise the economic, social and environmental potential and consequently unlock the value of NSW floodplains, Government adopt the following guiding principles for floodplain management:

- treat floodplains as an asset, specialising in uses that are productive and minimise risk to life during major weather events. Such uses would include sporting and recreational activities, garden plots and community gardens, agriculture and forestry, renewable energy production, biodiversity offsets, parks and outdoor education activities. Government should progressively move floodplain ownership to Government leasehold with lessees using the land under appropriately specified conditions. The management of the process of conversion to leasehold would be a Special Project of the NSWRA but over time handing the floodplain asset over to management by another government agency. The NSWRA should prioritise rapid conversion to leasehold in cases where houses and businesses are in high-risk areas – this may be accomplished by land swaps or buy backs. In doing so Government achieves early wins for new uses. In other cases, the conversion should occur as a condition of development, of a type that is consistent with safe evacuation or safety in place in the case of flash flooding that recedes rapidly
- treat development of the floodplain in parallel with development of urban structures (houses, businesses and industry) that are built near to the edge of the floodplain. Examples of connection could include highrise housing developments where apartment owners are granted automatic rights and access to community garden and community recreation facilities. Structures within the floodplain and surrounding development should be connected by a layer of sustainable transport.
- favour letting watercourses largely flow naturally rather than implementing engineering barriers such as flood levees and mitigation schemes to stop floods.
- communicate the intention to use planning arrangements that will lead to greater safety and community amenity as well as realising a significant state asset. This needs to be communicated in general to the people of NSW, but also to those particularly affected communities at the time of planning, rebuilding and construction.

### 5.1.5 Simplify planning system disaster provisions

#### Finding – simplify the planning system disaster provisions

*The new disaster adaptation plans and risk-based approaches to calculating flood planning levels will need to have a clear connection to the development assessment and infrastructure delivery process. It will be critical for new controls to create more resilient buildings to be enforced through development decisions, just as decisions to retreat from high-risk areas require support through public space and other infrastructure funding. Achieving these outcomes needs a clear line of sight between policy imperatives for disaster avoidance and adoption, the strategic plans that shape settlement decisions, and the operational decisions (like development assessment and spending) that achieve these outcomes. With multiple inputs to the preparation of local planning controls, the line of sight necessary to ensure effective adaptation and resilience to disasters can be obscured. Shifting the responsibility for flood risk management planning to the proposed NSWRA also raises the question of where the development controls for flooding should sit along with the policies that support the inclusion of disaster adaptation plans into strategic planning.*

*The division of the planning system into two parts – strategic and development control – and its operation across two levels of government makes it at times challenging in relation to addressing flooding (and natural disasters more generally).*

#### Recommendation 21 – simplify the planning system disaster provisions

That, to simplify and improve the state planning processes especially when anticipating and recovering from a disaster, Government:

- ensure there is a clear line of sight directing councils and planning authorities to include disaster response and resilient settlement outcomes in long term strategic plans (Regional and District Plans as well as Local Strategic Planning Statements). This may require more

prominence to be given to Planning for a more resilient NSW: A strategic guide to planning for natural hazards (Department of Planning, Industry and the Environment) as well as a clear link to the risk-based approach to hazard identification and the disaster adaptation plans.

- ensure the NSWRA provides the necessary tools and advice to enable planning authorities to incorporate cumulative impacts of potential natural disasters into strategic plans. These tools should ensure the disaster adaptation plans can be given real effect in strategic plans for settlement and local planning controls.
- ensure that Ministerial Directions on hazard and natural disasters (directions 4.1 and 4.6 inclusive) are updated to reflect the new risk-based approach to flood planning levels and deliver the disaster adaptation plans to the zoning process
- create specific flood planning provisions as a new chapter in the SEPP (Resilience and Hazards). These provisions would draw the existing flood planning clauses (5.21 and 5.22 in the standard instrument) up into the SEPP.
- put the natural disaster clause (5.9 in the standard instrument) into a new chapter in the SEPP Resilience and Hazards, along with objectives to assist councils to use the clause to build back to more resilient standards.
- update planning guidance so that wherever possible community facilities, such as might be used for evacuation centres, are located above the probable maximum flood and essential services are located above the flood planning level.
- ensure that the strategic land use frameworks and related controls permit new developments only in line with the evacuation capacity both individually and cumulatively.
- ensure that the strategic land use frameworks enable higher density flood resilient precincts to locate more development at or above the PMF and use a higher flood planning level to avoid catastrophic costs from extreme flooding, as well as deliver cost-effective controls for individual structures.

## 5.1.6 Housing and rehousing – issues and funding

### Finding – housing and rehousing issues

*Both metropolitan and regional NSW are in the grip of a housing crisis. House prices and rents rose significantly through the COVID 'shutdown', making it more difficult for many to find a place to live. While interest rate rises are easing house price pressures, the rental market remains extremely tight. Rents continue to escalate, and vacancy rates remain low - under 1% for many regions, including the Northern Rivers. The floods made uninhabitable or significantly damaged thousands of homes and forced thousands into emergency accommodation. There are still some 1300 in emergency housing across the Northern Rivers, more than four months after the floods. This is driving more demand for social, affordable and market rental housing and has worsened homelessness. Urgent action is needed to provide fit for purpose, resilient homes for the displaced or those who continue to reside on high-risk floodplains. This includes homes for Indigenous peoples which are respectful of culture and kinship.*

### Recommendation 22 – relocating communities most at risk with good homes and amenities

That, to empower vulnerable people and communities to relocate, Government through the NSWRA:

- identify and prioritise those communities most at risk from future disasters, and for whom relocation may be appropriate or necessary.
- leverage the work done through Government's homes, cities, manufacturing and skills policies, to collaborate and work with these communities in examining, designing, building and installing affordable, attractive and insurable housing options (e.g. locally fabricated high quality modular homes, or utilising local builders to retrofit and/or relocate existing homes to safer ground) and to enable small housing developments with capacity to grow organically over time
- utilise best-practice policy for rapid urbanism and community-building to establish new settlements. This should include:

- an enquiry-by-design or charrette process led by the Government Architect to ensure that new settlements reflect the aspirations and vernacular of the local community, whilst meeting the technical needs of establishing settlements and delivering infrastructure at low cost. This should also include considering how to repurpose floodplains for community use and benefit, i.e. recreation, sports and energy production as part of the process of returning land below the flood planning level to Government ownership. It should also consider the role of locally manufactured, well-designed and regulated modular housing solutions.
- promoting a sense of community by ensuring appropriate amenity (e.g. schools, shops, and services) is available to relocating people and communities at the time of moving to their new settlements.
- working with the financial and philanthropic sectors to investigate a special purpose fund to provide continuing support for these communities as they transit through re-establishment.

### **Recommendation 23 – housing and development funding options**

That, to empower vulnerable people and communities to avoid significant impacts from flood as well as drive broader investment in adaptation, Government through NSWRA:

- consider establishing a NSW Mitigation Fund as a form of secured finance as a lien on title, such as rates-based or utility-based financing, to allow the Government to harness private sector monies to deliver cost-effective flood-resilient retrofits for existing dwellings.
- investigate whether trading mechanisms for development rights, renegotiation with developers with existing rights, or uplift value capture to fund buy-outs could reduce existing and anticipated development in areas of greatest flood risks, with an initial focus on the Northern Rivers region and the Hawkesbury-Nepean. In doing so, Government should:
  - ensure that tradeable rights facilitate the construction of additional homes in line with regional plans, in particular the Government’s six cities vision developed by the Greater Cities Commission
  - fund voluntary property purchases in identified locations through the issuing of tradeable development rights.
- work with the insurance industry to ensure that works are undertaken such that they would improve access to lower cost insurance products, improving upon existing guidelines from voluntary house raising schemes.
- ensure that local delivery partners provide a seamless consumer experience in a cost-effective manner, whilst meeting community expectations for consumer protection and responsible lending
- consider how the NSW Mitigation Fund mechanism can address other adaptation and mitigation opportunities such as improving flood resilience for structures in areas of extreme risk and reducing emissions and bills whilst improving human health outcomes through energy efficient retrofits and home electrification.

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