

25 June 2020

NSW Department of Planning, Industry and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir / Madam,

SUBMISSION TO THE DRAFT FLOOD PRONE LAND PACKAGE

Thank you for the opportunity to comment on the Department of Planning, Industry and Environment's (DPIE) draft Flood Prone Land Package (the Package). As a planning professional, with an interest in risk-based land use planning in response to natural hazards, I **support and commend** the DPIE for working towards delivering a more robust planning response to flooding. The draft Package seeks to provide a more complete and nuanced land use planning approach to flood hazards, and seeks to support Councils undertaking strategic planning and assessing proposed development within flood hazard areas.

As planners, policymakers, decision-makers etc. we have a responsibility to our communities, to make decisions on land use policy, development and infrastructure that strengthens community resilience and directly reduces the current and future exposure of people, infrastructure and property to natural hazards and their impacts. Risk-based land use planning acknowledges that different land uses, people, built form and density have different sensitivities or susceptibility to natural hazards, including flooding. Risk-based planning seeks to distribute land uses and development within the natural hazard area in a way that is responsive to this susceptibility, in order to manage the risk to an acceptable or tolerable level.¹

At present, the planning framework is rigid, with flood hazards largely considered at the development assessment stage on a case by case basis, against controls that are largely based on a single 'defined flood event' (DFE). Combined with other barriers, such as the resource potential of hazardous land, existing land use and development constraints, availability of information and resources and community fear, an ad-hoc approach to planning for flood hazards across the State has ensued. There is also a general lack of understanding of flood hazards amongst the planning profession and decision-makers, with only a small body of engineering and planning practitioners applying a risk-based approach.

The draft Package represents a positive step towards a more risk-based response to flood hazards in NSW. The proposed amendments to the Local Environmental Plan and Section 9.1 Local Planning Direction are supported as appropriate policy responses. Notwithstanding, the following comments on the draft Package are provided for your consideration:

- **Relationship to revised Floodplain Development Manual (FDM) and associated guidance is unclear** – it is understood that a review of the 2005 FDM and associated guidance is currently underway. It is unclear, however, why the draft Package was released before the revised FDM. Reviewing the two packages together would have provided greater clarity for planning professionals on the Flood Risk Management (FRM) process and the framework which guides risk-based land use planning in response to flood hazards. Land use planning is one, albeit important tool, in a suite of risk management objectives (e.g. community awareness, environmental programs, disaster management, insurance policy, building controls, structural / infrastructure works, good governance and communication). The interaction is important and could have been better explained by exhibiting the revised FDM alongside the draft Package, and even more still by incorporating key FRM principles and processes into the draft Package, particularly the *Considering Flooding in Land Use Planning Guideline* (the draft Guideline). **The draft Package should not be finalised prior to the release and finalisation of the revised FDM.**

¹ Haines, D., Dearnley, C., & Ciancio, L. 2019, 'Risk-based land use planning: evolving from the Q100 Quagmire', FMA Conference paper.

- **Continued reliance on a single ‘defined flood event’ (DFE) and outdated terminology** – Reliance on a single DFE, typically the 1% AEP and 0.5 m freeboard (for residential development but increasingly applied for all development) and its current application in planning policy is highly simplistic and does not tell the full story (e.g. the hydraulic behaviour of a flood and its associated risk). It does not mark the boundary between safety and hazard. The draft Package, including the revised *Planning Circular* (the draft Circular) and the draft Guideline positively encourage an understanding of the full range of flood behaviour up to the Probable Maximum Flood (PMF) i.e. the entire floodplain, and provides Councils the flexibility in selecting design flood events and freeboards. Specifically, the draft Direction has been amended to remove (former clause 7) the need to obtain exceptional circumstances to apply flood-related residential development controls above the 1% AEP. This is supported. However, continued use of terms such as ‘flood planning area’ (FPA) and ‘flood planning level’ (FPL) undermines this. It appears that the definition of the FPA in the draft Guideline and the draft LEP clause and the draft Direction differ. The possible extension of the FPA to include ‘other areas of land’ presumably above the FPL, undermines the definition of the FPA, which is traditionally based on a single DFE. Further, it does not appear that the draft LEP clauses consider the PMF. **The policy reform presents the opportunity to map the extent of the PMF and apply graduated planning objectives and controls commensurate with the flood hazard, land use / development scenario and associated flood risk, without the need for DFEs, FPAs or FPLs.**
- **New terminology in the LEP may result in added complexity to an already complex issue** – the draft Package introduces two new LEP clauses relating to the Special Flood Considerations (SFC), in areas outside the FPA, and Regional Evacuation Consideration Area (RECA). These new terms are likely to cause greater confusion. The intent of the SFC is supported, however can be achieved by considering up to the PMF and applying a risk management matrix. These matrixes are included in some Development Control Plans (DCPs) already or hidden in a Flood Risk Management Plan (FRMP). The policy reform allows for greater integration of this existing mechanism, particularly with regard to sensitive uses. Evacuation should be considered across the entire floodplain not just within an identified area. Addressing these issues as different clauses creates overlap in objectives and controls. **The policy reform presents the opportunity to include a single clause in the LEP, titled ‘floodplain risk management’ or similar, with sub-sections, which allows for the graduated application of controls up to the PMF. Further, it provides the opportunity to ensure LEP clauses are simplified and should link to and give greater statutory weight to the detailed maps, objectives and controls in the DCP.**
- **Standard instrument or model clause?** – the draft Guideline reinforces the role of Councils in managing flood risk, however, acknowledges that how the Guideline can be applied is at the discretion of Councils. This is concerning given the already ad-hoc approach to flooding across the State. **Clarification is required as to whether the proposed clauses are standard instrument mandatory clauses or model clauses council can choose to include in their LEP?** Mandatory clauses would likely result in a more consistent application of flood controls within LEPs, however, will likely require significant time to implement through the Planning Proposal process and will likely require additional studies to be undertaken to inform their inclusion. Further, not all Councils will have RECA where a clause would need to apply. To reinforce the point above, **the policy reform presents the opportunity to include a standard LEP clause, that includes sub-sections, which are can be identified as not applicable if they do not apply to that LGA.**
- **No proposed amendments to or guidance on flood mapping in the draft Package** –the ability to publish maps in different locations and to share data is welcomed. However, the draft Package does not propose amendments to or guidance on flood mapping. For example, the draft Package does not detail how an SFC should be mapped. This is a missed opportunity. Currently, LEP mapping is too simplistic and does not consider flood events up to the PMF. The inclusion of flood hazard mapping in the LEP elevates its statutory weighting, which is beneficial despite the restrictive PP process to amend an LEP. **A more consistent and nuanced approach to flood hazard mapping, within the LEP and DCP is required.** It is recommended the planning industry move toward including mapping which identifies:

 - multiple flood extents, from rarer to more frequent flood events, up to the PMF,

- levels or 'bands' of risk, reflecting the likelihood and behaviour of flooding commensurate to the use / development (note: this was a recommendation of the Queensland Floods Commission of Enquiry). This would allow the graduated application of flood-related development controls, as described above,
 - climate change factors, and
 - areas where further hazard information is required.
- **Balancing flood risk and increased development in established areas** – the draft Direction, includes provisions which prohibit certain development across the floodplain, for example cl.(6)(c) '*residential development in high hazard areas*', cl.(6)(d) '*significant increase in the dwelling density of that land*', cl.(6)(e) '*seniors housing etc. in areas where the development cannot be effectively self-evacuated*' and cl.(6)(h) '*hazardous industries... where hazardous materials cannot be effectively contained during flood events*'. Whilst best practice, this may be more easily achieved in greenfield areas rather than established urban environments. Metropolitan councils are already progressing development applications and planning proposals that are inconsistent with the proposed clauses. New development and density may be unavoidable in such areas, or even desirable if future flood risk was reduced, for example replacement of low-density dwellings with flood compatible, high-density dwellings. **Guidance is required on best practice mitigation measures to be required if a proposal was inconsistent with the draft Direction, per cl.(9), particularly if there was debate between applicants and decision-makers.**
- **Consideration of climate change is an important and welcomed addition** – inclusion of draft LEP controls relating to climate change (objective (b) and clause (4)) is a positive addition, particularly reference to adaptability (cl.(4)(b)) 'the potential to modify, relocate or remove the development'. Notwithstanding, further guidance / consensus is required to on how to build in tolerance for climate change within flood modelling, mapping and flood-related development controls.
- **Additional guidance for planners and decision-makers is required** – the draft Package represents a step toward a more complete and nuanced approach to land use planning in response to flood hazards. However, more could be done at a State and local government level, including:
 - Greater guidance is required on how to balance natural hazard risk with the other environmental constraints and the efficient and economic use of land.
 - Greater strategic direction is required on what land uses are 'risk appropriate' i.e. tolerable or intolerable across the floodplain. The draft Package positively encourages an understanding on the constraints flooding places on the development of land to assist identifying areas suitable for different types of development, and controls in the LEP / DCP but goes no further. This information is contained in the FDM, FRMP (generally unknown to land use planners) or less commonly within the DCP. This direction could be made available in the draft Guideline.
 - Greater guidance is required on how to assess and achieve satisfaction with the proposed draft LEP controls, including what is required from an applicant to demonstrate that a control is satisfied, for example scope and methodology to prepare site-specific studies or assessments, so to avoid inconsistent application of the controls and debate between applicants and decision-makers. This guidance could be made available in the draft Guideline.
 - Preparation of model DCP clauses and flood mapping is required to provide guidance to Councils and ensure a more consistent approach across the State. The draft Package provides no explanation or example of 'flood-related development controls'.
 - Greater engagement between land use planners, specialist engineers and decision-makers, is required.

Thank you again for the opportunity to comment on the draft Package. Should you wish to discuss this submission please do not hesitate to contact me on the email provided.

Kind regards,
Alicia Baker

23 June 2020

Our Ref: SF18/1572

Contact: Pulak Saha, 02 95621617

RE: Flood Prone Land Package

Dear Sir/Madam,

Thank you for providing the opportunity to provide feedback on the proposed "Flood Prone Land Package". It is noted these changes include:

- a proposed amendment to schedule 4, section 7A of the *Environmental Planning and Assessment Regulation 2000*
- a revised planning circular
- a revised local planning direction regarding flooding issued under section 9.1 of the *Environmental Planning and Assessment Act 1979*
- revised Local Environmental Plan (LEP) flood clauses
- a new guideline: Considering Flooding in Land Use Planning (2020).

Council staff have undertaken a review and their comments are below. Please note the feedback has not been considered by Council and are not considered the endorsed view of Bayside Council.

Staff Comments:

Overall these changes, if adopted, will result in improved management of flood. The proposed LEP clause is a significant improvement to the existing model clause, because:

- Of the additional requirements in the draft LEP clause relating to hazardous materials, consideration of climate change for new developments and the requirement to consider the cumulative impacts of development.
- Of the additional requirements in the draft LEP clause that requires special flood considerations for the sensitive, vulnerable and critical uses.

It is requested that it is noted that the Bayside LEP (draft) flood planning clauses are consistent with the flood planning package as circulated by the NSW Government.

Some of the requirements of the proposed clause have also been included in Bayside Council's proposed Development Control Plan including the consideration of cumulative impact of the development and hazardous materials.

As the State Government guidance has been unclear to date the draft Bayside LEP does not address climate change, however there may be the opportunity to consider climate change in the Bayside Development Control Plan.

As such, the proposed guidelines are generally supported. However, additional information is sought to clarify the following:

1. Definition of the flood planning area
Proposed definition includes *"The FPA defines the area where the majority of flood-related development controls apply"*.
 - (i) **Council staff would like to see clarification of this definition, as the use of the term majority is not self-explanatory. For example does this include the land below the probable maximum flooding?**
2. Clause 4 of requires the consideration of climate change as below
 - 4) *In addition to the matters referred to in subclause (3), development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that projected changes to flood risk as a result of climate change have been considered in the design of the development, including:*
 - a) *consideration of the intended design life and scale of the development,*
 - b) *evacuation and management of risk to life, and*
 - c) *the potential to modify, relocate or remove the development.*

Council staff seek additional information:

- (i) **What will be the flood planning level for a development which has life of 100 years?**
- (ii) **Which climate change scenario should be applied?**

Should you require any further information, please contact Council's Strategic Floodplain Engineer, Pulak Saha on 02 95621617.

Yours faithfully



Clare Harley
Manager Strategic Planning



File no: F20/1086

24 June 2020

Ms Gina Metcalfe
A/Director, Central (Western)
Department of Planning, Industry and Environment
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150

Dear Ms Metcalfe

Submission on Flood Prone Land Package

Thank you for the opportunity to review and comment on the Flood Prone Land Package this is on public exhibition until 25 June 2020.

We are supportive of the more holistic approach to flood risk management which this suite of documents will provide. However, there are a number of areas which we suggest would benefit from clarification.

We suggest there is a need for greater strength and clarity around the key terminology which determines where flood-related development controls apply and what is an acceptable impact from development. This wording is currently very broad and open to interpretation. We are concerned that this may erode the NSW Government's current strong policy position towards the impact of development on flood risk.

We are also concerned about the consistent application of the principles outlined in the Flood Prone Land Package to ensure they apply to all relevant environmental planning instruments across the State. In particular, we are concerned about its consistent application in the North West Growth Area, which covers a large part of Blacktown and is located in the Hawkesbury-Nepean catchment.

Our submission is included as Attachment 1 to this letter. We look forward to discussing the content of our submission with you.

If you would like to discuss this matter further, please contact Helen Budd, Senior Coordinator Strategic Planning on 9839 6206 or Zara Tai, Strategic Planner on 9839 6237.

Yours faithfully

Glennys James PSM
Director Planning and Development

Connect - Create - Celebrate

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Blacktown City Council submission Flood Prone Land Package 2020

1. General comments

a. Greater certainty in the wording of key terms

- i. The key terms throughout the documents which determine where flood-related development controls apply and what is an acceptable impact of development are too open to interpretation. We appreciate that the intent of this may be to enable councils to make a merit-based assessment as to the appropriateness of a development on a case-by-case basis. However, the lack of definitive language will create uncertainty for landowners, developers and consent authorities, create delays in the assessment process and potentially lead to lengthy and costly court action to determine whether a development is likely to have an impact on flood behaviour or flood risk.
- ii. NSW Government flood policy to date has effectively prevented a development from changing the flood risk within the respective catchment. Maintaining this position has been extremely important in protecting the safety of residents in the Hawkesbury-Nepean Valley floodplain, and we commend the State for this. Consideration of the cumulative effect of development is an important aspect of this position. We are concerned that the open language used throughout the suite of documents will erode this position. Terminology such as 'will not adversely affect', 'will not significantly alter', 'is not likely to result in' does not support the policy position of preventing change to the flood risk because it is too open to interpretation, is not measurable and makes it very difficult to assess the cumulative impact of development.

b. State-wide implementation

- i. The revised Planning Circular is silent as to whether the proposed revised Local Environmental Plan (LEP) clauses are to be implemented as mandatory Standard Instrument clauses or voluntary modal clauses. Floods are not bound by Local Government Area (LGA) boundaries. The provisions for managing flood prone land should be based on a catchment wide approach, with consistent provisions applying within each catchment regardless of which LGA the affected land is located in.
- ii. There are numerous environmental planning instruments (EPIs) that apply within and across LGA boundaries. Careful consideration must be given to implementing the revised clauses across all relevant EPIs to prevent inconsistencies in flood considerations.
- iii. Of particular concern for us is the implementation of the proposed clauses in *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP), which covers a significant area of Blacktown LGA. A large part of

the North West Growth Area (NWGA) is impacted by flooding within the Hawkesbury-Nepean Valley catchment. A significant proportion of land within the NWGA has already been rezoned for urban development and is currently being developed under the existing flood planning clauses.

- iv. Additionally, a significant amount of development is completed across the State under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Such development, by nature, requires less scrutiny and is fast-tracked for completion. Careful consideration must be given to implementation of the revised clauses in the Codes SEPP to ensure that management of flood prone land is not compromised. In particular, the impact of the specific development and its contribution to the cumulative impact of development in the catchment must be easy to assess in a fast-tracked environment. The current open wording of key terminology in the revised clauses does not support consistent interpretation in a fast-tracked assessment environment.

c. **Standard Development Control Plan template**

The Flood Prone Land Package should include standard Development Control Plan flood management controls. These should also be included in the standard Development Control Plan template that is currently being prepared by the Department of Planning, Industry and Environment. This would provide greater certainty and transparency for landowners, developers and planning and consent authorities.

d. **Determine the Flood Planning Level at a catchment level**

The Flood Prone Land Package confirms the 1% Annual Exceedance Probability (AEP) as the default defined flood event across the State. However, the package states that individual councils retain discretion to select a different flood event (with sufficient justification) and different freeboards when setting a Flood Planning Level (FPL). We suggest that the FPL should be set by the NSW Government at a catchment level for reasons of consistency. Catchments should be clearly identified and mapped. Floods are not bound by LGA boundaries, the FPL should be consistent regardless of which LGA the affected land is located in. This will provide certainty for landowners, developers and the consent authority.

e. **Application of the clauses and relationship with other controls**

We suggest the Flood Prone Land Package suite of documents should clarify the circumstances under which the revised clauses will apply. For example, will the clauses apply to all new development or will some minor development such as an extension to an existing dwelling be exempt? Clarification is also sought how the Flood Prone Land Package will integrate with the Flood Resilient Building Controls, which is also currently in draft form.

f. **Planning Certificates**

- i. We request at least 4 weeks between finalisation and commencement of the changes for councils to prepare and test required updates to our systems to meet our legal obligations, in particular with respect to notations on Planning Certificates.

- ii. We request that the NSW Government provide standard wording for the changes in notation on Planning Certificates.

2. Proposed Flood Planning Area clause

a. Need to consider flood extent

- i. We suggest including the word 'flood extent' in Objective (1)(c). The extent of the flood should not be increased as a result of development. The suggested wording for the clause is as follows:

'To maintain existing flood behaviour, *flood extent* and flood function'.

b. Vague definition of Flood Planning Area

The definition of Flood Planning Area (FPA) needs to be more specific. The definition of FPA refers to land below the flood planning level, being the 1:100 ARI, which is certain. However it also states that it "may also extend to include other areas of land where the majority of flood related controls apply". This is vague and uncertain. The definition should be amended to only apply to the flood planning level, being the 1:100 ARI.

c. Inconsistency between objective and standards

- i. There is an inconsistency in the use of the word 'significant' between proposed Objective (1)(d) and the proposed wording in Clauses (3)(b) and (3)(f). Proposed Objective (1)(d) states that one of the objectives of the clause is:

'to avoid significant adverse impacts including cumulative impacts on flood behaviour and the environment'.

- ii. Whereas the word 'significant' has been removed from Clauses (3)(b) and (3)(f), which currently exists in the model flood planning clause in LEPs. The proposed clause reads that development consent must not be granted unless it is demonstrated that the development "will not adversely affect ...", with the word significant being removed.
- iii. The intent of the clause needs to be clarified, as an adverse impact is a lot greater standard to comply with than a significant adverse impact. The removal of the word 'significant' is preferable, as it is subjective and difficult to determine on development applications.

d. Need to consider impacts on development

- i. We suggest inserting the word 'development' in Clause (3)(b), which reflects the current wording in the Standard Instrument LEP model clause. Development should be included as 'properties' may only refer to the land but not necessarily the 'development' on the land. The suggested wording for the clause is as follows:

'will not adversely affect flood behaviour resulting in a detrimental increase in the flood affectation on other *development or* properties, including cumulative impacts'.

3. Proposed Special Flood Considerations clause

a. Vague definition of where the clause applies

Proposed Clause (2)(c) states that the clause applies to land between the FPL and up to the Probable Maximum Flood (PMF) with specific consideration to “any other land uses requiring controls in relation to risk to life considerations”. This is too broad and vague. It needs to be removed from the clause so that it is certain as to where the clause applies.

b. Additional sensitive, vulnerable and critical uses

We suggest that the list of ‘sensitive, vulnerable and critical uses’ outlined in proposed Clause (4) should be expanded to include the following land uses:

‘public utility undertaking, sewage reticulation system, sewage treatment plant, telecommunications facility, telecommunications network, water recycling facility, water reticulation system, water storage facility, water supply system, and water treatment facility’.

4. Proposed Regional Evacuation Consideration Area clause

a. More certainty needed of where the clause applies

Proposed Clause (2) states that the clause applies to land in a regional evacuation strategy or flood related state emergency sub-plan prepared by SES. If such strategies and plans exist, they need to be mapped and inserted into environmental planning instruments to make it easier for landowners, developers and consent authorities to determine whether the clause applies.

b. Evacuation capacity

- i. Clarification is required as to how proposed Clause (3) will be implemented. The wording appears to require that every development application lodged on land in the Regional Evacuation Consideration Area (RECA) will provide modelling of the evacuation route. We consider this to be impractical, inefficient and represents an unreasonable cost impost on development in this area.
- ii. We suggest that an alternative method be found to manage performance and capacity on regional evacuation routes, such as planning controls created at the strategic planning stage where forecast growth is modelled and considered for evacuation purposes. It is unreasonable to suggest that a consent authority can properly consider whether the evacuation capacity will be exceeded on every individual development application in the affected area.

5. Proposed Flooding Local Planning Direction

a. Inconsistency with the proposed LEP clauses

- i. Proposed Section (6)(b) provides that a draft LEP must not contain provisions that apply to the FPA which “permit development that will result in significant flood impacts to other properties”. Whilst the word ‘significant’

exists in the current Direction 4.3 Flood Prone Land, it is inconsistent with the proposed FPA Clause (3)(b) that has removed the word 'significant'. This needs further consideration.

- ii. The Department need to be clear on the level of flood affectation that it deems acceptable on other properties, both in relation to planning proposals and development applications. As raised previously, a 'significant' adverse impact is a lesser standard to comply with than an 'adverse impact'.

b. **Uncertainty on dwelling density increases**

Proposed Section (6)(d) provides that a draft LEP must not contain provisions that apply to the FPA which "permit a significant increase in the dwelling density of that land". This is difficult to quantify as to the degree of density increase that will be acceptable. It is vague and very subjective. The Direction should be more specific about the acceptable level of increase so it is clear to landowners, developers and planning authorities whether a planning proposal complies.

c. **Uncertainty of government costs**

- i. Proposed Section (6)(g) provides that a draft LEP must not contain provisions that apply to the FPA which are likely to result in a significant increase in government spending on emergency services, flood mitigation and emergency response measures. Whilst we recognise the potential costs to government from proposals, these costs cannot be determine by a landowner, developer or Council.
- ii. Planning proposals are costly and take a considerable amount of time. Plus, the outcome remains uncertain unless there is clear advice from government early in the process as to whether this direction is satisfied. The direction either needs reconsideration to provide greater transparency or a commitment from government to provide a clear response early in the process.

d. **Uncertainty on exceedance of evacuation capacity**

- i. Proposed Clause (7)(a) provides that a draft LEP must not permit development that will exceed the capacity of an established regional evacuation route. Compliance with this Direction is problematic, as there could be multiple proposals within the same RECA, and could occur across multiple LGAs.
- ii. There needs to be a more transparent and clearer Direction that landowners, developers and planning authorities can determine compliance with. A strategic planning approach should be undertaken before the RECA is determined. This would establish the development capacity through planning controls. The Direction would then be that should be no increase in development capacity above the planning controls within the RECA area.

e. **Consistency across environmental planning instruments (EPIs)**

For consistency and transparency, the proposed flood directions should apply to all EPIs not just the creation of LEPs. Consideration of flooding is important irrespective of whether controls are in a LEP or SEPP, and particularly when multiple planning instruments apply to the same flood catchment. It is within the

Ministers powers to direct a public authority or an EPI to consider directions such as these. They should be applied consistently.

Blue Mountains City Council submission on the draft Flood Prone Land Package

Blue Mountains City Council welcomes the opportunity to provide comment on the changes proposed to the flood prone land package.

As a general statement, Blue Mountains City Council supports the proposed changes to the flooding guidelines which provides advice to councils when considering flooding in land use planning.

Commentary on the exhibited Flood Prone Land Package and recommended changes are provided below.

A reference to a Flood Planning Area to include mapped and unmapped affected land

The proposed guideline notes maps where flood-related development controls apply should be mapped and published in relevant planning instruments or on a council website.

Blue Mountains Local Environmental Plan maps do not include flooding in part due to the intricate flood pathways throughout the local government area (LGA). Flood studies for key areas have been adopted by the Council however not all flood prone areas are mapped. The large area of the LGA and small areas potentially flood affected make this a major undertaking.

Council requests where a reference is made to mapped flood-related development controls that the reference also include unmapped flood-related development controls.

Short-term holiday rental be included in a list of sensitive, vulnerable and critical uses

The proposed list of sensitive, vulnerable and critical land uses as noted in proposed subclause (4) is supported by Council. Blue Mountains City Council request short-term holiday rental be included in this list. Visitors to the Blue Mountains, occupants of short-term holiday rentals may not be familiar with the short duration, high velocity character of flood events where conditions can change rapidly.

Council requests short-term holiday rentals be included in the list of sensitive, vulnerable and critical uses.

The definition of *probable maximum flood* be included in the proposed Special Flood Considerations clause

The term probable maximum flood is used in the proposed subclause (2) of the Special Flood Considerations clause however this term is not defined in subclause (5).

Council requests the definition of probable maximum flood be included in subclause (5) of the Special Flood Considerations clause.

Supported comments of the flood prone land package

Blue Mountains City Council specifically supports the following inclusions proposed in the Flood Planning Area clause:

- The objectives to maintain flood behaviour, limit significant cumulative impacts and the introduction of a safe evacuation objective; and
- A definition of hazardous materials in subclause (2) of the Flood Planning Area clause; and
- The consideration of cumulative impacts of flooding in subclause (3); and
- The requirement for safe and efficient evacuation in subclause (3); and
- The prohibition of development which could increase pollution from potential or hazardous materials in subclause (3); and

- The consideration of climate change for the intended design life and scale of a proposal in subclause (4).

Blue Mountains City Council supports the following inclusion in the proposed Special Flood Considerations clause:

- The objective to avoid detrimental effects on the environment during flood events during events relating to hazardous materials; and
- The objective for safe occupation and evacuation of the land; and
- The requirement that a development must comply with an adopted flood policy, a development control plan and consistent with any council adopted floodplain risk management plan.



Boral Land & Property Group

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The Secretary
Department of Planning, Industry and Environment
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

Via the NSW Planning Portal

Dear Secretary,

Re: Submission in response to the exhibited Flood Prone Land Package

Boral Limited (Boral) is an international building and construction materials group, headquartered in North Sydney, Australia. Boral is the country's largest construction materials and building products supplier with operations in all states and territories, supplying concrete, quarry products, asphalt, and cement to build infrastructure, residential construction and commercial buildings.

The Boral Land & Property Group has prepared this submission on behalf of Boral Limited and its subsidiary companies in response to the exhibition of the draft Flood Prone Land Package.

Boral supports initiatives to deliver a consistent approach to land use planning and management of flood prone land. However, the exhibited package would appear more likely to contribute unnecessarily to the complexity and uncertainty of the New South Wales (NSW) planning system adopting a broad based policy approach implemented through rigid compliance with undefined controls.

Taking into account the above, Boral raises the following matters for the further consideration by the Department prior to the finalisation of the package.

Consistency with existing legislation

The proposed LEP amendments may raise conflict with the provisions of the *Environmental Planning and Assessment Act 1979* in respect to the role and manner in which a Development Control Plan (DCP) is applied in the assessment of a Development Application.

Proposed subclause (3) (a) under *Special Flood Considerations* states the following (**bold** emphasis added)

Development consent must not be granted for development to which this clause applies unless the consent authority is satisfied that the development:

- (a) ***Compliance with any council flood policies, development control plan and is consistent with any council adopted floodplain risk management plan (developed consistent with the Floodplain Development Manual***

The proposed amendment mandates compliance with a Development Control Plan (DCP). This is considered to be contrary to the overriding provisions of the *Environmental Planning and Assessment Act 1979*, specially section 4.15(3A) (a) that provides the following:

- (3A) ***Development control plans if a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority—***

...

(a) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

...

Taking into account, the prevailing provisions of the Act and the intent with which these provisions were implemented, proposed clause 3(a) should be amended to reflect the hierarchy of controls and the need for flexibility in the assessment of development applications.

Consistency and clarity in the definition of planning terms

The proposed amendments will introduce new terms for the purposes of interpreting and applying the proposed controls, including a new definition for “*Hazardous Materials*” as follows:

Hazardous Materials is any item or agent (biological, chemical, radiological, and/or physical), that has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

The definition applies to land identified within a *Flood Planning Area* and *Special Flood Consideration*.

Boral raises concern regarding the potential inconsistency of the proposed definition with that used for the purposes of interpreting and applying State Environmental Planning Policy No. 33 Hazardous and Offensive (SEPP 33) wherein a “*Hazardous Material*” is defined as follows;

hazardous materials — are substances falling within the classification of the *Australian Code for Transportation of Dangerous Goods by Road and Rail (Dangerous Goods Code)*. (Guideline entitled “*Applying SEPP 33*”, DPE.p.15).

Furthermore, Boral raises concern that the proposed definition, unlike the established term used in the application of SEPP 33, is too broad and ambiguous. The effect of which may capture uses including concrete and asphalt plants, as well as recycling operations. None of which would currently be considered to handle or store “hazardous materials”.

The proposed definition should be consistent with existing planning instruments with the aim of reducing complexity. It is imperative at this time to be supporting the streamlining and acceleration of new developments not contributing unnecessarily to the proliferation of contradictory and unnecessary planning terms.

Cost and uncertainty

While Boral recognises the importance of managing the risk of flood affected land to both life and property, concern is raised that the proposed controls will unreasonably contribute to the increased cost of development applications, with respect to both extended timeframes and lodgement requirements. In addition, the proposed controls will contribute to increased uncertainty in respect to the assessment process and ongoing security of tenure.

In particular, Boral raises concern regarding the proposed introduction of the following controls:

- Flood Area Planning clause (2) that adopts a broad and ambiguous definition allowing consent authorities to require detailed and expensive flood studies where the flood planning level or probable maximum flood level has not been determined by a government study;
- Flood Planning Area subclauses (3) and (4) aimed at requiring detailed flood and climate change assessment;
- The requirement of subclause (4) for developments in Flood Prone Areas to be designed and delivered with a capacity to “modify, relocate or remove development” contributing to delivery and operational costs as well as undermining the validity of a development consent granted in perpetuity; and
- Implementation of the proposed controls relating to Regional Evacuation Consideration Areas requires applicants and consent authorities to have access to information regarding evacuation routes that is frequently not publicly available. The absence of such information would prevent a consent authority from being able to demonstrate consistency with clause (3) of the relevant draft provisions.

Further consideration needs to be given to the practicality and reasonableness of the proposed controls. As drafted, the amendments would introduce a rigid planning response to the management of flood prone that is likely to contribute to greater uncertainty and increased cost to developments at a time when government (at all levels) have indicated a desire to streamline and simplify the planning process.

Your consideration of our submission would be appreciated and we would be happy to meet or discuss this further should it be necessary. Should you have any questions related to the information provided in this letter, please do not to hesitate to contact the undersigned on 0401 894 110, or rachael.snanpe@boral.com.au.

Yours sincerely,



Rachael Snape
Planning & Development Manager (NSW & ACT)
Boral Land & Property Group

25 June 2020

Department of Planning, Industry and Environment
12 Darcy Street
Parramatta NSW 2150

Attention: Director of Flooding

Subject: Flood Prone Land Package

Dear Director,

The Department of Planning, Industry and Environment have exhibited the state-wide Flood Prone Land Package. Calibre supports the decision to advise Councils on making informed decisions regarding managing flood risk, and how to consider flooding in land use planning. However, numerous concerns have been raised in this submission regarding how the proposed flood controls will be reflected in Council planning controls, and the increased building controls placing greater pressure on the delivery and affordability of housing.

Calibre has drawn upon their strong expertise in urban development focused around subdivisions and greenfield development, and fluency with statutory planning frameworks and controls in order to submit this submission in reference to the Flood Prone Land Package. Further clarification on the following matters would be appreciated.

There are concerns about the proposed flood controls as they leave a lot up to interpretation of the Council and it is unclear how each Council could apply their understanding of the flood controls. There may be issues with insurances for existing dwellings if the understanding of flood prone controls is not understood and should be redefined. Furthermore, the effect on reducing potential developable land and increasing building controls will put greater pressure on delivery of homes; especially in Western Sydney where these flood controls will have the most impact on planning in both existing and new residential areas.

1 DRAFT CIRCULAR

- 1.1 Changes to requirements within the NSW Flood Manual, Standard Instrument, and local planning directions as well as for planning certificates could have big impacts on developable lands.
- 1.2 The changes to and 7A (2) of Schedule 4 of the *Environmental Planning and Assessment Regulation 2000* (The Regulation) list additional flood development controls for areas between the Flood Planning Level and the PMF on Section 10.7 Certificates. Unless these additional controls are properly explained this may cause significant financial hardship to residents of existing dwellings that are between the Flood Planning level and the PMF.

Clause 7A (1) and 7A (2) of the Regulation requires planning certificates to highlight controls for sensitive, vulnerable and critical uses. The criteria needs to be clearly explained (in plain English) so that purchasers relying on planning certificates will understand the different controls.

- 1.3 Clause 7A (3) notes that a development needs to consider regional evacuation strategies. How does this information make it onto a residential property certificate? How could a simple development for a child care centre be required to prepare a regional flood evacuation strategy? How could they afford it? If Council's require this sort of thing for a house extension, then it would be unfeasible.

- 1.4 All these additional planning requirements could affect property insurances of existing properties.
- 1.5 Council's now given the ability to make FPL not just 1% AEP plus freeboard. But they can increase to whatever event they like. 200yr, 500yr? This is too subject to interpretation. This could stagnate potential developable land.
- 1.6 It's unclear what the 'full range' up to the PMF which needs to be considered is. Is it just the 200yr and 500yr or more? 1000yr, 2000yr?

2 LOCAL PLANNING DIRECTIONS UNDER SECTION 9.1 EP&A ACT

- 2.1 The proposed amendments to the Local Planning Direction 4.3 "Flood Prone Land" to be made under section 9.1 of the Environmental Planning and Assessment Act 1979 (The Act) introduce provisions that contain significant ambiguity and offer wide discretion to Councils in defining their Local Environmental Plan (LEP) flood planning controls and flood planning areas. It includes:-
- amending Clause 4 to introduce the new Guideline on Development Controls on Low Flood Risk Areas;
 - introducing several new requirements into Clause 6 to prevent:
 - increase in dwelling density,
 - permit the development of:
 - centre-based child care facilities,
 - hostels,
 - boarding houses,
 - group homes,
 - hospitals,
 - residential care facilities,
 - respite day care centres, and
 - senior housing in areas where the development cannot effectively self-isolate;
 - are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities; or
 - permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during floods.
 - Introduce a bar on LEP provisions applying to the Regional Evacuation Consideration Area that permit development that would exceed the capacity of an established evacuation route or routes; and
 - removing the requirement for special exemption to introduce flood planning controls above the flood planning levels (current Clause 7).
- 2.2 Whilst the intention of not increasing exposure to hazard and risk is understood and broadly supported, it is noted that this could have big implications on a wide variety of land uses. The implications implementing the Guidelines are discussed in section 3 below.
- 2.3 The restriction on increasing density may be too restrictive where entire communities are located in areas subject to the controls, it may force people to leave their community if their current housing does not meet their needs and there is a bar on developing smaller forms of dwellings due to their necessarily higher densities, even where there is no net increase in population over time.

- 2.4 The draft plans definition of sensitive, vulnerable and critical uses is not restricted to early childhood and nursing homes, it extends to a lot of uses that are non-habitable or can be removed, which traditionally are ideal for use in flood prone land.
- 2.5 The bar on development that is likely to result in a significant increase in government spending on emergency services and related measures such as infrastructure is extremely broad in its compass. This could be open to wide discretion in its application and without definitions as to what constitutes 'significant increase' or definition of nexus between the development and demand on emergency services and emergency management measures introduces a high level of risk into land use decisions that are opaque and could potentially devalue or sterilise lands due to the difficulty of quantifying how a potential land use can be exposed to these provisions. Significant time and resources could be expended on planning proposals only for them to fail on this rather nebulous definition. Clear guidance is required as to what the expectations are as to when the bar would apply.
- 2.6 The bar on permission of hazardous storage establishments includes definitions that are excessively broad. In particular, commercial and industrial areas can store hazardous materials. Even shopping centres which include milk are considered to be hazardous. We could see a situation where these land uses are expected to store materials above PMF. This could be impossible in many cases. A rigid application of these measures could lead to widespread downzoning of land and a withdrawal of essential daily needs from existing communities and these factors need to be balanced against the risks of less-frequent flooding events above the current Flood Planning Standards.

3 FLOODING IN LAND USE PLANNING GUIDELINE

- 3.1 It is comforting to know that the intent of the directions is to still "not sterilise", however the wording in the Local Planning Direction could be interpreted to have that effect as it appears more restrictive and a narrow reading would effectively sterilise land.
- 3.2 There is still excessive discretion as to when to apply the guideline. This introduces considerable risk in approaching new sites or proposals as significant time and resources could be expended only for the proposal to fail leading to considerable waste when clear guidance can prevent this from occurring.
- 3.3 There is lots of mentions of 2020 guidelines on how to define flood hazard, land use planning guide and emergency response, however these documents are not included in the exhibition material. All the referenced 2020 guidelines should be included in the package to enable a full understanding of the extent and effect of the proposed amendments.
- 3.4 There is a high level of risk in allowing Council's to decide on what the FPL is, as this could lead to egregious extensions of the levels out of balance with actual hazard risk and also lead to wide divergence between Councils as to definitions leading to inconsistency of application and confusion as to what the standards should be.
- 3.5 The Guideline implies that 1% Average Exceedance Probability (AEP) + freeboard is not the design event in all locations. How are developers going to purchase lots with any confidence? To date, they would take a look what the 1% AEP is and determine the developable areas, however if it varies between Councils then this will increase due diligence costs and risk to the purchase of development sites.
- 3.6 This change to definitions and the introduction of additional Guidelines on land that was not previously considered as Flood Prone will affect purchasers, developers and even insurances on properties. This could cause significant economic loss to those who have purchased in good faith.
- 3.7 What happens to those that have already bought properties? If a Council introduces a Flood Risk Management regime with a higher Flood Planning Level it can decrease land value significantly.
- 3.8 Under the Special Flood Considerations heading:
- This is applying rules on land between Flood Planning Level and the Probable Maximum Flood. As mentioned above, this has more widespread constraints than what appears to have been considered in the preparation of the package.
 - A strict reading of these considerations appears to prevent schools, caravan parks, hostels, childcare locating below the Probable Maximum Flood level. This could have massive implications for existing communities. For example most of the current development in Hawkesbury Local Government Area would be under the Probable Maximum Flood Level, which could prevent any development at all under a strict application of the considerations.

- Would all of the identified land uses currently operating below the Probable Maximum Flood Level be prevented from expanding or renovating under these Guidelines?
- The majority of factories and industrial or even supermarkets could be considered hazardous under the definitions used.

It would be greatly appreciated if the Department of Planning could address the concerns raised in this submission and the Department is strongly urged to have information forums to discuss the new planning controls.

To further discuss this submission, please contact Peter Lee on 8808 5000.

Yours Sincerely,

Calibre Professional Services Pty Ltd



Peter Lee
Planning Leader

26 June 2020

Director Resilient Places
Department of Planning Industry and
Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Contact: Martin Johnson
Our Ref: DOC2020/064488
Your Ref: Flood Prone Land Package

Dear Sir / Madam

Flood Prone Land Package including amendments to flood-related land use planning and development standards

Thank you for the opportunity to comment on the proposed amendments to the NSW planning framework which seek to improve the management of flood risk for the full range of events up to the Probable Maximum Flood (PMF).

We acknowledge that the Flood Prone Land planning amendments are consistent with the NSW Government's Flood Prone Land Policy and that local government is primarily responsible for managing flood risk.

The proposed amendments to flood considerations in land use planning will improve Council's management of flood risk to both existing and future development. As such, we support the following outcomes of the Flood Prone Land Package:

- Ability to set the Flood Planning Level (FPL) higher than the Defined Flood Event (DEF) of 1% Average Exceedance Probability (AEP). This would be beneficial for the Cessnock Local Government Area (LGA) as the Wollombi district has a recorded flood event that is equivalent to two metres above the 1% AEP flood level;
- More emphasis on risk management and flood evacuation. Fundamentally, Council should be discouraging development that burdens emergency services;
- Inclusion of further details within Section 10.7 certificates, such as notations for flood-related development controls, will be beneficial for prospective purchasers/developers;
- Provision for Council to consider climate change risks; and
- Informed decision-making in respect to whether development will financially burden Council due to increased spending on flood mitigation.

Notwithstanding these positive outcomes, we are of the view that the following matters need to be addressed in any new legislation relating to flood prone land.

Implications for existing residential zones, approved development and strategic centres

The introduction of the policy will have significant implications for Council's medium density residential zones as higher density development will be discouraged under the 1% flood level. Higher density development is encouraged within established town centres, such as Cessnock, Kurri Kurri and Branxton, which are identified as strategic centres under the Hunter Regional Plan 2026 and have access to existing services and infrastructure.

As there is an overall focus in our LGA to support more liveable and compact centres, the suitability of existing medium density residential zones will need to be reconsidered. Growth in these centres will be limited due to restrictions on both new development and the expansion of existing businesses and facilities.

This will have implications for sustaining vibrant town centres whilst also imposing financial hardship for established businesses that are unable to expand or make improvements to their existing development.

The policy does not consider the process of transition from the existing standards to additional controls applied within the Flood Planning Area (FPA). The drafting of flood related local environmental plan (LEP) clauses should therefore consider savings provisions for existing development or exemptions for minor works.

Option for model provisions or standard instrument clauses

The draft clauses provide a framework for addressing flood constraints in land use planning decision-making. It would be Council's preference to have these controls packaged as model provisions to enable flexibility in addressing local situations.

For instance, sub-clause (4) of the Special Flood Considerations provision prescribes all land uses which fall under the category of 'sensitive, vulnerable and critical uses'. As the definition does not provide for land uses which include, but are not limited to, associated types of development, Council would seek to expand this definition to include additional land-uses such as a community facilities.

It is critical that Council includes community facilities under this definition as they are a public asset and can often be nominated as evacuation centres.

Cross-border considerations

When revising the FPL, Council considers that future consultation with adjoining local government areas be made a mandatory process. We advocate for consultation with adjoining Councils to be a requirement in the revised legislation.

The Floodplain Development Manual allows councils to select a rarer DFE (altering the FPL and FPA) to address broad scale flood impacts in consideration of the social, economic and environmental consequences associated with floods of different probabilities. As such, there is potential that councils may have inconsistent interpretations of local flood studies resulting in the following implications:

- Council has a Local Flood Plan (a sub-plan of the Cessnock City Local Disaster Plan) which identifies a cross-border assistance arrangement. Under this agreement, Cessnock City SES will deploy resources to support Singleton SES in the event that a significant flood event cuts road access to Elderslie. Accordingly, development

standards in an adjoining LGA can have indirect impacts on Council's emergency response and resourcing;

- Development within a street crossing the LGA boundary (e.g. Merewether Close North Rothbury in the Cessnock LGA and Merewether Close Branxton in the Singleton LGA) could have significant variance in FPL creating visual amenity and downstream impacts; and
- Economic impacts as land will be more affordable to develop where flood constraints have not been adequately considered.

Appropriate Land Zoning

Currently, Council is experiencing issues whereby residential lots within established areas are incapable of being developed since the land is subject to Councils Flood DCP. In certain cases, the hazard category can prohibit the construction of a dwelling even though the allotment is afforded a dwelling entitlement. The proposed legislation would further prohibit infill development.

The policy should address the impacts of sterilising pockets of existing residential land, such as a dwelling entitlement provision for the residential zones noting economic considerations and responsibilities for ongoing site maintenance.

Climate Change

It is unclear how councils should be considering climate change risk under the proposed policy. For example, sub-clause (4) of the proposed Flood Planning Area LEP clause provides as follows:

- (4) *In addition to the matters referred to in subclause (3), development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that projected changes to flood risk as a result of climate change have been considered in the design of the development, including:*
- a) consideration of the intended design life and scale of the development,*
 - b) evacuation and management of risk to life, and*
 - c) the potential to modify, relocate or remove the development.*

The wording of this draft provision suggests that flood risk as a result of climate change should be considered in respect to the permanency of construction as opposed to accommodating more frequent rainfall events. In this regard, the standard appears inconsistent with the Building Code of Australia (BCA) in that development would be considered a temporary structure. Furthermore, Model Clause 2.6B under the LEP Standard Instrument only provides for the temporary use of land for a maximum period of 52 days.

As the intent of this clause is to trigger consideration of climate change impacts, the consent authority could alternatively be satisfied by the following measures:

- The proposal is consistent with Council's adopted Climate Change Policy;

- Development has been designed in accordance with a flood study as outlined in the Australian Rainfall and Runoff (ARR) 2019.

Notwithstanding, it is noted that a number of scenarios may be considered under this guide and Council currently does not have an adopted policy recognising the preferred methodology. Furthermore, DPIE suggest an alternative method of using the 1 in 200 year or 1 in 500 year event to test climate change sensitivity.

Whilst Council's approach could reasonably be addressed in the Climate change Strategy, an interim policy would be necessary in the event the draft planning changes are implemented.

- The Flood Planning Level is to periodically reviewed in accordance with the Floodplain Development Manual, which requires Councils to consider the potential implications of climate change on flooding behaviour.

Planning Certificates

According to the draft planning circular, the EP&A Regulation will require Councils to include a notation on Section 10.7 planning certificates if flood-related development controls apply to sensitive, vulnerable, or critical uses, hazardous industries, hazardous storage establishments, or where risk to life considerations apply outside the Flood Planning Area.

All of the above types of development are defined with the exception of 'risk to life' and this term requires clarification in order to determine whether Clause 7A(2) applies to the land.

If you require any further information, please do not hesitate to contact Council's Acting Strategic Planning Manager, Mr Iain Rush, on telephone 02 4993 4155.

Yours faithfully

A handwritten signature in black ink, appearing to be 'M. Johnson', with a long, sweeping horizontal line extending to the right.

Martin Johnson
Acting Director Planning and Environment

26 June 2020

Specialist Planning Officer - Floodplain Management
NSW Department of Planning Industry and Environment

Submitted via NSW Planning Portal (<https://www.planningportal.nsw.gov.au/flood-prone-land-package>)

To whom it may concern,

Re: Flood Prone Land Package Exhibition

Thank you for providing the Flood Prone Land Package for review.

The City of Canada Bay generally supports the majority of amendments that are proposed, however the following issues/concerns need to be addressed:

1. Local Planning Direction 4.3

- (3) The reference to 'flood prone land' is proposed to be replaced with 'land due to flooding'. The reference to flood prone land has also been removed from (2) and it is considered likely that the intent of these changes is to ensure that the Direction is applied to all land for all likely flood impacts, and not just land identified as flood prone.

The way that the clause has been drafted to include 'land due to flooding' requires further definition to make it clearer, more understandable and less prone to misinterpretation.

If the intent is that the Direction applies to all land, it would be better to clearly state:

This direction applies when a relevant planning authority prepares a planning proposal or a draft LEP.

- (6) (f) This clause includes 'Dams, drainage canals, levees, buildings structures or filling in floodways...'. The wording is similar to the current clause however an 'and' is missing between 'buildings' and 'structures' as follows:

'Dams, drainage canals, levees, buildings and structures or filling in floodways...'

- (9) (b) It is not appropriate to support a planning proposal where a floodplain risk management plan has not been prepared. In addition to this, Council is concerned that if this was to occur and the planning proposal was to be gazetted, that a development application will not be

able to satisfactorily address the LEP clause. In this regard (9) (b) is not supported.

If (9) (b) is to be pursued then the following amendments should be made:

- Remove reference to 'or Council adopted flood study' as an adopted flood study is insufficient to justify/support a rezoning. The clause should also require that the impact assessment be prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005 (or its update) such as:

(b) the planning proposal is supported by a flood and risk impact assessment prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005 (or its update) and consistent with the relevant planning authorities' requirements, and/or

- LEP clause (3) (i) be amended to include reference to Council policies and also a flood and risk impact assessment:

i) is not inconsistent with any relevant *Council policies, floodplain risk management plan or flood and risk impact assessment*.

2. LEP clause

- As discussed above, if a flood and risk assessment may be used in accordance with draft Direction 4.3 (9) (b), then LEP clause (3) (i) must also enable the use of a flood and risk assessment (not just a floodplain risk management plan) by the consent authority to determine if development consent should be granted.

Yours sincerely



Paul Dewar
Manager Strategic Planning

25 June 2020

Director, Industry and Infrastructure Policy
Department of Planning, Industry and Environment
GPO Box 39
Sydney NSW 2001

Dear Sir/ Madam,

Canterbury Bankstown Submission–Flood Prone Land Package

Thank you for the opportunity to comment on the Flood Prone Land Package.

The existing flood controls are optional model provisions which Council may decide to apply in the Standard Instrument LEP. Based on the exhibition material, it is our understanding that this optional arrangement will continue to apply to the draft flood controls.

However, concern is raised with the intent of the draft flood clauses. The following comments are provided for consideration.

1. Draft flood clause–Flood Planning Area

Issue 1: Residual flood risks

Clause 3(b) reads: Will not adversely affect flood behaviour resulting in detrimental increases in the flood affectation on other properties, including cumulative impacts.

The concern is this matter is open to interpretation and may delay the development assessment process.

Applicants would typically seek to demonstrate that pre–development and post–development changes are minimal and therefore in their opinion would be compliant with this draft clause.

The difficulty is where pre–development conditions currently exacerbate high flood risk. For example, there may be an existing structure in an overland flow path, creating high flood risk around the structure. This structure would not have been approved by today's standards but may have been acceptable several decades prior to effective floodplain management guidelines. Despite this, the draft clause would conclude that matching pre–development and post–development flood behaviour will retain residual flood risk.

There is also financial implications for the applicant and Council should this matter escalate through the NSW Land and Environment Court.

Recommendation: Define the management of residual flood risks regardless of the pre-development condition.

Issue 2: Flow distributions and velocities

Clause 3(d) reads: Will not significantly alter flow distributions and velocities to the detriment of other properties or the environment of the floodplain.

The concern is the draft wording 'significantly alter flow' is open to interpretation and may delay the development assessment process.

Recommendation: Provide additional guidance on significantly flow alternation, preferably as cut-off numeric percentages in terms of flow distribution and velocity.

Issue 3: Hazardous materials

Clause 3(h) reads: Will not increase the potential for hazardous material to pollute the environment during flood events.

The concern is this matter is open to interpretation and may delay the development assessment process.

For example it is not clear whether the draft flood clause is specific to hazardous industries and hazardous material storage establishments or whether it would apply to other land uses. For example, a backyard shed which is stored for cleaning chemicals, fertilisers, paints and fuels. The cumulative impact of these sites for flooding above the FPA may cause a more significant environment impact compared to a well-regulated hazardous material storage facility.

Recommendation: Provide additional guidance as to which scenarios the draft clause is intended to apply.

Issue 4: Climate change

Clause 4 reads: Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that projected changes to flood risk as a result of climate change have been considered in the design of the development.

The concern is it is unclear whether the consideration of climate change requires the development consent to incorporate measures to mitigate against climate change.

The draft wording appears to focus on 'risk to life' with little consideration for property damage and loss of use which may affect the community on an economic and social scale.

For example, a development may meet all the requirements of clauses 3 and 4 by not posing significant risk to life in the event of climate change. However, the development may still be at risk of damage and loss of use in the event of climate change.

Recommendation: Direction is required on the consideration of climate change to ensure consistency across all local government areas.

2. Draft flood clause–Special Flood Considerations

Issue 5: Risk to life

Clause 2 reads: This clause applies to land between the flood planning area and up to the level of the probable maximum flood with specific consideration of the following:

- (a) sensitive, vulnerable and critical uses (as defined in subclause 4),
- (b) hazardous industry or hazardous material storage establishments, and
- (c) any other land uses requiring controls in relation to risk to life considerations.

The concern is the scope of the special flood considerations may inadvertently apply to a broad range of land uses beyond those listed in clause (2).

For example, even though a property may not have specific 'risk to life' issues up to the PMF, the PMF is likely to cut-off major egress paths. Inherently, there is a 'risk to life' through evacuation or lack thereof.

Recommendation: Provide additional guidance as to which scenarios the draft clause is intended to apply.

3. Exempt and complying development

Issue 6: Apply the Flood Prone Land Package to exempt and complying development under the State Codes

The exhibition material does not discuss whether the Flood Prone Land Package will apply to exempt and complying development, particularly in relation to:

- Houses, dual occupancies, manor houses, multi dwelling housing (terraces), outbuildings and fences under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- Secondary dwellings under the State Environmental Planning Policy (Affordable Rental Housing) 2009.

It is important that the Flood Prone Land Package applies to these development types to avoid significant adverse impacts such as the cumulative impacts on flood behaviour and the flood affectation on other properties.

Recommendation: Apply the Flood Prone Land Package to exempt and complying development under the State Codes.

If you have any enquiries, please contact Council officer, Lisa Ho on 9707 5473 or email: lisa.ho@cbc.city.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'M Noble', with a long horizontal flourish extending to the right.

Mitchell Noble
Manager Spatial Planning

NSW Department of Planning Infrastructure and
Environment
Via online submission

Your Reference

Our Reference F2020/01685

Contact Janelle Scully

Telephone 98065771

Email jscully@cityofparramatta.nsw.gov.au

25 June 2020

Dear Sir/Madam

RE: City of Parramatta Council Submission – Flood Prone Land Package

Thank you for the opportunity to prepare a submission in relation to the package of materials exhibited by the Department of Planning Infrastructure and Environment in relation to how land-use planning considers flooding and flood-related constraints.

This submission on the Flood Prone Land Package has been prepared by officers of the City of Parramatta Council and has not been endorsed by the City of Parramatta Council.

If you have any enquires regarding this submission, please contact Janelle Scully, Team Leader, Land Use Planning on 98065771 or jscully@cityofparramatta.nsw.gov.au.

Yours sincerely,



David Birds
Group Manager City Planning

Contact us:

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ABN 49 907 174 773 | cityofparramatta.nsw.gov.au

COUNCIL OFFICER SUBMISSION – FLOOD PRONE LAND PACKAGE

Introduction

Council officers from the City of Parramatta Council welcome the opportunity to submit to the NSW Department of Planning, Industry, and Environment (DPIE) comments on the package of changes on public exhibition regarding how land-use planning considers flooding and flood-related constraints.

This submission on the Flood Prone Land Package has been prepared by officers of the City of Parramatta Council and has not been formally endorsed by the City of Parramatta Council.

In preparing this submission, Council officers have reviewed the following material:

- revised local planning direction regarding flooding issued under section 9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act)
- revised Local Environmental Plan flood clauses
- new guideline: *Considering Flooding in Land Use Planning* (2020)
- revised planning circular: *Considering flooding in land use planning – guidance and statutory requirements*.
- proposed amendment to schedule 4, section 7A of the *Environmental Planning and Assessment Regulation 2000*

Council officers offers the following commentary on specific aspects of the exhibition package.

Planning for a resilient city

Parramatta is the demographic and geographic centre of the Greater Sydney Region with approximately two-thirds of the population living in Western Sydney. The significance of Parramatta has been recognised in the State government's strategic planning framework for a number of decades. Its current nomination as Sydney's 'Central River City' in the *Greater Sydney Region Plan - A Metropolis of Three Cities* (Region Plan) and the *Central City District Plan* (District Plan) continue to strengthen the significant economic function of the Parramatta CBD and its role in providing necessary housing, employment, recreation and cultural opportunities. The Region Plan and District Plan both acknowledge and reinforce the necessity of Parramatta's transformation into a thriving metropolitan centre to support the unprecedented population growth experienced across the Greater Sydney Region.

Impacts from potential flooding is a critical issue for the City as a significant proportion of the City of Parramatta LGA is within a floodplain and the catchment is relatively small, which means overland flow and riverine flooding can happen rapidly causing flash flooding. This type of flooding affects large parts of the City including the Parramatta CBD and is expected to be further compounded by Parramatta's vulnerability to the effects of climate change from higher extreme temperatures, less rainfall and more severe storms. Council officers support the principles of climate change and resilience-building that underpin the proposed flood and land use planning amendments on exhibition and consider in principle that the proposed amendments will deliver a more consistent approach to reducing exposure to flooding hazards.

Council's planning for Parramatta's important nominated role as the Central River City includes managing the unprecedented levels of growth across the LGA with reducing exposure to flooding hazards. In the Parramatta CBD, Council has identified changes to the planning framework needed to stimulate employment and dwelling growth for the Parramatta CBD to realise its full potential. Council has prepared a Planning Proposal to amend the planning controls for the Parramatta CBD contained in *Parramatta Local Environmental Plan 2011* (PLEP 2011) to enable and support the significant growth and changes planned for the Parramatta CBD.

The Planning Proposal will increase the capacity for new jobs and dwellings to create a dynamic and diverse city, and meet targets set for growth by the State Government. The new planning framework will deliver an additional 50,000 jobs and 14,000 dwellings over the next 40 years within the Parramatta CBD. A key consideration of the Planning Proposal has been balancing this expected growth with managing risks to life and property from flooding and being able to plan for the full range of flooding up to the Probable Maximum Flood (PMF). The Gateway determination issued by the Department in December 2018 for the Parramatta CBD Planning Proposal included approval of Council's request for exceptional circumstances to apply flood-related residential development controls above the 1% Annual Exceedance Probability (AEP) flood event. Council officers support the Department's new approach to flood and land use planning that enables the full range of flooding to be planned and managed with more certainty by removing the need to obtain exceptional circumstances from the Minister. Further guidance from the Department however would be helpful about integration with NSW State Emergency Services (SES) policies where Council's risk to life policies differ. This issue is discussed in more detail below.

Across the LGA, the City is experiencing significant housing growth with most of this occurring in "growth precincts" under processes led by both the City and State government agencies. This growth is a product of sustained strategic planning over many years and the increased attraction of being close to the Parramatta CBD. Based on 2016 data, the City's population is expected to reach 416,000 by 2036; however, if all the dwellings currently in the strategic planning pipeline are delivered, the population will be up to 485,000 people. Furthermore, people working in the City of Parramatta LGA, particularly in the Parramatta CBD and also Westmead, Epping and Sydney Olympic Park, account for a significant number of people in the LGA and this is increasing. Between 2006 and 2016, more than 28,000 new jobs were created in Greater Parramatta to Olympic Precinct (GPOP) with an additional 72,000 jobs expected to be created by 2036.

Several of the growth precincts and metropolitan and strategic centres are affected by flooding to varying extents. The City's *Local Strategic Planning Statement* (LSPS) adopted by the Council in March 2020 identifies the need for the City of Parramatta to continue planning to minimise flood risk and associated damage and maximise safety. The LSPS has priorities and actions to support increasing the resilience of people and infrastructure against natural and urban hazards. For example, Action 104 requires the City to review and update planning and development controls based on completion of flood modelling and the associated flood risk management study and plan.

Council officers commend the State government on its commitment to the revision of the plans and guidelines on exhibition and support the general principles behind their proposed changes, which align with the City of Parramatta Council's Parramatta Floodplain Risk Management Policy. The changes are generally positive and will provide for better flood risk management in our LGA and support the transformation of Parramatta into a strong, competitive and productive metropolitan centre to service the Greater Sydney Region.

Council officers present the following commentary and suggested amendments on specific aspects of the package.

Revised Local Planning Direction – 4.3 Flooding

Council officers strongly support the removal from the direction for the need to obtain exceptional circumstances to apply flood-related residential development controls above the 1% AEP flood event. The ability to consider and apply development controls for the full range of flood events is an important outcome from this package, and Council officers commend the State Government for its commitment to the revision of this policy. It is acknowledged that the revised direction will not apply to planning proposals and draft LEPs that have been issued with a Gateway determination under section 3.34(2) of the EP&A Act and that existing approvals issued by the Department for exceptional circumstances are unaffected by this amendment.

As noted above, the Parramatta CBD Planning Proposal will allow for a significant increase in development within the floodplain area of the Parramatta CBD and therefore Ministerial Section 9.1 Direction 4.3 Flood Prone Land applies. To address this, Council commissioned updates to the relevant flood risk management plans which concluded that the intensification of development in the Parramatta CBD represents a tolerable risk to life and property provided there are amendments to Parramatta LEP and DCP 2011 improving the management of flood risks to life. The amendments recommended occupants of buildings in identified areas that have particular evacuation or emergency response issues to:

- Shelter within a building above the probable maximum flood level; or evacuate safely to land located above the probable maximum flood level;
- Have an emergency access point to the land that is above the 1% annual - exceedance probability event, and
- The building is able to withstand the forces of floodwaters, debris and buoyancy resulting from a probable maximum flood event.

Vertical evacuation through 'sheltering in place' (SIP), in which evacuees take refuge above the flood level within their building and wait for floodwaters to recede is the most viable response in the Parramatta CBD given the flood behaviour and extent. Council recognises that this risk to life policy conflicts with previous SES advice on emergency strategies being the evacuation of people in at-risk locations to areas out of the floodplain. It would be helpful if the Department could provide specific guidance and formal advice on the issue of vertical evacuation to enable greater clarity and certainty for Councils that have to apply a vertical evacuation risk to life strategy. Addressing the flood risk problems at the strategic planning stage requires a whole-of-government approach and Council officers would welcome being part of Government discussions to discuss these issues and develop an integrated response.

Council officers understand the rationale for the new and amended provisions in the Local Planning Direction – 4.3 Flooding, specifically clause (6)(c) and (d) which require a 'planning proposal or draft LEP to not contain provisions that apply to Flood Planning Areas' that would 'permit residential development in high hazard areas' and 'permit a significant increase in dwelling density' (formerly development). Notwithstanding this, the Department is advised there are a number of significant sites in the early planning stages (pre-Gateway Determination stage) being considered for substantial re-development by both private developers and the State Government that may no longer be permitted if the inconsistencies in part (6) could not be addressed to the satisfaction of the Secretary of the DPIE as set out in part (9).

Additionally, Council officers would like to see clarification in relation to how planning proposals may be inconsistent with Local Planning Direction 4.3 - Flooding, specifically the new provision - clause (9)(b). This new provision enables a planning proposal to be inconsistent with the terms of the direction '...if supported by a flood and risk impact assessment or Council adopted flood study consistent with the relevant planning authorities' requirements'. The intent of this new provision is unclear. Council officers understand that a 'Council adopted flood study' is just a study into flood behaviour as described in the 2005 Floodplain Development Manual being, 'A flood study is a comprehensive technical investigation of flood behaviour'. The Council adopted flood study is just the flood mapping and is not used to permit land uses.

Likewise, it is unclear what is meant by 'the planning proposal is supported by a flood and risk assessment' given this could be good or bad, and it will be a judgement decision as to whether to proceed. Conversely, does it imply that adopted flood planning levels can be changed by a flood and risk impact assessment? If this is correct, then this could potentially have a detrimental unintended impact as it would require changes to Council's adopted flood planning levels reported in its Flood Study and Floodplain Risk Management Study and Plans. This would trigger the need for formal community consultation under the guidance of Council's Flood Committee and a Council Meeting for formal approval to any changes to the Floodplain Risk Management Plan. This could have a significant impact on council resourcing and approval processes and times if it were to occur for every planning proposal.

Council officers would also like to see additional guidance and formal advice provided in this package of changes on how sensitive developments such as those identified under Clause 6(e) that are located within the flood plain (up to the PMF extent) should also be addressed and considered by Council.

Finally, clarification is also sought about clause(6)(f) which infers that 'filling in floodways' is permissible through development consent. This is inconsistent with clause (6)(a) which requires a planning proposal or draft LEP not to contain provisions that apply to the Flood Planning Area which 'permit development in a floodway'. Is 'filling in floodways' in clause (6)(f) included to suggest that a proposed diversion of the floodway may be permissible through development consent? If this is what is intended, Council officers suggest there be a statement explicitly stating that this should only be applied in exceptional circumstances where there is improved community flood risk management, and safety benefits demonstrated and supported by detailed hydraulic flood modelling. Further advice from DPIE is required in regards to this matter.

Revised and new Local Environmental Plan flood clauses

Council officers support the amendments to the existing 'Flood Planning' local provision (model local clause) now referred to as 'Flood Planning Area' and in principle supports the new LEP clause for 'Special Flood Considerations' that ascribes objectives and provisions to land above the Flood Planning Area up to the PMF. Council officers acknowledge that the 'Regional Evacuation Consideration Area' applies to areas identified in a regional flood evacuation strategy or flood-related state emergency sub-plans by the SES, which do not apply within the Parramatta LGA.

The following suggested amendments to the new 'Special Flood Considerations' clause are recommended to clarify the planning intent and support more resilient development.

Firstly, Council officers suggest that the impacts from floods up to the PMF include broader environmental considerations than just impacts from hazardous materials. Specifically, that the

environmental considerations in the 'Flood Planning Area' clause - being development 'will not adversely impact the environment or cause erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses' (clause (3)(f)) - be included in the 'Special Flood Considerations' LEP clause.

Secondly, in addition to the sensitive, vulnerable and critical land uses identified in part (4) of the Special Flood Considerations LEP clause, Council officers suggest that the land use, 'information and education facility', also be included. This land use is defined in the Standard Instrument LEP to mean 'a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like'. The inclusion of this land use will ensure the issue of evacuating large numbers of people from a location during a flood with waters rising higher than the flood planning area can be considered. The draft Guideline could then be amended to include additional clarification where development controls might be needed to address the risk to life associated with information and education facilities where large numbers of people may be present.

Thirdly, further advice and guidance is required from DPIE in relation to the Special Flood Considerations LEP clause concerning the specific development consent considerations that should be applied under this clause due to the large potential ranges of flood risk that could occur in any given area between the Flood Planning Area and the PMF extent as the impacts on consideration of the provisions in part (3) items (a) through to (d) can vary for the same area subject to the severity of the flood. This clarification should be provided in the new guideline: Considering flooding in land use planning guideline.

To make the terminology consistent with the draft Local Planning Direction 4.3 – Flooding and the Planning Circular, the reference in the draft 'Special Flood Considerations' LEP clause to the 'Floodplain Development Manual' in part (3)(a) should be changed to 'the Floodplain Development Manual 2005 (or its update)'. Similarly, the reference to the 'Floodplain Development Manual' in the draft 'Guideline: Considering flooding in land use planning guideline' on page 1 should be changed to 'the Floodplain Development Manual 2005 (or its update)'.

Given the range of flood conditions and management frameworks across NSW, Council officers support the 'Flood Planning' and 'Special Flood Considerations' LEP clauses being local provisions (also known as model local clauses), as opposed to mandatory clauses (both compulsory and optional) as described in the Department's LEP Practice Note titled 'Preparing LEPs using the Standard Instrument: standard zones'. The recommendations from the Flood Evacuation Study prepared by Council to support the Parramatta CBD Planning Proposal highlights Council officer's reason for the 'Flood Planning' and 'Special Flood Considerations' LEP clauses being local provisions.

The Flood Evacuation Study recommended specific controls to address the flood extent and behaviour within the Parramatta CBD, with one of these being 'having an emergency access point to the land that is above the 1% annual - exceedance probability event'. This control works together with the vertical evacuation risk to life policy where access into and out of a building during a flood event due to a medical or fire emergency is necessary where people are sheltering within a building. The ability to tailor flood LEP controls to a specific area is essential to reflect the particular flood conditions and risk to life responses. Therefore, it is Council officer's strong recommendation that the 'Flood Planning' and 'Special Flood Considerations' LEP clauses be local provisions.

New Guideline: Considering Flooding in Land Use Planning (2020)

Council officers welcome the new guideline providing advice on flood-related land use planning and the areas where flood-related development controls should apply. The Special Flood Considerations listed by the Department appear to be well thought out and are similar to the City of Parramatta Council's current practice. Suggested specific changes to the draft guideline follow.

In addition to the listed circumstances where development controls might be needed to address the risk to life within 'Special Flood Consideration' areas, Council officers suggest the inclusion of another circumstance being - 'Areas subject to specific council investigations'. This will enable the special investigations Council might do to be taken account of, for example, the evacuation analysis prepared for the Parramatta CBD to support the changes to the planning framework.

Council officers also suggest at the end of the sentence, "Areas where circumstances other than those identified above which a council identifies as requiring controls to address the risk to life", that the following be added - "or very significant economic, social, cultural or environmental damage". This would enable Councils when implementing the guideline to include development controls if any of the above types of damage were possible.

Finally, and as outlined above, if the Department accepts the inclusion in the Special Flood Considerations LEP clause of the land use 'information and education facility', the draft Guideline could include additional clarification about the development controls needed to address the risk to life associated with information and education facilities. Secondly, the reference to the 'Floodplain Development Manual' in the draft guideline on page 1 should be changed to 'the Floodplain Development Manual 2005 (or its update)' to be consistent with the draft Local Planning Direction 4.3 – Flooding and the Planning Circular.

New Planning Circular: Considering flooding in land use planning – guidance and statutory requirements.

The information included in the draft Planning Circular clearly summarises the key points from the package of changes that Councils should consider in relation to land use planning and flood-related constraints.

The Department could consider including additional information in the Planning Circular to:

- clarify Councils are not required to use all three of the categories (Flood Planning Area, Special Flood Considerations and Regional Evacuation Consideration Area) and that these categories may overlap.
- highlight the new provisions that a planning proposal or draft LEP must not contain, specifically, sensitive uses, residential in a high hazard area and a significant increase in dwelling density etc.
- provide further guidance on the integration with SES emergency response strategies.

Proposed amendment to schedule 4, section 7A of the Environmental Planning and Assessment Regulation 2000

Council officers raise no specific concerns with the proposed changes to the planning certificates and expect to be able to comply with the requirements.

Summary comment

Council officers commend the State government on its commitment to the revision of the plans and guidelines on exhibition regarding how land-use planning considers flooding and flood-related constraints. The principles behind their proposed changes are supported and generally align with the City of Parramatta Council's Parramatta Floodplain Risk Management Policy. The changes are generally positive and will provide for better flood risk management in our LGA and support the transformation of Parramatta into a strong, competitive and productive metropolitan centre to service the Greater Sydney Region.

Council officers request the opportunity to discuss in further detail the suggested amendments to the plans and guidelines on exhibition and outlined in this submission before finalisation, particularly to clarify the intent of the amendments for existing flood affected development sites that have not yet received a gateway determination.

Department of Planning, Industry and Environment
Locked Bag 5022
GPO 164
Parramatta NSW 2124

24 June 2020

Our Ref: URB/20/158

Dear Sir/Madam,

FLOOD PRONE LAND PACKAGE SUBMISSION

The purpose of this letter is to provide comments in relation to the Department of Planning, Industry and Environment's proposed amendments to the *Environmental Planning and Assessment Regulation 2000* (Regulation), directions, guidelines and policies relevant to flooding and flood-related constraints in land use planning (i.e. the Flood Prone Land Package).

The Flood Prone Land Package consists of:

- a proposed amendment to Clause 7A of Schedule 4 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation);
- revised Local Environmental Plan (LEP) flood clauses;
- a revised local planning direction regarding flooding issued under Section 9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act);
- a new guideline: Considering Flooding in Land Use Planning (2020); and
- a revised planning circular outlining the proposed changes to the above.

The following comments are made in relation to proposed amendments, particularly the proposed changes to Schedule 4 of EP&A Regulation and revised LEP Flood Clauses.

General comments

Given the safety implications for appropriate flood planning, Council acknowledges the importance of adequate minimum requirements. However, there is also a need for clarity to ensure expensive, and time-consuming requirements are not imposed on the community unnecessarily. Further, the community relies on this clarity to make informed decisions around the purchase and development of land, so any changes to the framework should be subject to significant consultation with affected residents. Should these changes be imposed upon Councils, it should not fall on Councils to undertake that consultation. It is noted that when Council propose LEP changes of similar impact, they are generally required to notify landowners directly beyond posting the proposed changes on their website.

It is also unclear how and when the proposed changes are to be implemented. Councils and communities would require adequate notice to ensure the changes are implemented smoothly. In addition to ensuring information is appropriately published and mapped, a review and update

to existing DCPs may also be required. Councils should be given sufficient time to make adequate preparations and the current request for submissions should not be considered to constitute notice to commence such preparations given appropriate changes should be considered as a result of feedback. The time between formal confirmation of changes and their implementation should reflect the current circumstances, allowing additional time for Council's to prepare given the current need to prioritise responses to the current pandemic as well as the various changes to planning system and local plans already in train.

While flood level measures, such as 1 in 100 flood levels, Flood Planning Levels (FPL), and Probable Maximum Flood levels (PMF) are important and useful tools, they are not equally useful as risk measures. Flood Planning Levels set as the 1 in 100 level plus freeboard, can be problematic if extrapolated to sites above the 1 in 100 level and may not effectively account for a site's characteristics and characteristics of the flow path, resulting in sites with significantly lower risk being treated in the same manner as sites with significantly higher risk.

The nuanced requirements to manage flood risk on varying affected sites with different flood affectation requires flexible controls. It is the view of Council that one-size fits all planning controls at the LEP level are not particularly well suited to this task. More flexible local controls at the Development Control Plan level, applied in accordance with s4.15 3(A), are better suited to ensure appropriate risk management without the application of onerous, expensive, and unnecessary requirements where a site's unique characteristics may be such that part of the site is flood affected, but the proposed development poses little to no risk.

As such, Council makes the following comments with respect to the proposal:

Revised Local Environmental Plan Flood Clauses

As noted above, Council is of the view that DCP's a more appropriate means to address the imposition of flood controls.

However, notwithstanding this objection should LEP clauses be pursued the following matter should be addressed:

Flood Planning Area Clause

- Flood Behaviour and Function

Most new developments in flood affected areas modify flood behaviour slightly in the vicinity of development and may also modify flood function at a small scale. However, as currently worded, Objective 1(c) does not acknowledge the small scale of these modifications such that the objective will rarely be met. The intent appears to be addressed in the other proposed objectives and should the clause be implemented despite Council's objection, it is recommended that this objective be removed.

- Cumulative Impacts

It is unclear how the cumulative impact of an individual development is to be assessed in relation to Objective 1 (d) and subclause 3 (b). It is suggested that should the clause proceed despite Council's objection, the words "including cumulative" be removed.

- Potential to modify, relocate or remove the development

Subclause 4 (c) does not provide sufficient detail to be effectively implemented. In particular, the measure of what constitutes a reasonable requirement in relation to the potential to modify, relocate or remove the development is unclear.

Special Flood Considerations Clause

To improve clarity, it is suggested subclause to be reworded to more explicitly and directly indicate that it applies only where the PMF is above the flood planning level:

(2) This clause applies to land between the flood planning area and up to the level of the probable maximum flood *where the probable maximum flood level is higher than the flood planning level.*

While it is implicit in the currently proposed wording, it considered the proposed addition ensures the circumstances where the clause applies is clear and explicit.

Schedule 4 of EP&A Regulation (Section 10.7 Planning Certificates)

Clause 7A (2) Flood-related development controls for specific uses between FPA and PMF

Given the proposed LEP Clause relating to Special Flood Consideration, Council's may be required to answer "Yes" for all land between the FPA and PMF, where the PMF is above the FPA.

It is anticipated that that this will cause significant and unnecessary angst and confusion in the community. It is the view of Council that landowners seeking to explore sensitive, vulnerable and critical uses, or uses relating to hazardous materials should familiarise themselves with relevant LEP provisions and DCP controls, and the addition of a s10.7 notation is not required for this purpose. Further it is a reasonable expectation that all sites will be subject to controls that ensure development meets the objectives of the proposed Special Flood Considerations Clause; an additional notation on a s10.7 certificate would simply raise unnecessary concern that is not commensurate with the level of risk nor the types of development controls applicable. This would be further exacerbated should the changes proceed with no further community consultation and education, the delivery of which should not be left to Council's should these changes be imposed as proposed.

If you have further enquiries relating to this matter, please contact me on 9952 8188

Yours sincerely,



Dyalan Govender
Manager Urban Strategy

2 July 2020

Our Ref: 2020/284906
File No: X027689

Melanie Schwecke
Resilience Planning
Department of Planning Infrastructure and Environment
4 Parramatta Square Parramatta NSW 2124

By email: resilience.planning@planning.nsw.gov.au

Dear Melanie

City of Sydney Final Submission – Flood Prone Land Package

The City of Sydney is broadly supportive of efforts to ensure that the planning system properly considers the risk to life and property from flood events and improves community resilience to flooding. This includes a more merits-based approach to flood planning that aligns with the overall intent of the Floodplain Development Manual.

This submission requests that the DPIE consider the amendments proposed within to improve the outcomes it is seeking from the Package. The City has concerns with the proposed changes to Section 10.7 Planning Certificates under the Environmental Planning Regulation 2000 and the scope and applicability of the proposed new flood planning clauses. The submission also suggests that standards for flood mapping should be part of the Package and an approach for the inclusion of the new flood planning clauses into local environmental plans.

Planning Certificate Changes

Significant changes to the information requirements on section 10.7 Planning certificates are proposed. The description of the draft clause in the draft circular indicates the intention of the new information requirements but does not provide any actual draft wording. The City is supportive of the intention to be more explicit about the flood related development controls applying to development on Flood Prone Land. It would have been preferable if the City's response to the proposed changes could have been based on actual draft clauses.

The City's current practice in providing Clause 7A Flood related development controls information on Section 10.7 certificates is to provide a notation that is dependent upon the environmental planning instrument that applies to the land.

In respect to land that is subject to an LEP, the notation placed on a certificate is that *"The development on this land or part of this land is subject to flood related development controls..."*. The notation then goes on to refer to the flood planning clauses in the relevant LEP and the DCP, respectively.

For land that is subject to a State Environmental Planning Policy the notation placed on a certificate is that *"The development on this land or part of this land is not subject to flood related development controls."*

It is envisaged that until the City is able to accurately map the Flood Planning Area (FPA) land, similar generic notations will be provided in response to the proposed new Clause 7A(1) requirement. At this stage, it is likely that the City will be providing 'No' answers to Clauses 7A(2) and 7A(3), respectively as they are unlikely to apply to land uses within the City in the short term.

Although the City supports the proposed changes to the flood related information on planning certificates, accurate mapping of the FPA is required. This will take considerable time and significant resources to complete. The City will progressively prepare FPA maps as part of future reviews of the Floodplain Risk Management Plans (FRMP) for each of its eight catchments over the coming years. If the State Government is eager to have the new FPA information in the City's planning certificates in a shorter timeframe, then additional funding from the State will be required to assist in this task.

New Flood Planning Clauses

The new Flood Planning Area (FPA) clause will provide more flexibility in defining the area to which flood related development controls apply and is supported. However, an issue exists with the definition of the FPA which relies upon the definition of the Flood Planning Level (FPL) which is derived from a Floodplain Risk Management Plan (FRMP) recommendation. The statutory power of a council to impose flood related development controls on land that is below the FPL defined in an ancillary document not referenced in the clause itself is questionable. It would be preferable if the FPL, as recommended by a FRMP, was unequivocally defined in the clause itself.

It is suggested that in subclause (6), after the definition of FPA, the following definition is inserted:

Flood Planning Level means the level of a 1:100 ARI (average recurrence interval) flood event plus 0.5 metres freeboard.

The extension of the definition of the FPA to include other areas of land above the FPL is also supported. Unfortunately, the definition includes within it the ambiguous phrase "*where the majority flood related controls apply*". The FPA should be defined only by the significance of the risk or hazard associated with land, not by a tally of where the greatest number of flood controls apply. It is suggested that the last part of the FPA definition is deleted and instead words to the effect '*where there are significant risks to life and property from extreme flood events*' are inserted.

Consideration should also be given to improving the FPA definition of where the clause applies by including a reference to a FPA map. It is suggested that sub-clause (2) of the draft FPA clause be amended to include after point (a) the word '*and*', followed by a new point '*(b) land that is shown as 'flood planning area' on the Flood Planning Map held at the offices of the Council.*'

To assist in the provision of more flexibility in the definition of the FPA, the City recommends that the new FPA clause be made available to council's as a model clause rather than it being compulsorily introduced as an amendment of the Standard Instrument Order.

The new Special Flood Consideration clause will provide some flexibility in applying flood related development controls to critical, sensitive and vulnerable land uses located between the FPA and the Probable Maximum Flood (PMF). The City is supportive of the

introduction of this clause and will consider utilising it in the future if recommended by a FRMP review for any of its catchments.

Although the City supports the intent of this clause, the application of it over the entire LGA will be difficult. Given that it is likely that many councils have multiple catchments that require separate Floodplain Risk Management Plans, it may be more appropriate to amend the clause to allow it to be applied to specific areas within the FPA. The recommendations for sensitive, vulnerable and critical uses identified in a FRMP may be implemented in a more targeted way.

To allow the Special Flood Consideration clause to be implemented in the way described, the City recommends that the new clause should be available to council's as a model clause rather than it being compulsorily introduced as an amendment of the Standard Instrument Order.

The new Regional Evacuation Consideration Area clause is supported by the City as an important matter to be addressed when assessing development proposals on a floodplain. It is acknowledged that the clause will not be applicable to the City. Only the Hawkesbury-Nepean River catchment is currently identified in a regional flood evacuation strategy prepared by the NSW State Emergency Services. Only councils within that catchment would be able to utilise the proposed clause. If in the future the City becomes subject to a similar flood evacuation strategy, consideration will be given to the inclusion of the new clause in the City's LEP at that time.

Given that the Regional Evacuation Consideration Area clause will not be applicable to most councils and the City for some time, the City recommends that the new clause be made available to councils as a model clause rather than it being compulsorily introduced as an amendment of the Standard Instrument Order.

The City supports, in principle, making maps publicly available to show where flood related development controls apply. To improve community awareness and understanding of flooding planning, the DPIE should consider setting mapping standards for defining the FPA and incorporating them into the draft circular and guidelines. This would ensure a consistent approach across the State and allow DPIE to monitor the application of flood controls. Landowners with properties in different local government areas would have a consistent understanding of what the FPAs represent and what they mean thereby avoiding the potential for conflicting or confusing information about their properties.

Currently there are mapping standards for flood planning maps within Local Environmental Plans applied across the State. Consideration should be given to using and improving the current mapping standard as a basis for formulating a new FPA mapping standard for the entire State.

In terms of the publishing of FPA maps and making them publicly available, the City is supportive of the flexibility offered in the draft guideline for multiple platforms to be used. Due to the dynamic and changing nature for the maps, the City's preference is for them to be either incorporated into its development control plan (DCP) which require shorter timelines for the process of amendment than an LEP amendment, and /or to make them available on the City's website or at its offices.

The Flood Prone Land Package does not provide any information on how and when the changes will be implemented by the State Government. It is requested that notice be given well in advance of the proposed changes to the Environmental Planning

Regulation 2000 to allow the councils to prepare for changes to its planning certificate notations.

To implement the proposed new flood planning clauses, there appear to be two options. The first option is to have them mandated in the Standard Instrument Order 2006. The second option is to set them out as Model Clauses to be included as a local provision amendment to the principal plan in the future.

The City's preference for implementation is for the new clauses to be available as model clauses for insertion as part of a major LEP amendment. This will allow time to ensure that the clauses are carefully crafted in consultation with DPIE to meet the needs of City. Flexibility as to when the clauses are incorporated in a meaningful way into the LEP is afforded by this approach.

Should you wish to speak with a Council officer about the above, please contact Terry Agar, Senior Planner, on 9265 9333 or at tagar@cityofsydney.nsw.gov.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'GJahn', with a stylized flourish at the end.

Graham Jahn AM
Director

City Planning | Development | Transport

25 June 2020

Luke Walton
Executive Director
Planning Policy
Department of Planning, Industry and Environment
Locked Bag 5022, Parramatta NSW 2124

v/e

Draft Flood Prone Land Package

Dear Luke,

Thank you for the opportunity to prepare a submission in improving local infrastructure contributions plans. Wagga Wagga is the largest regional inland Council with a population approaching 70,000 and being identified to grow to a 100,000 in NSW Regional Economic Plan 2040. Wagga Wagga's greenfield neighbourhoods have had unprecedented growth and our CBD, which is nestled on the Murrumbidgee River is seeing significant development.

We have large parts of our urban area, villages and rural areas that are impacted by Riverine Flood and are in the process of finalising our Flood Risk Management Plan, Major Overland Flood Risk Plan and Village Overland Flood Plan.

Council would encourage further work in relation to collaborating with Regional and Rural Council's whom have different challenges to coastal areas and metropolitan Councils. Particularly in relation to the definition of flood prone land and consequences associated with restricting development located within the Probable Maximum Level. Flood mitigation and management is very different in relation to storm events and riverine events, which needs to be considered when strategic planning.

Council would encourage further guidance in relation to the updated Local Planning Direction pursuant to 9.1 of the Environmental Planning and Assessment Act;

- Significant flood impacts
- Significant increase in the dwelling density of the land
- Effectively self-evacuate
- Significantly increased requirement for government spending

Council recognises the need to consider climate change in future planning, however there is some difficulties in the implementation proposed in this package. We recognise that storm events could have greater implication on overland flow areas. Riverine events are in a more controlled environment with over three days' notice and all levels of government have just completed a levee that provides our city with 1:100 plus 900mm freeboard (which considers climate change). Therefore, we are confident that our CBD has adequate protection and therefore increased density should be encouraged to leverage from this and other investment within the CBD.

There is ambiguity in the package particularly in relation to the consideration of climate change on flood planning. Council would like further dialogue with the Department to ensure that our flood planning provisions are consistent with the direction of NSW Planning, however are practical and reflect the local environment. This will ensure our local studies and planning framework reflect the more detailed controls proposed in this package.

Council appreciates that this package recognises that vulnerable and sensitive uses occur within the special flood consideration area and this package allows for Council to adopt a local approach to dealing with this.

Council would appreciate the opportunity to further collaborate with you in relation to improving flood prone land. Should you have any further questions please do not hesitate to contact Tristan Kell on 02 6926 9122 or kell.tristan@wagga.nsw.gov.au .

Regards,

Tristan Kell
Manager City Strategy
Wagga Wagga City Council





25 June 2020

Reference: Clarence flood planning submission
Contact: Stephen Timms

Department of Planning, Industry and Environment

Late submission emailed to: resilience.planning@planning.nsw.gov.au

Flood Prone Land Package - Council Submission.

Thank you for the opportunity to provide feedback on the Flood Prone Land Package and the updated guidance for Councils. We congratulate you on this significant piece of work.

Clarence Valley Council agrees with the general intent of the various proposed updates to existing guidance, particularly elevating the importance of considering evacuation and risk to life through the planning process. Although the underlying objectives are outlined in the Floodplain Development Manual (FDM) we agree it is important to update the various statutory instruments that DPIE are consulting on. This is part of a wider maturity process needed across the planning framework to plan with resilience in mind.

A proactive approach to strategic planning, supported by evidence, and undertaken in collaboration with relevant agencies and the community is necessary to support more resilient communities. Clarence Valley Council are on that journey, however the time and resources needed to provide clarity and certainty to the development industry, the community and across Council regarding these issues needs to be acknowledged.

Our submission overleaf outlines the key issues that we think need further consideration by the Department before the Flood Prone Land Package can be enacted.

If you have any further questions regarding the submission please direct them to Stephen Timms stephen.timms@clarence.nsw.gov.au or 0400 446 576.

Kind regards,

Des Schroder
Director Planning, Environment and Community

Background Summary

Flood planning in the Clarence Valley

The Clarence is the largest river on the east coast of NSW. It rises in the Macpherson Ranges on the NSW-Queensland state border, and flows south through an extensive coastal floodplain to Yamba, where it meets the Pacific Ocean. It has a catchment area of 22,716 square kilometres and around 50,000 people live and work on the floodplain, including in Grafton, Maclean and Yamba. Major tributaries include the Mann, Nymboida and Orara Rivers. Clarence Valley Council also has responsibility for flood prone land around the Woolli River.

Clarence Valley Council has embarked upon a major planning process for floodplain management in the Clarence Valley and has developed a reasonably mature approach to land use planning and flood risk. We have a number of Floodplain Management Plans covering the whole of the floodplain. However, our communities and assets are still vulnerable to large and extreme flood events and our extensive rural road network and connecting regional distribution routes are susceptible to submersion and damage from flooding.

Council is currently updating the Lower Clarence Flood Study and Models to incorporate major infrastructure projects such as the new Grafton Bridge and completion of the Woolgoolga to Ballina section of the Pacific Motorway which traverses the Clarence floodplain. Those studies are dependent on state government work, such as the *Woolgoolga to Ballina upgrade Hydrological Mitigation Report*. A review of structural flood mitigation works (i.e. the 'rural flood study') is also underway.

This work will culminate in an amalgamated Clarence River Floodplain Risk Management Plan, but that process does take some time, with completion targeted for 2024.

Our existing defined flood event for Grafton was determined in March 2014, following the Floodplain Development Manual process, and a flood planning level set at below the 1% AEP. Evacuation planning and additional assistance from SES and DPIE is needed to progress that work, along with a commitment from Fulton Hogan to implement conditions of consent for the new Grafton Bridge and to update an evacuation plan for Grafton.

Importance of risk to life and evacuation planning

We support the elevation of the importance of evacuation and risk to life considerations.

In the Clarence Valley most of the structural flood mitigation works that have been identified in our flood risk management plan have already been constructed, such as levees at Grafton, South Grafton and Maclean. The subsequent floodplain management studies and plans have predominantly recommended non-structural, valley-wide measures as the most appropriate outstanding floodplain management measures for the Valley. These include the need for better flood warning, emergency management planning, community awareness, voluntary purchase and voluntary house raising schemes, and flood-related planning considerations are included in our LEP. However, additional resource is needed to complete that work, with assistance from SES and other organisations.

DPIE should continue to advocate for appropriate resources and assistance to develop evacuation plans and guide development and decision making across NSW, and to ensure all areas are prepared for significant flood events.

Implementation

Training and resourcing

While we agree with the intent and general direction of the package, implementation may require additional resourcing from Council. We support the proactive engagement through webinars and training sessions run by The Department of Planning, Industry and Environment. However, in addition to those information sessions DPIE should make further assistance available to Councils as we work through the implementation via the processes set out in the Floodplain Development Manual.

This should involve a proactive approach by relevant experts, preferably in regional offices, to assist as needed if matters arise regarding planning proposals or development applications.

Flood compatible uses on the floodplain

We note that the drafting of these clauses is indicative only, and thank DPIE for the opportunity to engage at this stage of the process, rather than after legal drafting and policy direction has been determined and set.

We suggest that further thought is given to land uses that could be located on the floodplain but pose minimal risk to life safety or the environment, particularly on larger, flatter floodplains. Topical examples in the Clarence Valley at present that would be inconsistent with the terms of the proposed local planning direction may include:

- Rezoning for Working Waterways and boat building operations
- Rezoning for a Service Centre along the new Pacific Motorway
- Filling of land above 1%AEP to support appropriate uses in locations where evacuation can be safely undertaken
- Industrial zoning and development that may be on the margins of the 1%AEP prior to development, but finished floor level will be well above the determined flood planning level
- Rezoning for Special Purpose Zones for appropriate flood compatible activity (tourism, watersports or others).

Clarence Valley Council has already applied the *exceptional circumstances* and includes a list of uses similar to the sensitive, vulnerable and critical uses under your proposed special flood considerations. We agree with the slightly expanded list. However, while our Floodplain Risk Management Plan is updated (not until 2024) these additional uses would be delayed or declined if the Flood LEP Clauses were enacted. On such a large and flat floodplain, this may unnecessarily delay economic recovery in the Clarence Valley.

Critical infrastructure and cultural change

One of the best ways to encourage cultural change towards better urban planning and more resilient communities is for state government to set the example. Critical Infrastructure projects (Hospitals, Schools, Motorways and the like), along with large utility operators (Energy substations etc.) should adhere to the same principles to help ensure that communities can continue to function during and post flood events, including in larger events.

The NSW Critical Infrastructure Resilience Strategy and the approach to resilient infrastructure planning in Queensland provide good examples. Positive work by Infrastructure NSW and the Infrastructure Sustainability Council of Australia (ISCA) to evolve the process for assessing large scale infrastructure projects all help to support more resilient outcomes. However, the flood planning level used to inform decisions and acceptable level of risk needs further improvement, informed by potential impacts of flooding and the objectives of the Clauses proposed.

Conclusion

Clarence Valley Council supports the proposed changes, however:

1. We encourage DPIE to ensure that the proposed changes respond to the risks within a given floodplain. Controls and considerations for the Hawkesbury-Nepean Valley and other high risk areas may need to proceed ahead of other areas like the Clarence Valley.
2. We suggest that either the provisions relating to *inconsistencies* (s9.1 (2) (9)) are clarified so that existing adopted flood studies can be relied on while our Floodplain Risk Management Plan is updated over the next few years, or that a short term exception for the Clarence Valley Council is requested due to the current circumstances, including:
 - a. the low probability of significant development that could cumulatively increase risk to life in the next few years, coupled with reasonable warning times, for the lower Clarence areas;
 - b. steps that Council are undertaking to update the Floodplain Risk Management Plan (not until 2024);
 - c. the limited potential for development on the floodplain under the existing LEP, but the need for some discreet planning proposals to rezone land or development applications for flood compatible uses;
 - d. the time delay in updating DCP's and cultural change needed across the Council and development industry to ensure effective and efficient implementation;
 - e. the need to support economic recovery given recent drought, bushfires and COVID19 that has impacted the Clarence Valley.
3. We urge DPIE to continue to advocate for further assistance to Local Government in implementing the Flood Prone Land Package, including:
 - a. Proactive assistance from DPIE, SES and other agencies as needed, including maintaining a physical presence and local people involved in emergency management in our area; along with maintaining availability to answer questions through the implementation phase of these planning reforms;
 - b. Measures and planning controls to ensure critical infrastructure appropriately support resilient communities, both during and following flood events;
 - c. Maintaining momentum for a continuous cycle of improvement to update relevant guidelines, such as the North Coast Regional Plan and North Coast Settlement Planning Guidelines, to ensure appropriate and evidence based

principles and guidance to assist land use decision making. The development of these must include local councils and communities.

- d. Promote the consideration of all hazards as part of a holistic approach to land use planning, so that flood issues are not dealt with in isolation when making land use decisions.

SUBMISSION BY COFFS HARBOUR CITY COUNCIL ON THE FLOOD PRONE LAND PACKAGE JUNE 2020

General

This submission has been prepared by Council officers at Coffs Harbour City Council, for lodgement with the NSW State Government, as a response to the exhibition of the Flood Prone Land Package which includes:

- a proposed amendment to schedule 4, section 7A of the *Environmental Planning and Assessment Regulation 2000*
- a revised planning circular
- a revised local planning direction regarding flooding issued under section 9.1 of the *Environmental Planning and Assessment Act 1979*
- revised Local Environmental Plan flood clauses
- a new guideline: Considering Flooding in Land Use Planning (2020).

The Guidelines are open for consultation until 25 June 2020.

In general, Council strongly supports the proposed guidelines and package as it assists Council to reduce the risk of flooding to the community. Floods greater than the 1 in 100 year flood event do happen, and it is important this is recognised in land use planning. The changes will assist Council by providing clear guidance, and adding clauses to the Standard Instrument Principal Local Environmental Plan (LEP) to be able to apply flood-related development controls on land that has a low probability/high consequence flooding in events greater than the defined flood event and up to the Probable Maximum Flood (PMF), is strongly supported.

Council's Development Control Plan 2015 (DCP) already accounts for certain sensitive, vulnerable and critical uses by setting minimum finished floor levels to events greater than the 1 in 100 year flood event, and considerations to the PMF, as per guidance in the NSW Government floodplain Development Manual (2005). The package proposed helps strengthen Council's existing DCP. Amendments to Council's existing DCP may be required to improve its clarity around the proposed special consideration area clauses. Council would need some time to update the DCP to make sure it fully aligns with the proposed LEP clauses. The changes required for the section 10.7 planning certificates would also require some time to implement, especially as council is moving towards the automation of these certificates. Adequate notice of the impending changes if approved would be welcome, so that Council can make arrangements for alterations to the DCP and 10.7 planning certificates. Adequate notice also assists the development industry to plan and adapt.

Section 10.7 Planning Certificates—Amendments to the EP&A Regulation

These amendments would mean Council would have to alter the planning certificates which are currently in the process of being reviewed. This is not an issue, but Council would require time to make the relevant changes to the templates and systems that would generate these certificates. This includes adding some additional layers and attributes for the Special Flood Consideration area in Councils Property and Rating system if implemented.

Proposed LEP Clauses

The proposed LEP clauses including the Special Flood Considerations are generally supported. It is Council's preference that the clauses become standard clauses as this will be easier to implement and make for more consistent planning instruments across the state. The changes may have some implications for our DCP, which would most likely require amendments to make sure it clarifies the clauses around the Special Flood Consideration area. However, there are benefits in updating the DCP as it will provide a clearer and easier assessment process for both developers and Council. To include the Special Flood Consideration area, Council would need to create a new mapping layer. We do have the information to derive this layer in most catchments, however not all, and assume that the clause can be applied in selected areas of the LGA where appropriate data is available.

In relation to the included sensitive, vulnerable and critical uses, most of these match up with those found in Council's existing DCP for sensitive and essential facilities, where the flood planning level is above the 1 in 100 year flood level. Council's DCP also includes telecommunication facilities as a sensitive land use and the inclusion of this use in the standard clause should be considered. The list in the Special Flood Consideration clause (4) also includes some land uses that Council currently does not consider as sensitive however Council has no issue with a standardised approach it strengthens the ability to assess developments safe occupation and evacuation of the land.



24 June 2020

Mr Jim Betts
Secretary
Department of Planning, Industry and Environment

Submitted through the online [Planning Portal](#)

RE: Flood Prone Land Package

Thank you for the opportunity to comment on the *Flood Prone Land Package* (the package), currently on public exhibition by the Department of Planning, Industry and Environment (the Department). Please see our comments below for your consideration.

Existing flood prone land management scheme is adequate

While the package is well-intentioned in that it seeks to better preserve life and property its proposed application and implementation is considered excessive and onerous. The proposed amendments introduce concepts into plan-making and legislation which are already adequately referenced and implemented through their inclusion in the current *Floodplain Development Manual* and Australian Rainfall and Runoff. This is particularly so for the following:

- Definition of significant adverse impacts;
- Cumulative impacts of development;
- Assessment of climate change risk.

The package wording should be simplified to reference:

- Applying to all flood prone land (and providing a clear distinction between what is flooding and what is stormwater – catchment area/flow depth)
- The latest version of the Floodplain Development Manual and Australian Rainfall and Runoff.

Failing that, more expansive definitions that cover different situations and types of developments need to be provided to assist Council's in applying this consistently across the state.

Unnecessary sterilisation of land

While the Package and the Department's messaging stresses that the intent of the Package is not to 'sterilise' land from development, this will be the impact for many types of development. Once councils adopt the proposed Flood Planning Areas, land between the 1%AEP and Probable Maximum Flood that is currently able to be rezoned will no longer be so for most (urban) developable uses. The area of land lost for potential urban development is likely to be vast. This is unacceptable, given that there are many practical and widely-used techniques and mechanisms to mitigate and minimise flood risk.

Similarly, the use of terms such as "permissible" uses and the scheduling of development types is a blunt instrument that can be implemented with impunity by Councils when they are empowered by the package to do so.

A more balanced approach would be to allow developers to demonstrate the necessary flood resilience of planning and development proposals without excessive and onerous blanket restrictions which do not take into account the individual characteristics of the site or the proposed development.

Consistency in approach

Many aspects of the package are open to interpretation, and it is up to each Council in NSW as to how they implement it. Some Councils may choose to do nothing and have business as usual, while others may implement the Package to its fullest possible extent. This disparate approach will provide further uncertainty and confusion in the industry. It is likely to inadvertently catch out proponents who will find that the approach to flood planning and land use varies greatly from council to council.

Policy devolvement

Put simply, why should an issue which has state-wide implications be delegated to local government to implement? This issue needs state-wide leadership and control that can only be exercised by State Government. As stated above in relation to consistency in approach, instead of a single policy, the industry could end up with dozens of variations of flood policy across the State's LGAs. Stronger definitions in the Floodplain Development Manual would act to achieve greater consistency across the State.

Economic recovery

As Australia and the state emerges from the Covid-19 lockdown and its impacts, both federal and state governments are developing stimulus packages and policies to support the economy during this difficult time when thousands of jobs have been lost. This includes the fast-tracking of planning proposals and development applications, the HomeBuilder scheme to encourage renovations and construction of new homes, and millions of dollars in infrastructure investment. The imposition of the Package at this time is at odds with the economic recovery that is desperately needed during this uncertain and difficult time. The package will deter development, create uncertainty, result in extra costs, wasted effort and costs from developers who have developed proposals based on the existing flood prone land planning regime, and increased red tape. All these will act to put a brake on economic recovery efforts.

We strongly recommend the Department reconsider the implementation of this flood prone land package until the impacts upon development industry and the broader economic recovery of NSW and the country are considered.

Please contact the undersigned at AL@coronation.com.au or 8316 9100 if you would like to discuss these issues in more detail.

Yours Sincerely



Aras Labutis
Urban Transformations Director

Fairfield City Council

Submission to State Flood Planning Controls 2020

June 2020

INTRODUCTION

The NSW Department of Planning, Industry and Environment (DPIE) has placed a package of proposed new State Wide flood planning controls on public exhibition, with submissions due on 25 June 2020. If adopted by the Government, the proposed new Local Environmental Plan clauses would provide the basis for replacing the principle flood controls set out under Clauses 6.3 – Flood Planning and 6.4 – Floodplain Risk Management of the Fairfield Local Environmental Plan (LEP) 2013.

A report was presented to Council's Outcomes Committee on 9 June 2020 detailing comments and issues associated with the key functions and operations of the proposed new controls. As a result, Council resolved the following:

- 1. Council provide in principle support to the proposed changes to the NSW flood planning controls currently on public exhibition and advise the State Government, that to promote consistency, the controls should be made mandatory for all councils in NSW.*
- 2. Council endorse the issues raised in the report to form the basis of a submission from Council to the NSW Department of Planning, Industry and Environment on the proposed amendments.*

Council supports the Government's increased recognition of the consequences of extreme floods and the need to consider all flood risk including extreme events. The proposed controls aim to build resilience in communities located on floodplains and reduce the extent of property damage and potential loss of life from severe to extreme flooding throughout NSW. Council agrees that existing flood planning documents do not align with government strategies and plans and therefore need updating.

Fairfield City already has flood planning controls similar to those being proposed under this exhibition. In fact, Council's controls are considered more onerous in that they require Council to take into account whether adequate arrangements have been made for safe occupation and evacuation for all development between the Flood Planning Level (FPL) up to and including the Probable Maximum Flood (PMF) including for **all** residential, commercial and industrial land uses.

Council had previously resolved to remove this level of restriction on commercial, industrial and non-sensitive residential land uses. This Planning Proposal, which is with DPIE for finalisation, will effectively bring Council's controls in line with the proposed State controls currently on public exhibition.

The proposed Flood Prone Land Package currently on public exhibition by the NSW DPIE consists of the following documents:

- Revised flood clauses for local environmental plans (LEP model clauses)
- Considering Flooding in Land Use Planning Guideline, which replaces the Guideline on Development Controls on Low Flood Risk Areas
- Revised 9.1 Ministerial Direction on flooding
- Revised Planning Circular on flooding

Submissions on the proposed new flood controls are due to the NSW DPIE by 25 June 2020. The content of the Council's Outcomes Committee report has provided the basis for Council's submission and is discussed as follows.

Submission

1. Proposed Amendments to Model Flood Clauses for LEPs

With respect to LEP controls, the proposed model Clause relating to Flood Planning Area (FPA) is consistent with Council's existing Clause 6.3 Flood Planning and the flood planning controls of the majority of councils in NSW. Council welcomes the scope to now consider including additional land identified through the Floodplain Risk Management Process (FRMP) within the FPA.

There are two (2) other requirements proposed to be considered in addition to those already contained within Council's LEP clause. These relate to the potential for hazardous materials to pollute the environment during flood events and the requirement to ensure that development must not be inconsistent with any relevant floodplain risk management plan adopted by the Council. The proposed additions are supported and Council would welcome them being integrated into its current Clause 6.3 Flood Planning.

The land uses included under the Department's proposed model clause relating to Floodplain Risk Management are more extensive than those proposed under Council's current Planning Proposal that is with the Department for finalisation. They do not however include residential (general), commercial or industrial uses, which are the categories of land use Council has resolved to remove from the current clause 6.4 of Fairfield LEP 2013.

The additional uses proposed under the draft controls are supported as they are all sensitive and critical uses that require additional flood planning considerations. The additional objectives and consent requirements are also supported as they relate to the management of risk to life and the environment from hazardous industries and extreme flood events.

Clarification is sought from the NSW DPIE however regarding how the model clauses will be implemented into LEPs. It is preferable that the clauses be mandated and compulsorily integrated into LEPs rather than councils having to undertake individual Planning Proposals to update LEPs. Further, if they are mandated across the State, it will ensure consistency of flood planning controls across all local government areas and catchment boundaries.

2. Draft Planning Guideline

The draft guideline establishes 3 categories of land to which flood related development controls may apply being Flood Planning Area (FPA), Special Flood Consideration areas (SFC) and Regional Evacuation Consideration Area (RECA). Fairfield City does not have any land within the LGA that would fall within the definition of a RECA.

The purpose of the proposed guideline is to outline how councils should determine these areas. Compliance with the guideline is not mandated, but provides advice to councils on flood related land use planning.

No issues are raised with respect to the draft Guideline and it is therefore supported.

3. Proposed new 9.1 Ministerial Direction on Flooding

The current Planning Direction 4.3 has restricted councils from applying flood related development controls to residential development on land between the 1% Annual Exceedance Probability (AEP) and the level of the PMF.

Fairfield City Council, however, obtained approval from the NSW DPIE and OEH (known as exceptional circumstances) to include a 'discretionary' clause 6.4 - Floodplain Risk Management in the LEP 2013 when that Plan was originally made in 2013.

This additional clause allowed Council to consider the flood hazard and evacuation risks associated with certain development (predominantly sensitive uses but also residential, commercial and industrial development) between the FPL and the PMF. This exception meant that Fairfield City has had the most precautionary controls in NSW.

The proposed amendment to the Ministerial Planning Direction 4.3 – Flooding currently being exhibited, removes that restriction and allows all councils to consider the full range of flood risk associated with residential development across the floodplain. It does not impose a requirement for councils to include controls for residential development above the FPA, but removes the need for councils to apply for exceptional circumstances if there is an identified need for such controls.

The introduction of the FPA allows councils to consider other areas above the FPL where it may be appropriate to apply flood-related development controls. It includes land at or below Council's already defined FPL (1:100 ARI plus 500mm freeboard) but may extend to include additional areas where low probability events have the potential for high consequences.

This new approach is supported as it allows Council to consider additional controls for areas where the Floodplain Risk Management Process (FRMP) identifies areas of land above the FPL where additional controls are needed for reasons such as evacuation constraints, rapidly rising deep water, or little or no warning time because of flash flooding.

In the future, should Council's work relating to the FRMP (as defined in NSW Government's Floodplain Development Manual) identify that there are areas above the FPL that require development controls due to risk to life considerations then these can now be adopted by Council without the need for exceptional circumstances. These amendments will make it much easier for all councils in NSW to implement future amendments as new information becomes available. For these reasons, the proposed amendments to the Direction are supported.

4. Proposed New Planning Circular and Planning Certificates

The proposed new Circular will supersede current Planning Circular PS07-003 and provides information on how to consider flooding in land use planning. It outlines the

changes to the directive and revised LEP clauses and introduces the new Guideline. It does not apply new policy. The draft Circular also outlines changes to Section 10.7 Planning Certificates.

There are no issues raised with regards to the draft Circular, however it should be noted that required changes to Planning Certificates can be a complex and timely process and sufficient notice must be given to councils prior to the introduction of new controls to allow necessary changes to Planning Certificates.

CONCLUSION

As highlighted in this submission, Council supports the changes as proposed under the new State-wide Flood Planning Framework. The new controls are considered to align with not only Council's current controls but also amendments currently being finalised under Fairfield City Council's Flood Risk Management Planning Proposal.

There are several concerns Council has in relation to the key operational provisions of the new controls which have been highlighted and discussed in detail in this submission and Council looks forward to further information and consultation when draft Legislation is released for public comment later in the year.



19 June 2020

Ms Santina Camroux
Director Resilient Places
NSW Department of Planning Industry and Environment
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

Attention: Ms Melanie Schwecke

(Submitted on line)

Dear Santina and Melanie

Submission – Flood Prone Land Package

Thank you for the opportunity to provide input to your Department's draft updated Flood Prone Land Package (**the Package**) which is to provide advice to councils on considering flooding in land use planning. We are also grateful for the workshop and webinar you facilitated during the review of the Package, for the benefit of our members.

About Floodplain Management Australia

Floodplain Management Australia (**FMA**) was established to promote sound and responsible floodplain management, and to help reduce the risks of flooding to life and property.

FMA has continued to carry out these important roles for more than 50 years and is now the national voice for flood management, with a membership of around 160 Local Government Councils, catchment authorities, government agencies, businesses, insurers and professionals involved in all aspects of urban and rural flood risk management. Our members are at the front-line of flood risk assessment, flood management planning, decision making, emergency management and community engagement - see floods.org.au

FMA has strong partnerships with key State/Territory and Commonwealth Government agencies including NSW State Emergency Service, NSW Department of Planning, Industry and Environment, ACT State Emergency Service, Victorian Department of Environment, Land, Water and Planning, Queensland Reconstruction Authority and the Bureau of Meteorology. In addition, we have links to equivalent organisations in the United States, the United Kingdom and New Zealand. Our international network is invaluable in sharing flood management experience and expertise from other nations with our members for the benefit of their communities.

Natural disasters are costing Australia over \$560 million a year on average, and flooding from rivers and local catchments is the costliest, yet most manageable, of natural disasters. The most recent major flood event, the 2019 North Queensland Monsoon Trough, resulted in \$1,243 million in insurance losses, while Deloitte Access Economics estimated that the social and economic cost was \$5,681 million (*The social and economic cost of the North and Far North Queensland Monsoon Trough (2019) for the Queensland Reconstruction Authority.*)

Our Overall Comments

FMA commends the Departments' review of the key flood risk management (**FRM**) policies that influence planning in NSW.

FMA has advocated for a review of these policies since first introduced in 2007. The policies and practice associated with how flood risk is considered in planning in NSW has evolved since the mid-20th Century and retains elements that continue to constrain the achievement of optimum outcomes. Despite this, over the last 13 years there has been a growing awareness amongst planners and the general community of the importance of effective risk based planning and clarity in the communication of flood risks.

Our vision is for simple but fundamental changes to the manner in which the planning system in NSW deals with flood risk that:

1. Provide an uncomplicated and internally consistent system that is efficient to implement
2. Allow for best practice risk based planning outcomes
3. Communicate flood risks clearly to the public.

The Package is being reviewed at the same time that the Floodplain Development Manual (**the Manual**) is being reviewed. The Manual was published 15 years ago and remains elementarily similar to the first version of the Manual introduced in 1986. While the Manual should be recognised as having provided important revolutionary guidance for undertaking FRM, those components of the Manual dealing with Planning in particular, need review. While we recognise that the Manual and the Package are undergoing separate reviews, we understand the timing for these reviews are not so disjointed that the benefits of a combined comprehensive exercise should be ignored.

There is currently an opportunity for generational change that should not be overlooked.

Fundamental changes that we consider should be considered are:

- Dispensing with the reliance on a singular flood planning level (**FPL**) in local environmental plans (**LEPs**).
- Reviewing the way flood planning areas (**FPAs**) are delineated in LEPs so that they are consistent with the definition of flood prone land (ie floodplain) in the Manual to provide a practical framework for more detailed controls in development control plans (**DCPs**) for a range of land uses subject to different flood hazards.
- Providing better ways of mapping areas of the floodplain for the planning purposes that reflect a risk based approach to FRM and avoid miscommunicating flood risk to the community.
- Uncomplicating the way the planning system addresses FRM and bringing greater consistency with the FRM process specified by the Manual.

These changes are consistent with the FMA Land Use Planning Position Policy*, which is available at the FMA website: floods.org.au/site/technical-information

Notwithstanding our view about the need for more fundamental change, the following sections of this submission outline detailed comments on the different components of the Package, which in many cases highlight the need for more the fundamental changes outlined above.

Specific Comments on Components of the Package

Draft Planning Circular

- a) The Circular commonly refers to “managing flooding”. We suggest that this be changed to “managing flood risks” as the message should be about how planning can manage the risks associated with flooding and not what could be inadvertently interpreted as physically managing flooding through structural measures. While structural measures can play an important part in FRM they are only one mechanism that should not be the first approach used in planning. Consequently, the Manual inclusions outlined on page 1 should also reference the broader flood modification and response modification measures that it contains.
- b) The following statement (pg.2) is key to the guidance required and we support it whole heartedly, noting that this should be consistently reflected throughout the Package:
Effective consideration of flood risk in land use planning involves developing an understanding of the full range of flood behaviour up to the Probable Maximum Flood (PMF) and considering this in management of flood risk.
- c) For clarity it would be desirable to define “flood-related development controls” (pg.2) but in the absence of a definition it is taken to include controls in a DCP. Note FRM controls in a DCP often apply to an area that differs from the FPA applying in a LEP which typically relies on the default single FPL of the 100 year flood. Conversely a DCP often includes variable FPLs applying across the floodplain for different land uses, consistent with a risk based approach. This is an example of an unnecessary complication and inconsistency that should be resolved.
- d) We suggest that in the unlikely situation that a Council does not have information required to answer the proposed question at clause 7A(3) of the Regulation (pg.2) the advice on a Planning Certificate be “unknown” as opposed to “no”.
- e) We support the proposal (pg.3) to amend Local Planning Direction 4.3 to remove the need to obtain exceptional circumstances to apply flood-related residential development controls above the 100 year flood.
- f) The reference (pg.3) to the Manual’s recommendation that a “defined flood event” or historic flood plus freeboard should generally be used to set residential “FPLs” could be confusing and may not lead to optimum outcomes. While a defined flood event is referenced in AIDR Handbook 7 it is not referenced in the current Manual and is a new term that may not be familiar to NSW planners, and adds complexity and need not be introduced. While our members have expressed a preference that the 100 year flood (plus freeboard) should be maintained as a minimum FPL for most aspects of residential development, Councils should be encouraged to undertake a risk based approach to FRM. This could identify multiple FPLs for non-residential uses, vulnerable and critical uses and, in some cases, aspects of residential development such as non-habitable floors.
- g) Reliance on the FRM process (assumably the process set out in the Manual) to justify variations from using the 100 year flood (plus freeboard) in preparing flood related development controls for residential development can be onerous, confusing, and counter to achieving optimum outcomes. The FRM process is commonly out of sync with the process of preparing an LEP or DCP and may not relate to all floodplains within an LGA, and can discourage taking a broader risk management approach. We suggest that the requirement is amended to reflect that choosing an alternate FPL requires justification based on a risk management approach that is consistent with the principles of the Floodplain Development Manual.
- h) While this was explained at the Webinar, it would may be of assistance to outline where the proposed “Regional Evacuation Consideration Area” clause will apply in the short and long

term, and whether any government agency such as the SES could have a role in providing advice to Councils when assessing compliance with the clause. We understand that at present the clause would only be relevant to those parts of LGAs within the lower Hawkesbury-Nepean Floodplain. It would be helpful if the Department (and the SES) could provide a full briefing for Hawkesbury-Nepean Catchment Councils, and develop some form of practice note or guideline as to how these matters are to be considered and managed.

The inference that the choice of a single FPL for general residential development is required to establish an FPA is inconsistent with a risk management approach and is a legacy of an outdated historical approach that is in need of fundamental review.

Revised LEP Clauses

- a) Currently there are no compulsory FRM provisions within the *Standard Instrument—Principal Local Environmental Plan* and one model “Flood Planning” clause. The use of the model clause varies considerably across the state, including some LEPs where there is no clause and some LEPs contain an additional “Floodplain Management Risk” clause. The wording of adopted clauses sometimes also varies from the Model clause. The manner by which land is mapped for the purposes of triggering the application of such clauses varies from wholly relying on a descriptive definition, to maps that identify land affected by the PMF, 100 year flood, 100 year flood plus freeboard and flood control lots (as defined by *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 - the Codes SEPP*).
- b) While flexibility on how individual Councils could address FRM in their LEPs is supported, the significant variation currently in LEPs is a reflection of a lack of direction. This is compounded by different definitions provided in the Manual. Such variability in LEP provisions, without a consistent and easily understood base, can confuse the general public leading to a misunderstanding of risk exposure and lack of preparedness.
- c) The principal purpose of LEP provisions is to identify where FRM related provisions trigger approval different pathways and to specify considerations when assessing applications. However, this needs to be presented in a way that does not miscommunicate flood risk to the community.
- d) Three Model clauses are now proposed to deal with FRM. This introduces additional complexities and the potential to confuse the public. With the single most stated issue with the planning system in NSW being its unnecessary complexity, we respectfully suggest that the Department should be moving towards uncomplicating FRM LEP provisions. A single Model Clause would suffice with optional subclauses if required.
- e) Our specific comments in regard to the “Flood Planning Area” clause are:
 - i. Objective 1(c) requirement to “maintain the existing flood behaviour” does not always provide the best outcome. In some cases, mitigation measures such as levees or filling that change flood behaviour without any unacceptable external impacts can provide the best planning and FRM outcome.
 - ii. The requirement of objective 1(d) to avoid “...cumulative impacts on flood behavior” is not a matter that ideally should be left to the DA stage (see FMA Land Use Planning Position Policy*). It would be impractical to consider the cumulative impacts associated with individual small scale development such as single dwelling houses. However, it is recognised that some Councils require an assessment of cumulative impact in specific situations such as large scale subdivisions or in areas with legacy issues. While the intent of the objective is appreciated, we suggest rewording.
 - iii. It is not clear how individual developments could “enable safe evacuation from the land” as required by objective 1(f). Enabling safe evacuation would typically be

reliant on a range of factors such as the capacity evacuation routes and the availability of flood warning systems. Also, many Councils have adopted policies that allow development to rely on shelter in place in certain circumstances which would be inconsistent with this objective. While the intent of the objective is appreciated, we suggest rewording.

- iv. There is a concern that the definition of “hazardous materials” is broad and could inadvertently capture unintended land uses, making it difficult for otherwise appropriate uses to comply with subclause 3(h). Possible examples of such land uses include turf farms and sewage treatment plants.
 - v. Subclause (4) mandates that Council must be satisfied that the design of a development has taken into consideration climate change flood risk. This could be unnecessarily onerous or impractical for some Councils or for some types of DAs. Again, again while the intent of the objective is appreciated, we suggest rewording.
 - vi. The definition of FPA is unnecessarily complicated. As FPL is not defined in the clause it would be defined as per the Manual, in which case the Manual defines “flood planning levels (FPLs)” – that is more than one FPL could apply. The use of the word “may” introduces vagueness. As noted above, “flood related development controls” is not defined but would be interpreted as including FRM DCP controls. Consequently, an FPA could be a wide range of areas including parts of a floodplain, the whole floodplain or in some circumstances more than the floodplain. A substantial number of Councils in NSW have DCP FRM controls that apply to the whole of the floodplain as defined by the Manual, even if only for sensitive, vulnerable and critical uses.
 - vii. While it is appreciated that the Department is seeking to avoid unnecessarily constraining development in the floodplain the proposed definition will not achieve that objective in our view, and will only create further burdensome complexities for Councils and developers.
 - viii. In our view, the definition of FPA should simply adopt the Manual definition of the floodplain. This provides consistency across FRM policies in NSW, clarity as to what should be mapped, appropriate high level FRM LEP provisions for DCPs to follow with more detailed controls, less confusion and potential to miscommunicate risk to the public, and a significantly less complicated assessment process.
- f) Our specific comments in regard to the “Special Flood Considerations” clause are:
- i. Consider rewording objective 1(a) for the above reasons.
 - ii. The application of the clause to “the flood planning area and up to the level of the probable maximum flood” is problematic. The extent of what could be the FPA is wide ranging as outlined above, and could already be the PMF based on the proposed definition in the Flood Planning Area clause, meaning the clause would apply nowhere.
 - iii. The clause infers that emergency management issues are not relevant to other land uses, such as residential, in some parts of the floodplain even though emergency management plans of Council and the SES would cover all situations.
 - iv. Subclause (3)(b) is problematic because it does not recognise shelter in place, as discussed above. Also, this clause does not appear to actually require ensuring evacuation is possible, rather it relates to the impact the development would have on evacuation from “the land” [the subject of the DA].

- g) Our specific comments in regard to the “Regional Evacuation Consideration Area” clause are:
- i. We strongly support the protection of the capacity of regional evacuation routes (clauses (1)(a) and (3)(a)). However, this is a matter that should be addressed through regional and local strategic planning that precedes the plan making process (see FMA Land Use Planning Position Policy*). Reliance on individual DAs to achieve this is unlikely to achieve this aim and the imposition of such a requirement on individual DAs could be impractical.
 - ii. We anticipate there will be uncertainty about how to define “rising road access” and its necessity for all conceivable types of development in all circumstances and suggest this be reviewed. The interpretation is critical because the wording of clause (3) is such that a Council must be satisfied that it will be available before approving any development within the area subject of the clause.
- h) For the reasons outlined above, we recommend considering one LEP FRM clause and a definition of FPA that is the same as that in the Manual.
- i) While we recognise that the Manual definition of floodplain applies up to the PMF we do not advocate imposition of planning restrictions on all development in the lower risk parts of the floodplain. Subclauses should be worded to write-down the applicability of some considerations to certain development in lower risk parts of the floodplain. The LEP considerations should be sufficiently high level to avoid inadvertently preventing acceptable development and creating unintended inconsistencies with DCPs.
- j) Perceived concerns of the development industry that adoption of a clause that applies to all a development in a floodplain (ie up to the PMF) is unwarranted. A substantial number of Councils have DCP controls that apply in this way. If flood risk is seen to be a relevant issue for a development based on a DCP control or expert advice, it is typically taken into consideration by a Council or the Court, regardless of the applicability of a such an LEP clause. The interests of the development industry would best be served by providing greater certainty about the applicable rules and reducing complexity.
- k) As most LEPs now contain an FRM clause, Council would benefit from an outline of how the DPIE envisages transitioning to the new provisions. We understand that the DPIE has not yet determined whether the clause would become a mandatory clause within the Standard LEP or remain a model clause. Discussions so far with FMA members indicate mixed views on this point at present. The preference of our members would most likely be dependent on the final form of the clause and we would request that the DPIE engage in further consultation with us before pursuing a Standard LEP mandatory clause approach.

Amendment to Section 9.1 Local Planning Directive

- a) The reference to the Flood Planning Area in clause (5) suffers from the same definitional issue discussed above.
- b) The restrictions on development in a floodway can in some cases be problematic. There is no one single way of determining the extent of a floodway, and the restrictions could be excessive for minor flooding such as typical overland flow flooding situations. This could lead to disputes as to when clauses (6)(a) and (f) should be applied.
- c) The requirement that all sensitive uses should in all cases be required to self-evacuate can be excessive. For example, in urban renewal situations subject to minor overland flow flooding, shelter in place could be an acceptable alternative.
- d) The flexibility afforded by clause (8) could unnecessarily lead to disputes as to whether a proposal is consistent with the Manual. The Manual is written as a flexible document providing different ways of achieving desirable FRM outcomes. We suggest that the

requirement be changed to being “consistent with the principles of the Manual”, being the approach adopted in S733 of the *Local Government Act 1993*.

While not a criticism, we observe that clause (8) references “Flood Planning Level(s)” (ie recognising the ability to have multiple FPLs consistent with the Manual) while the proposed Model LEP clauses refer only to a singular FPL. We also note that this creates potential inconsistencies with the definition of “flood planning area” provided at Note (f) which refers to a singular FPL, and the definition of “flood prone land” at Note (a) which is the same as that in the Manual (ie up to the PMF). This exemplifies the unnecessary complexity and confusion created by the existing system and the need for fundamental change.

New Flood Planning Guideline

The draft Guideline covers concepts in the above proposed policy documents. Consequently, our comments in regard to the draft Guideline in the main are reflected in our comments above.

- a) We commend in particular the recognition that FRM needs to consider the “...full range of flooding up to the Probable Maximum Flood (PMF)” and the specification of sensitive, vulnerable, or critical uses.
- b) We also commend the recognition that variable freeboards can be appropriate when addressing difference between major riverine and minor flooding but note that this can add to the complexities of assigning a single FPL in an LEP.
- c) The necessity for the introduction of a further term “Defined flood event” not currently used in the Manual arises only because of the continued historical approach of defining an FPA based on a single FPL. Rethinking this approach could dispense with such additional terms which do not assist in uncomplicating the system.

For the reasons outlined above we recommend that the approach of adopting a single FPL for defining an FPA be reviewed. As emphasised above this requires a fundamental change in approach. The Manual, and national guidance provided by AIDR Handbook 7, recognise that multiple FPLs would be appropriate when applying a risk based approach to FRM.

Conclusion

FMA brings together expertise and experience from all aspects of flood protection, preparedness, response and recovery, with involvement in the planning process from a range of perspectives. Consequently, we consider that the above comments provide a balanced response, that in summation supports our overriding proposition that the policy documents should be reconsidered to bring about some simple but fundamental changes.

We would be pleased to contribute further as the Department progresses with the important work of reviewing the Package. We would be happy to convene a meeting with key members of the FMA Executive or to facilitate a further workshop at a forthcoming FMA Quarterly Meeting.

We thank you again for the opportunity to be involved and look forward to hearing back from you.

Yours faithfully



Paul Grech

LAND USE PLANNING DIRECTOR

*FMA Land Use Planning Position Policy is available at floods.org.au/site/technical-information

Please address correspondence to:

Glenn Evans Executive Officer Floodplain Management Australia

115 Marshall Street Garden Suburb NSW 2289

Email eo@floods.org.au

Phone 0415 873353

14th May 2020

Re: Flood Prone Land Package

Good Morning,

We wish to submit the below feedback in regard to the Flood Prone Land Package

Boarding Houses

We request the classifying of Boarding Houses as Sensitive, vulnerable and critical uses is reviewed. New Age Boarding Houses are typically utilise for key worker housing, and not those who may be less mobile.

There is limited land available for the construction of these housing types, and as a key typology for providing affordable housing, we would like to see this reviewed.

Perhaps specifically 'new age boarding' houses could be excluded from the Sensitive/Vulnerable category.

Complying Development Code

We also request that the proposed guidelines, LEP clauses and Planning Certificate notations are reviewed in the context of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Namely that these new documents/clauses do not inadvertently curtail the ability to undertake development under Complying Development CDC provisions.

Specifically, as Private Certifiers are generally (understandably) quite conservative in their interpretation of the rules, it would be useful for significant detail to be provided/included around what can/cannot be approved under SEPP Complying Development by Private Certifiers. A checklist or table would be great: ie. Secondary Dwelling in FPA can be approved if: 1, 2, 3 etc. Dwelling house in FPA can be approved if: 1, 2, 3 etc.

Thankyou for considering our feedback

Kind Regards,



Dominic Collignon | Director

02 8065 6111 | 0410 939 131

dominic@fortnumproperty.com.au

MEMORANDUM

Georges River Council officer submission on Flood Prone Land Package exhibition

Comments in relation to proposed Local Planning Direction on flooding Clause (6) (a) and (c).

In highly urbanised areas, subclause (a) and (c) are considered too onerous, as it is not reasonable to prevent the development of a lot for example a single residential lot, even in the case that includes a floodway or areas of high hazard flooding.

This would effectively 'sterilise' the lot from potential development. A development of the lot should be able to be considered subject to the proposal, not increasing or aggravating flood conditions on any other neighbouring properties, roadway or land, and that all other flood controls including structural soundness and emergency response have been addressed.

It is noted if a development proposal could achieve all flood control requirements it would normally allow for a **significant reduction in the hazard** for both people and property, in comparison to an existing dwelling that likely would have been built prior to current flood controls and flood studies having been undertaken.



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25 June 2020

Melanie Schwecke
Specialist Planning Officer
Resilience Planning Team
Place, Design and Public Spaces
Department of Planning, Industry and Environment

resilience.planning@planning.nsw.gov.au

Dear Melanie,

HIA Submission – Flood Prone Land Package

Thank you for the opportunity to provide comments to the Department of Planning, Industry and Environment on the Flood Prone Land Package, currently on exhibition. The package provides updated guidance to councils as well as additional controls for the development of flood prone land, which councils must consider when *'preparing a planning proposal or a draft LEP that removes or alters a zone or a provision that affects land due to flooding'*.

The package includes:

- a proposed amendment to schedule 4, section 7A of the Environmental Planning and Assessment Regulation 2000,
- a revised planning circular,
- a revised local planning direction regarding flooding issued under section 9.1 of the Environmental Planning and Assessment Act 1979,
- revised Local Environmental Plan flood clauses, and
- a new guideline: *Considering Flooding in Land Use Planning* (2020).

The proposed Local Environmental Plan clauses introduce a new definition for distinguishing between lands where different categories of flood-related development controls apply:

Flood Planning Area (FPA) is the area of land below the flood planning level (FPL) and may also extend to include other areas of land where the majority flood related controls apply.

Although the NSW Flood Prone Land Policy (Policy) currently provides for a merit-based approach to a range of appropriate FPLs, it recommends that FPLs for typical residential development be based on the 1% AEP flood event plus an appropriate freeboard (typically 0.5m). This position was reinforced by the 4.3 Direction issued by the Minister for Planning in 2009.

Under the current regime, where a planning proposal imposes flood related development controls above the residential FPL adequate justification must be provided by the relevant planning authority to the satisfaction of the Director-General.

The Package leaves relevant planning authorities without guidance to determine the additional areas of land beyond the FPL (to the FPA) where flood related controls may apply and it is highly likely that councils will choose to be excessively and unnecessarily conservative in the assessment of flood affected land, resulting in less developable land being available in NSW, including in Greater Sydney's key Growth Areas.

HIA requests that DPIE not proceed with the Package until a detailed regulatory impact assessment is carried out, and the Package should only proceed if a net benefit to the State is established.

Should you require any further information on the issues raised in this letter, please contact Brad Armitage, Assistant Director – Building and Planning NSW on email b.armitage@hia.com.au or telephone number 9978 3327.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

A handwritten signature in dark ink, appearing to read 'David Bare', with a stylized flourish at the end.

David Bare
Executive Director



25 June 2020

Department of Planning, Industry and Environment

12 Darcy Street

PARRAMATTA NSW 2150

Inner West Council submission regarding the proposed NSW Flood Prone Land Package, June 2020

To whom it may concern,

Inner West Council generally supports the changes being made to the NSW Flood Prone Land Package (the package) as these will enforce a more robust consideration of the dangers of development in and around flood prone areas. This will build resilience to future flooding events and reduce the potential for damage to property and human life.

Due to the location of the Inner West, adjacent to two major water bodies - Sydney Harbour to the north and the Cooks River to the south, as well as the topography of the land, large areas of the LGA are subject to flooding. This includes large tracks of lands through Marrickville and Sydenham, along the Cooks River in Tempe and Dulwich Hill, as well as along other minor waterways like the Hawthorne Canal in Haberfield and Leichhardt. Updates to legislation giving Council greater power to reduce flooding related risk are welcomed.

Consideration within the LEP on the impacts of climate change is particularly supported by Inner West. This is reflective of Council's goal to build climate change resilience. Strategic Direction 1 of our Community Strategic Plan states Council's commitment to "contributing positively to the environment and tackling climate change". Likewise, the recently adopted Inner West Local Strategic Planning Statement (LSPS) includes adaption to climate change as our first planning priority. We welcome a State-wide approach which recognises this threat and helps build resilience.

Inner West Council appreciates the opportunity provided by the Department of Planning, Industry and Environment (the Department) to comment on the proposed suite of changes to the package. This submission intends to support these changes and clarify some of the issues regarding its implementation in the Inner West.

Revised Planning Circular

1. Council supports the proposed changes to Schedule 4 Section 7A of the Environmental, Planning and Assessment Regulation as it will provide greater clarity with regard to the controls applying to flood affected land.

Draft amendments to Local Planning Direction 4.3

The proposed amendments to the Local Planning Direction are generally supported. These changes are considered an improvement as these will strengthen Council's ability to prohibit inappropriate land uses within flood prone land, specifically residential land uses in high hazard flooding areas. Council also supports the removal of provisions requiring special exemptions for flood controls above the Flood Planning Level (FPL).

Following comments are provided regarding the implementation of the policy:

2. While the flexibility provided to Councils regarding the adoption of a self-determined flood planning level (subject to Flood Plain Risk Management Plan (FPRMP)) is supported, concern is raised that the loss of an independent verification and signoff from the Department or other suitable authority will result in inconsistent application of freeboard controls between LGAs due to community sentiment rather than adopted policy.
3. "High hazard flooding area" is not clearly defined. In order to apply this direction consistently, further clarification is required.

Proposed flood Local Environmental Plan (LEP) Clauses

Flood Planning Area

4. Objective (1)c) is to “maintain existing flood behaviour and function”. This objective does not consider the impact of existing built areas on flood behaviour and the creation of potential high hazards due to development history. Better outcomes would be derived from changing the wording of this objective to “maintain natural flood behaviour” or “maintain and improve existing flood behaviour”.
5. Use of the word “enable” in objectives (1) e) and (1) f) is concerning as it could place pressure on Council to allow use of land for unsuitable purposes. It is suggested that “enable” be replaced with “provide for” or “allow”. This is consistent with the language under objective (1) b).
6. Provision (3) a) refers to “flood function”. This term is defined in the new guidelines but not in the Floodplain Development Manual. DPIE should ensure consistency across the manual and the guidelines.
7. Council supports the inclusion of new provisions (3) c) and (3) d), which require assessment of cumulative and downstream impacts, as well as impacts to evacuation routes for the surrounding area.
8. Provision (3) h) requires Council to be satisfied that development “will not increase the potential for hazardous material to pollute the environment during flood events”. “Hazardous Materials” are defined as “...any item or agent (biological, chemical, radiological, and/or that has the potential to cause harm...”. It is unclear if large waterborne items that may be washed away in high hazard flows such as vehicles and large appliances would be considered as hazardous materials.
9. Council generally supports the inclusion and consideration of projected changes to flood risk as a result of climate change. However, there are questions regarding its implementation as no guidance on climate change has been provided to Council from the Department beyond the existing 2007 guideline *Practical Consideration of Climate Change* (OEH, 2007).
10. Clarification is sought from DPIE where the proposed flooding clauses would be inserted in the LEP as the existing standard instrument does not include a section on flooding. The three existing Inner West LEPs - Marrickville, Ashfield and Leichhardt, as well as the draft Inner West LEP 2020 all consider flooding under Section 6 of the LEP.
11. It is unclear if the proposed LEP flooding provisions will necessitate inclusion of new and updated LEP flood maps. Extensive gazettal requirements for LEPs would make it burdensome to frequently amend the LEP maps in response to Council’s revised studies and management plans. Council’s current practice is to include flood maps in the DCP which can be easily updated.
12. Council also requests DPIE to provide sufficient notice to enact these proposed changes in the LEP especially if new flood maps are required to be prepared.

Special Flood Considerations

13. The proposed special flood consideration clause is supported. This will however require Council to prepare new provisions in the DCP for consistency in assessing ‘sensitive, vulnerable and critical uses’ in between the Flood Planning Area and Probable Maximum Flood level. Council would like to clarify if standard DCP clauses will be provided to benefit Councils in approaching this.
14. Alike point 13 above, it is unclear if the proposed special flood considerations would require Councils to prepare new LEP maps.

Regional Evacuation Consideration Area.

15. The term “regional evacuation consideration area” is new and not currently defined in the State Emergency Management Plan (2018), Evacuation Management Guidelines (2014), Local Emergency Management Planning Guideline (2015) or the NSW State Flood Plan (2018). This term and subject area is also not considered in Council’s DCP or LEP. This terminology appears to only apply to the adopted NSW SES Hawkesbury-Nepean Flood Plan. Council recommends DPIE to clarify what a specified regional evacuation consideration area is and/or amend the terminology to be consistent with State EMPs and sub-plans.



New Guideline

16. Council supports the new *Considering Flooding in Land Use Planning Guideline* as this codifies and reinforces the work undertaken by Councils when considering development within floodplain areas.

If the comments and views made in this submission require further clarification or discussion, please do not hesitate to contact Jarrad Sheather, Strategic Planner on 9246 7593 or by email at jarrad.sheather@innerwest.nsw.gov.au.

Sincerely,

Harjeet Atwal

Senior Planning Manager



25 June 2020

Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta
NSW 2141

Submitted online via NSW Planning Portal

<https://www.planningportal.nsw.gov.au/flood-prone-land-package>

Insurance Australia Group (**IAG**)¹ commends the NSW Department of Planning, Industry and Environment on the updated Flood Prone Land Package. IAG has long been an advocate for improved land use planning as a way of mitigating the risk to life, property and prosperity posed by natural disasters.

Our purpose is to make your world a safer place and we recognise that our role extends beyond transferring risk and paying claims. Our purpose drives our business to work collaboratively with the community, Government, industry bodies and other organisations to understand, reduce and avoid risk, and to build resilience and preparedness. This results in better outcomes for the community and means fewer claims and lower premiums for our customers.

IAG's Natural Perils team has unique expertise in measuring natural disaster risk and understanding options to address high hazard characteristics of buildings and property. Our recent research publications have focussed on quantifying the impacts of climate change on risk to property and include *Severe Weather in a Changing Climate*² (in partnership with the US National Centre for Atmospheric Research) and *Regional Sensitivity of Australian Flood Risk to Climate Drivers*³. IAG has been a member of Floodplain Management Australia since 2012 and is a founding member of the Australian Business Roundtable for Disaster Resilience and Safer Communities⁴. We support and encourage the proposed changes to flood risk planning in NSW and are willing to work further with government to understand how our data could best be applied to minimise risk.

Land use planning, development controls and building standards are the most effective tools in reducing the impact of flooding and other natural disasters. They are most effective when

¹ IAG is the parent company of a general insurance group with controlled operations in Australia and New Zealand. Our businesses underwrite almost \$12 billion of premium per annum, selling insurance under many leading brands, including: NRMA Insurance, CGU, SGIO, SGIC and WFI (in Australia); and NZI, State, AMI and Lumley Insurance (in New Zealand). With more than 8.5 million customers and information on the majority of domestic residences in our markets, we use our leadership position to understand and provide world-leading customer experiences, making communities safer and more resilient for the future.

² Available at <https://www.iag.com.au/severe-weather-changing-climate>

³ Available at https://www.floods.org.au/client_images/2128563.pdf

⁴ <http://australianbusinessroundtable.com.au/>

aligned with the best measures of the underlying peril risk. IAG has long advocated that land use planning needs to move away from measuring risk using the traditional 1% Annual Exceedance Probability (AEP) threshold mandated under the existing planning guidelines, and towards more appropriate risk measures which consider the economic and life safety consequences of the full range of possible flood events. Our research⁵ indicates that over-reliance on the 1% AEP flood standard has resulted in disproportionate sensitivity to climate-induced changes in flood risk in areas immediately adjacent to flood planning areas.

We strongly support this updated land planning package, as we believe it will improve the ability of Local Governments to set appropriate flood planning controls, by:

- Removing the need to obtain exceptional circumstances to apply flood-related residential development controls above the 1% AEP flood event;
- Introducing new categories of flood-related development controls, including Special Flood Consideration (SFC) and Regional Evacuation Consideration Areas (RECA);
- Requiring consent authorities to be satisfied that developments will not impose unsustainable social and economic costs to the community as a result of flooding.

We offer the following suggestions for the NSW Department of Planning, Industry and environment to consider.

Safeguards must ensure standards are not eroded – In order to ensure community resilience to flooding is not eroded over time, we suggest including safeguards against lowering standards. This could be achieved through the current revision of the NSW Floodplain Development Manual, modifying the criteria for determining the Design Flood Event (DFE) to include a requirement that the DFE is not reduced over time.

Availability and Disclosure of Flood Risk Data – We suggest amending the proposed planning package to require local governments to disclose the flood risk of properties which lie within known flood risk areas but are not subject to flood-related development controls.

Our data indicates that around 65% of properties with a known flood risk lie outside the 1% AEP extent and are not subject to flood-related development controls. Residents in these areas are typically unaware of their flood risk and often first learn of their risk via their insurer, or through experiencing a flood event which exceeds the 1% AEP. Local government's flood risk disclosure and data availability tends to be limited to the 1% AEP flood event, rather than the full spectrum of potential flood events up to the Probable Maximum Flood (PMF), which is what insurers use to measure flood risk. In many cases, these properties carry considerable flood risk from events larger than the 1% AEP, and therefore attract significant flood insurance premiums.

IAG believes flood hazard data should be publicly available to inform individual and community wide risk management decisions. Increasing flood risk disclosure requirements would help the community make informed choices and better understand the trade-offs for living, working or building in a flood prone area.

Ensure climate risk is considered at a community scale - To preserve the community's resilience into the future and ensure access to affordable insurance is maintained, we suggest the new LEPs and development controls must consider the likely climate-induced changes to natural disaster risk over the full lifespan and scale of the community, rather than the lifespan and scale of individual developments.

The proposed Flood Planning Area clause puts the onus on individual developments to demonstrate consideration of future-climate flood risk. Also, the proposed Local Planning

⁵ Regional Sensitivity of Australian Flood Risk to Climate Drivers, 2019 (available at https://www.floods.org.au/client_images/2128563.pdf)

Direction, Planning Circular and Planning Guidelines do not explicitly require consideration of the likely climate-induced changes to flood risk over the full lifespan of the community. The risk here is that just considering climate risk at individual development levels can result in short term planning horizons that fall far short of what is needed for a community, causing unacceptable accumulation of risk. For example; We have seen in the Victoria State Planning Policy Framework, the time horizon for consideration of climate risk to some coastal developments is set as short as 2040, while sea level rises are already locked in well beyond 2100. This falls far short of the reasonable lifespan of individual buildings, let alone for shaping the land use in communities which are likely to exist many hundreds of years into the future

Implementation Support for Local Governments – We note the success of the Victorian government’s “Rural Council Planning Flying Squad” model, implemented between 2011 to 2015 to support rural Councils on complex planning matters including updates to flood planning controls. This model was cited by the Australian Productivity Commission as leading practice for moderating the effects of local government skills shortages and facilitating the transfer of knowledge, skills and processed across councils. We propose that this model could be effectively adopted in NSW to assist smaller rural Councils in updating their flood-related planning controls and improving the disclosure of flood risk and availability of flood hazard data.

The proposed changes to the NSW flood planning framework are an important step towards closer alignment of land use planning with the true underlying flood risk. We believe the flood prone land package will result in improved community resilience which has flow on affects to the affordability of flood insurance for newly developed properties under the new planning regime.

IAG welcomes the opportunity work with the NSW Department of Planning, Industry and Environment to further develop future land planning packages that can further reduce risk and protect our communities. We are happy to discuss the issues raised in this submission in more detail. Please contact Andrew Dyer, Specialist, Natural Perils – (02) 9292 1518 or andrew.dyer@iag.com.au.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Grove'.

Scott Grove
Group General Manager
Reinsurance

To: NSW Department of Planning, Industry and Environment

Submission to NSW Flood Prone Land Package 2020

I would like to make comments relating to the NSW Flood Prone Land Package (FPLP) which has recently been on public exhibition. I make these comments as a practising and qualified town planner with 30 years of experience as both a consultant and council employee in regional NSW, and I have a particular experience in floodplain management planning. I am also a Registered Planner (Planning Institute Australia) and a Professional Member of Floodplain Management Australia.

My comments are made in the context of my observations over my career that NSW planners have become much less fluent in floodplain planning, especially relating to detailed technical understanding of flood risk and mitigation and how that is applied to planning policy. In many councils, flood engineers and planners work together to develop and implement local floodplain management. The loss of detailed flood knowledge by planners is a serious issue when they are required to implement complex technical planning provisions such as those proposed in the FPLP.

I generally support the proposals in the FPLP, especially the stronger Flood Planning Area LEP clause, and the option for councils to develop Regional Evacuation Consideration Areas and Special Flood Considerations and to include them in their LEPs. Although I understand that this has particular relevance to the Hawkesbury-Nepean floodplain, it is a significant step forward as an option for all NSW councils.

However, the introduction of these LEP options will require significant support to be given to smaller regional councils who may not have the resources to interpret and develop these options for their local areas. In many cases, there is no planner, let alone a planner who understands floodplain management in detail.

There are areas where the FPLP could be improved, and my remaining comments cover these topics:

1. Timing of FPLP in relation to current review of NSW Floodplain Development Manual
2. The importance of Development Control Plan provisions
3. The need for strong policy direction regarding flood mapping
4. Simplification of the structure of the proposed LEP flood clauses

1. Timing of FPL Package and NSW Floodplain Development Manual

I understand that the *NSW Floodplain Development Manual 2005* (FDM) is currently being reviewed by another section of DPIE. However, I am disappointed that the FPLP and FDM weren't put on exhibition at the same time. Together, they represent the most significant change in floodplain planning in NSW since 2005, and they need to be 'read and understood' together. This is especially important since, despite the focus on LEP provisions in the FPLP, Development Control Plans (DCPs) are likely to be the planning documents by which most of the detail of local floodplain knowledge is translated into planning controls. I anticipate that the 'accompanying documents' in the FDM Review will be excellent resources to help councils formulate relevant DCP provisions, and I would expect that DPIE would recognise this importance and consider its LEP provisions in the FPLP alongside the implications for DCPs.

The staggered timing of these two processes and their requirements and implications are likely to cause confusion amongst practitioners, especially in councils and private practice where floodplain management planning staff and/or understanding may be limited.

2. Development Control Plan provisions

I appreciate that DPIE has ‘no control’ over each councils’ DCP, and as such may not be terribly ‘interested’ in their implications, but as outlined above, DCPs are likely to be the key planning documents that translate floodplain planning at a local level, and will complement and provide local clarity to the LEP provisions proposed by the FPLP.

DPIE has had a ‘Standard Template DCP project’ that has been under development since 2018, with the aim of providing, amongst other things, a ‘library’ of ‘non-mandatory’ but ‘model’ DCP clauses able to be used by individual councils, some of which will presumably be related to flooding.

I trust that these ‘model’ DCP clauses have been considered in the development of this FPLP and vice versa, and as per my comments in No 1 above, I consider that this information should form part of a wider flood package that is exhibited and considered together, not separately.

3. Mapping

There is only brief mention in the FPLP to mapping of flood-related development controls:

“All areas where flood-related development controls apply should be mapped and maps made publicly available. This could entail being published in Development Control Plans, Local Environment Plan, other relevant environmental planning instruments or on a council website. (p4, Considering flooding in land use planning guideline)

This issue must be given more attention, must be underpinned by a much stronger governance framework and more guidance should be given to councils. I propose the following additions to the FPLP.

Firstly, there is a difference between:

1. *flood related development control mapping* - ie mapping of the Flood Planning Area (FPA), Regional Evacuation Consideration Area (RECA) and Special Flood Considerations (SFC); and
2. *other flood mapping and related data* - ie mapping and data usually derived from local modelling and interpretation from Flood Studies and Floodplain Risk Management Plans showing local details such as various flood events, hazard areas etc.

These are dealt with separately below.

Flood related development control mapping

I strongly object to *flood related development control mapping* being published ‘on a council website’. All *flood related development control mapping* should be placed in councils’ Local Environmental Plans (LEPs). Placing such mapping in LEPs ensures certainty and consistency to property owners, the wider community, and property & development industry professionals, who rely on this information for development assessment purposes, planning certificates, insurance information, valuations etc. None of these stakeholders can operate by checking such mapping on a ‘council website’ on a regular basis, especially if no notice is given when such mapping will be changed by councils. Further, when such mapping is placed in the LEP, it is also available on the NSW Government’s ‘Planning Portal’, where the development and insurance industry in particular expects to find local *flood related development control mapping*.

The LEP and its required processes under the EP&A Act (eg *Community Participation Plans*) are the only suitable place that processes relating to *flood related development control mapping* can be transparently and fairly undertaken, particularly when changes to the mapping are made by councils.

I also propose that Councils should be required to provide the following in LEP flood mapping:

- A clear distinction between the defined flood event, the freeboard and the probable maximum flood.
- A description on the LEP map as to what source(s) the mapping has been derived from (eg name of relevant Flood Study).

The characteristics above are not currently shown on any LEP mapping, and are causing ongoing confusion in many areas of NSW, where council staff are sometimes not even sure if their LEP mapping contains freeboard or not. It is often too long ago since the LEP maps were made for any current staff to be aware of how they were made, and the seeming absence or loss of suitable metadata means that the issue has now become confused in some councils.

This is a critical issue, since many NSW LEPs contain a ‘standard’ Flood Planning local provision which applies to:

“ (a) land identified as “Flood planning area” on the Flood Planning Map, and
(b) other land at or below the flood planning level”

and

“flood planning level” is defined in the LEP dictionary as “the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.”

I have also witnessed other incidents where council staff have argued vehemently that the FPL does not include freeboard, despite the definition in their LEP.

Mapping and Planning Certificates

Requiring a distinction between freeboard and the defined flood event (as suggested above) will also assist greatly in the interpretation and appropriate use of Planning Certificates (as discussed at p2 of the *Draft Planning Circular*). Where councils know both of these levels, then a distinction should be made in Planning Certificates. This becomes especially important on relatively flat land near a well-defined river or watercourse, where there may be a relatively large area of land affected by the freeboard, in contrast to a smaller area affected by the defined flood event. Enabling this important distinction has implications for individual properties, especially the effect on flood insurance and valuations, which are affected to a large degree by information on Planning Certificates. There is no merit in large swathes of land on the outer edge of a freeboard being lumped into the same insurance flood risk category as properties close to the river and affected by the defined flood event.

Other flood mapping

Other flood mapping and data (as defined earlier) does not necessarily need to be placed in an LEP; it is appropriate for this level of technical detail to be placed or referenced in a DCP, or sometimes to be placed on a council website. However, in these cases, such mapping and data MUST be required to be underpinned by a council policy (perhaps under the Local Government Act, but preferably under the EP&A Act) to articulate the following:

1. exactly what the mapping/data is - i.e. its relationship to the *flood related development control mapping*, its source(s), dates and whether these source(s) were prepared under a FDM process;
2. when it will be used – eg in reference to DCP clauses, for Flood Certificates etc;
3. where it is stored – exact metadata and administrative detail so that it cannot get confused in the future;
4. under what circumstances access is given to whom (eg is there a distinction between information held by staff, and information available on a public website, and if so, why);
5. how it will be updated/revised – under what procedures eg Local Government Act, Council’s Community Participation Plan etc.

Mapping standards and policy framework required

It is apparent that consistent state-wide mapping standards and a policy framework should be applied to flooding. As an example of consistent mapping, DPIE could look at the framework that was developed for acid sulfate soils in the 1990s by DPIE's predecessor.

Example of inappropriate mapping procedures

As an example to illustrate my concern about mapping, I draw your attention to my recent submission to Singleton Council's Planning Proposal for amendments to Flood Prone Land Provisions and mapping. This is an example of inappropriate flood mapping processes at the local government level, and a perfect example of why flood mapping should be kept within the governance and procedural framework of an LEP, not simply left to Council 'placing mapping on a website'. More detail can be found in my submission to Singleton Council, which I can forward to DPIE on request (I am unfortunately not able to upload it to the FPLP website along with this submission).

4. Structure of LEP flood clauses

The FPLP proposes that 3 different subject areas be included in proposed LEP clauses (Flood Planning Area, Special Flood Considerations and Regional Evacuation Consideration Area - as outlined in the document *Flood local environmental plan clauses*). Many current NSW LEPs already contain a Local Provision 'Flood Planning'. I strongly suggest that the 3 additional clauses be written as clear sub-clauses of that clause, so that all LEP subject matter relating to flooding 'stays together' within the Plan. LEPs are already confusing enough without having additional headings relating to flooding, especially ones that do not contain the word 'flood' (ie the 'Regional Evacuation Consideration Area' which at first glance could relate to any other type of hazard eg fire or coastal hazard).

Thank you for the opportunity to comment on the FPLP. I am happy to be contacted to explain my submission further if required.

Regards

Jan Fallding
Consultant Strategic & Social Impact Planner
Bachelor of Town Planning (Hons) UNSW
Registered Planner, Planning Institute of Australia
Professional Member, Floodplain Management Australia
Contact details at top of letter

CC:

Floodplain Management Australia
Planning Institute Australia (NSW)

Our ref: EP&D:RH1b1948845

10 July 2020

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

Dear Sir/Madam,

Flood Prone Land Package

The Law Society appreciates the opportunity to comment on the proposed changes to update the Flood Prone Land Package, which provides advice to councils on considering flooding in land use planning. We apologise for the delay in finalising our submission. The Law Society's Environmental Planning and Development Committee contributed to this submission.

1. Planning Circular

The draft revised Planning Circular notes that Schedule 4 of the EP & A Regulation will be amended by the (yet to be drafted) Environmental Planning and Assessment Amendment (Flood Related Development Controls Information) Regulation 2020.

It is difficult for us to comment without seeing the exact wording of these amending provisions, particularly considering there is a choice between the types of flood related development controls that are to be noted on planning certificates by councils. The drafting will be important in such cases. We note that the draft Planning Circular states "Flood-related development controls are not defined but would include any development controls relating to flooding that apply to land, that are a matter for consideration under section 4.15 of the Act.". We note that a development control plan ("DCP") is stipulated as a matter for consideration under section 4.15 of the Act, so would be included on this basis.

2. Proposed local environmental plan ("LEP") clauses

Flood Planning Area

We support the inclusion of the consideration of climate change as part of the criteria in the decision-making process, with the new clause (4) providing that development consent must not be granted to development on land to which the clause applies:

unless the consent authority is satisfied that the projected changes to flood risk as a result of climate change have been considered in the design of the development including:

- a) consideration of the intended design life and scale of the development,
- b) evacuation and management of risk to life, and
- c) the potential to modify, relocate or remove the development.

The new clauses are to apply to a Flood Planning Area (“FPA”) which is defined as land below the Flood Planning Level (“FPL”) “and may also extend to include other areas of land where the majority flood related controls apply”. We note that the word “of” appears to be missing between “majority” and “flood”. We are also concerned that the definition quoted is not clear. Any LEP clause should map the FPA and not contemplate that the clause could apply to other areas that are not defined.

The Planning Guideline suggests that most flood-related development controls are to apply to the FPA but may also “extend to include additional areas as outlined below”. The Planning Guideline suggests the areas should be mapped but we submit that this should be mandated and the definition clarified.

The definition of “hazardous materials” should mirror the definitions in the State Environmental Planning Policy and have the word “significant” inserted before “harm”.

We have compared the current and proposed considerations for development within an FPA, and provide our comments in the attached table.

Special Flood Considerations

Paragraph (3) provides that development consent must not be granted unless the consent authority is satisfied that the development:

- (a) complies with any council flood policies, development control plan and is consistent with any council adopted floodplain risk management plan (developed consistent with the Floodplain Development Manual),

We consider that this test does not provide sufficient flexibility. It requires compliance with a DCP, which is a stricter test than in the Act, which only requires that DCPs be considered. The test should be that the consent authority has considered the DCP, not that it is satisfied that it complies, to match the provisions in the Act. Further, the wording requires compliance with council flood policies, and consistency with any council adopted floodplain risk management plan (developed consistent with the Floodplain Development Manual). This creates uncertainty about the appropriate measures to be met and can create inconsistencies across local government areas with different councils adopting different flood policies on an ad hoc basis and from time to time.

Subparagraph (b) provides that the consent authority must be satisfied that the development “**will not affect** the safe occupation of and evacuation from the land,” and subparagraph (d) that it “**will not adversely affect** the environment during flood events due to hazardous materials” (emphasis added).

We suggest that there needs to be an appropriate threshold test for such an affectation or that the word “likely” be added given expert opinions can differ and this clause requires no doubt in order for a consent to be granted.

Paragraph (4) of this clause includes “boarding houses” in the category of “sensitive, vulnerable or critical uses”. We suggest that this will not always be the case and the definition should be excluded or narrowed.

3. Planning Guideline

We agree that all areas where flood-related development controls apply should be mapped and maps made publicly available. The Guideline proposes this can be done in DCPs, LEPs, other relevant environmental planning instruments (“EPI”) or on the council website. If the mapped areas are included in a DCP, then this means the EPI can be amended by

amending the DCP. As this may cause confusion, we query whether the mapping should be restricted to the EPI. Although we appreciate that some landowners would prefer their land not to be identified in a LEP as flood prone, that is the practical effect if it is mapped via a DCP. When doing a property search on the planning portal, this overlay is likely to be missed if it is mapped in a DCP.

We suggest that the Guideline should require the draft maps to be placed on public exhibition, including the reports and data used to determine the areas that are included. This will provide transparency and an ability to test the data. All draft maps, amendments and supporting documents should be provided to facilitate public consultation.

The Guideline refers to the determination of the flood planning level ("FPL") as provided in the NSW Government Floodplain Development Manual. We cannot comment on whether that is still an appropriate guide, but note that the Manual was last amended in 2005. The Manual itself provides that it should be reviewed every five years.¹

We note that many people associate flooding with rivers bursting banks, and many of the examples in the Manual focus on this. However, the Manual was amended in 2001 to include overland flooding. This covers flows from a variety of sources, including from pipes overflowing because urban development has been approved and built in local catchments and the drainage pipes don't have sufficient capacity. This is then segregated into local drainage and major drainage. Only the latter is considered appropriate to include in a planning certificate. However, the Manual now treats them in the same way and divides overland flooding into local and major and gives the council the discretion to choose which to include in the FPA. Presumably once a council updates its FPA, the FPA may well cover much broader areas than it did previously. This obviously has implications for the ability to undertake exempt and complying development. Given the level of discretion applied, we confirm the need for the transparency mentioned above on data and the decisions made to include or not include overland flooding in the FPA.

As noted in relation to the proposed LEP clauses, the definition of "boarding houses" in the category of "sensitive, vulnerable or critical uses" should be excluded or narrowed.

Conclusion

The Law Society appreciates the opportunity to participate in the reform process and we look forward to the opportunity to comment further in due course. If you have any questions about this submission, please contact Liza Booth, Principal Policy Lawyer, at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours faithfully,



Richard Harvey
President

¹Department of Infrastructure, Planning and Natural Resources, Government of New South Wales, *Floodplain Development Manual*, April 2005, 18 accessed at: < <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Water/Floodplains/floodplain-development-manual.pdf>>.

Clause 7.2(4) - using Penrith LEP as template	Proposal	Comment
is not likely to adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and	will not adversely affect flood behaviour resulting in detrimental increases in the flood affectation on other properties, including cumulative impacts,	the words “is not likely to” have been removed. We question whether, when it comes to flood predictions, an expert can be certain such that the former wording is more appropriate.
is not likely to significantly alter flow distributions and velocities to the detriment of other properties or the environment	will not significantly alter flow distributions and velocities to the detriment of other properties or the environment of the floodplain,	Same comment as above.
is not likely to adversely affect the safe and effective evacuation of the land and the surrounding area,	will not adversely affect the safe and efficient evacuation from the land or impact the capacity of existing evacuation routes for the surrounding area	Same comment as above.
is not likely to significantly detrimentally affect the environment or cause avoidable erosion, destruction of riparian vegetation or affect the restoration and establishment of riparian vegetation, or a reduction in the stability of river banks or waterways, and	will not adversely affect the environment or cause erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses	Same comment as above. We think the word “significantly” should remain. We suggest that every form of new development will adversely affect the environment in some way.
	will not increase the potential for hazardous material to pollute the environment during flood events,	Significant or another threshold should be added here.

24 June 2020

Mr Jim Betts
Secretary
Department of Planning, Industry and Environment

Submitted through the online [Planning Portal](#)

Re: Flood Prone Land Package

Thank you for the opportunity to comment on the *Flood Prone Land Package* (the package), currently on public exhibition by the Department of Planning, Industry and Environment (the Department). Please see our comments below for your consideration.

Existing flood prone land management scheme is adequate

While the package is well-intentioned in that it seeks to better preserve life and property its proposed application and implementation is considered excessive and onerous. The proposed amendments introduce concepts into plan-making and legislation which are already adequately referenced and implemented through their inclusion in the current *Floodplain Development Manual* and Australian Rainfall and Runoff. This is particularly so for the following:

- Definition of significant adverse impacts;
- Cumulative impacts of development;
- Assessment of climate change risk.

The package wording should be simplified to reference:

- Applying to all flood prone land (and providing a clear distinction between what is flooding and what is stormwater – catchment area/flow depth)
- The latest version of the Floodplain Development Manual and Australian Rainfall and Runoff.

Failing that, more expansive definitions that cover different situations and types of developments need to be provided to assist Council's in applying this consistently across the state.

Unnecessary sterilization of land

While the Package and the Department's messaging stresses that the intent of the Package is not to 'sterilise' land from development, this will be the impact for many types of development. Once councils adopt the proposed Flood Planning Areas, land between the 1%AEP and Probable Maximum Flood that is currently able to be rezoned will no longer be so for most (urban) developable uses. The area of land lost to urban development is likely to be vast. This is unacceptable, given that there are many practical and widely-used techniques and mechanisms to mitigate and minimize flood risk.

Similarly, the use of terms such as “permissible” uses and the scheduling of development types is a blunt instrument that can be implemented with impunity by Councils when they are empowered by the package to do so.

A more balanced approach would be to allow developers to demonstrate the necessary flood resilience of planning and development proposals without excessive and onerous blanket restrictions which do not take into account the individual characteristics of the site or the proposed development.

Consistency in approach

Many aspects of the package are open to interpretation, and it is up to each Council in NSW as to how they implement it. Some Councils may choose to do nothing and have business as usual, while others may implement the Package to its fullest possible extent. This disparate approach will provide further uncertainty and confusion in the industry. It is likely to inadvertently catch out developers will find that the approach to flood planning and land use varies greatly from council to council.

To mitigate against variations in timing and approaches between local governments, this issue needs state-wide leadership and control that can only be exercised by State Government. As stated above in relation to consistency in approach, instead of a single policy, the industry could end up with dozens of variations of flood policy across the State’s LGAs.

Economic recovery

As Australia and NSW emerges from the Covid-19 lockdown and its impacts, both federal and state governments are developing stimulus packages and policies to support the economy during this difficult time when thousands of jobs have been lost. This includes the fast-tracking of planning proposals and development applications, the HomeBuilder scheme to encourage renovations and construction of new homes, and millions of dollars in infrastructure investment. The imposition of the package at this time is at odds with the economic recovery that is desperately needed during this uncertain and difficult time. The package will deter development, create uncertainty, result in extra costs, wasted effort and costs from developers who have developed proposals based on the existing flood prone land planning regime, and increased red tape. All these will act to put a brake on economic recovery efforts.

We strongly recommend the Department reconsider the implementation of this flood prone land package until the impacts upon development industry and the broader economic recovery of NSW and the country are considered.

Please contact Angus MacInnes on 0428 500 693 or at angus@leamac.com, if you would like to discuss these issues in more detail.

Kind regards,

A handwritten signature in black ink, appearing to read "Angus MacInnes", written in a cursive style.

Angus MacInnes
Director - Leamac Property Group

25 June 2020

Department of Planning, Industry and
Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Ref: S305
Enquiries: Michael Griffith

Exhibition of Flood Prone Land Package - submission

Thank you for the opportunity to comment on the Flood Prone Land Package. Comments are included below as they relate to each document on exhibition:

Proposed amendment to schedule 4, section 7A of the *Environmental Planning and Assessment Regulation 2000*

- The statement in the circular that “Councils will continue to be required to distinguish between land where different categories of flood-related development controls apply” is misleading. The provisions of Clause 7A of Schedule 4 of the *Environmental Planning and Assessment Regulation 2000* only requires councils to advise ‘whether or not’ development is subject to flood related development controls.
- The requirement to distinguish where ‘different categories’ of flood related development controls apply is onerous in terms of data management and reporting on councils; and is likely to result in confusion for customers and developers.
- Distinguishing between ‘categories’ of flooding may also result in the assumption that some flooding categories are ‘acceptable’ or ‘manageable’; and result in assessment outcomes where refuge-in-place is considered acceptable, contrary to advice from NSW SES.
- The reliance upon ‘Flood Planning Areas’ being mapped within local environmental plans is questioned. Transitioning to an online planning environment and the challenges associated with maintaining an up-to-date Flood Planning Area (via an LEP amendment) is likely to result in council’s moving away from the fixed mapping associated with an LEP. To be responsive to climate change and utilise the most current flood data, councils are more likely to maintain a flood planning clause, without an associated Flood Planning Area map i.e. a separate map maintained by Council is preferable.
- It is recommended that the proposed provisions of Clause 7(A)1 and 7A(2) be amended to reflect the wording in Clause 7 relating to hazard risk restrictions - “whether or not the land is affected by a policy” adopted by the council or any other public authority. This allows councils to more accurately report the identified potential for flood hazards and associated risk restrictions (i.e. flood related development controls). The Department should also make it clear within the Planning Circular that a ‘policy’ includes a “flood study, flood management plan or the like”.
- The intention of Clause 7A should be clarified to ensure accurate and consistent reporting on flood-related development controls that “apply outside of the Flood Planning Area”. If the intent is to require council’s to report on risk beyond the 1:100 year and to the extent of the PMF, this should be explicit. Noting that council’s may not have the PMF data available based on currency and extent of existing flood studies, or for all waterways.

- A consistent definition of flooding ('flood planning level') should be provided i.e. 1:100 ARI events plus 500mm freeboard; to the year 2100 to account for climate change; and including sea level rise to account for climate change in locations impacted by riverine flooding and oceanic inundation (storm events and/or king tides). This should be consistent across all documentation including the Planning Circular, Guidelines, Policy, Direction, LEP clause and the flood Manual.
- A clear definition of both 1% AEP and 1:100 ARI events as well as PMF events is needed, as modellers don't always use the same definition or criteria for determining PMF events and climate change inclusion in 1% events can be variable (e.g. different additional rainfall scenarios). It also needs to be clarified what year or yearly increments are 1% events required (e.g. current 2020, and fifty year increments such as 2070 and 2120).

Revised planning circular

- Concern that this consultation package is separate to the body of work being done for the update of 'the manual'.
- Does the existing clause 7A(3) in the Regulation get renumbered (to 7A(4)) or will it be deleted?
- Ideally council would be allowed a month to make any changes to the information for the s10.7 certificates, as there would be significant work in doing so.
- The meaning of the following wording is unclear "The direction has been revised to remove the need to obtain exceptional circumstances to apply flood-related.....". Please clarify the intent of the wording.

Revised local planning direction regarding flooding issued under section 9.1 of the *Environmental Planning and Assessment Act 1979*

- 1(a) The Floodplain Development Manual is currently being updated. It is noted that the amendments should include updates to all associated SEPPs where the Manual is cited to ensure the consistent consideration of the Manual through the planning and assessment process. For example, SEPP No.36 cites "the principles of Floodplain Development Manual 1995" which no longer exists and does not contain 'principles'.
- Under 1(b) should it refer to 'flood prone land' rather than 'land'? The consideration of "potential flood impacts on and off the subject land" is ambiguous, if the intent is to require consideration of changes to hydrological flows (including flood) as a result of filling on flood prone land, this should be explicit.
- Under 3 the wording "affects land due to flooding" should be replaced with "affects the development potential of flood prone land". A second item could be provided requiring consideration of the Direction when a planning proposal "affects the identification of flood prone land" and/or the "application of flood related development controls" such as the introduction of a new/amended flood clause or definition.
- Comments regarding the use of 'Flood Planning Area' in planning certificate clauses are also relevant to the use of 'Flood Planning Area' in the draft Direction i.e. remove and replace with references to adopted flood policy/study.
- Amend 5 to read "A planning proposal or draft LEP must not rezone land on flood prone land from Recreation, Rural, Special Purpose ~~zones~~ or Environmental Zones to a Residential, Business, or Industrial Zone." Special Purpose zones are commonly used by Transport for NSW and councils to show future roads and the use of this zone for this purpose should still be permitted.
- 6(c) "high hazard areas" are not referred to within the LEP clause and are not able to be 'mapped' under the SI LEP Technical Guidelines (for Council's retaining a Flood Planning Area map within the LEP) and therefore should not be referenced within the Direction;
- 6(d) what is a 'significant' increase in density? On flood prone land the assumption that any increase in density increases risk to life and property.

- Under 6(e) should the land uses be consistent with the list for 'Sensitive, vulnerable, or critical uses' with other documents like the guideline.
- Amend 6(f) to read "permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, buildings, structures or filling in floodways or high hazard areas, still require development consent".
- (7) should be amended to include the words "where a Regional Evacuation Consideration Area and evacuation route apply".
- (8) see previous comment about consistent definition of "flood planning level".
- Note (f) is unclear with regards to the statement "may also extend to include other areas of land where the majority flood related controls apply".

Revised Local Environmental Plan flood clauses

- In general, how will the three clauses be implemented? The reason for this is throughout the State, the flood planning clause has been used differently in LEPs and they also have different wording. Council's preference would be for a model clause/ standard instrument clause. Ideally the clause would not require an LEP map, but reference online mapping from an adopted flood policy (i.e. studies). In addition to this, with the proposed standard format DCP that DPIE is working on, is there any plan for a standard DCP chapter for flooding?
- The clause should not be renamed from "Flood Planning" to "Flood Planning Area" as this assumes that mapping will be provided within the LEP which as discussed previously, is not an efficient mechanism for data management or responsive planning and assessment. Regarding content of the clause:
 - The wording for (1)c, could mean that any floodplain development and/or management structures (like mounds/levees/roads etc.) could be contrary to the clause as they have the potential to have an impact on the flood behavior and flood function.
 - The wording for (1)d mentions cumulative impact. What is considered an acceptable level of cumulative impact? It is also unclear when and how 'cumulative impact' is to be assessed.
 - Part 4 of the clause mentions projected changes to flood risk as a result of climate change. What level of consideration should be given to climate change, i.e. is there a level on top of the current flood levels that the State recommends to councils to use as projections for change? See previous comments about definitions and matters for consideration.
 - Is there any other terms that need to be mentioned like 'climate change' and FPL? See previous comments.
 - The consideration of "modification, relocation or removal" should be considered consistently across all lands potentially affected by environmental hazards – flood, coastal risk and bushfire.
- Special Flood Considerations clause:
 - Be clear whether this clause is optional or mandatory and where it will sit in a LEP.
 - Consider making the list for 'Sensitive, vulnerable, or critical uses' prescriptive or even consider removing 'may include'. Is there any uses missing? Moveable dwelling, manufactured home estate, manor houses?
 - Is there any other terms that need to be mentioned like 'PMF'?
 - Consistent terminology is required between all proposed documents – and it is unclear why "special floor considerations" is being introduced in the draft clause, if the intent and purpose is consideration of "probable maximum flood". i.e. consideration of PMF is also referred to in the planning circular, under the discussion about clause 7A(2), but there it is referred to as "considerations apply outside the Flood Planning Area".
 - Clause 3 - it is unclear how applicants would be able to "satisfy" a consent authority that the development "will not affect the safe occupation or and

evacuations from the land” – this should be reworded to “is satisfied that the development” can provide “safe evacuation from the land” – occupation/refuge-in-place during any flood, particularly PMF, has not previously been widely supported by SES.

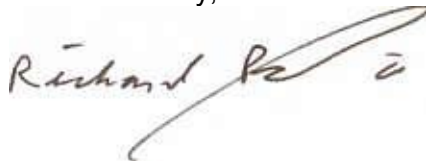
- Regional Evacuation Consideration Area clause:
 - It needs to be clearer what areas the Regional Evacuation Consideration Area (RECA) clause applies to. Identify that it is the Hawkesbury/Nepean that it is applying to.
 - The objectives and purpose are clear, but how accessible are maps of the Regional Evacuation Consideration Areas. Applicants and Council cannot be asked to consider and assess an application against information that is not publicly available.

A new guideline: Considering Flooding in Land Use Planning (2020)

- What is the ‘1’ in the first paragraph a reference to?
- The Floodplain Development Manual update is mentioned in the guideline. It would be good to review in conjunction with this exhibition. What is the timeframe for the update?
- It would be good to see more of a link in this document to the three LEP clauses subject to this exhibition.
- It needs to be clearer what areas the Regional Evacuation Consideration Area (RECA) applies to. Identify that it is the Hawkesbury/Nepean that it applies to.
- Supportive of the ability for councils to decide whether the maps should be published in a DCP, LEP, other relevant EPI or on a council website. It needs to be clarified though as to whether the “or on a council website” part means that the map can sit outside of an EPI and sit in something like a adopted policy of council. This enables Council to easily update the mapping as needed (see previous comments).
- Consider making the list for ‘Sensitive, vulnerable, or critical uses’ prescriptive or even consider removing ‘may include’.
- See previous comments about climate change and SLR affected “flood planning levels” and “flood planning areas” - these areas must be considered and applied consistently at the State level.

We trust that the Department will favourably consider these matters raised, and continue discussions with councils as you roll out these changes. If you require any additional information, please contact Michael Griffith on (02) 6592 5225.

Yours sincerely,



Richard Pamplin
Acting Manager Strategic Planning

First Name: Rudy

Last Name: VanDrie

Submission:

The new rules seem to only apply to the FPA which is limited to the FPL (1%+0.5m). As a flood engineer in Local Government dealing with development approval in flood prone land, I feel extremely strongly that the planning rules are falling very short of protecting lives and property by ignoring the PMF. The NSW Floodplain Development Manual (2005) correctly identifies Flood Prone Land as ALL land up to the PMF. This makes total logical sense. Ignoring what can occur in event larger than the 1% is at the risk of being negligent, with regard to the perspective of the coroner after a devastating flood. This was tested in 1988 after the Hagan Inquiry. An Engineer can be held personally liable and negligent for death of a person, through in action. Failing to recognize and identify hazard up to the PMF is negligent! Planning Laws are currently failing us and resulting in numerous ongoing Land and Environment Court Cases. Therefore Planning Laws MUST address the PMF, else they are clearly ignoring the elephant in the room. I am more than happy to discuss this further and provide evidence as to the level of cost and inconvenience current planning laws put Councils.

Narrabri Shire Council

Submission:

Dear Sir/Madam, Thank you for the opportunity to make a submission on the New South Wales (NSW) Department of Planning, Industry and Environment's ("DPIE") draft Flood Prone Land Package. Please find following the Council's comments;- Narrabri Shire Council ("Council") requests that the proposed flood Local Environmental Plan (LEP) clauses be amended to also include a definition for "flood planning level" (FPL), or make reference to how the FPL is derived if at the discretion of the local Council. Please note that Council's preference is for the latter. Council requests that the proposed flood LEP clauses be amended to re-word or remove the words 'of the land' in reference to the requirement for evacuation, to enable Councils' own risk to life considerations if evacuation from land is not a suitable response in the catchment due to flash flood environments for example. Council requests that the proposed LEP clauses be included as "model local clauses" rather than "standard instrument clauses" to allow for the great and varied differences in flooding across NSW to be addressed by each Council. Council requests that DPIE provides further guidance for standardisation of flood mapping across the state. For example; depth colour palettes, filtering of minor flooding etc. It is thought that having such basic requirements standardised would provide consistency to developers, the State Emergency Services, and the general public. Council requests that the DPIE Environment, Energy and Science Group's (EES) research into updating a range of guidance in relation to flood function, flood hazard and flood emergency response classification be made publicly available to local Councils. Council appreciates the opportunity to review the draft Flood Prone Land Package and trusts that these comments will be considered in the finalisation of these documents. Council commends the DPIE on preparing this package of advice to Councils on considering flooding in land use planning, which will expectantly build resilience in local communities located on floodplains and hope to reduce the extent of property damage and potential loss of life from flooding throughout NSW. Council expects that the roll out of the package will be carried out pursuant to all applicable legislative requirements, and continuous consultation with local Councils will be carried out throughout this process. If you require any further information, or wish to discuss these matters further, please contact Mrs Cara Stoltenberg, Strategic and Major Projects Planner, in the first instance on (02) 6799 6866 or caras@narrabri.nsw.gov.au.



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ABN 32 353 260 317

Santina Camroux
Director Resilient Places - Place, Design and Public Spaces
NSW Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

BB3 (CIS)

25 June 2020

Dear Ms Camroux,

RE: FLOOD PRONE LAND PACKAGE

Council would like to thank the Department of Planning, Industry and Environment (DPIE) for the opportunity to provide comments on the Flood Prone Land Package which seeks to amend the existing flood-prone land package as the current planning circular, guideline and direction have restricted the ability of councils in NSW to apply residential development controls on land between the 1% annual exceedance probability flood and the probable maximum flood. As a result, development that has occurred on this land has been undertaken with limited consideration of the full range of flood risk.

Firstly, Council would like to point out that it has not yet had the benefit of applying the existing Flood Prone Land Package to any great degree as it does not have an endorsed Floodplain Risk Management Study and Plan in place and nor has it implemented any flood related development controls to its planning instruments. Council is, however, in the process of finalising its Floodplain Risk Management Study and Plan which is anticipated to be completed later this year.

Whilst generally supportive of the proposed revisions to the Package, Council staff would like to identify a long standing issue that is not reflected in the existing or proposed Package, which relates to the need for a definition of “flood related development controls”.

Issue

Pursuant to Clause 7A to Schedule 1 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) and Section 10.7 (2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), councils must currently disclose on a Planning Certificate the following information:

7A Flood related development controls information

- (1) *Whether or not development on that land or part of the land for the purposes of dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (not including development for the purposes of group homes or seniors housing) is subject to flood related development controls.*
- (2) *Whether or not development on that land or part of the land for any other purpose is subject to flood related development controls.*

(3) *Words and expressions in this clause have the same meanings as in the Standard Instrument.*

It is noted that this clause is proposed to be modified to indicate whether:

- if flood-related development controls relating to the Flood Planning Area apply to the land;
- if flood related development controls apply to sensitive, vulnerable, or critical uses, hazardous industries, hazardous storage establishments, or where risk to life considerations apply outside the Flood Planning Area; and
- there is a need to consider the impact of development against an established regional evacuation strategy or flood-related state emergency sub-plan, within the Regional Evacuation Consideration area (if the information is available).

Flood related development controls are not defined under the Standard Instrument LEP, nor the EP&A Act. This lack of a definition is acknowledged in the existing and proposed Planning Circular as follows:

Flood-related development controls are not defined but would include any development controls relating to flooding that apply to land, that are a matter for consideration under section 4.15 [formerly section 79C] of the Act.

It is also noted that both the existing and proposed Planning Circular make specific reference to the establishment of flood related planning controls within an LEP and/or a DCP.

A simple interpretation would be that “development controls” are contained within an LEP or a DCP. However, the extent of section 4.15 of the EP&A Act is more wide ranging. Whilst the first part focusses on the need to address relevant provisions of EPIs and DCPs, the second part is focused on the need to address merit-based issues.

It is under these merit based issues (sections 4.15(1)(b)-(1)(e)), that consideration may need to be given to addressing flood related development controls contained within some other document or policy.

Therefore, it is questioned if “flood related development controls” is limited to that contained within an LEP or DCP, or may extend to development controls under some other endorsed document or policy. Further clarification is required in this regard.

In consideration of the issue, a review of the Floodplain Development Manual (2005) was also undertaken where it was noted that “flood related development controls” are not defined within the Manual either. Despite the term being referred to in a number of places throughout the Manual, there often appears to be conflicting information as to where these development standards may be located or established (i.e. sometimes within and LEP or DCP, and in other instances within flood related studies, plans and/or policies).

Of particular note is the definition of Flood Planning Area under the Manual, which states:

The area below the FPL and thus subject to flood related development controls. ...

It is unclear if the setting of a Flood Planning Level (FPL) outside of an LEP and DCP (i.e. within a Floodplain Risk Management Plan and Study) automatically means that a property would be subject to flood related development controls. An alternative view is that the definition within the Manual merely means that flood related development controls should be applied to all land located below the FPL.

The establishment of a FPL is typically determined by the combination of the setting of defined flood event (e.g. 1% AEP) and a nominated freeboard (e.g. a safety threshold margin). In the majority of instances, the FPL becomes the defacto flood related development control. This is less likely to occur where the primary form of flooding occurs through inundation from overland flow rather than overbank discharges to a stream or river. However, the setting of a freeboard is merely identifying a safety threshold above a defined flood event and does not necessarily comprise the development control that is ultimately adopted.

It is understood that many councils who have prepared a Floodplain Management Plan and Study, have also adopted an interim policy which sets flood related development controls until such controls are established in their LEP and or DCP. They have then used this interim policy for establishing positive statements relating to flood related development controls on their Planning Certificates. This appears to allude to the fact that "flood related development controls" may not necessarily be limited to being located within an LEP or DCP.

It is acknowledged that the Floodplain Development Manual is not subject to review as part of this Package, but is currently being looked at separately. Council will make representations to this Review once it progresses.

Therefore, due to the levels of ambiguity as to what "flood related development controls" constitute, it is strongly recommended that a definition of "flood related development controls" be established within the EP&A Act and /or Standard Instrument LEP. Clarification should also be provided if the term is to apply to documents or policies beyond an EPI or a DCP. The establishment of a suitable definition should also be reflected in the package documentation.

If you have any further queries, please contact Ben Boyd of Council's Strategic Planning Department on 9936 8100.

Yours sincerely,



MARCELO OCCHIUZZI
MANAGER STRATEGIC PLANNING



Our reference: Infostore
Contact: Abdul Cheema
Telephone: 4732 8120

3 August 2020

Melanie Schwecke
Specialist Planning Officer
Resilience Planning | Green and Resilient Places
Department of Planning, Industry and Environment
via email: resilience.planning@planning.nsw.gov.au

Dear Melanie,

Flood Prone Land Package

I refer to our interim submission to the Flood Prone Land Package provided to you on 25 June 2020.

Council has now considered and endorsed the attached submission at its Ordinary Meeting of 27 July 2020 for your consideration.

If you have any further questions, please contact Abdul Cheema, City Planning Coordinator on 4732 8120 or abdul.cheema@penrith.city.

Yours sincerely,

Natasha Borgia
City Planning Manager

Thank you for the opportunity to comment on the “Flood Prone Land Package” (Package).

It is appreciated that the Package is necessary to ensure that we build resilience in communities located on floodplains and reduce the extent of property damage and potential loss of life from severe to extreme flooding throughout NSW. However, Penrith is a river city, so as it continues to grow Council has properly planned to meet the risks of a 1 in 100-year flood (plus freeboard) being the long-held standard. This is the basis for growth under our Local Strategic Planning Statement.

This Package significantly shifts the consideration of flood related development controls for development opportunities above the 1 in 100-year flood level, potentially creating an impediment to growing our City. The scale of this impact is unclear, in particular, what controls will be imposed between the 1 in 100-year flood level and the Probable Maximum Flood level. Given the lack of information available, it is difficult to ascertain the full extent of the impacts the proposed changes will have, and this causes uncertainty.

In addition, Penrith City Centre is also subject to the “Adaptive Management Framework” and accompanying Development Assessment Guideline to manage flood risk and evacuation constraints that place a limitation on the number of residential dwellings that can be constructed in the City Centre. This constraint is impacting development in the Penrith City Centre and its ability to fulfill its strategic role in the future. We would be incredibly concerned if any further restrictions were imposed through this Package and currently it is not clear how this will impact the City Centre and the broader region.

The Package is considered pre-mature in the absence of other related work currently under way. Evidenced based decisions about flood related development controls should inform any amendments. Therefore, the Package should not be implemented until the broader flood work as described below has been completed and evidence-based decisions can be made:

- a) The Regional Land Use Planning Framework is currently being undertaken by Infrastructure NSW which will among other matters consider the existing and future planned population to determine risk to life and evacuation capacity.
- b) The FEM2 is currently being undertaken by the State Emergency Services (SES). A Geographical Information Services (GIS) layer will be required by council to assess any proposal as required by the proposed changes.
- c) The Department of Planning, Industry and Environment (DPIE) is currently undertaking work on the Greater Penrith to Eastern Creek Growth Area. As a part of that project, the Department will be looking at ways to improve the infrastructure capacity that will improve evacuation capacity.
- d) The Department of Planning Industry and Environment is currently reviewing the NSW Floodplain Development Manual. The review of the Manual and the release of the Government’s Flood Prone Land Package should coincide.

With gaps in regional evidence and data there is an uncertain level of risk. Therefore collectively, government needs to make decisions about managing the risk on the floodplain.

In addition to the above information, it is strongly recommended that the Package is not further progressed until the following is undertaken:

- a) Clarity is provided on what the Regional Evacuation Consideration Area (RECA) is, what is its boundary and what are the proposed associated controls.
- b) DPIE have indicated that at this point in time the RECA will only apply in limited areas in NSW such as the Hawkesbury-Nepean Valley. Clarity is needed on why this is the case and the implications of this.
- c) Clarity is provided on whether the broader Package would apply to the whole State or just the Hawkesbury-Nepean Valley.
- d) Clarity is provided on the intention to implement planning controls between 1:100 and PMF.
- e) Further analysis to understand the extent of the land affected by the proposed Package.
- f) Once this is understood, that further consultation be undertaken with local government, industry and land owners on what the impacts are.
- g) Transparent information sharing including the provision of a map and FEM modelling showing regional evacuation areas and evacuation capacity.

We would re-emphasise the importance of evidenced based planning decisions and the need for greater detail and clarity prior to the proposed changes being made and that further consultation be carried out ahead of finalising the Package.

Following are council's general comments and on each of the exhibited documents for your consideration.

1. AMENDMENT TO SCHEDULE 4, SECTION 7A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

- a) The amendment to schedule 4, section 7A of the Environmental Planning and Assessment Regulation 2000 has not been placed on exhibition. It is difficult to provide comments without seeing the amendment.
- b) Councils should be consulted in the drafting of the regulation to make sure it achieves the desired outcome and the understanding that council has of the exhibited material.

2. REVISED PLANNING CIRCULAR

- a) Flood-related development controls are not defined but would include any development controls relating to flooding that apply to land, that are a matter

for consideration under section 4.15 of the Act. These are very broad. The planning circular needs to be clear by defining the “flood related controls”.

- b) Clause 7A(1)1 require the inclusion of a notation on planning certificates if flood-related development controls relating to the Flood Planning Area apply to the land. Council already does this. However, we seek clarification on what are flood related controls.
- c) Clause 7A(2)1 require the inclusion of a notation on planning certificates if flood related development controls apply to sensitive, vulnerable, or critical uses, hazardous industries, hazardous storage establishments, or where risk to life considerations apply outside the Flood Planning Area. It is very broad information that may not be in a form that is easily or readily available. More detail on the actual wording of the regulation is needed. This could potentially apply to most zones.
- d) Clause 7A(3)1 is a new requirement in planning certificates that requires a notation to advise whether there is a need to consider the impact of development against an established regional evacuation strategy or flood-related state emergency sub-plan, within the Regional Evacuation Consideration area. Where will this information be sourced from? Most properties across Penrith may be subject to this clause. It may be practically impossible to place a notation on all properties that are capable of intensification for the purposes of this clause.

3. REVISED LOCAL PLANNING DIRECTION

- a) Clause 5 states that a planning proposal or draft LEP must not rezone land within the Flood Planning Area from Recreation, Rural, Special purpose zones or Environmental Zones to a Residential, Business, Industrial, or Special Purpose Zone. On many occasions flood fringe areas and in rare cases some flood storage areas are filled above the Flood Planning Level but this does not happen until the rezoning is approved. This clause makes impossible to rezone any land within Flood Planning Area even if it can be filled. (e.g. Jordan Springs).
- b) Clause 5 could potentially affect properties affected by overland flooding. In many cases the depth of overland flow flood is shallow and the flooding is mainly due to inadequate drainage or poor road alignment/ design. This clause will prohibit any rezoning of land affected by overland flow flooding where the flooding is very shallow, not severe and could be managed by better drainage.
- c) Clause 5 will encourage earthwork (fill) development applications prior to lodging a Planning Proposal. This would have implications for the strategic assessment of proposals.
- d) Clarity is sought on if clause 5 will also apply to SEPPs /SEPP amendments such as the Aerotropolis SEPP. There should be consistency on the application of this clause for LEP and SEPP amendments.

- e) Clause 5 doesn't differentiate between different flooding types, how they can be managed, and the risk of each of these (risk matrix). It is appropriate to prohibit development in high risk areas and flood ways. However, development may be suitable in low risk areas.
- f) Clause 6 (g) states that a planning proposal or draft LEP must not contain provisions that apply to the Flood Planning Area which are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities. This clause is too broad, and it could be argued that any planning proposal in the Flood Planning Area will result in a significantly increased requirement for government spending on road infrastructure or emergency management services. e.g. Penrith City Centre Planning Proposals. Penrith LEP 2010 clause 6.1 requires satisfactory arrangements to be made for the provision of designated state public infrastructure before the subdivision of land in an urban release area. This clause is enough to cover this matter.
- g) Clause 7 (a) states that a planning proposal or draft LEP must not contain provisions that apply to the Regional Evacuation Consideration Area which permit development in areas that will exceed the capacity of an established regional evacuation route(s). We seek clarification whether this would mean that all planning proposals would need to be referred to SES to determine if the outcome will exceed regional flood evacuation. SES does not have capacity or resources to deal with these referrals. We have been unable to receive responses to our referrals from SES even after more than a year of referring them. There should be a defined timeframe or streamlined referral process in place if this clause was to be adopted including compulsion for SES to provide advice.
- h) Furthermore, there is no specific map that shows Regional Evacuation Consideration Area. Clarity is also sought on how will this limit the application of complying development.

4. REVISED LOCAL ENVIRONMENTAL PLAN FLOOD CLAUSES

The revised proposed LEP clauses should be considered as a model clause that is optional. It should be up to Council whether it wants to adopt it or adopt it with changes to suit local circumstances as discussed later in this submission.

Flood Planning Area

- a) The proposed LEP clause is intended to apply "to land that is within a Flood Planning Area as defined by clause 6" (which is based on the flood planning level). It should be noted that the current clause in Penrith LEP 2010 applies to land at or below the flood planning level, but in addition to this, it also applies to land "identified as flood planning land on the Clause Application Map". These areas are considered part of the flood island. We would want to retain them in any new provisions for flooding. There should be some scope

to retain some other areas where the existing clause applies and translate these across to the new clause.

- b) The proposed definition provided for Flood Planning Area “is the area of land below the Flood Planning Area and may also extend to include other areas of land where majority flood related controls apply”. Further clarification is requested as to which flood related development controls apply. For example, is this the Clause Application Map where we identify the flood island areas, or DCP controls for example? The use of the term “may also apply” implies that Council has the ability to identify where these areas (and therefore clause) applies.
- c) One of the objectives of the revised clause (1b) is to allow development on land that is compatible with the flood hazard and flood function of that land considering projected changes as a result of climate change. Detail is required on the intention of this clause (i.e. what are the results of climate change? (More Rain, raising sea levels, more evaporation) It is difficult to satisfy this objective without further detail.
- d) Furthermore, clause 4 states that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that projected changes to flood risk as a result of climate change have been considered. We are unclear if there is a distinction between changes to flood risk generally or changes specifically in response to climate change. How do you determine if something is a result of climate change? Or are we just to interpret that every flood risk or event is a result of climate change?
- e) A definition is needed for 'Flood Function' in accordance with objective 1(b), 1(c) and clause 3(b).
- f) Clause 3 (c) states that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will not adversely affect the safe and efficient evacuation from the land or impact the capacity of existing evacuation routes for the surrounding area. How does Council determine ‘not adversely affect’? Every development will impact the capacity of existing evacuation routes which according to this clause would prohibit any development on flood prone land (land within PMF). Furthermore, the capacity is unknown at this point in time. This clause could potentially affect more than 18,000 properties
- g) Clause 3 (i) states that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development is not inconsistent with any relevant floodplain risk management plan adopted by the council. There seems to be a double negative used. It is recommended that “is not inconsistent” is changed to “is consistent with”.
- h) Clause (4) states that in addition to the matters referred to in subclause (3), development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that projected

changes to flood risk as a result of climate change have been considered in the design of the development, including the potential to modify, relocate or remove the development. More detail is required on what is required to satisfy this clause. For example, in accordance with 4(c) every development can be removed by demolition. Is this the intent of the clause?

- i) Clause (5) should include a definition of 'Flood Function' and 'Flood Planning Level'.

Special Flood Considerations

- a) The developments listed in Clause 4 should be above the PMF
- b) The definition of 'Flood Planning Level' should be provided in clause 5
- c) Clause (2) describes the land to which this clause applies. It "applies to land between the flood planning area and up to the level of the PMF with specific consideration of the following:
 - Sensitive, vulnerable and critical uses,
 - hazardous industry or hazardous material storage establishments, and
 - any other land uses requiring controls in relation to risk to life considerations".

Due to the use of the term 'with specific consideration', it's unclear if the intention is that all other uses are not required to be considered, or that we need to provide attention or extra scrutiny to the uses listed above. If it is intended that the clause is to only apply to the uses above, it is suggested 'with specific consideration' is deleted.

- d) This clause will have implications for the permissibility of various land uses. Some land use may be permissible through the land use table in the LEP but prohibited by virtue of the clause. The legal implications of this needs to be considered.

Regional Evacuation Consideration Area

- a) Clause 3 states that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development
 - will not exceed the evacuation capacity of the regional evacuation routes.
 - will provide or has access to rising road access to regional evacuation routes.

This clause prohibits all development that does not have a rising road access to regional evacuation routes such as Low Flood Island. Is it the intent that no development consent shall be granted in these areas even for alterations and additions?

- b) It should be noted that regional flood evacuation routes are not all flood free.

- c) There needs to be more transparency of the capacity of these routes. The spare capacity across the Local Government Areas needs to be made public for the application of this clause
- d) As stated above, SES does not have capacity or resources to deal with referrals. We have been unable to receive responses to our referrals from SES even after more than a year of referring them. There should be a defined timeframe or streamlined referral process in place if this clause was to be adopted including compulsion for SES to provide advice.

5. A NEW GUIDELINE: CONSIDERING FLOODING IN LAND USE PLANNING (2020).

- a) The guideline should include discussion regarding overland flow flooding and Mainstream flooding to assist in differentiating between the risks of both.
- b) The guidelines recommend that all areas where flood-related development controls apply should be mapped and maps made publicly available. This could entail being published in Development Control Plans, Local Environment Plan, other relevant environmental planning instruments or on council website. We have published various completed studies and associated maps on our website. However, it should be noted that making flood maps a part of the LEP or DCP is not supported. Maps change over time and we discourage lengthy LEP and DCP amendments when a change occurs.

25 June 2020



BY EMAIL: resilience.planning@planning.nsw.gov.au.

Specialist Planning Officer
Floodplain Management
Department of Planning Industry & Environment
Locked Bag 5022
Parramatta NSW 2124

Dear Specialist Planning Officer

Flood Prone Land Package – Penrith Lakes Development Corporation – Draft Submission

1. Introduction

- 1.1 We refer to the proposed 'Flood Prone Land Package' (**Package**), currently exhibited by the Department of Planning Industry and Environment (**Department**). We understand that the exhibited Package consists of:
- (a) a proposed amendment to schedule 4, section 7A of the Environmental Planning and Assessment Regulation 2000 (NSW) (**EP&A Regs**);
 - (b) a revised planning circular;
 - (c) a revised local planning direction regarding flooding issued under section 9.1 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**);
 - (d) revised Local Environmental Plan (**LEP**) flood clauses
 - (e) a new guideline: Considering Flooding in Land Use Planning (2020) (**New Guideline**).
- 1.2 Penrith Lakes Development Corporation (**PLDC**) own almost 2,000 hectares of key strategic land in Sydney's Western City District (**PLDC Land**). Since the conclusion of quarrying in 2015 the PLDC Land has been progressively rehabilitated, providing capacity for a range of employment, environment, parkland, residential, tourism and waterway uses.
- 1.3 The PLDC Land is located on the Hawkesbury Nepean Valley floodplain, making flood prone land planning a critical consideration in future development. In our view, the existing flood prone land planning regime has been successful in delivering safe and appropriate development within the floodplains of NSW. We are concerned that the State Government's shift away from the widely accepted 1:100 AEP plus freeboard flood planning level, towards more conservative requirements, may unnecessarily sterilise large areas of the State that are appropriate for urban development. We do not believe the proposed shift is warranted and given a shift of this significance believe further details on the risk modelling and assumptions that underpin it should be provided. Accordingly, this submission provides the basis of PLDC's objection to the Package.

2. Application of the Package to PLDC land

- 2.1 The PLDC Land is subject to State Environmental Planning Policy (Penrith Lakes Scheme) 1989 (**SEPP Penrith Lakes**). As a result, PLDC acknowledges that much of the Package will not apply to PLDC Land for the following reasons:

Penrith Lakes Development Corporation Ltd

Old Castlereagh Road, Castlereagh NSW 2749	PO Box 457, Cranebrook NSW 2749	T: 02 4729 0044 F: 02 4730 1462	E: info@pldc.com.au W: www.penrithlakes.com.au	ACN 000 133 951 ABN 46 000 133 951
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- (a) SEPP Penrith Lakes is not modelled on the 'Standard Instrument—Principal Local Environmental Plan' (**SI LEP**). As such the revised LEP flood clauses proposed as part of the Package will not apply to SEPP Penrith Lakes.
- (b) The New Guideline sets out a number of matters to be determined and applied by Council. These include:
 - (i) the Flood Planning Level;
 - (ii) the Defined Flood Event;
 - (iii) controls in the Flood Planning Area, Regional Evacuation Consideration Area and Special Flood Considerations.

These matters are addressed in the revised LEP flood clauses that form part of the Package. As such, the extent to which these matters will apply to the PLDC Land is unclear.

- (c) Existing flood planning controls that apply to the PLDC Land have been the subject of extensive flood modelling and studies carried out by PLDC and purported to have been carried out by the Department. As such, it would be inappropriate to substitute the existing flood planning regime with that put forward by the Package given the lack of evidence or modelling exhibited in support (refer to section 4).

2.2 While it is unlikely that the Package will apply to the PLDC Land, this submission raises broader concerns in respect of the package, and, in particular, not having further details on the modelling and risk assumptions that underpin it. Noting these concerns, we stress that any proposed changes to SEPP Penrith Lakes or flood planning controls applicable to the PLDC Land should be subject to comprehensive community consultation and supported by evidence-based modelling.

3. Application of the Package to State Significant Development

- 3.1 The Package does not address the role of proposed reforms in the assessment of State Significant Development (**SSD**). In our view, the Package should not bind the Minister in the assessment of SSD.
- 3.2 The revised planning circular which forms part of the Package states that 'the NSW Government's Flood Prone Land Policy is set out in the Floodplain Development Manual, April 2005 (**Manual**)'. Notwithstanding the reforms proposed in the Package, the Manual should remain the primary tool for the assessment of SSD and the Minister should not be bound by locally determined flood planning levels (**FPLs**).

4. The importance of evidence-based policy reform

- 4.1 The existing flood prone land planning system in NSW has been operating successfully for several decades, providing safety for the community and certainty for the industry. The existing Manual, supporting guidelines and the associated planning instrument clauses ensure that flood risk is accounted for in land use planning and development. In doing so, the existing system considers flood risk and likelihood, as well as issues relating to evacuation. The system is premised on the widely accepted concept that 1:100 AEP plus freeboard is the appropriate flood planning level unless there are exceptional circumstances.
- 4.2 The Package does not identify any shortcomings associated with the existing flood prone land planning system in NSW. Other than the following extract from the NSW Planning Portal, no justification or rationale is provided:

Significant flood events, like those in Brisbane in 2011 and those more recently in NSW show the importance of managing flood risk up to and beyond the 1 in 100 chance per year flood and considering flood risks up to the probable maximum flood level.

- 4.3 In our view, such significant State-wide policy reform should be supported by evidence which is provided to stakeholders so that its robustness can be considered.

- 4.4 The Package proposes to allow dwelling densities to be reduced in response to evacuation capacity requirements. In the absence of transparency and engagement in relation to evacuation modelling that would underpin restrictions on dwelling densities above the flood planning level, we are concerned that these controls appear to arbitrary and have the capacity to undermine the State's housing supply and contribute to a burgeoning housing affordability crisis.
- 4.5 In the past, we have experienced significant challenges in obtaining flood modelling and studies relating to the PLDC Land from the Department. Such challenges provide substance to the abovementioned concerns and given the State-wide application of the Package we encourage the Department to provide the above requested information as part of the package.

5. Clear and consistent policy facilitates clear and consistent implementation

- 5.1 The Package lacks sufficient clarity to be applied on a consistent basis. In this submission we highlight the following examples:

(a) Reliance on the Floodplain Development Manual

The revised planning circular states that the NSW Government's Flood Prone Land Policy is set out in the Manual. However significant concerns are raised regarding inconsistencies between the Manual and the Package. The Manual was prepared in 2005 and has provided the basis for flood prone planning policy in NSW since that point. However, with the introduction of new controls and new powers provided to Council in establishing benchmarks for flood planning it is difficult to assume absolute consistency. Our concerns are heightened by the fact that matters central to the Package (such as flood planning levels, evacuation routes, flood risk likelihood, hazard categorisation, among others) are already addressed in the Manual. In our view, any reform to flood prone land planning in NSW should start with the Manual and be supported by evidence-based modelling, rather than introducing ad hoc and inconsistent controls in other instruments.

(b) Language of proposed LEP clauses

While we acknowledge that the wording of the proposed LEP clauses is indicative at this stage, the language in the proposed clauses represents a significant departure from existing approaches to flood prone land. In particular, we note the removal of requirements for a consent authority to be satisfied of both likelihood and significance (refer to clauses 7.2(4)(d) and (f) of the Penrith Local Environmental Plan 2010). The wording of the satisfaction clause at (3) in each of the proposed LEP clauses requires strict compliance in some instances and uses absolutes such as 'will not'. The use of such language would be a significant and onerous change in flood prone land planning throughout the State. We encourage the Department to further consider the way such controls would be implemented throughout processes of development assessment.

(c) Sensitive, vulnerable and critical uses

The Package proposes to apply special flood considerations to land uses that are considered 'sensitive, vulnerable or critical uses'. We believe the list of 'sensitive, vulnerable or critical uses' needs to be more nuanced to reflect the different risks posed by the various uses. It is important to nuance this list because there are likely to be significant areas of developable land between the flood planning area and up to the level of the probable maximum flood (**PMF**).

(d) Definitions

The term 'flood planning level' is not defined in the proposed LEP clauses. While this term is defined in the New Guideline its definition is unclear as it is linked to a 'defined flood event' (**DFE**) that is to be selected by Council. As a result the Flood Planning Area is defined in the LEP clauses by reference to the FPL, however, the FPL is not defined in the LEP and is instead defined in the New Guideline by reference to a local DFE that may or may not have been established by Council. This lack of clarity and lack of defined terms will likely result in confusion throughout the industry.

Similarly, the proposed LEP clauses provide a definition for 'hazardous materials' that is not clear and is inconsistent with similar definitions applied in environment and planning incidents and assessments throughout the State. Specifically, the definition proposed is not consistent with that provided in the Department's 'Hazardous and Offensive Development Application Guidelines: Applying SEPP 33', which provides the following definition:

hazardous materials — are substances falling within the classification of the Australian Code for Transportation of Dangerous Goods by Road and Rail (Dangerous Goods Code).

Unlike the established definition extracted above, the proposed definition is too broad and ambiguous. As a result, the proposed definition may capture uses that would currently be considered to handle or store 'hazardous materials'. In our view, the proposed definition will create confusion and may also impose overly onerous restrictions on development where adequate safeguards are in place to prevent hazardous materials from escaping and causing harm.

6. Impact on infrastructure and development

6.1 The Package's deficiencies relating to clarity and consistency (refer to section 5) give rise to concerns relating to the practical implementation of the Package and the impact that it may have on infrastructure and development throughout the State. In this submission we highlight the following examples of circumstances in which such concerns arise:

(a) Broad range of outcomes

The Package permits a broad range of outcomes that will cause confusion and uncertainty throughout planning and development. The Package proposes a system that may give rise to 128 different DFEs and FPLs across the State (permitting these to be established by Council). This will result in uncertainty and confusion.

(b) Evacuation routes and strategies

The existing flood-prone land planning system requires evacuation issues to be addressed for land between the 1:100 AEP and the PMF level. The Package proposes to require development above the flood planning level (and potentially above the floodplain entirely) to address regional evacuation routes and strategies. This arbitrarily imposes onerous flood planning requirements and links them directly to flood and evacuation modelling which has not been consulted on or been made available in connection with the Package.

(c) Notations on section 10.7 planning certificates

In our view, the proposed notations will create unnecessary alarm for purchasers, valuers and insurers, leading to lower valuations and higher insurance premiums. These impacts will not be commensurate with the level of flood risk at the property. Constraints on the development of the land that reflect evacuation constraints would already be noted elsewhere in the section 10.7 certificate.

6.2 The above are described as examples of uncertainty in the application of the Package.

7. The importance of State Government oversight

7.1 The Package removes the State Government's oversight with respect to flood prone land planning in NSW. The State Government's oversight with respect to flood prone land planning has created certainty for the community and the industry by applying a consistent approach to flood prone land planning across NSW. It has allowed the State Government to maintain strategic control over flood prone land planning and ensure that flood risks are balanced with the delivery of much needed housing and employment.

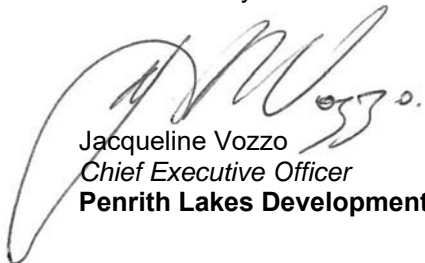
7.2 The Package removes the long-standing requirement for local councils to satisfy the Secretary of the Department that a variation or inconsistency with the Manual and associated controls is justified. Instead, the Package allows variations or inconsistencies to be justified by councils through their own studies and

assessments. The Package provides no comfort as to whether these studies and assessments will be exhibited or made available to the public. In our view it is essential that, at the very least, the Department's oversight in this respect is replaced by some form of public oversight through mandatory community consultation.

8. Conclusion

- 8.1 This submission sets out the basis for PLDC's objection to the Package.
- 8.2 Although significant doubts are raised with respect to the Package's application to PLDC Land, we encourage the Department to provide further consideration to:
- (a) application of the Package to State Significant Development;
 - (b) the importance of evidence-based justifications;
 - (c) the need for clear and consistent policy that facilitates clear and consistent implementation;
 - (d) the impact that the Package will have on infrastructure and development; and
 - (e) the importance of State Government oversight in flood prone land planning.
- 8.3 We would welcome the opportunity to discuss the matters raised in this submission.

Yours faithfully



Jacqueline Vozzo
Chief Executive Officer
Penrith Lakes Development Corporation Limited

25 June 2020

Department of Planning, Industry and Environment
via online portal

PIA Submission to DPIE Flood Prone Land Package

Thank you for the opportunity to provide a submission to the DPIE Flood Prone Land Package. PIA supports the general approach of the package in considering a wider range of flooding events, better integrating evacuation considerations, and reflecting the realities of a changing climate.

This package is an important step in improving flood planning processes. PIA wishes to raise some issue that should be addressed to improve the package:

- An updated version of the 2005 Floodplain Development Manual (the Manual) should be finalised and released as part of this package.
- For local government, the implementation of the requirements of the flood package will involve significant resource investment in policy, mapping and process changes and councils should be supported in undertaking this work.
- The new LEP clauses as drafted should be consolidated where possible to simplify legislation for practitioners.
- The quality of mapping should be enhanced by giving direction on consistent mapping standards and digital representation approaches to ensure the critical issues in flood mapping are given equal weighting as other land constraints.
- The transition period while councils prepare Special Flood Consideration Area (SFCA) or Regional Evacuation Consideration Area (RECA) policy needs to be carefully managed.
- The package should be clearer direction about how flood risk management (FRM) principles should be applied in flood planning for critical infrastructure and DPIE led planning processes.
- For some councils, increased development on flood prone land may be considered unavoidable and advice regarding best practice mitigation should be provided in the Guideline or updated Manual.

Each of these issues is considered in greater detail in the sections below and have been prepared in partnership with PIA members who work closely with the flood planning system.

The package should seek to simplify processes

For many planners, the flooding planning process is seen as a particularly complex element of the NSW planning system. Planners have a critical role in FRM, acting as a conduit between government, technical experts, and the community. PIA therefore holds concerns that by not releasing the updated Manual at the same time as the Flood Prone Land Package, the system may be further complicated. The Guideline, Circular and Planning Direction each make reference to the FRM processes in the Manual, however without an updated iteration of the Manual, it is difficult to determine how the FRM process is set to change and how this will impact upon the selection of defined flood events (DFE) and the like. Further, the Guideline establishes a range of new definitions which are inconsistent with the existing Manual and it is unclear whether the updated Manual will supersede the Guideline.

Recommendation: Prior to the finalisation of the new Flood Prone Land Package, release an updated version of the Manual to allow councils to better understand the interaction of this package with any new FRM processes to be announced.

Local government must be supported in implementing these changes

While councils outside the Hawkesbury-Nepean Valley are unlikely to pursue a RECA in the short term, many councils will prepare maps that show SFCAs. This will result in significant changes to mapping, planning certificates and development controls. While some councils have adequate in-house expertise to progress these changes, many will require external support to deliver these reforms.

Recommendation: As part of the implementation of the Flood Prone Land Package and new Manual, deliver the following services to councils:

- A dedicated team of flood professionals in DPIE who are on call to answer questions and advice on process.
- Training for council staff where requested, not just for engineers but also for planners.
- Model DCP clauses to provide guidance to councils in preparing controls and could be undertaken as part of the Standard Template DCP work being undertaken.

Legislative changes should be easily interpreted and integrated with existing clauses

The Flood Prone Land Package includes three new standard LEP clauses relating to Flood Planning Area (FPA), SFCA and RECA. Planners are now well-acquainted with the model flood planning additional local provision. PIA is of the view that incorporating the three new standard LEP clauses into an amended version of this existing model provision will ensure practitioners can more easily interpret flooding clauses. This should not undermine the integrity of each provision, but instead provide a 'one stop' clause for flooding to assist practitioners in more clearly interpreting the legislation. This could also be integrated with existing flood risk management clauses which are available where councils have proven exceptional circumstances to apply controls above the residential flood planning level.

Recommendation: Consider hosting all flood related LEP clauses in an amended flood planning model local provision.

Mapping for flood should be made more robust through this process

PIA is concerned that the Flood Prone Land Package does not adequately address the need to improve the quality of flood mapping. There is significant variation in how councils approach the task of flood mapping, with some providing it in the LEP or DCP and some simply providing a map on their website. Additionally, there is little consistency in what material is relied upon to prepare the mapping or what the map itself shows (eg. 1% AEP, 1 in 100 year floods, freeboards or probable maximum flood (PMF)). The Flood Prone Land Package should include a consistent approach to mapping which requires the indication of the PMF, DFE, freeboard, SFCA and RECA where relevant. This mapping should be provided in a consistent manner and must indicate which studies or processes have been used to develop the mapping.

Recommendation: Mandate a consistent approach to flood mapping and its digital communication as part of the Flood Prone Land Package.

Provide guidance on considering evacuation before FRM process is finalised

PIA is concerned that the Flood Prone Land Package does not provide sufficient detail regarding how councils are to consider evacuation, especially during the transition period before the Manual and Flood Prone Land Package is finalised. As previously noted, the preparation of RECA and SFCA processes at each council will take some time. Many councils rely on shelter in place as an acceptable emergency management measure for some developments in certain floodplain areas, which is not reflected. Councils therefore require guidance on how to handle proposals and applications that come before them before the finalisation of the FRM process.

Recommendation: Create a working group with representatives from DPIE, councils, PIA and other stakeholder groups to develop clear considerations for evacuation.

There must be clearer direction around managing flood risk for critical infrastructure

The package includes little detail about how government manages and assesses flood risk in relation to critical infrastructure. PIA believes the Flood Prone Land Package is an appropriate mechanism to deliver clear guidance on how FRM processes interact with critical infrastructure and infrastructure delivery processes such as relevant State Environmental Planning Policies (SEPPs). Additionally, many SEPPs take the role of an LEP (such as the Growth Centres SEPP) and the Package does not explain how it relates to these planning instruments. This should be made consistent and clear.

Recommendation: Create clearer guidance around FRM processes for critical infrastructure and precincts rezoned by DPIE led planning processes and lead by example by requiring NSW Government projects adhere to FRM principles.

Additional detail about mitigation should be provided in the package

For many councils, particularly those in urban environments, it may be unavoidable to progress proposals which will place residential development on land with flood risk. Therefore, councils need clear guidance on best practice mitigation. Instead of requiring individual officers to determine whether mitigation measures are adequate, there should be detailed guidance from

DPIE on which they can rely. This should include guidance on the development of at-risk sites and what constitutes satisfaction in relation to flood risk before issuing consents.

Recommendation: Develop mitigation guidance to help councils determine best practice approaches, especially in established urban areas.

Thank you again for the opportunity to provide feedback on this package. PIA supports much of what DPIE has prepared in this package and hopes these improvements can help shape a flood planning system which is simple, enforceable and supports councils in managing flood risk for their communities.

Should you wish to discuss any of this submission further, please do not hesitate to contact me by phone on 0431 019 989 or by email at audrey.marsh@planning.org.au.

Yours sincerely



Audrey Marsh
NSW Policy Officer

23 June 2020

Refers to: Flood Prone Land Package

Santina Camroux
Director Resilient Places
Department of Planning, Industry & Environment
Parramatta Square, 12 Darcy Street,
PARRAMATTA NSW 2150

Dear Santina,

Flood Prone Land Package - Submission

I refer to the above and provide this submission on behalf of Port-Macquarie Hastings Council (PMHC).

PMHC appreciates the opportunity to comment and encourages the NSW Government to continue with community and Council consultation on the updated Flood Prone Land Package at all key phases including any future deliberations on legislation, regulations, policy and guidelines.

PMHC supports the principles of the Package, which recognises the importance of providing an integrated flood planning framework whilst also ensuring that often overlooked risks relating to evacuation and hydraulic function of the floodplain are now realised. The following specific comments are provided in relation to various aspects of the draft Package.

Firstly, whilst there are 4 draft documents that have been released, 1 key document has not yet been released for comment, this being, the new Floodplain Development Manual. PMHC is keen to see the revised Manual as we recognise that many of the changes outlined in the draft documents relate back to the new Manual. PMHC acknowledges that the revised Manual will contain most of the specific technical controls around how much of the new information contained in the Package is developed and implemented.

This aside, PMHC recognises that the main changes arising from this package relate to three key things:

- I. Changes to flood related development controls based on the Flood Planning Area (FPA) and changes to how the FPA is developed and mapped.
- II. Regional Evacuation Consideration Areas (RECA's) are new. It appears this aims to control development from an evacuation management and emergency response perspective. It appears that these areas will also be mapped and trigger flood controls.
- III. Special Flood Considerations (SFC's) are also new. Again, evacuation management and emergency response is a key consideration, however hazardous development will also be captured in this category. It is not clear whether this needs to be supported with mapping.

Refers to: Flood Prone Land Package

It appears that Councils are not required to use all three of the categories outlined above, however there is no information on how Councils can opt in, or out and what inherent risks are presented for Council should we choose to go one way or another.

Summary of potential changes and possible impacts on Councils:

- I. Identification of Regional Evacuation Consideration Areas (RECA's) - Likely to involve consultants to update our Floodplain Risk Management Plans and is likely to generate new maps. Significant financial and staff resourcing implications.
- II. Special Flood Consideration (SFC's) - The number of developments in this category has expanded somewhat, from the 7 development types presently listed under Clause 7.4 of the LEP to 15.
- III. Changes to Planning Certificates. Some of which appear to rely on the identification of RECA's.
- IV. Changes to Planning Proposals. Some of which appear to rely on the identification of RECA's.
- V. Councils will need to undertake a wholesale revision of existing Flood Policies or DCP's to ensure that it accords with the new information. The NSW state government should account for this via savings and transitional provisions and targeted financial assistance.

Some issues PMHC has identified:

- I. SFC's now need to consider hazardous development. However, no hazardous development types have been specifically nominated in the draft package, whereas those development types that require evacuation (i.e. schools, hospitals etc) have been specifically listed.
- II. Are we permitted to retain our Flood Policy or will it need to be incorporated into the DCP?
- III. Requirements for flood mapping appears to be open to interpretation. The guideline states that we 'should' produce maps and this 'could' entail them being published in a DCP, LEP or just on respective Council websites. Clarification on this aspect is requested.
- IV. Climate Change is presently referred to under Clause 7.3 of the LEP. The proposed LEP clauses in the Package also retain this wording, however none of the remaining documents mentions climate change. Clear direction on how Councils' should incorporate/address climate change should be provided.

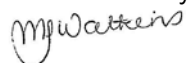
Council wishes to have the opportunity to make further comment as the Package is developed and reviewed following this first round of feedback.

Thank you for the opportunity to provide feedback on this important matter and we look forward to being involved in future stages of the review.

Refers to: Flood Prone Land Package

Please contact Council's Environmental Projects Officer, Jesse Dick on 6581 8629 or by email jesse.dick@pmhc.nsw.gov.au should you wish to clarify any aspect of this submission.

Yours sincerely



Melissa Watkins
Director, Development and Environment

26 June 2020

Ms Santina Camroux
Director Resilient Places
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Email – resilience.planning@planning.nsw.gov.au

Dear Ms Camroux

Flood Prone Land Package

The Property Council welcomes the opportunity to provide comments to the Department of Planning, Industry and Environment (Department) on the flood prone land package.

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes. Our members are associated with the management and development of land in many areas impacted by flooding, including Western Sydney, the Hunter region and Illawarra-Shoalhaven region.

We are pleased to provide the comments below for your consideration having reviewed the package released for comment, which includes:

- Proposed Planning Circular: "Considering flooding in land use planning: guidance and statutory requirements,
- Proposed Local Planning Direction – Flooding
- Proposed Local Environmental Plan clauses
- Proposed guideline "Considering Flooding in Land Use Planning"
- Proposed amendment to Schedule 4 of the *Environmental Planning and Assessment Regulation 2000* (this has yet to be released for comment).

It is also understood that as a consequence of this package, Planning Circular PS 07-003 "New guideline and changes to section 117 direction and EP&A Regulation on flood prone land" will be superseded and "Guideline on development controls on low flood risk areas – floodplain development manual" will be revoked.

Planning Circular

We support the Department's intention to provide clear policy guidance to councils and the community for the development of all flood prone land within the floodplain, including

consideration of all floods up to the Probable Maximum Flood (PMF) level. We also agree that, apart from exceptional circumstances, residential flood level should be set at 1% AEP (annual exceedance probability).

Local Planning Direction

The objectives and intent of the proposed Direction are generally appropriate.

The proposed Direction removes the current requirement that prevents a flood related development control being imposed above the residential flood planning level for residential development on land unless adequate justification for those controls are provided to the Director General (now the Planning Secretary). We argue that this is an important part of the current Direction and should be retained. There has been no justification provided for its removal from the updated Direction.

In regards to consistency with the Direction, a planning proposal may be inconsistent with the Direction where the Secretary can be satisfied that the planning proposal is in accordance with a floodplain risk management plan prepared by the relevant council (and consistent with the 2005 Floodplain Development Manual) or the planning proposal is supported by a flood and risk impact assessment or Council adopted flood study consistent with the relevant planning authorities' requirements.

We note that both of these consistency provisions have not been carried over from the current Direction that was issued on 1 July 2009. It would be helpful to understand how these provisions will be applied and in what circumstances the Secretary would agree to a planning proposal that was inconsistent with these requirements.

Local Environmental Plan Clauses

The proposed standard LEP clauses, namely flood planning area, special flood considerations and regional evacuation consideration area, are appropriate.

However, to increase public awareness and support for planning for all floods there must be more information made available relating to these clauses through their publication on the NSW Planning Portal. As a minimum this should include each council without exception providing the digital mapping of each of these three flood areas. There must be wider availability of any current flood study for each catchment within a local government area, including any flood risk management plans that have been prepared. Any relevant State Emergency Sub-plan prepared by the NSW State Emergency Service should also be made available on the Planning Portal where the regional evacuation consideration area clause has been applied.

Considering Flooding in Land Use Planning Guideline

The Property Council supports initiatives to help NSW communities become more resilient to flooding beyond the 1% AEP. The proposed Guideline is a useful tool to better understand how many of the different flood planning categories operate.

It is important that the draft Guideline makes a clear statement that the 1% AEP is more than a starting point for determining a defined flood event (DFE) for development purposes. It should indicate that except in exceptional circumstances, 1% AEP is the appropriate DFE. We acknowledge that there will be some instances where a higher standard is required to protect sensitive and vulnerable land uses and agree that it is appropriate for those to be identified in the draft Guideline.

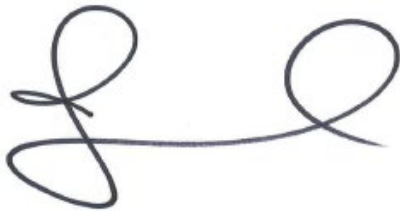
On page 2 of the draft Guideline there is a reference to several documents that are currently in draft form and will be released as part of a future update of the *Floodplain Development Manual* (2005). We would be interested to participate in any consultation undertaken by the Department as part of the update of the manual.

Amendment to *Environmental Planning and Assessment Regulation 2000*

It is understood that a change to section 7A of Schedule 4 of the EP&A Regulation is proposed to be made concerning the content included in Planning Certificates. As this amendment has not been drafted, it is unavailable for comment at this time. We would be grateful if a copy of the proposed amendment be circulated to relevant stakeholders before this Regulation is finalised and made.

Should you have any questions regarding the content of this submission, do not hesitate to contact Troy Loveday, Senior Policy Advisor, on 0414 265152 or tloveday@propertycouncil.com.au

Yours sincerely

A handwritten signature in dark ink, appearing to be 'Jane Fitzgerald', with a stylized, flowing script.

Jane Fitzgerald
NSW Executive Director
Property Council of Australia

Department of Planning, Industry and Environment
Resilience Planning Team
Locked Bag 5022
Parramatta NSW 2124

Dear Sir/Madam

Exhibition Flood Prone Land Package

Thank you for giving Queanbeyan-Palerang Regional Council (QPRC) the opportunity to comment on the Flood Prone Land Package currently being exhibited by the Department. Council welcomes any changes to the current policies and guidelines that seek to improve clarity and consistency around the application of flood planning policy in NSW, including confirming the circumstances where formal Floodplain Risk Management Plans (FRMPs) are formally required to support proposed changes to local planning controls.

Council's recent experience in the preparation of FRMPs and a number of site specific planning proposals is that there is significant divergent interpretation of the existing Flood Prone Land Policy by the State, councils, industry and the community. This suggests any new policy needs to better clarify and confirm how flood management outcomes are consistently delivered through the planning system.

QPRC supports the concept of having clear guidelines around the development and implementation of flood related planning controls in NSW. Areas of Queanbeyan township in particular are subject to flood inundation and the town has a history of flood events. Flood prone land is also a feature of Council's other main townships of Bungendore and Braidwood.

In respect of most residential development, Council's view is that the 1% Annual Exceedance Probability (AEP) plus 0.5 metre freeboard, represents a prudent and balanced delineation as to where planning controls should subsequently require additional consideration of flooding impacts (ie, where the flood planning level (FPL) should be determined). Requiring additional controls beyond this level is generally not considered appropriate as that is seen as an unnecessary burden on land generally suitable for a wide range of developments.

There is little background in the package as to how the likelihood of a Probable Maximum Flood (PMF) event has been balanced against the proposal to include additional regulatory controls and the cost this potentially places on Council and landowners. Relative to other risks such as bushfire, flood impacts are already generally well recognised and accommodated in local and State planning controls. The package would benefit from additional NSW examples of where flooding events above the FPL have occurred and where this flooding has directly impacted on the safe evacuation of residents, or, impacted upon crucial infrastructure. The need for a change to current flood planning controls at this time is not well articulated.

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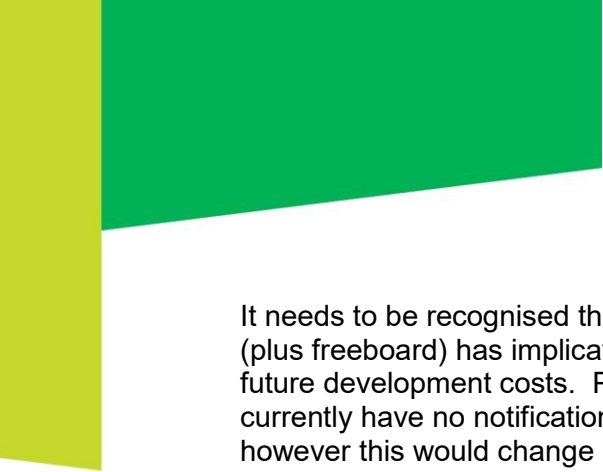
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It needs to be recognised that extending flood controls beyond the current 1% AEP (plus freeboard) has implications in respect of reducing property values and increasing future development costs. Properties above the FPL and up to the PMF in QPRC currently have no notification on s10.7 planning certificates in respect of flood controls however this would change under the proposed package. In Queanbeyan alone, the number of properties that will see notifications on 10.7 certificates in respect of flooding controls would increase from 1,395 properties to 4,848 properties. Significant numbers of additional properties would also be impacted both Bungendore and Braidwood townships.

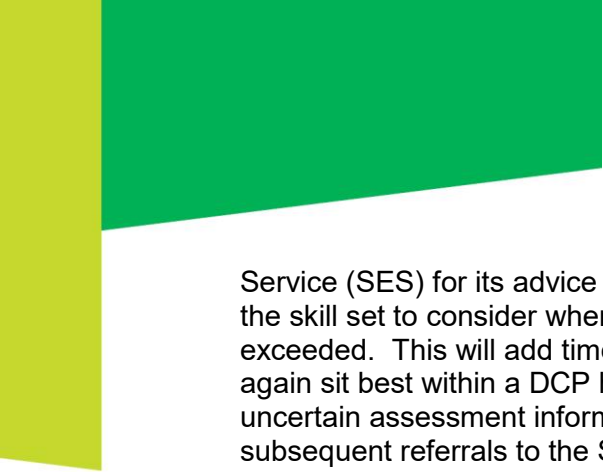
Council supports appropriate planning considerations for vulnerable developments located above the FPL however would argue that these controls sit best in a development control plan (DCP) where they will not trigger the need to provide the advice on a 10.7 certificates, however would still remain a matter that must be addressed at development application stage. Requiring such controls to be placed within LEPs and then referenced on 10.7 certificates seems an overly blunt approach to addressing these concerns. It is noted DPIE is developing a standardised DCP format and Council would generally support controls in respect of vulnerable developments up to the PMF being placed within these standard DCPs.

Council notes there is also a proposal in the package to include 3 separate LEP clauses in respect of flood planning into local environmental plans (LEPs). To provide some relative context to this proposal, Council currently has no standard clauses in its respective LEPs that manage more immediate and regular risks such as bushfire. It seems to be a potential overreach that 3 distinct LEP clauses are necessary to manage flooding impacts. At the very least, consideration should be given to drafting a single clause that addresses potential flooding impacts, and including additional elements in that single clause as necessary to capture the other matters covered under the proposed 3 clauses.

In this regard, Council is supportive of the proposed Flood Planning Area clause, and notes it generally gives similar effect to the existing controls in Council's LEPs at this time with some additional provisions to ensure evacuation routes are not compromised and to manage storage of potentially hazardous material below the FPL.

Council does not support an additional LEP clause in respect of Special Flood Considerations as this would result in new and unnecessary notifications on 10.7 planning certificates in areas considered generally suitable for a wide range of land uses. Council would support ensuring suitable controls are contained in DCPs in respect of vulnerable developments between the FPL and the PMF. Council's view is most of these forms of development should demonstrate the potential for safe evacuation for a range of emergency issues including, flooding. Regardless, these controls sit best in an appropriate DCP.

Similarly, Council does not support the proposed additional LEP clause in respect of Regional Evacuation Consideration Areas. It is unclear if a Regional Evacuation Consideration Area is an existing concept under any legislation or if it is a new concept proposed to be adopted as part of the draft package. In practice, the clause will essentially have the effect of being a de-facto concurrence clause as Council staff will be required to forward any such development applications to the State Emergency



Service (SES) for its advice and determination as Council staff may or may not have the skill set to consider when the evacuation capacity of a regional evacuation route is exceeded. This will add time to and costs to such applications. Any such controls again sit best within a DCP however this won't address the concerns in respect of uncertain assessment information and criteria, or the time and costs associated with subsequent referrals to the SES.

Removal of the requirement to seek the Secretary's approval for 'exceptional circumstances' to establish planning controls above the 1% AEP should be carefully considered. It is understood the *Guideline on Development Controls on Low Flood Risk Areas* was specifically implemented a number of years after the *Floodplain Development Manual* was released to address a concern that policy creep had occurred in respect of implementing the plan. Council's view is that this is one of the few documents that provides certainty and clarity in progressing planning outcomes where flood considerations are relevant.

The Flood Prone Land Package does not address the most urgent issue confronting Council in respect of planning for flood prone land which is the need to clarify and confirm when a formal Floodplain Risk Management Plan (FRMP) is, or is not, required prior to progressing changes to local planning controls. This remains vague and uncertain and is not resolved by the draft package. DPIE's Flooding Unit have previously advised Council that any changes to planning controls affecting land within the PMF in the absence of a FRMP are inconsistent with the existing *Section 9.1 Direction 4.3 Flood Prone Land* and the *Floodplain Development Manual* itself. Regardless, DPIE's Planning Unit continue to issue Gateway determinations and progress those same planning proposals to conclusion. This creates considerable frustration and uncertainty for the Council, industry and the community. The merger of the same functions under a common Department should be seen as the opportunity for DPIE to clarify and confirm these requirements. Some examples of local matters where this uncertainty has arisen are illustrated below:

- Council has recently proposed a new cemetery in a semi-rural location where all burials and structures will all be located above the FPL as determined by flood studies for the site. DPIE's Flood Unit has subsequently provided advice that the proposal won't be supported in the absence of a FRMP for the entire catchment. Council's view is has taken a cautious and appropriate approach to considering flood impacts for such a use. It is unclear how a cemetery located above the FPL represents a significant risk to property or life, or, why a formal FRMP must be in place beforehand.
- Council has similarly proposed new areas for commercial and light industry development on land above the FPL to be subsequently advised by DPIE's Flood Unit it does not support those developments unless a FRMP is prepared for the entire catchment. This has resulted in significant extra costs and delays for Council and the respective developers.

It is crucially important to Council that DPIE resolve this uncertainty and provide clear and consistent advice as to whether formal FRMPs are necessary prior to any planning proposals being progressed on any land within the PMF.

As noted Council is on the view a number of elements of the package should be further considered.

Again thank you for the opportunity to make a submission. If you have any enquiries in respect of this matter please contact myself on 6285 6277.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Martin Brown', with a stylized, cursive script.

Martin Brown
Program Coordinator
Land Use Planning
Queanbeyan-Palerang Regional Council

Tweed Shire Council

Submission:

Tweed Shire Council is very supportive of the exhibited Flood Prone Land Package. Tweed was significantly impacted by Planning Circular PS07-003 and pursued reforms directly with the State agencies involved at the time, as well as through Floodplain Management Australia. Tweed was one of the few Councils who pursued "exceptional circumstances" in order to consider planning controls above the flood planning level (FPL). While this took some 7 years to obtain, it proved essential due to our high growth rates, our relatively high sensitive/vulnerable community demographics, and our degree of flood risk. Tweed was also heavily involved in the development of the second standard LEP flood clause to deal with development between the FPL and probable maximum flood (PMF) and raised concerns with compulsory flood mapping in LEPs. The exhibited reforms supersede the PS07-003 and in our view bring the planning guidelines, directions, regulations and statutory planning clauses back in line with, and complementary to, the NSW Floodplain Development Manual. Tweed was also part of the Local Government Reference Group that assisted in the review and drafting of the documents. We thank the Department for that opportunity.

Our Ref: F2004/08420

3 July 2020

Santina Camroux
Director Resilient Places
Place, Design and Public Spaces
Department of Planning, Industry & Environment
Parramatta Square 12 Darcy Street
Parramatta NSW 2150
resilience.planning@planning.nsw.gov.au

Dear Ms Camroux,



RE: FLOOD PRONE LAND PACKAGE

Council has reviewed the exhibition material contained within the revised flood-prone land package by the Department of Planning, Industry and Environment and provides the following comments and suggestions below.

(A) Flood planning level can be increased beyond the 1%AEP

Council notes that the flood planning level can be increased beyond the 1%AEP to address broad scale impacts where extreme events have the potential for high consequence or to address risk to life. In assessing the full range of flood risk, reconsideration of the reintroduction of sea level rise benchmarks to the currently predicted 1.5m by 2100 is requested.

Rainfall intensity and sea level rise significantly affect flood planning in coastal areas such as Randwick. Regular updates to benchmarks should be in alignment with IPCC predictions to ensure the most up to date climate change science predictions are being utilised in the flood modelling. For your information, Council is considering utilising a 1.5m 2100 sea level rise prediction in coastal hazard studies associated with our coastal management plan.

(B) LEP Clauses

Council notes that the LEP clauses proposed have not yet been specified as optional or mandatory. While Council is generally supportive of a standard instrument, the controls still need to be relevant to the Randwick environment and flood management requirements as discussed below:

Flood Planning Area clause

Council notes that some of the changes to the flood planning area clause may be difficult to determine, interpret or measure such as the following:

- (h) *(the development) will not increase the potential for hazardous material to pollute the environment during flood events.*

Council is of the opinion that this control is reasonable where the locations of hazardous material are known, however there are substantial areas of landfill land in urban areas within Sydney that are often unknown and undocumented that may become hazardous if exposed during flood events. As such, it is suggested that the clause be amended to refer to "known' hazardous material".

Council notes the inclusion of new requirements in the Flood Planning Area for the safe evacuation from land during flood events which read as follows:

- c) *(the development) will not adversely affect the safe and efficient evacuation from the land or impact the capacity of existing evacuation routes for the surrounding area,*

Flood events in the Randwick LGA predominantly occur as flash flooding arising from pipe capacity issues with flooding usually dissipating within 30mins/1hour. Based on the nature of these flood events there would be insufficient warning time to enable a safe evacuation of these flood affected sites.

Additionally, It would be difficult to determine safe evacuation from land/development during flood events when the best option may be to seek refuge on site given the short duration of these events, especially where evacuation may pose a greater risk to residents safety than remaining within the property. Council suggests that this proposed LEP clause should allow for flood free refuges to be incorporated in the design of proposed developments as an alternative to evacuation where this may be applicable due to the nature of the flooding.

Consideration should be given to this factor given that one of the planning directions proposed for the future development of land in flood prone areas stipulates that any future planning proposal must not contain provisions that increase the requirement for government spending on emergency services which reads as follows:

- (g) *are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities ...*

Special Flood Consideration Clause

Council would suggest that additional land uses that should be considered under the Special Flood Consideration Clause should include those related to "transient populations". Randwick City has a significant proportion of student accommodation and residential colleges which should be considered for their inclusion in this clause due to their high density and potentially vulnerable nature.

Overall, Council supports the inclusion of the flood planning level definition into both the Flood Planning Area and Special Flood Consideration Clauses of the LEP as this would establish standardised criteria to aid in the interpretation of these clauses and their application.

(C) Application to s10.7 certificates.

Council notes that the proposed amendments to the Regulation and associated notations on the 10.7 certificates will require Council to amend Council's Flood Policy. This will require the reporting and endorsement of the new policy to a Council meeting. To give Council enough time to effect these changes a minimum of 8 weeks notification of these changes before they come into effect under the Regulation is requested.

Clause 7A (3)¹ of the Regulation is a new requirement in planning certificates. It requires councils to include a notation to advise whether there is a need to consider the impact of development against an established regional evacuation strategy or flood-related state emergency sub-plan,

within the Regional Evacuation Consideration area. Council understands that this evacuation strategy currently only applies to the Hawkesbury Nepean area and does not apply to any part of the Randwick LGA.

Council requests that, if the clause is not currently relevant to an LGA, their inclusion be made optional as mandatory regional evacuation strategies in planning certificates for urban LGAs may create unwarranted and confusing notations which often lead to unnecessary enquiries for Councils from potential property buyers. Notations for evacuation strategies can be included later if and when they become relevant to a Council.

(D) Conflict between flood prone land areas and coastal vulnerability areas for risk to life

Council would suggest that more guidance on how Councils should interpret the proposed flood prone land package in LGAs with coastal environments such as Randwick City, and how the package affects existing Coastal Management SEPP provisions required of Council, would be desirable. In this regard, development on land within the "coastal vulnerability area" is referred to as follows under the Coastal Management SEPP:

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that the proposed development incorporates appropriate measures to manage risk to life and public safety from coastal hazards.

While Council currently has a flood plan for properties located below the flood planning level, it will also be preparing a coastal zone emergency action subplan as part of a Coastal Management Plan that is required over the next few years when coastal vulnerability areas in Council are identified. This task is further complicated by the combined effect in the Randwick LGA of coastal flooding from the east and inland flooding from the west which maybe be difficult to manage in a coastal environment. Consequently, evacuation routes may become contradictory especially when a high intensity rainfall event coincides with an east coast low which has historically for Randwick caused the worst flooding events.

(E) Impact on local water sensitive urban design strategies

Given that much of the Randwick LGA is geomorphologically located on sand and sits above the Botany Sands Aquifer, Council has been considering options to increasing infiltration, groundwater recharge and permeability of surfaces. This is one action in Council's Local Strategic Planning Statement (LSPS) to achieve the district plan water quality objectives in the Randwick LGA for reducing flow demands on stormwater pipes. As such, the flood prone land package should also include advice as to how water sensitive urban design strategies can be integrated into the proposed flood management planning approach. This would assist in informing on issues such as what are the effects of flood control measures (under the proposed Flood Planning Area) on existing on-site detention requirements in Council areas, and how can these effects be addressed.

If you have any questions regarding the above content please contact Bronwyn Englaro, Senior Sustainability Officer on 02 9093 6796.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Alan Bright', with a stylized, flowing script.

Alan Bright

Manager Strategic Planning

First Name: Name Withheld

Last Name: Name Withheld

Submission:

Thank you for this opportunity. I'm a Development Engineer in local government. I wondered if the Draft LEP clauses could be enhanced under heading FPA or PMF FPA. For safety reasons, evacuation from all areas below the PMF FPA is emerging as an important planning issue. Perhaps LEP clauses could ensure evacuation routes between the certain proposed developments and the regional evacuation area be brought in early as essential assessment criteria for planning proposals and development applications. The evacuation areas would have to be identified by the consent authority, but applications would need to consider the traffic capacity of the evacuation route and its safety, that is, not impacted by fast or deep flood flows. Thank you.

Council Reference: 31157E (D20/221675)

11/06/2020

Attention: Department of Planning, Industry and Environment
Via Planning Portal

Dear Sir/Madam,

Draft Submission - Flood Prone Land Policy Package

Council welcomes the opportunity to provide comments on the Departments Flood Prone Land Package (the Review). Feedback on each of the separate but related components of the Review (as well as general comments) is provided below.

1. Submission Timeframe and Extension

Considerable documentation needed to be considered in order for Council to provide a thorough and appropriate response to this Review. As you can appreciate, the submission process takes time to coordinate comments from multiple sections across Council and for the submission to be considered by the elected Council.

Council appreciates the granting of our request for an extension to the 25 June 2020 submission deadline until 9 July 2020, noting that a draft submission (this submission) is to be provided by 25 June 2020. This submission therefore does not necessarily reflect the views of the elected Council. This draft submission will be considered by Council in late June 2020, and once endorsed by Council, a final submission will be made with a cover letter detailing any substantial changes (as directed by the Department of Planning, Industry and Environment (DPIE)).

In future, consideration of extended consultation timeframes is requested, not only in order to provide an appropriate and thorough submission, but to also allow the submission to go through the formal Council reporting process if required.

2. General Comments

Council is generally supportive of the proposed changes identified. The review appears to widen the scope of Council's assessment in flood-prone areas, strengthening Council's ability to refuse an application on flood prone land unless it can demonstrate that there is no increased risk to life.

The draft Flood Prone Land review package includes:

- Revised Planning Circular
- Revised Ministerial Direction relating to flooding
- Revised Local Environmental Plan (LEP) flood clauses
- Proposed new guideline: Considering Flooding in Land Use Planning (2020)

Each component is discussed below.

3. A revised planning circular

The proposed new circular supersedes Planning Circular PS07-003 and provides information on a package of changes regarding how land use planning considers flooding and flood-related constraints. The circular discusses:

- The amendment to schedule 4, section 7A of the Environmental Planning and Assessment Regulation 2000 (the Regulation).
- The revised local planning direction regarding flooding issued under section 9.1 of the Environmental Planning and Assessment Act 1979 (the Act).
- The revised Local Environmental Plan (LEP) flood clauses.
- The new guideline: Considering Flooding in Land Use Planning (2020).

Whilst the planning circular generally discusses the four areas above, it discusses in detail the amendment to schedule 4, section 7A of the *Environmental Planning and Assessment Regulation 2000* (the Regulation).

Although Councils will continue to be required to distinguish between land where different categories of flood-related development controls apply, the amendment proposes to change the following clauses, which will have implications for what is required to be notated within Council 10.7 planning certificates.

- Clause 7A(1) - requires councils to include a notation on section 10.7 certificates, if flood-related development controls relating to the Flood Planning Area apply to the land. Currently, Shoalhaven Council already includes a notation within part 7 of its planning certificate, identifying whether or not development for the purpose of residential accommodation is subject to flood related development controls. The proposed amendment will simply broaden section 7A(1) to incorporate existing 7A(2), which identifies that “development for any other purpose” is subject to flood related development controls.
- Clause 7A(2) – requires councils to include a notation within Part 7 of its planning certificates, identifying if flood related development controls apply to sensitive, vulnerable, or critical uses, hazardous industries, hazardous storage establishments, or where risk to life considerations apply outside the Flood Planning Area. Council is supportive of this change, as it essentially defines sensitive, vulnerable, or critical use developments, similar to the way Planning for Bushfire Protection defines “Special Fire Protection Purposes”.

- Clause 7A(3) – is a new requirement in planning certificates. It requires councils to include a notation to advise whether there is a need to consider the impact of development against an established regional evacuation strategy or flood-related state emergency sub-plan, within the Regional Evacuation Consideration area (if the information is available).

Currently, Council is not aware of any regional evacuation strategy or flood-related state emergency sub-plan applying to the Shoalhaven local government area. Until such time as a plan/strategy is developed, the notation under clause 7A(3) of Shoalhaven planning certificates, will be 'No'.

As the State Emergency Service (SES) is a separate government agency, it is essential that a mechanism exists to ensure that the SES liaise with local councils during the policy development stage, or at the very least, a referral process is in place so that councils are aware these documents are being developed so that the planning certificates can be updated appropriately.

Council is concerned that existing clause 7A(3) will be replaced as part of the current review. The proposed clause replaces the dictionary explanation linking development types to Standard Instrument (Local Environmental Plan) Order 2006. Whilst it is acknowledged that new terms, sitting outside the standard instrument, may be implemented as part of this amendment (i.e. state emergency sub-plan), it is suggested that this clause be expanded and continue to be incorporated within the EP&A Regulation, as it provides consistency and a place of reference, which is particularly important from a legal context.

Shoalhaven Council currently operate our own planning certificate program (very much a band aid system) and it may take at least 6 months to make relevant changes to implement the required changes. As such, it is requested that there is a deferred commencement element to the planning certificate part of the Regulation amendment to enable councils to be prepared, taking into consideration other resourcing requirements such as the LSPS.

In addition to this, the Department of Planning, Industry and Environment (DPIE) has coordinated a working group consisting of representatives from local councils to assist with the development of a standard template planning certificate. From this perspective, it is important that the proposed changes have regard for this working group and the relationship between the future standard template planning certificates and the proposed changes.

4. Local planning direction 4.3 – Flooding

A revised local planning direction issued under section 9.1 of the EP&A Act is proposed as part of the Review. The revised direction will apply to draft LEPs that have not been issued with a gateway determination under section 3.34(2) of EP&A Act.

There are a number of positive changes identified between the current Local Planning Direction 4.3 - Flooding and the proposed direction, these include:

- The direction has been revised to remove the need to obtain exceptional circumstances to apply flood-related residential development controls above the 1% Annual Exceedance Probability (AEP) flood event.
- The proposed direction will apply to the state, whereas currently, the direction applies to all relevant planning authorities that are responsible for flood prone land within their LGA.

- Terminology throughout the direction has been broadened to refer to “land” that is affected by/due to flooding as opposed to currently only affecting “flood prone land.”
- Clause 4 - includes provisions that require draft LEPs to be consistent with the principles of:
 - NSW Flood Prone Land Policy
 - Floodplain Development Manual 2005 (or its update)
 - Considering flooding land use planning guidelines.
- Clause 5 - proposes to remove the ‘special use’ zone enabling rezoning.
- Clause 6 - broadened significantly to exclude a number of uses and circumstances where a planning proposal or draft LEP must not contain provisions that apply to a Flood Planning Area.
- Clause 7 – proposes to replace existing provisions with provisions relating to Regional Evacuation Consideration Area.
- Clause 8 - reworded to be more concise, and the inclusion of ‘or its update’ ensures the relevance of the clause into the future.
- Clause 9 – addition of “the planning proposal is supported by a flood and risk impact assessment or Council adopted flood study consistent with the relevant planning authorities’ requirements”.

Council is generally supportive of the changes proposed to Local planning direction 4.3 – Flooding, as it will provide additional measures to support staff during the planning proposal process.

5. Revised Local Environmental Plan flood clauses

Three local clauses have been developed and are proposed as part of this amendment:

- Flood Planning Area (FPA)
- Special Flood Considerations
- Regional Evacuation Consideration Area

The proposed new FPA clause is supported, especially noting the proposed wording regarding application is compatible with Council’s recent amendment to clause 7.3 of Shoalhaven LEP 2014. This amendment removed the existing Shoalhaven flood mapping from the LEP and instead applied clause 7.3 to land at or below the flood planning level.

It is noted that the Regional Evacuation Consideration Area clause will not apply to Shoalhaven. It currently only applies to the Hawkesbury Nepean area, as they are the only LGA with a regional flood evacuation strategy or flood related state emergency sub-plan by NSW State Emergency Services.

6. A new guideline: Considering Flooding in Land Use Planning (2020)

The guideline is consistent with the NSW governments Floodplain Development Manual, which supports resilient development of flood-prone land. It provides councils greater flexibility in defining the areas to which flood-related development controls apply, with consideration of both defined flood events (used to set flood planning levels (FPL)) and low-probability/high-consequence flooding. In addition, it allows for land requiring controls related to regional evacuation consideration to be identified.

The manual states that a defined flood event (DFE) of the 1% AEP, or a historic flood of similar scale, plus a freeboard should generally be used as the minimum recommended level for setting residential FPLs. Councils that propose a different FPL are required to demonstrate the merits of this approach through the FRM process.

Individual councils have discretion as to when they will apply the information contained within this guideline. It is intended that as councils undertake or update studies under the FRM process or obtain additional flood information, that information would support the implementation of this guideline.

The guide places a greater focus on strategic planning and emphasises that the full range of flooding up to and including PMF must be considered when undertaking strategic land use planning, and as such this should be considered in:

- Regional, metropolitan and district plans.
- Local strategic planning statements.
- Environmental planning instruments.
- Planning proposals.

There are three different categories where flood-related development controls may be applied:

- Flood Planning Area (FPA).
- Regional Evacuation Consideration Area (RECA).
- Special Flood Considerations (SFC).

Councils are not required to use all three categories outlined within the guide, but where more than one type or area is used, the Regional Evacuation Consideration Area (RECA) may overlap with the Flood Planning Area (FPA) or Special Flood Considerations (SFC) in the areas they cover. In this regard, it is assumed that a hierarchy exists with the RECA and SFC sitting over the FPA. Confirmation/clarification is required in this regard.

It appears that this package would only negatively impact current Planning Proposals if considerable Flood Risks were present – particularly where increases to water velocity or increased risk to the ability of emergency services to efficiently evacuate the local community can be shown.

7. Conclusion

Generally, Council supports the content of the Flood Prone Land Review. The proposed changes support councils with regard to flood related land use planning and areas where flood related development controls should apply, widening the scope of council's assessment in flood-prone areas and helping to protect the community.

It is requested that appropriate timeframes be considered in relation to any required changes to the Shoalhaven LEP or DCP or planning certificates, so that appropriate time and resources can be allocated within Council's Strategic Planning Works Program. In this regard it is requested that we be given at least 6 months.

If you need further information about this matter, please contact Peta Brooks, Planning Environment & Development Group on (02) 4429 3228. Please quote Council's reference 31157E (D20/221675).

Yours faithfully

A handwritten signature in cursive script, appearing to read 'J. Tague'.

Jenna Tague
Coordinator – Policy Planning

Stockland

Level 25, 133 Castlereagh Street
Sydney NSW 2000
www.stockland.com.au



25 June 2020

Attention: Specialist Planning Officer - Floodplain Management

NSW Department of Planning, Industry and Environment
GPO Box 39
Sydney NSW 2001

Email: resilience.planning@planning.nsw.gov.au

Thank you for the opportunity to make this submission on updates to the Flood Prone Land Package ('draft package') released by the Department of Planning, Industry and Environment. The draft package provides advice to councils on considering flooding in land use planning, particularly at the plan-making stage, and consists of:

- A new guideline: Considering Flooding in Land Use Planning (2020)
- A revised planning circular
- A revised local planning direction regarding flooding issued under section 9.1 of the Environmental Planning and Assessment Act 1979
- A proposed amendment to the EP&A Regulation 2000
- Revised Local Environmental Plan flood clauses.

This submission contains general commentary about aspects of the draft package.

About Stockland

Stockland is Australia's largest diversified property group and largest residential developer, with over \$8 billion invested across NSW within our residential, retail, retirement and office portfolios. Given the extent of Stockland's involvement in the NSW economy, we take seriously the opportunity to comment on draft policy changes that will impact the way planning decisions are made with regard to flood planning.

Stockland also has a proud track record in sustainability, and we understand the importance of water management and quality to help deliver on our goal to create and shape communities that thrive now and into the future. We understand that Australia's fluctuating climate can lead to long-term drought, water scarcity and severe flooding. As a responsible property developer, Stockland constantly considers where water is sourced, how efficiently it is used and how the quantity and quality is managed.

Key opportunities and challenges

Management of flooding and flood impacts, including evacuation, are important considerations in the development and planning process in NSW.

We agree with the statement in the draft Guideline that *"flood-prone land is a valuable resource that should not be sterilised by unnecessarily precluding its development"*. This statement

should be considered through all the proposed changes in light of the comments received during the exhibition period.

Whilst we agree with the underlying intent of the proposed changes, being to make communities more resilient to flooding impacts, we have some concerns about the detail contained in the draft package and its practical implementation:

- The proposed changes have the potential to impact the availability of land for residential development in NSW, the timing of planning decisions, and the ability for industry to innovate around and manage natural hazards.
- The proposed amendments have the potential to create inconsistencies across Local Government Areas and sterilise land beyond the flood boundary. The proposed changes, as currently drafted, enable inconsistency across Council boundaries without clear checks and balances, and we believe this should be reconsidered.
- The proposed removal of a requirement that prevents a flood related development control being imposed above the current residential flood planning level unless adequate justification for those controls are provided, is an important feature of the current policy and should be retained.
- We believe the draft Guideline should make clear that the current benchmark (the Flood Planning Area based on 1:100 year flood plus freeboard) should be maintained as the accepted benchmark, and unless there are exceptional circumstances, should continue to be consistently applied across NSW.
- Changes to the way in which flood prone land is defined and mapped (especially retrospectively) have the potential to impact on existing residential homes, commercial properties and industrial land holdings.

Specific Comments on the Draft Package

Considering flooding in land use planning guideline

The 'Considering flooding in land use planning guideline' (*the draft Guideline*) seeks to provide advice on flood-related land use planning and areas where flood-related development controls should apply.

Following review of the draft Guidelines and associated documents, we have identified the following key matters which we request be considered in the finalisation of the documentation:

a) Consistency in the mapping and definition of Flood Planning Areas

Stockland has a range of diversified property interest across NSW including large scale greenfield residential communities, industrial, retail, retirement and commercial projects. In this regard, Stockland interacts with a large number of local Council's across NSW in creating communities and delivering jobs for local residents.

Currently, the Flood Planning Areas (FPA) across NSW are defined as being land within the 1:100 year flood (plus 0.5m freeboard).

A key amendment proposed by the draft Guidelines and associated planning documents is to allow individual Councils to determine their own independent FPA, based on whichever flood frequency is deemed appropriate. This has the potential to create

inconsistency in the flood planning across NSW and potentially impact on land capability, housing and job creation.

In addition, there are instances where Stockland projects span multiple Council boundaries. In this scenario, under the proposed amendments it is possible that the defined FPA would vary between Council boundaries, creating unnecessary complexity and uncertainty.

We believe it is important that the draft Guideline makes clear that the 1% AEP is more than just a starting point for determining a defined flood event (DFE) for development purposes. It should indicate that except in exceptional circumstances, 1% AEP is the appropriate DFE. Whilst there may be some instances where a higher standard is required, a firmer commitment to the 1% AEP is considered to be important.

We consider that the current adopted definition of FPA provides clear consistent guidance for Council's the Development Industry and all other stakeholders across NSW and should be retained.

b) Risk Minimisation

As discussed in the draft Guideline, it is the intent to allow Councils to select an appropriate Defined Flood Event (DFE) to determine the FPA. This approach has the potential to result in adopting a risk minimisation / lowest risk strategy, where Council's adopt flood events higher than the 1:100 year in order to minimise future liability.

In this respect, it is possible that local authorities would adopt the Probable Maximum Flood (PMF) as the DFE, resulting in large areas of the state being sterilised for future development.

We believe it is more appropriate for the DPIE to provide a single consistent guideline for the DFE to be adopted across NSW. Furthermore, we recommend DPIE maintains its strategic and regulatory oversight of all planning within Flood Prone Areas to ensure consistency and certainty for all stakeholders, including the development industry.

c) Land use Impacts

As discussed above, the draft Guidelines establish a flood planning regime whereby each Council adopts its own individual DFE to determine the extend of flood prone lands. This has the potential to have significant impacts on both planned future housing and employment areas, and existing industrial / retail assets as described below:

i. Planned Housing & Employment Lands

Under the proposed amendments, Council's may adopt FPA area which extends beyond the current adopted 1:100 year flood levels.

Typically, existing Structure Planning across growth areas within the Sydney Metropolitan, Illawarra and Hunter Regions have adopted the 1:100 year flood level in defining unconstrained land capable of delivering new housing and employment opportunities. Moreover, strategies, plans and policies for Sydney have all generally

adopted the 1:100 year flood level, which has then been used to determine housing/employment targets and determine supply adequacies.

The adoption of a different flood event (per LGA) as allowed under the draft Guidelines may significantly reduce the extent of land capable of delivering new homes and employment land in planned growth areas across NSW. In turn, this has the potential to significantly undermine and change the established housing supply scenarios. There is no indication of how the Government intends to reconcile these proposed changes with any impacts on housing supply, which is already under pressure from other constraints.

As an example, Stockland has interests in land holdings in the recently rezoned Mamre Road Precinct and the developing Marsden Park and Marsden Park North Residential Precincts. Rezoning of these precincts extends over a number of different Council areas, but adopted a consistent DFE, being the 1:100 year event to determine FPA.

Under the draft Guidelines, any individual Council could have adopted a different flood event. This would have directly and significantly reduced the extent of developable land, reduced dwelling delivery and reduced job creation.

ii. Existing Industrial & Retail Assets

Stockland has interests in many existing industrial and retail assets across NSW. These assets have been acquired and delivered under the current flood planning regime, which adopts the 1:100 year flood event in determining the FPA.

There is a considerable risk that a Council may adopt a higher flood event as a new FPA as proposed by the draft Guidelines. In this instance, this would render existing unconstrained employment and retail land potentially flood prone. This would have significant impact on the ability to expand employment and retail assets to deliver jobs and facilities for local communities.

Identification of new flood Prone Land may also have impacts on insurance, OHS and workplace practices across these assets.

d) Evacuation and Management Measures

The draft package references major flood events like the Brisbane floods in 2011. However, most of the changes proposed only seek to change how flooding is considered at the plan-making phase. Alone, this has the potential to create plans that work to the 'worst case scenario'.

There is little in the draft package to recognise and build in the important role of evacuation planning and increasing public awareness about flood risk management. In many instances, planning has the potential to be used as a blunt tool to manage for flooding. Rather, a nuanced and balanced approach to flood planning, combined with more education, awareness and focus on other aspects like evacuation planning for example, could lead to more balanced land use and risk mitigation outcomes.

Draft Flooding Ministerial Direction

The draft Ministerial Direction released for exhibition includes several amendments which will impact the delivery of future residential and retirement projects across NSW.

The wording and structure of Clause (6)(d) of the Ministerial Direction in specifically referencing dwelling densities and retirement living projects will impact opportunities to review land use outcomes and rezone land across NSW.

Similar to the issues raised above, expansion of “flood prone land” classification beyond the current 1:100 year flood level would render existing unconstrained land artificially inappropriate to accommodate increased dwelling densities and retirement projects.

Stockland therefore requests a reconsideration of the drafting of the Direction, and an opportunity to work with the Department to further refine the drafting of the Ministerial Direction.

LEP Clause - Special Flood Considerations

The introduction of the draft Special Flood Considerations Local Environmental Plan (LEP) Clause as proposed will have the effect of sterilising significant areas of land for the purposes listed as being “sensitive” land uses.

Stockland supports the need to locate sensitive land uses in appropriate locations and ensure safe occupation and evacuation of flood prone land.

However the LEP Clause as proposed, seeks to impose restrictions on the delivery of specific land uses on land which is currently not identified as being flood prone land.

This Clause, if adopted, may have significant ramifications in the ability to deliver a range of housing options, community facilities and schools in recently zoned new release areas, where a Flood Planning Level of 1:100 year storm event has been used to zone land.

As an example, if adopted, the Clause as written would have the effect of prohibiting the delivery of a school on land zoned for residential or special uses which is above the 1:100 year flood level, but within the Probable Maximum Flood (PMF) area.

This would have significant impacts on the delivery of existing endorsed Structure Plans and Indicative Layout Plans in multiple growth areas across NSW.

Stockland therefore requests a reconsideration of the drafting of the LEP Clause, and an opportunity to work with the Department to further refine the drafting in recognition of the comments above.

Stockland

Level 25, 133 Castlereagh Street
Sydney NSW 2000

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Conclusion

Stockland appreciates the opportunity to comment the documents currently on exhibition and welcomes any further opportunity to be part of discussions on this topic. Please feel free to contact me or organise a meeting to discuss any of the comments or recommendations above. Llew Gartrell (0411 571 366 or llew.gartrell@stockland.com.au) is the contact for your office.

Kind regards

A handwritten signature in black ink, appearing to read "R. Rhydderch", is positioned below the "Kind regards" text.

Richard Rhydderch

General Manager – Residential Development NSW



File Ref: 2015/87240

11 June 2020

13/01/201102212012123003021222013

NSW Department of Planning, Industry and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam,

Draft Flood Prone Land Package

[In response, please quote File Ref: 2015/87240]

Comments on the Draft Flood Prone Land Package

Sutherland Shire Council welcomes the opportunity to comment on the NSW Planning and Environment's Flood Prone Land Package. Sutherland Shire Council strongly supports the move by the State Government to update the planning framework for flooding in order to better assist councils in considering flooding in land use planning. Council supports State Government level guidance to assist decision makers in undertaking strategic planning and assessing proposed development within areas affected by flooding.

At present, the planning framework for flooding is rigid and often requires decision making at the development assessment stage on a case by case basis. Council welcomes more agility in the flood planning framework to ensure suitable planning however, the documents contained within the NSW Government's Flood Prone Land Package appear to have further complicated how Council's implement the Flood Risk Management Process and communicate these issues to the community.

Sutherland Shire is a 300 square kilometre local government area located at the southern extend of the Sydney Metropolitan Area. Like many LGAs, parts of the Sutherland Shire are at risk from flooding from its estuaries, freshwater creeks and the catchments draining to the main waterways. Flooding is more severe in the Woronora River Valley however, the greatest overall source of flood risk derives from overland flooding and creek flooding.

Sutherland Shire Council has for many decades followed the NSW Government's Flood Prone Land Policy and specifically the flood risk management process described by the policy. Council operates a floodplain risk management program that seeks to develop and implement flood plain risk management studies and plans. Council also actively applies flood-related development controls in accordance with the Sutherland Shire Local Environmental Plan 2015 and the Sutherland Shire Development Control Plan 2015.

Sutherland Shire Council continually strives to improve its approach to floodplain risk management with the aim of reducing risk to life and property from the full range of flooding.

Council therefore welcomes the opportunity to comment on the flood prone land package recently released by the Department of Planning, Industry and Environment.

It appears that one of the primary intentions of the package is to bolster LEP controls while giving Council's more flexibility in defining where and how the LEP controls apply. Unfortunately the inconsistencies between the package documents, a lack of logic and misunderstanding of Flood Risk Management make it difficult to see the benefits of applying the package. The Package attempts to improve on the 2007 s.117 direction and the existing model clause, however the continued reliance on the concepts of flood planning area, flood planning level and defined flood events, detracts from the benefits of these improvements. The introduction of new terms such as Regional Evacuation Consideration Area and Special Flood Considerations is only likely to cause confusion, and is not of practical benefit or helpful in improving outcomes. Generally, the community and development industry have difficulty in understanding flooding and many of the provisions in the package add a further layer of complexity.

The attachment to this letter summarises Sutherland Shire Council's position on the exhibited draft Flood Prone Land Package. Please note that this submission is Council officer's views and Council will consider this matter at its meeting of 24 August 2020. If any changes are required a revised submission will be made.

If you require any further explanation of the issues raised, please contact Erin Sellers, Team Leader Stormwater and Waterway Assets for technical issues on 97100857 and Jordan Widenstrom, Environmental Planner on 9710 0639 for planning issues.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Mark Carlon', with a long horizontal line extending to the right.

Mark Carlon
Manager Environmental Planning

Sutherland Shire Council Detailed Submission: Flood Prone Land Package

This document provides more detail in relation to the issues raised in Sutherland Shire Council's submission to the draft Flood Prone Land Package. Please note that this submission is Council officer's views. Council will consider this matter at its meeting of 24 August 2020 and if any changes are required a revised submission will be made.

General Comments

For the flood prone land reforms to be effective, Sutherland Shire Council considers that an equitable and strong partnership with the State Government is required.

In general, Sutherland Shire Council supports the emphasis placed on evacuation and its consideration in land use planning. Council also supports the consideration of flooding beyond the 1% AEP giving council more flexibility in considering the full range of flooding up to the Probable Maximum Flood in its decision making.

While Council acknowledges the need for strict controls to address the impacts of flooding and its threat to life and property, it supports the sentiment that flood prone land is a valuable resource that should not be sterilised by unnecessary development controls.

Sutherland Shire Council supports reforms which give councils the protection for their actions and management measures under the good faith requirements of Section 733 of the Local Government Act 1993.

Draft Local Planning Direction

Sutherland Shire Council supports a number of the provisions in the draft Planning Direction that appear to closely reflect the principles that apply to bush fire prone land and land affected by coastal hazards. This provision, in particular, will greatly assist Council in managing future development in those areas most sensitive to flooding. Council however, raises the following concerns in relation to the content of the Draft Local Planning Direction.

- Clause (3):
 - Presumably the direction applies to flood prone land not 'land due to flooding'.
 - Presumably this direction will not apply if Council chooses to not remove or alter the existing Clause 6.3 Flood Planning in the SSLEP 2015.
- Clause (4):
 - It appears the main objective of this direction is to give effect to the 'Considering flooding in landuse planning guideline'. However the direction would not take effect until such time as a planning proposal or draft LEP is prepared.

- Clause (6):
 - Presumably the list of provisions cannot be included in a LEP anyway if councils are expected to adopt the new proposed LEP clause as a model clause or remain with the existing model clause.
 - These provisions would be better expressed as objectives or principles, given there are numerous exceptions to the provisions, as listed below.
 - 6 (a) and 6 (c): Development could be permitted in a floodway or high hazard area if it was the redevelopment of an existing dwelling with a high risk of flooding to a flood compatible dwelling with a low risk of flooding.
 - 6 (d): Similarly, increased development density could be allowed if the future flood risk could be shown to be reduced from existing, for example, replacement of at-risk, low density dwellings with flood compatible, high density dwellings.
 - 6 (f): This has the intention of not allowing complying development within the flood planning area. This restricts Council's ability to explore options where complying development may be preferred to issuing development consent within the flood planning area (however that becomes defined).
- Clause (7):
 - A regional evacuation route should be defined. Notwithstanding, this clause presumably refers to the larger, cross-boundary floodplains such as the Hawkesbury-Nepean floodplain and is unlikely to be applicable to the Sutherland Shire. However, consideration should be given to not just the traffic capacity of the evacuation route but the capacity of the entire flood emergency response system e.g. flood forecasting and warning infrastructure, emergency services staff capacity, community flood awareness and preparedness, etc.
- Clause (9):
 - Ideally the direction should be worded to avoid the risk of any planning proposal being inconsistent. More fundamentally, the direction should seek to support the intent of a flood study or FRMS&P which should then in turn are used to inform the preparation of a planning proposal.

Revised Local Environmental Plan Flood Clauses

Sutherland Shire Council supports many of the provisions contained in the draft LEP flood clauses. There are however some areas of concern as outlined below:

- Standard Instrument or Model Clause?
 - Upon review of the Draft LEP clauses, no mention is made as to whether the proposed clauses are standard instrument mandatory clauses or model clauses councils can choose to include in their LEP.
 - Sutherland Shire Council does not have any Regional Evacuation Consideration Areas within the LGA, and none of the current flood studies identify any areas where this clause would need to apply. As a consequence, Sutherland Shire Council requests that the proposed LEP

provisions are model clauses which council can choose to include within its LEP should studies be conducted that require controls for areas including the Regional Evacuation Consideration Areas.

- Wording of Controls:
 - The draft LEP contains controls, due to their wording, will create enforcement issues for councils. Some of the controls are worded in a way that make assessing compliance difficult which in turn makes enforcement more difficult. This will lead to conflict in the assessment process between council officers and applicants.

An example of the wording of a control is provided below:

“Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

(g) Is not likely to result in unsustainable and social economic costs to the community as a consequence of flooding”

While the intent of the controls to be met is supported, the lack of guidance as to how to assess and achieve satisfaction with these controls is an area of concern. If Council has no guidance as to how to test compliance with the control, and the applicant is not given any guidelines to prove compliance, there will unavoidably be inconsistent applications of the controls. This will inevitably lead to debate between officers and applicants.

Given the wording of the controls requires the consent authority to be satisfied before issuing a consent, it is requested that the draft LEP tests as to how a council can be satisfied that each of the controls has been met. Clarification is sought as to how impacts are assessed and what information should be required from an applicant to demonstrate that the control is satisfied.

This could be included as guidelines in the ‘Considering Flooding in Land Use Planning (2020)’ document. Providing some direction will effectively streamline application processing and provide councils with the tools to make sound decisions.

- It is suggested that DPIE take the opportunity to change the title of the clause to ‘floodplain risk management’ for the following reasons:

- Although sub-clause (3) refers to development consent which is a statutory planning process, the objectives of the clause are an FRM function
- It links to and supports floodplain risk management described in the 2005 FDM.
- 'Flood planning' confuses the development of a floodplain risk management plan or a flood plan (typically an emergency response plan), with the statutory planning process. Flood planning is not a term commonly used in FRM.
- Floodplain risk management is a type of management activity like stormwater management, which is another model clause and appears as Clause 6.4 in the SSLEP2015
- It can integrate the 'floodplain risk management' clause that is used by councils which have sought exceptional circumstances to apply controls above the residential FPL
- If the title cannot be changed to 'floodplain risk management' then it should be changed simply to 'flood planning' which is the title of the existing model clause. The clause title then relates to the statutory planning process not simply the area to which the process applies.
- Clause (1):
 - The clause objectives should be reconsidered in light of an objective tree analysis i.e. what are the means and what is the end. Sub-clause 1a) is the end goal while the other sub-clauses are the means to that end.
 - There is an opportunity to present these in terms of the three types of flood risk and/or the three type of FRM measures as expressed in the 2005 FDM. This will help ensure consistency with the FDM and achieve the aims of Clause 4(a) and (b) of the local planning direction.
 - If the clause objectives are to be kept then council suggests modifying (1) (c) given that, although the intent is understood, there are many instances where existing flood behaviour is undesirable and should not be 'maintained'.
- Clause (2):
 - There is an opportunity to integrate the standard 'floodplain risk management' clause and allow for the application of graduated controls up to the PMF without having to continue to rely on the term 'flood planning area'.
- Clause (3):
 - Number of sub-clauses is increased from 5 to 9 when compared to the existing model clause however, this does not necessarily improve the development outcome. For instance, Clauses (3) b) and d), and c) and e), achieve the same thing and could be combined. Flood duration should be added to (3) d). Clause (3) f), while important, is not related to flooding.
 - The sub clauses should be rationalised and provide greater regulatory weight to the DCP objectives and prescriptive controls.

- Clause (4) is welcome and supported. This will assist Council in the application of its sea level rise policy to developments affected by both flooding and sea level rise.

Draft Guideline: Considering Flooding in Land Use Planning

- Relationship with SEPPs:
 - The Flood Prone Land Package proposes a number of changes which have the ability to affect provisions within a number of existing SEPPs however, no reference is made to this as part of the exhibited documents. SEPP (Exempt and Complying Development Codes) 2008 prohibits development on flood control lots including flood storage areas, floodway areas, a flow path, a high hazard area and a high risk area. Further guidance is required to how the newly proposed Regional Evacuation Consideration Areas and Special Flood Consideration Areas relate to the provisions of the Exempt and Complying Development Codes.

It appears that changes will be required to all other SEPPs that refer to flood related development controls such as the SEPP Exempt and Complying Development Codes. Sutherland Shire Council requests guidance on how the new Flood Prone Land Package relates to these SEPPs.

- First paragraph: It's not entirely clear how this guideline will raise community flood resilience. It appears from the application of the 'Special Flood Considerations', that only a part of the community will gain the benefit of flood controls, not everyone. The use of the term ARI has been superseded by AEP as described in Section 2.2.5 of Australian Rainfall and Runoff 2019 and should be avoided.
- Fourth paragraph: There appears to be a misunderstanding of the FDM. The FDM mentions cumulative impacts of development but cumulative impacts are to be avoided by managing future risk through proper development control. The legacy of past cumulative impact manifests as the present day existing flood risk. Any ongoing cumulative impact represents a failure of the FRM process. Similarly there should not be an impact of future development on emergency services if the FRM process is correctly followed (although undoubtedly there will be an impact, the manual doesn't discuss how this is managed).
- Applying the guideline:
 - First para: Presumably if councils have discretion in applying the guideline then the three categories can effectively be ignored if council chooses. Does this mean that council does need to utilise the flood planning area concept as outline in the local planning direction and LEP clause?
- Considering flooding in land use planning:

- Consideration of the full range of flooding up to the PMF within strategic land use planning documents is supported. However, the guidelines are inconsistent with the fact the proposed flood local environmental plan clauses does not consider the PMF.
- Understanding how flood constraints vary:
 - 'Flood constraints' is not good use of terminology. Flooding is a development constraint. However, more specifically, flood behaviour and flood function are not development constraints per se, they are simply a description of flood behaviour. Flood hazard and flood risk would be considered development constraints.
 - The hierarchy of how flooding is considered is not clear. This section does not add any value beyond what is already expressed in other documents. The relevance of this section is not clear.
- Flood Planning Area:
 - The definition of flood planning area given here i.e. the area below the FPL where the majority of flood-related development controls apply, is inconsistent with the definition given in the flood LEP clauses and local planning directions which states the FPA is the area below the FPL plus other areas of land where the majority of flood related controls apply (presumably this means land above the FPL). This should either be clarified or the terms FPA and FPL removed altogether.
 - The intention of the guideline to allow councils flexibility in selecting design flood events and freeboards other than the 1% AEP event and 0.5 m freeboard is welcome. However the continued reliance on a single defined flood event (DFE) and freeboard is not helpful given councils will define a number of design events as the basis for applying different types of development controls for different development scenarios.
 - By allowing an extension of the FPA in certain areas, the definition of the FPA, which is based on a single DFE, becomes compromised and essentially illogical.
 - In practice, the FPA is rarely referred to and does not aid in understanding risk or applying development controls, and serves little practical purpose. It is much simpler to show the extent of the PMF and apply graduated planning controls that are commensurate with flood risk and development scenario, without the need for FPLs, FPAs and DFEs.
 - The last paragraph on using a rare flood as a basis for setting floor levels and ensuring structural adequacy is supported, and reflects Council's current practice when allowing shelter-in-place. Again this supports the need for using varying design flood events rather than a single DFE.
- Regional Evacuation Consideration Area:
 - The need for and purpose of a RECA (particularly as a new term) is not clear.
 - Flood emergency response must be a consideration across the entire floodplain, not just part of the floodplain, as a means of addressing ongoing flood risk. In low flood risk areas it is often the only consideration.

- The need for controls should be independent of development density.
- The focus of RECA's is on the Hawkesbury-Nepean floodplain which, although one of Australia's most dangerous floodplains, does not serve LGAs like Sutherland Shire where the primary flood risk is from overland flow.
- Special flood considerations:
 - The introduction of another term is not helpful. The intent of special flood considerations is supported however, this is already dealt with in the risk management matrix of many DCPs and is currently supported by the LEP clause on floodplain risk management.
 - Fourth bullet point: There should be no circumstances where risk to life should not be considered. All development controls for all development types (not just sensitive, critical or vulnerable uses) up to the PMF should always consider risk to life. The degree of control should however be commensurate with the degree of risk to life.
- Maps:
 - The flexibility to publish maps at different locations is welcome. This gives Council the ability to update maps at the time new data or other changes become known or adopted, without being restricted by a more formal update process e.g. LEP update process.

Planning Circular – Considering flooding in land use planning: guidance and statutory requirements

- Section 10.7 planning certificates:
 - The proposed draft Planning Circular requires councils to amend their 10.7 planning certificates to reflect the changes proposed in the Environmental Planning and Assessment Regulation updates as part of the Flood Prone Land Package. Amending planning certificates is a complex process for Council that requires a significant amount of time and resources to complete.
- During previous correspondence with the Department of Planning, Industry and Environment, Councils were informed that any amendments to the Environmental Planning and Assessment Regulation resulting in the need to update 10.7 planning certificates would allow for an 8 week period for Council's to amend their certificates. Council requests that this 8 week timeframe is maintained from when the planning circular is finalised and its commencement date.
- Updates to Clause 7A of the EP&A Regulation 2000 are supported.
 - Clause 7A(2): It is not clear how risk to life considerations that apply outside the flood planning areas would trigger the need for a notation.
- Local planning direction 4.3 – Flooding:
 - Removing the need for councils to apply for exceptional circumstances is welcome and supported.

Implications for Council

- Clause (4) of the proposed LEP flood clause related to the consideration of climate change is welcome and supported. However, aside from this, the use of the entire clause adds no further value to Council to what it already obtains under its existing Clause 6.3 of the SSLEP 2015.
- Council would take advantage of the flexibility afforded by the land use planning guidelines in setting the area to which controls apply and how the areas are mapped. However, Council will continue to face difficulty in integrating the concepts of FPA, FPL and DFE with the current flood-related development controls outlined in the Sutherland Shire Development Control Plan 2015.
- Council would likely use its discretion afforded by the guideline to avoid introducing the concepts of RECA and SFC.
- The ability to better articulate the application of flood-related development-controls on Section 10.7 planning certificates is welcome however, the benefits are constrained by the continued reliance on the FPA concept which at present is inconsistently defined and is problematic to map.
- It is preferable to simply map the PMF extent as the area to which flood controls apply and use a series of graduated controls that are commensurate with flood risk and the development scenario, without recourse to the concepts of FPA, FPL or DFE.

Conclusion

- It appears one of the intentions of the package is to bolster LEP controls while giving Council's more flexibility in defining where and how the LEP controls apply. Unfortunately, the inconsistencies between the package documents, a lack of logic and the misunderstandings of FRM make it difficult to see the benefits of applying the package.
- The package attempts to improve on the 2007 S.117 direction and the existing model clause, however the continued reliance on the concepts of flood planning area, flood planning level and defined flood events, detracts from the benefit of these improvements.
- The introduction of new terms such as regional evacuation consideration area (RECA) and special flood considerations (SFC) is only likely to cause confusion, is not of practical benefit and is not considered helpful.

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ABN: 39 638 876 538



Reference: 020-20 SJ

Thursday, 25 June 2020

Re: Flood Prone Land Package

To whom it may concern,

Thank you for the opportunity to comment on the Flood Prone Package being prepared for councils for consideration of flooding in land use planning. The Sydney Coastal Councils Group (SCCG) supports greater guidance being developed by the NSW Government to assist our member Councils build resilience in communities located in flood risk areas and reduce the extent of property damage and potential loss of life from flooding.

The Sydney Coastal Councils Group (SCCG) is a regional organisation of Councils that advances sustainable management of Sydney's urban coastal and estuarine environment. We currently comprise nine member Councils who represent 1.3 million Sydneysiders. One of our key goals is for people and places to adapt to a changing climate and future shocks and stressors.

We have reviewed the package of draft material that has been developed to support Councils which includes a revised planning circular, revised Local Environmental Plan flood clauses, and a new guideline titled *Considering Flooding in Land Use Planning*.

A key issue is the apparent omission with regards to catchment flooding and tidal inundation in these documents and we seek clarification. This is despite:

1. These being defined as a coastal hazard in s. 4(1) of the *Coastal Management Act 2016*
2. Planning Circular – Planning for Coastal Hazards (19-006) stating that *when assessing the risk of a current or future coastal hazard, councils and other consent authorities have discretion to consider:*

“any relevant floodplain risk management plans or estuary management plans prepared by or on behalf of a council or public authority that take into account tidal inundation in combination with catchment flooding.”
3. The NSW Coastal Manual requiring Coastal Management Programs to *“identify relevant coastal processes acting singularly or in combination, which affect coastal hazards, including ... catchment characteristics and flows and the potential for river floods to coincide with extreme oceanic events.”*

It also appears to be a missed opportunity to update requirements around determining sea level rise predictions as these are important in any flood modelling in the coastal

zone. Sea level rise predictions are important in flood modelling as it determines how quickly stormwater can be discharged by pipe to the ocean and subsequently how much water backs up and causes inland flooding. This also determines how resilient an area is to flooding which I understand is a focus on the flood prone land package.

If you have any queries, please contact me by email at executiveofficer@sydneycoastalcouncils.com.au or by phone (0407733075).

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Joyce', with a stylized flourish at the end.

Sarah P Joyce
Executive Officer



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL
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PO Box 7064, Norwest 2153
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29 June 2020

Department of Planning, Industry and Environment
12 Darcy Street
PARRAMATTA NSW 2123

Our Ref: FP99 FP85

Dear Sir/Madam

SUBMISSION ON THE FLOOD PRONE LAND PACKAGE

Thank you for the opportunity to provide comment on the Flood Prone Land Package (the Package). It is understood that the package has been prepared in response to recent national flood events, and identifies the importance in managing flood risk up to and beyond the 1 in 100 chance per year flood.

The intent of the Package is supported in principle, recognising the importance of protecting life and property from severe and extreme weather events throughout NSW. It is noted that portions of our rural land and growth centres are identified within the Hawkesbury-Nepean Flood Emergency Sub Plan prepared by the State Emergency Service (SES). In addition, three regional evacuation routes are located within the Shire boundaries being the Old Northern Road Route, Pitt Town Route and Windsor Road Route. The following comments on the proposed Package are provided for your consideration:

Standard Instrument LEP Clauses

The Package proposes three new clauses to the Standard Instrument, these being the Flood Planning Area, Regional Evacuation Consideration Area, and the Special Flood Considerations.

It is requested that the clauses be introduced as optional clauses rather than mandatory clauses noting that additional mapping and flood studies are likely to be required to ensure the clauses achieve their desired effect. A flexible approach to implementation would also fit with the advice contained in the draft guideline 'Considering Flooding in Land Use Planning' which identifies that it is up to the discretion of individual councils when they apply the information.

Regional Evacuation Consideration Area

This clause is designed to protect the capacity of regional evacuation routes and support vehicular connectivity of development to regional evacuation routes. The clause applies to land identified within a regional evacuation strategy; and requires the consent authority to not issue development consent if it will cause an exceedance in the evacuation capacity of a road.

The Pitt Town evacuation route passes through Old Pitt Town Road, Edwards Road and Annangrove Road within the Hills Shire Council and runs alongside the Annangrove Road employment area, Box Hill and Box Hill North urban release areas. Council's recently finalised Local Strategic Planning Statement (LSPS) and supporting strategies identify the growth expected in these areas with total capacity for over 15,000 dwellings in the Box Hill precinct, 5,000 dwellings for the Box Hill North Precinct and 28,000 jobs for the Box Hill and Annangrove employment areas.

The zoning of these locations for growth has followed extensive investigations as part of a precinct planning process and they form part of Council's response to employment and dwelling targets identified in the Central City District Plan.

The SES Flood Emergency Sub Plan does not provide sufficient detail to ascertain where the 'Regional Evacuation Consideration Area' would apply. Is it not clear whether it is based upon a defined flood event, properties along the route or a wider area. Without knowing the extent of the area affected, it is difficult to gauge the implications of the proposed clause however care is needed in drafting to ensure the planned growth for the locality is not hindered. Clarity is needed of the definition which should be supported by mapping from the SES or Department and provided to Council in a digital format. This will assist Council in evaluating the implementation of the clause and administration of section 10.7 planning certificates should the clause be adopted.

Flood Planning Area and Special Flood Considerations

The current Flood Planning clause in Councils Local Environmental Plan applies to land at or below the Flood Planning Level defined as the level of a 1:100 Average Recurrent Interval (ARI) flood event plus a 0.5 metre freeboard. It is noted that this term has not been included in the draft clauses but rather is only included in the proposed guidelines. It is requested that final drafting of the proposed clauses retain the definition of Flood Planning Level within the local environmental plan clause. For the sake of clarity, consideration could also be afforded to including the definition of terms such as 'flood hazard' and 'flood risk'.

The proposed new clauses reference the terms of Flood Planning Area and Special Flood Considerations which may extend beyond the Flood Planning Level and up to the probable maximum flood. The proposed guidelines indicate it is intended for councils to undertake or update studies under the Flood Risk Management Process or to obtain additional flood information that would support the implementation of the package. Any additional flood mapping or studies is likely to require significant time and resources. Without external funding from public authorities such as the Department of Planning, Industry and Environment, it is requested that the clauses remain optional until the additional studies can be resourced.

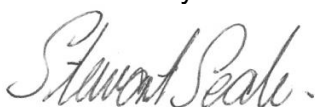
Section 9.1 Directions

The proposed revisions to Local Planning Direction 4.3 Flooding are noted. It is requested that the Ministerial Direction and/or the Standard Instrument clauses also be amended to provide clarity on the type of information that is required to be submitted for assessment of flooding impacts. Clarity should also be provided on whether the level of information changes with the different categories (Flood Planning Area, Regional Evacuation Consideration Area and Special Flood Considerations).

Within the draft Ministerial Direction, subclause 6(d) states that a planning proposal or draft LEP must not permit a significant increase in the dwelling density of the land. The term 'significant increase' is subjective and it is unclear how this is determined. It is also unclear how this applies in areas where substantial uplift is anticipated. Furthermore, whilst the draft Planning Circular identifies the cumulative impacts of development on flood prone land as a key issue, it is unclear how such impacts will be determined and assessed as part of the planning proposal process.

Thank you again for the opportunity to comment on the Package. Should you have any enquiries in relation to Councils submission please contact Samuel Austin Town Planner on 9843 0473.

Yours faithfully



Stewart Seale
PROJECT MANAGER – LSPS & LEP

Tweed Shire Council

Submission:

Tweed Shire Council is very supportive of the exhibited Flood Prone Land Package. Tweed was significantly impacted by Planning Circular PS07-003 and pursued reforms directly with the State agencies involved at the time, as well as through Floodplain Management Australia. Tweed was one of the few Councils who pursued "exceptional circumstances" in order to consider planning controls above the flood planning level (FPL). While this took some 7 years to obtain, it proved essential due to our high growth rates, our relatively high sensitive/vulnerable community demographics, and our degree of flood risk. Tweed was also heavily involved in the development of the second standard LEP flood clause to deal with development between the FPL and probable maximum flood (PMF) and raised concerns with compulsory flood mapping in LEPs. The exhibited reforms supersede the PS07-003 and in our view bring the planning guidelines, directions, regulations and statutory planning clauses back in line with, and complementary to, the NSW Floodplain Development Manual. Tweed was also part of the Local Government Reference Group that assisted in the review and drafting of the documents. We thank the Department for that opportunity.



Flood Prone Land Package

UDIA NSW Response

June 2020

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CONTACT

For further information about any matter raised in the submission please contact:

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ABOUT THE UDIA

Established in 1963, the Urban Development Institute of Australia (UDIA) is the leading industry group representing the property development sector. Our 500 member companies include developers, engineers, consultants, local government, and utilities. Our advocacy is focussed on developing liveable, affordable, and connected cities.

EXECUTIVE SUMMARY

The Urban Development Institute of Australia – NSW (UDIA) welcomes the opportunity to make a submission on the Flood Prone Land Package (the Package). Many of our members work on developments in proximity to flood prone land, including both large listed developers and smaller private operators.

We bring a high level of industry knowledge and experience of working with the NSW Floodplain Development Manual and associated guidelines and planning policies. We believe the existing land use planning regime for flood risk has been successful in delivering safe and appropriate development within the floodplains of NSW. UDIA has significant concerns about what we see as an emerging shift by the NSW Government away from the widely accepted 1:100 AEP plus freeboard flood planning level, towards more conservative requirements. We do not believe this shift is warranted and fear it would unnecessarily sterilise large areas that are appropriate for urban development. It is particularly hard to understand this shift without any transparency from the NSW Government on the risk modelling and assumptions that underpin it.

The existing flood risk planning regime, including the NSW Floodplain Development Manual, is widely accepted and works well. The 1:100 AEP plus freeboard has been accepted by the NSW community over several decades as the appropriate level for managing flood risk, unless there are exceptional circumstances. In the vast majority of NSW, insurance – not land use planning – should manage flood risk above that level.

To this end, the UDIA makes the following recommendations in response to the Package:

- Recommendation 1: Retain the 1:100 AEP plus freeboard as the Flood Planning Level, unless exceptional circumstances apply.
- Recommendation 2: Require councils to satisfy the DPIE Secretary of the justification for all exceptional circumstances, variations or inconsistencies with the Floodplain Development Manual and associated controls/policies.
- Recommendation 3: Retain the existing restrictions on imposing flood-related development controls on residential land above the flood planning level.
- Recommendation 4: Further refine the approach to restricting sensitive uses to reflect the different risks posed by these uses.
- Recommendation 5: Remove the proposed Regional Evacuation Consideration Area unless the NSW Government will engage transparently with the industry on the flood and evacuation modelling used to underpin it.
- Recommendation 6: Remove the proposed notation under clause 7A(3)1 of the EP&A Regulation because it creates unnecessary alarm that is not commensurate with flood risk.
- Recommendation 7: Ensure the wording of assessment criteria in the LEP clauses allow for tests of likelihood and significance.

EXISTING FLOOD-PRONE LAND PLANNING WORKS WELL

The existing flood-prone land planning system in NSW has been operating successfully for several decades, providing safety for the community and certainty for the industry. The Floodplain Development Manual, the supporting guideline and the associated planning instrument clauses ensure that flood risk is accounted for in land use planning and development.

The system considers flood risk and likelihood, as well as evacuation issues. It is premised on the widely accepted concept that 1:100 AEP plus freeboard is the appropriate flood planning level unless there are exceptional circumstances. The NSW Government has the final say as to whether exceptional circumstances exist.

This approach has created certainty for the community and the industry by applying a consistent approach to flood-prone land planning across NSW. It has allowed the NSW Government to maintain strategic control over flood-prone land planning and ensure that flood risks are balanced with the delivery of much-needed housing and employment.

In the exhibited Package, DPIE has:

- not demonstrated any fundamental problems with the existing system that would necessitate the level of change that is proposed.
- It has not demonstrated that development according to the existing system has increased risk to life or damage to property.
- It has not demonstrated that buildings developed under the existing system are not resilient enough to flood events; and
- It has not demonstrated a need for more extensive consideration of evacuation issues, or for more notations on section 10.7 certificates.

UDIA strongly recommends that the concepts enshrined in the existing flood-prone land planning system are retained. Flood planning levels should remain at 1:100 AEP plus freeboard, and only vary from this under exceptional circumstances approved by DPIE following strategic consideration. The existing requirements for flood resilient buildings and consideration of evacuation issues should also remain unless the NSW Government can transparently show that this system does not adequately protect life and property.

RECOMMENDATION 1: RETAIN THE 1:100 AEP PLUS FREEBOARD AS THE FLOOD PLANNING LEVEL, UNLESS EXCEPTIONAL CIRCUMSTANCES APPLY.

THE IMPORTANCE OF GOVERNMENT OVERSIGHT

The Package proposes to remove the requirement for local councils to satisfy the DPIE Secretary that a variation or inconsistency with the Floodplain Development Manual and associated controls is justified. Instead, these variations or inconsistencies could be justified by the council through their own studies or assessments.

UDIA acknowledges there are some circumstances where a higher flood planning level is required. However, it is essential that DPIE retain the final say in approving any variations or inconsistencies with the Floodplain Development Manual and associated controls, to maintain consistency. DPIE

has strategic oversight of land use planning and development across NSW and is responsible for balancing flood risk with the need for housing, employment and urban development.

Local councils do not have a mandate beyond their own local government area and if left unchecked, could develop a flood-prone land planning system that is overly conservative and prevents appropriate development that would deliver broader economic and social benefits. An inconsistent approach to flood-prone land planning will develop across NSW, creating uncertainty for the community and the industry. The concept of exceptional circumstances needs to be clearly defined to prevent it being applied broadly.

As one example, UDIA is aware that DPIE oversight successfully prevented inappropriate local flood planning controls in Sydney's North West a decade ago.

RECOMMENDATION 2: REQUIRE COUNCILS TO SATISFY THE DPIE SECRETARY OF THE JUSTIFICATION FOR ALL EXCEPTIONAL CIRCUMSTANCES, VARIATIONS OR INCONSISTENCIES WITH THE FLOODPLAIN DEVELOPMENT MANUAL AND ASSOCIATED CONTROLS/POLICIES.

MANAGING RISK ABOVE THE FLOOD PLANNING LEVEL

The Package proposes additional planning controls above the flood planning level. UDIA opposes this as a fundamental shift away from the widely accepted approach to managing flood risk in NSW, being:

- Land use planning manages risk up to the flood planning level
- Insurance managed risk above the flood planning level.

Before engaging with the community and industry on this shift, DPIE should quantify the potential extent of changes – the area and land uses that are currently between 1:100 AEP and PMF.

The Package proposes to restrict development above the flood planning level in three ways:

- additional building resilience
- lower dwelling density
- restrictions on sensitive uses

UDIA opposes all three of these restrictions for the reasons below.

BUILDING RESILIENCE CONTROLS ABOVE THE FPL

The Package proposes to remove the current restriction on imposing flood-related development controls on residential land above the flood planning level. UDIA has seen additional building resilience controls proposed above the flood planning level in the draft development control plan for West Schofields. We oppose the removal of this restriction, because we do not believe that the additional cost burden of resilient construction is commensurate with the level of risk from flood events above the flood planning level. The proposed resilient building standards would protect buildings from flood events that have an extremely low likelihood of occurring during the expected lifetime of the building.

If the guideline *Reducing Vulnerability of Buildings to Flood Damage* were to be imposed, UDIA estimates it would add more than \$50,000 to the cost of a new home, as follows:

Component	Anticipated Increased Cost to Conform with 96 Hour Immersion Specification
Walls Support Structure	\$8,560
Wall and Ceiling Linings	\$24,500
Roof Structure	\$6,200
Doors	\$6,500
Windows	\$5,400
Insulation	\$2,150
Bolts, Hinges, Nails & Fittings	\$400
Anticipated Increased Cost Per lot	\$53,710

Given flood events above the flood planning level have a less than 1% chance of occurring in any given year, these costs do not align with the level of risk or insurance implications.

RECOMMENDATION 3: RETAIN THE EXISTING RESTRICTIONS ON IMPOSING FLOOD RELATED DEVELOPMENT CONTROLS ON RESIDENTIAL LAND ABOVE THE FLOOD PLANNING LEVEL.

DWELLING DENSITY CONTROLS ABOVE THE FPL

The Package proposes to allow dwelling densities to be reduced in response to evacuation capacity requirements. While UDIA supports aligning densities with evacuation capacity in areas of genuine flood risk, we are very concerned that there has been no transparency or engagement with our industry on the evacuation modelling that would underpin the proposed restrictions on dwelling densities above the flood planning level. As such, it is difficult for us to make an informed response to the proposed dwelling density controls. From the reduced dwelling densities proposed in the draft West Schofields DCP, we are concerned that the cost to housing supply and affordability outweighs the benefits for flood evacuation.

SENSITIVE USES ABOVE THE FPL

The Package proposes to restrict land uses that are considered sensitive to flood events. UDIA believes this list needs to be more nuanced to reflect the different risks posed by the range of sensitive uses listed. It is important to nuance this list because there are significant areas of developable land above the flood planning level and below the Probable Maximum Flood. If sensitive uses are wholly restricted, new residential communities could develop without adequate access to the facilities considered sensitive uses.

UDIA recommends that distinctions be made between *hazardous* uses (which should be restricted within the floodplain) and uses where users may be slower to evacuate (which may need to be restricted up to something like the 1:200 AEP).

RECOMMENDATION 4: FURTHER REFINE THE APPROACH TO RESTRICTING SENSITIVE USES TO REFLECT THE DIFFERENT RISKS POSED BY THESE USES.

ADDRESSING FLOOD EVACUATION REQUIREMENTS

The existing flood-prone land planning system requires evacuation issues to be addressed for land between the 1:100 AEP and the Probable Maximum Flood level. The Package proposes to require development above the flood planning level (and potentially above the floodplain entirely) to address regional evacuation routes and strategies. UDIA does not support amplifying these requirements and tying them directly to flood and evacuation modelling which the industry has not been consulted on or seen.

UDIA is concerned that the current evacuation scenarios that seem to underpin draft controls in West Schofields and Penrith CBD seem overly conservative, resulting in unreasonable dwelling caps. The evacuation scenarios rely on extreme events that are likely to occur once in 10,000-100,000 years, as well as making very conservative assumptions about warning times, resident volumes in the Precinct at any given time, and evacuation route decisions.

RECOMMENDATION 5: REMOVE THE PROPOSED REGIONAL EVACUATION CONSIDERATION AREA UNLESS THE NSW GOVERNMENT WILL ENGAGE TRANSPARENTLY WITH THE INDUSTRY ON THE FLOOD AND EVACUATION MODELLING USED TO UNDERPIN IT.

SECTION 10.7 CERTIFICATE NOTATIONS

The Package proposes to require a notation on section 10.7 certificates to advise whether there is a need to consider the impact of development against an established regional evacuation strategy or flood-related state emergency sub-plan, within the Regional Evacuation Consideration area (if the information is available).

UDIA does not support this notation because it would create unnecessary alarm for purchasers, valuers and insurers, leading to lower valuations and higher insurance premiums. These impacts would not be commensurate with the level of flood risk at the property. Constraints on the development of the land that reflect evacuation constraints would already be noted elsewhere in the section 10.7 certificate.

RECOMMENDATION 6: REMOVE THE PROPOSED NOTATION UNDER CLAUSE 7A(3)1 OF THE EP&A REGULATION BECAUSE IT CREATES UNNECESSARY ALARM THAT IS NOT COMMENSURATE WITH FLOOD RISK.

LEP CLAUSE WORDING

UDIA acknowledges that the wording for the LEP clause in the Package is indicative only. Nonetheless, we are concerned by the removal of key words from the current flood clauses that require a test of significance, and a test of likelihood. We recommend, for example, that all criteria that is worded 'will not' is changed to 'is unlikely to', and that all reference to 'no impact' is changed to 'no significant impact'.

RECOMMENDATION 7: ENSURE THE WORDING OF ASSESSMENT CRITERIA IN THE LEP CLAUSES ALLOW FOR TESTS OF LIKELIHOOD AND SIGNIFICANCE.

CONCLUSION

UDIA supports the protection of life and property from flood risk, and our members have planned and developed flood resilient communities across NSW under the existing flood-prone land planning system. We do not believe the NSW Government has demonstrated the need for the expansion of flood-prone land planning controls beyond the existing system. The 1:100 AEP plus freeboard is an appropriate flood planning level, and the insurance sector covers risk above that level.

The proposed Package would significantly reduce housing supply and worsen affordability without a commensurate improvement in protection from floods. Our proposed recommendations will ensure a balanced and consistent approach to flood planning in NSW.

UDIA

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1 July 2020
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Dear David

DRAFT FLOOD PRONE LAND PACKAGE

During our telephone call late last week you invited our firm to provide a response to DPIE's draft 'Flood Prone Land Package' (**draft Package**) which has recently been on exhibition.

Within this letter we provide a response from our perspective as flood risk practitioners who have over 35 years' experience of providing advice to NSW councils and to developers, including providing expert testimony in the NSW Land and Environment Court on over 100 occasions. We have also drafted the flood controls within DCPs for over 25 councils. We are independent of the development industry, and the local and state agencies responsible for land use planning and development approvals.

Whilst the current system for management of floodplain development in NSW has generally worked well, there are areas that need improvement. Therefore we welcome DPIE's initiative to make changes through the draft Package although amendments to the Package are required.

RESPONSE

1. Planning Circular PS07-003 and its associated documents (the **2007 Guideline**) arose at a time when our draft Blacktown FRMS&P was under consideration including draft planning controls for development in the 'low flood risk precinct' within the Blacktown LGA. Over the 13 years that have elapsed since 2007, there has been widespread condemnation of the Guideline as providing an inadequate response to the management of flood risks in the region of the floodplain between the typical residential FPL and the PMF level (i.e. the **Outer Floodplain**).
2. We support the replacement of the 2007 Guideline with clearer guidance provided it is consistent with the NSW Flood Prone Land Policy (**Policy**) and the Floodplain Development Manual (**Manual**). The draft Package goes some way to achieving this objective but it lacks some key aspects of guidance which are necessary. The remainder of our response addresses these aspects.
3. Flood risks in the Outer Floodplain are generally poorly understood and often inadequately managed in NSW. These usually involve the 'low probability / high consequence' events which are difficult for developers and consent authorities to understand. Focusing too much on either the low probability or the high consequence leads to biased and inappropriate outcomes.

4. Application of the Policy and Manual to land use planning within the Outer Floodplain requires “*balancing the relative costs and benefits of using the floodplain*”.¹ Whilst the flood hazards need to be recognised and avoided where significant, land use planning must also recognise that “*flood prone land is a valuable resource that should not be sterilised by unnecessarily precluding its development*”.²
5. In our experience, this ‘balancing’ is on occasions poorly achieved and the outcome is inconsistent with the Policy and the Manual. Many councils lack the skills and the guidance to achieve a suitable ‘balance’ and therefore adopt a risk-averse approach when considering development proposals in the Outer Floodplain.
6. Our main criticism of the draft Package is that it does not assist councils in achieving an appropriate balance. The current wording of the draft Package will likely be interpreted by many councils as encouraging consent authorities to take a more risk-averse approach to development in the Outer Floodplain.
7. The stated aim of the guideline which is to “*help NSW communities to be more resilient to flooding beyond the 1% Annual Exceedance Probability (AEP)*”³ will be interpreted to mean less development. Further there is nothing in the draft Package to help councils avoid unnecessary sterilisation of the floodplain due to inappropriate assessment of the true flood risks.
8. Councils need more guidance from DPIE on how to deal with the low probability / high consequence environment in the Outer Floodplain and to avoid unnecessary sterilisation of floodplain land. A PMF event is typically 1000 times less likely to occur than a 1% AEP event but many councils apply the same ‘one size fits all’ approach when formulating controls for the PMF.
9. Consent authorities also lack knowledge of the level of risks which society accepts when considering other natural hazards, particularly those hazards which involve direct risks to life. For example, the National Construction Code adopts between 1 in 1500 and 1 in 2000 year as appropriate standards when designing buildings against earthquakes and cyclonic winds, and Austroads uses 1 in 2000 year when designing major bridges. In the absence of a proper understanding of the level of risk which society accepts, consent authorities sometimes apply controls to the management of flood risks which are significantly more onerous than for the management of other natural hazards.

Summary

- (a) The 2007 Guideline needs to be replaced with better guidance consistent with the Policy and the Manual. The draft Package in a modified form provides an opportunity for this to occur.
- (b) The draft Package is not supported in its current form. It needs additional material and guidance included to better assist councils and other consent authorities achieve an appropriate balance of the benefits and costs of developing in the Outer Floodplain.

¹ Section B1 of the Floodplain Development Manual.

² Part of the primary objective of the NSW Flood Prone Land Policy as outlined in Section 1.1 of the Floodplain Development Manual.

³ Opening paragraph of draft document entitled ‘Considering flooding in land use planning guideline’.

- (c) In its current form it will be interpreted by many councils and consent authorities as promoting a more risk-averse approach to development that will result in unnecessary sterilisation of some floodplain land.
- (d) Further guidance is needed from DPIE to address low probability / high consequence regions of the floodplain. This should include advice on:
- the use of the merit approach espoused by the Manual and which balances social, economic, environmental and flood risk parameters to determine whether particular development or use of the Outer Floodplain is appropriate and sustainable;⁴
 - the levels of risk accepted by society for other natural hazards;
 - the socio-economic consequences of inappropriate and unnecessary sterilisation of floodplain land; and
 - the indemnity provided to councils when acting in accordance with the Manual (and accompanying legislated guidance material).

Yours sincerely



Drew Bewsher
Director

⁴ Refer Foreword to the NSW Floodplain development Manual.

2 July 2020

Mr Jim Betts
Secretary
Department of Planning, Industry & Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Flood Prone Land Policy Package

Dear Mr Betts

I write in relation to the **Department of Planning, Industry and Environment's Draft Flood Prone Land Policy Package**, placed on public exhibition until 25 June 2020. I would like to acknowledge and **thank Deputy Secretary Alex O'Mara for allowing** the Urban Taskforce an additional week for us to submit our formal submission.

I understand this package provides advice to councils on considering flooding in land use planning and consists of a proposed amendment to schedule 4, section 71 of the *Environmental Planning and Assessment Regulation 2000*, a revised planning circular, revised local planning direction regarding flooding issued under section 9.1 of the *Environmental Planning and Assessment Act 1979*, revised Local Environmental Plan flood clauses and a new guideline: *Considering Flooding in Land use Planning* (2020). Please find our comments below for your consideration.

The Urban Taskforce does not support the use of the Probable Maximum Flood level as a suitable mechanism to inform land use planning

Flood risk mapping throughout NSW has been undertaken for some time **using the '1:100 flood event' measurement**. **The flood prone land package introduces a new flood level measurement** – the Probable Maximum Flood Level and requires councils to use this mechanism to inform future land use zoning and planning.

The definition of the 'Probable Maximum Flood' provided by the NSW State Emergency Service reads as follows:

The largest flood that could conceivably be expected to occur at a particular location, usually estimated from probable maximum precipitation. The PMF defines the maximum extent of flood prone land, that is, the floodplain. It is difficult to define a meaningful Annual Exceedance Probability for the PMF, but it is commonly assumed to be of the order of once in 10,000 to 10,000,000 years¹.

The introduction of the PMF has significant impacts upon the development potential of land within Sydney as well as throughout NSW, particularly land identified as being between the 1:100 flood level and the PMF.

The UTA supports the ongoing use of the 1:100 measurement and supports the existing flood plain management approach currently used in NSW. This measurement is considered a suitably accurate and appropriate measurement of flood risk, which has opened appropriate areas of land for

¹ NSW State Emergency Service, **New South Wales State Flood Plan Glossary**, Supporting Document to the NSW State Flood Plan, February 2018

development without unnecessarily sterilising land which is not at risk of flooding, or at very minimal risk of flooding.

We note that the Department of Planning itself, in the Western Sydney Aerotropolis Plan, a document recently prepared by the Department, has opted to utilise flood risk mapping of the South Creek Precinct using the **'1:100 flood event' mechanism, as opposed to the 'Probable Maximum Flood' mechanism** which was used in the Stage 1 Aerotropolis LUIIP.

Better guidance is required

The *Guideline on Development Controls on Low Flood Risk Areas (2007)* needs to be replaced with better, clearer guidance consistent with the existing NSW Flood Prone Land Policy and Floodplain Development Manual.

The draft Package provides the opportunity to do this if amendments and modifications were made.

Additional material should be included to better assist councils and other consent authorities achieve **an appropriate balance of the benefits and costs of developing in the 'Outer Floodplain'**.

In its current version, it will be interpreted by many councils and consent authorities as promoting a more risk-adverse approach to development that will result in unnecessary sterilisation of floodplain land. Specifically, further guidance is needed to address low probability, high consequence regions of the floodplain.

This should include advice on:

- **The use of the 'merit approach' espoused by the Manual and which balances social, economic, environmental and flood risk parameters to determine whether particular development or use of the Outer Floodplain is appropriate and sustainable**
- The levels of risk accepted by society for other natural hazards
- The socio-economic consequences of inappropriate and unnecessary sterilisation of floodplain land, and
- The indemnity provided to councils when acting in accordance with the Manual (and accompanying legislated guidance material).

Economics impacts of the flood prone land package

The introduction of a new policy constraining future development of land is not in line with the NSW **and Federal government's remit to streamline planning and support economic growth and recovery** post-COVID-19. Adding additional, unnecessary red tape of questionable relevance will not assist in **the state's economic recovery and will act as a hindrance to potential development and investment.**

Our submission has been informed by Urban Taskforce member feedback and expert advice from Drew Bewsher of Bewsher Consulting.

Mr Bewsher has over 35 **years' experience** providing flood advice to councils and developers and has provided expert testimony in the NSW Land and Environment Court on over 100 occasions. He operates independently of the development industry and government.

His analysis of the draft Package is provided as an attachment to this letter and should be considered part of our submission.

The Urban Taskforce is always willing to work closely with the Government to provide a development industry perspective on these issues.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tom Forrest', with a stylized flourish extending from the end.

Tom Forrest
Chief Executive Officer

Attached: Advice provided to Urban Taskforce Australia from flood expert, Drew Bewsher of Bewsher Consulting

6 July 2021

Contact: *Stuart Little*
Telephone: *02 9865 2449*
Our ref: *D2020/60937*

Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Sir/Madam,

RE: Flood Prone Land Package

I refer to the public exhibition of the Department of Planning, Industry and Environment's (DPIE) Flood Prone Land Package that provides advice to councils on how flooding is to be considered in land use planning. We understand that the intention of the package is to update the current approach to managing flood risk including improving the safety of more vulnerable members of the community and improve resilience to climate change.

The package consists of:

1. a proposed amendment to schedule 4, section 7A of the Environmental Planning and Assessment Regulation 2000
2. a revised planning circular
3. a revised local planning direction regarding flooding issued under section 9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act)
4. revised Local Environmental Plan (LEP) flood clauses, and
5. a new guideline: Considering Flooding in Land Use Planning (2020).

WaterNSW is interested in the Flood Prone Land Package as it has responsibility for:

- water quality protection in the Sydney Drinking Water Catchment, with flooding generally resulting in a deterioration of water quality in catchment streams and in water reservoirs
- protection of critical water infrastructure such as the Warragamba Pipelines and Upper Canal from adverse impacts arising during flooding events
- issuing Flood Works Approvals under the *Water Management Act 2000*
- flood mitigation and management under the *Water NSW Act 2014*, and
- managing dams across NSW and the implications for downstream flood behaviour.

We are generally supportive of the package and note the introduction of new provisions for the Regional Evacuation Consideration Area (RECA) and Special Flood Considerations (SFC) for more vulnerable members of the community and to minimise environmental risks from hazardous industries. We also strongly support that 'all areas where flood-related development controls apply should be mapped and maps made publicly available' (as stated in the new Guideline).

Our main comments are:

- Designation of Flood Planning Areas

The current instruments and maps that give effect to flood prone land designation vary considerably between Council areas. The new package still provides Councils with substantial discretion in designating and mapping Flood Planning Areas (FPA) and Flood Planning Levels (FPL) through various different instruments, plans and studies. This is unlike the bushfire issue, where the EP&A Act (s10.3) requires Councils to map bushfire-prone land in LEPs, which then informs the designation of 'bushfire-prone land' on s10.7 planning certificates.

We consider designation of the FPA should be tied to Local Environmental Plans (LEPs) or Development Control Plans (DCPs), and that there should be greater impetus placed on Councils to translate the maps arising from flood studies and floodplain risk management studies and plans into DCP or LEP provisions. This would then provide a centralised source of truth for FPA land designation and associated declaration on s9.1 planning certificates.

- Status of LEP clauses

It is currently unclear whether the flooding LEP clauses will be integrated into the Standard Instrument – Principal Local Environmental Plan, and if so, whether they will be proposed as mandatory or discretionary clauses. It is also unclear if the clauses are intended to supplement or replace any existing flood planning clauses which Council may have for flood planning in the local provisions of their LEPs.

- Potential inconsistency of approach

The package does not appear to require Councils to conduct or revise their floodplain risk management studies and plans, or ensure that Councils map and designate FPAs across their major settlement areas or areas of urban expansion. Some examples of inconsistency and different approaches used by Councils are provided in Attachment 1. We consider that greater guidance is needed to standardise the way in which flood prone land maps are given legal effect in the NSW planning system.

- Mapping updates

Not all Councils have FPA maps and some only have mapping for some of their waterways. We consider more incentive is required for Councils to update FPA maps, and to complete any necessary preceding Flood Risk Studies or Plans to inform such mapping. Effort should be made to have FPA maps for all towns and settlements lying in close proximity to waterways and floodplains. Education and incentives are also advised to assist Councils successfully integrate flood risk management planning into necessary maps and effective planning regulation. It would be useful if the final package could be designed to assist Councils with resources and support to improve the mapping of FPAs in their LGAs.

- Stormwater management

The package is predominantly concerned with fluvial flooding rather than also managing overland flows and flooding risk that can contribute to the fluvial flooding risk. To this end, the package would benefit by also including a stormwater management clause in the Standard Instrument to help urban development retain stormwater in the landscape through water sensitive urban design (WSUD) measures. We offer suggested provisions for such a stormwater clause in Attachment 1.

Detailed comments are provided in Attachment 1.

If you have any questions regarding the issues raised in this letter, please contact Stuart Little at stuart.little@waternsw.com.au.

Yours sincerely



CLAY PRESRAW
Manager Catchment Protection

ATTACHMENT 1 – DETAIL

The Detail in this Attachment is structured as follow:

1. Background – Flood Planning Area (FPA)
2. Circular: Considering Flooding in Land Use Planning: Guidance and Statutory Requirements
3. Schedule 4, section 7A of the Environmental Planning and Assessment Regulation 2000
4. Direction 4.3 Flooding
5. Flood Local Environmental Plan (LEP) Clauses
6. Considering Flooding in Land Use Planning Guideline
7. Revoking the Guideline on Development Controls on Low Flood Risk Areas (2007).
8. Overland Flow and Stormwater Management Clause

1. Background – Flood Planning Area (FPA)

For the Flood prone land package to work effectively, it would be useful to include a standardised definition for Flood Planning Area (as is proposed in the Standard Instrument amendments). However, as that definition is based on the 'Flood Planning Level' (FPL), we also believe that the FPL needs to be defined. Also, importantly, there needs to be a standard way of defining the maps (areas) to which the FPA relates.

It is WaterNSW's experience that Council LEPs can vary widely in their approach to what constitutes a 'Flood Planning Area'. Consequently, greater guidance is needed to ensure consistency in how flood planning is addressed between different Councils. For example:

1. Councils generally have a Flood Planning clause in their LEPs. These tend to be structured in one of two ways: by giving effect to land on a designated FPA map (e.g. Sutherland, Upper Lachlan, Wingecarribee LEPs) or, alternatively, by having a clause structured to apply to land at or below the FPL (i.e. in the absence of maps) (e.g. Campbelltown, Cooma-Monaro, Kiama LEPs). The FPL is usually defined as 'flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard'. This approach leaves the FPL open to being determined on a case-by-case basis without any indication of the types of studies or reports that might be called upon to inform the level.
2. For those Councils that have FPA maps in their LEPs, sometimes the FPA can be artificially truncated by roads or infrastructure due to the boundaries of a preceding Flood Study, rather than incorporating the true flooding risk into the upper reaches of a catchment. This can be despite upper reaches of relevant waterways undergoing significant development pressure (e.g. Mittagong Creek Flood Planning Area truncating at Old South Road within Wingecarribee LGA - see Maps FLD_007G, FLD_007H of the Wingecarribee LEP).
3. Some Council LEPs can also map some creeks and rivers as part of their FPA maps giving the impression that all major waterways in the vicinity of townships are addressed by the FPA maps. This is not always the case. For example, the Wingecarribee River on the outskirts of Bowral and Burradoo is not included in the FPA maps of Wingecarribee Council whereas Mittagong Creek is largely included (see Maps FLD_007E, FLD_007H of the Wingecarribee LEP).
4. FPAs can be provided by means of maps in Council LEPs or DCPs. However, areas that are not mapped can still be at risk of flooding and afforded Floodplain risk management studies and plans, flood studies or other flood-related documents. The current planning system relies on a variety of studies, plans, instruments and reports to inform FPLs and give FPAs legal effect.

In light of the above, greater guidance is needed on Placing an onus on Councils to consider all their relevant Flood Prone Area Studies and Strategies, and identify where mapping gaps exists, with an aim to have these 'gap' areas filled. It also emphasises the need to standardise how FPA maps are given effect in the NSW planning system.

2. Circular: Considering Flooding in Land Use Planning: Guidance and Statutory Requirements

Introduction

The Circular would benefit by defining the FPA and its relationship to the FPL as these terms and definitions are critical in applying the changes to Regulation, LEP clauses and changes to Direction 4.3 Flooding. Ideally, the terms and their relationship to one another would be explained in the Introduction.

The Circular would benefit by mentioning, at the end of the Introduction, that the package itself is based upon providing and improving three categories of flood-related development controls

- Flood Planning Area (FPA)
- Regional Evacuation Consideration Area (RECA)
- Special Flood Considerations (SFC).

This forms the backbone of the scope of the reforms. The Circular could then briefly define each of these and then note that new provisions apply to the three categories through amendments to the EP&A Regulation, a revised Local Planning Direction 4.3—Flooding, Revised LEP clauses a new ‘Considering Flooding in Land Use Planning Guideline’. This would help explain the package as a whole as well as segueing to the regulation, guideline and instruments then described in the following pages of the Circular.

Section 10.7 Planning Certificates—Amendment to the EP&A Regulation

Please see below comment on the proposed changes to Schedule 4, section 7A of the Environmental Planning and Assessment Regulation 2000.

Local planning direction 4.3—Flooding

The Circular currently provides a very limited overview of the changes proposed to Direction 4.3, advising that its ‘has been revised to remove the need to obtain exceptional circumstances to apply flood-related residential development controls above the 1% Annual Exceedance Probability (AEP) flood event’. The stated sub-clause relates to the FPA which generally equates with FPL which comprises the 1% AEP event + 0.5 m freeboard (i.e. not simply the 1% AEP as advised in the Circular).

Also, Direction 4.3 is proposed to be modified in other ways, including new provisions applying to the RECA and what is essentially SFC (i.e. for childcare centres, hostels etc and in relation to hazardous industries). It would be useful for the Draft Circular to expand on the changes occurring to Direction 4.3.

Considering Flooding in Land Use Planning Guideline

The Circular overviews the requirements of the new guideline. WaterNSW has no issues with the advice offered here.

Revised LEP clauses

The Circular advises that three new LEP clauses have been developed relating to FPA, RECA and SFC. It would be beneficial for the Circular to explain whether these are optional or mandatory provisions and whether they are used to replace or supplement Councils’ existing Flood planning clause within the local provisions of their LEPs.

3. Schedule 4, section 7A of the Environmental Planning & Assessment Regulation 2000

The details of the proposed amendment to Schedule 4, section 7A of the Environmental Planning & Assessment Regulation 2000 were not provided in the exhibition materials. We have been reliant upon the information contained in the draft Planning Circular in making comment on the intended changes. The below information relates to both the proposed changes to Regulation and the supporting information in the Circular.

Schedule 4 of EP&A Regulation lists the matters that must be identified in section 10.7 Planning Certificates. Clause 7A relates to flood planning matters and currently states:

7A Flood related development controls information

(1) Whether or not development on that land or part of the land for the purposes of dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (not including development for the purposes of group homes or seniors housing) is subject to flood related development controls.

(2) Whether or not development on that land or part of the land for any other purpose is subject to flood related development controls.

(3) Words and expressions in this clause have the same meanings as in the Standard Instrument.

'Flood related development controls' are not currently defined and, based on information contained in the proposed Circular, it appears this term will remain undefined. It would be helpful if the Regulation, or at least the Circular, specified the types of flood-related development controls that need to be considered by Council in meeting its obligations under clause 7A of Schedule 4 rather than simply referring to an matter relevant to s 4.15 of the EP&A Act.

It appears that clause 7A(1)1 of the Regulation will be amended to require councils to include a notation on section 10.7 certificates if flood-related development controls relating to the FPA apply to the land. WaterNSW supports this approach as it limits the consideration of flood-related development controls to the FPA.

It appears that Clause 7A(2)1 of the Regulation will require Councils to include a notation on section 10.7 planning certificates if flood-related development controls apply to sensitive, vulnerable, or critical uses, hazardous industries, hazardous storage establishments, or where risk to life considerations apply outside the FPA. We support the intent of this provision but not it may present some practical challenges for Councils. If the Department is asking Councils to make a notation on Planning Certificates for any land up affected by these issues up to the Probable Maximum Flood (PMF) limit, then this may be straight forward to apply to land in those zones that allow hazardous industries and hazardous storage establishments up to the PMF. However, 'sensitive, vulnerable or critical uses' are very vague terms and it is difficult to understand how such uses will transpose into Planning certificates.

The Circular foreshadows that there will be a new Clause 7A(3) of the Regulation. This will impose a new requirement for Councils to include a notation to advise whether there is a need to consider the impact of development against an established regional evacuation strategy or flood-related state emergency sub-plan, within the RECA (if the information is available). It is unclear whether this provision will apply to the RECA or a wider pool of land within the 'catchment' of such an area. If the latter, then how will that area be determined? Presumably these strategies and sub-plans are prepared and revised from time to time. This may present challenges for Councils to keep their Planning Certificates up to date. More guidance appears to be required.

As a general matter, the Department needs to provide sufficient directional advice to Councils on how to address the proposed new clauses under Schedule 4 of the Regulation so that Councils are able to act effectively in 'good faith' and not be exposed to any increased liability risk under s733 of the *Local Government Act 1993* due to these changes.

4. Direction 4.3 Flooding

Current Direction 4.3 Flood Prone Land is intended to be replaced by new Direction 4.3 Flooding. The most notable changes are:

- inclusion of the requirements for Planning Proposals and draft LEPs to be consistent with the new '*Considering flooding land use planning guideline*' as well as the *NSW Flood Prone Land Policy* and the principles of the *Floodplain Development Manual* (2005) (or its update)
- replacement of current clause 6(c) which restricts Planning Proposals and draft LEP provisions from permitting a significant increase in the development of that land in FPAs. The new provisions instead inhibit Planning Proposals and Draft LEPs from permitting:

- residential development in high hazard areas, and
 - a significant increase in the dwelling density of that land
- removal of current clause 7 which requires referral of Planning Proposals to DPIE where flood-related residential development controls are proposed above the FPL
- inclusion of new clauses that inhibit certain development within the FPA including:
 - childcare centres, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing unless the development can effectively self-evacuate
 - hazardous industries or hazardous storage establishments where hazardous material cannot be effectively contained during floods
- inclusion of a new clause that applies to 'Regional Evacuation Consideration Areas' and which inhibits Planning Proposals and draft LEPs from containing provisions that permit development in areas that will exceed the capacity of established regional evacuation routes.

WaterNSW is supportive of these changes and in particular the new provisions restricting hazardous industry development in the FPA as this will benefit water quality outcomes in the Sydney Drinking Water Catchment and other areas of the State. It will also assist in Planning Proposals and draft LEPs meeting the objectives of Direction 5.2 Sydney Drinking Water Catchment.

WaterNSW holds a concern regarding new proposed clause 8 that repositions FPLs as a draft LEP consideration and not as one for Planning Proposals. It is unclear why this change has occurred although perhaps it is to encourage FPLs and FPAs to be mapped in LEPs. If this is the intent, then we support this approach. However, we are concerned that as the provision only now relates to draft LEPs, Planning Proposals will potentially no longer be required to determine a FPL such as for a spot rezoning. This is particularly the case for regional areas where Flood Risk Management Plans and Studies may not have been prepared for particular stream reaches.

We believe that the provisions of current clause 8 need to be reinstated for Planning Proposals including that FPLs be determined consistently with the Floodplain Development Manual 2005. This would ensure that all Planning Proposals identify the 'Flood Planning Level' irrespective of whether a 'Flood Planning Area' has been 'designated' (i.e. by means of an LEP Map) for the area. This would also necessitate the preparation of Flood Study or report where one is not available. The current exceptional circumstances provision under current clause 8, requiring consultation with DPIE, could be waived as this issue would be addressed in the consistency provisions of clause 9.

Where Flood Planning Maps are not available for an area, the Direction needs to be able to call up and refer proponents and Councils to other studies (Floodplain Risk Management Studies and Plans) or invoke a requirement for such studies to be prepared to inform the Planning Proposal.

For completeness, WaterNSW understands that the 'Guideline on *Development Controls on Low Flood Risk Areas*' will be removed from any reference in Direction 4.2.

We also note that current clause 6(e) has been reworded and will be contained under new cl 6(f). The new wording suggests that dams, drainage canals etc require development consent. WaterNSW notes that the planning controls governing the permissibility of farm dams varies greatly throughout the State and is in need of improved standardisation and guidance in its own right. The proposed wording of cl 6(f) implies that farm dams automatically require development consent when this is not the case. WaterNSW suggests that the wording of new clause 6(f) be reframed so that it is similar to current clause 6(e).

5. Flood Local Environmental Plan (LEP) Clauses

The Flood Prone Land Package includes proposed amendments to Council LEPs by introducing new clauses. The package is silent on whether the proposed clauses will be provided in the

Standard Instrument and whether such clauses will be discretionary or mandatory. Three new LEP clauses for flooding are proposed, relating to the FPA, SFC and RECA.

Flood Planning Area Clause

Clarification is required on how the FPA clause is given effect by those Councils that already have a Flood Planning clause in the local provisions of their LEP and the maps, definitions, and heads of consideration. Is it the intent of these provisions to replace or supplement those existing LEP clauses? We would be concerned if the new clause removes existing FPA maps from LEPs. This has important implications for flood planning, as FPA maps clearly identify those lands that are and are not subject to flooding provisions of the LEP. We also note that the proposed clause does not give effect to any maps. Rather it is tied to a definition under subclause 6. WaterNSW seeks clarification regarding the intent of proposed LEP clauses in relation to the existing Flood Planning provisions of Council LEPs.

In terms of detail, we provide the following comments on the proposed FPA clause:

1. The objectives (subclause 1) could be expanded to include consideration of downstream impacts. This could be done by expanding object (1)(a) to include downstream uses as well as the subject site. Alternatively, an additional objective could be added:
 - to avoid the risk of development increasing significant adverse impacts on downstream land uses, communities and environments.
2. The objective to protect immediate environments could be more explicit. The following additional objective could be added:
 - to protect erosion and destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourses from the impacts of flooding.

The land area subclause (subclause 2) applies to the 'Flood Planning Area'. This then ties to the definitions of subclause (6). The following comments apply:

1. Due to the way the clause is structured, it will only apply to land below the FPA or other areas where the majority of flood related controls apply. Currently, most if not all Council Flood Planning clauses apply to land *at or below* the FPL. We are concerned that land *at* the FPL may not be captured. WaterNSW requests that the clause be explicit in applying to land *at or below* the Flood Planning Level.
2. While the FPA is defined in subclause (6), its definition is dependent upon the 'Flood Planning Level (FPL)'. This is currently undefined in the LEP, with clause (5) directing the reader to the Government's Floodplain Development Manual. It would be useful to have a standard definition for the FPL as well to clarify whether it is tied to the 1% AEP level + 0.5m freeboard as given effect by numerous LEPs, or whether a more flexible approach is proposed to determining the FPL as per the Floodplain Development Manual.
3. The proposed definition for FPA includes the phrase 'and may also extend to include other areas of land where the majority flood controls apply'. It is unclear whether Councils will be required to map any additional areas beyond the FPL. It needs to be made clear that if Councils wish to include other lands beyond the FPL in the FPA, then such lands need to be mapped.

The heads of consideration in Subclause (3) could be expanded. We ask that consideration be given to expanding subclause 3(d):

- will not significantly alter flow distributions and velocities to the detriment of other properties, *infrastructure, land uses*, or the environment of the floodplain.

The reason we ask for this is that critical water supply infrastructure such as the Upper Canal and Warragamba Pipelines which both transfer water to Prospect Water Filtration Plant are at increased risk of exacerbated flooding impacts from upstream development. Such flooding can potentially pollute the open waters of the Upper Canal or dislodge the pipelines from their anchor blocks. Additional consideration of issues such as land use and infrastructure would help WaterNSW protect critical water infrastructure under the provisions of this clause.

Subclause (3)(c) could be expanded or another clause added to encompass not just the evacuation of land but also its safe occupation. The following is suggested:

- ‘will not adversely affect the safe *occupation* of the land’.

The considerations should also be expanded to embrace any local flood study report which may be prepared for lands that have not been subject to FPA maps or Flood Plain Risk Management Studies. The following is suggested:

- ‘has taken into account any relevant floodplain risk management study or flood study or similar report applicable to the site’.

WaterNSW is supportive of the additional matters relating to climate-change considerations as stated in subclause (4). Matters relating to subclauses (5) and (6) are described above.

Special Flood Considerations Clause

WaterNSW is supportive of the provisions of the Special Flood Considerations clause. We particularly note that the clause applies to land between the FPA up to the Probable Maximum Flood (PMF).

While extending consideration to childcare centres, hospitals and other development types that house more vulnerable members of the community, the new clause also places additional consideration on hazardous industries and hazardous materials storage establishments. Here, the clause requires the consent authority to be satisfied that that the development ‘will not adversely affect the environment during flood events due to hazardous materials. WaterNSW notes and supports this provision noting it will help protect water quality. To minimise the risk of adverse effects on water quality, we suggest the following:

1. That the clause apply to all land *at* or below the PMF level, rather than between the FPA and the AEP. This would ensure sensitive, vulnerable and critical uses were explicitly considered for land at or below the FPA as well as between that Area and the PMF.
2. The Department may wish to replace the term ‘Flood Planning Area’ with ‘Flood Planning Level’ if it wants to clause to apply to land areas outside those that are currently mapped under LEPs and which may only be subject to Floodplain Risk Management Plans or Studies.
3. We ask this clause be expanded to incorporate human health considerations. We suggest that the relevant subclause (subclause (3)(d)) be amended to read:
 - Will not adversely affect *human health* or the environment during flood events due to hazardous materials.

6. Considering Flooding in Land Use Planning Guideline

WaterNSW is supportive of the *Considering Flooding in Land Use Planning Guideline* which promotes the consideration of flooding issues on land use planning for the full range of flooding scenarios up to and including the PMF. We note that the guideline is advisory only and that it is at Council’s discretion whether to apply it. That said, it is called up under the new Proposed Direction 4.3 Flooding.

The Guideline lists the range of strategic planning instruments where flooding considerations are relevant. It would benefit by mentioning DCPs, SEPPs and LEPs by name rather than broadly mentioning ‘environmental planning instruments’. This would provide a clearer link between the Guideline and new Proposed Direction 4.3 Flooding which refers to the term LEP and which calls up the Guideline.

The Guideline distinguishes between three categories of flood-related development controls – FPA, RECA and SFC. The Guideline then goes on to explain what these areas are, their use, and the types of controls that would typically apply to them. The Guideline described why it may sometimes be appropriate for the FPA to be expanded to include additional areas where low probability events have the potential for higher consequences. We support these explanatory provisions.

We note and support the guideline's advice that all flood-related development controls should be mapped including in DCPs, LEPs other environmental planning instruments (i.e. SEPPs) or on a Council website. As discussed above, information in Flood Studies and Flood Risk Management Plans do not necessarily make their way into LEP or other maps. It would be useful for the Guideline to encourage Councils to utilise the information in such studies and plans, to clearly define their 'Flood Planning Areas' and incorporate relevant maps into their DCPs or LEPs. Without this, there is a risk that the proposed development controls will not be called up, particularly in regional areas.

The Guideline would also benefit by listing the type of flood plans and strategies prepared by Council to inform flooding risk (e.g. Flood Plans, Floodplain Risk Management Plans and Strategies, available LEP or DCP maps and provisions). This would then at least alert Councils and developers to the range of documents that may be present and relevant to flood-related planning decisions. This would help facilitate application of the proposed EP&A Regulation amendments, revised Direction 4.3 Flooding and the proposed LEP clauses for insertion into the Standard Instrument.

7. Revoking the Guideline on Development Controls on Low Flood Risk Areas (2007).

WaterNSW has no issue with the proposed revocation of the *Guideline on Development Controls on Low Flood Risk Areas (2007)*.

8. Overland Flow and Stormwater Management Clause

Currently the proposal focuses on fluvial flood risks and does not address the risk from stormwater that contributes to overland flow and flash flooding. This can increase the susceptibility of the floodplain to flooding and is often caused due to increased impervious area and/or blockage of flow path by developments.

In light of this, we suggest that the amendments be accompanied by a proposed stormwater management clause for insertion into the Standard Instrument and across into Council LEPs. This clause would be aimed at mitigating overland flooding impacts, and promoting water detention and retention in the landscape through WSUD. A number of Council LEPs have such a clause.

The Department could refer to the Blue Mountains LEP 2015 (clause 6.9) and Ku-ring-gai LEP 2015 (clause 6.5) for guidance. Such a clause could apply to an entire LGA and aim to protect downstream properties and environments, bushland and waterways from adverse stormwater and flooding impacts arising from new development. It could encompass various heads of consideration including WSUD, maximising water permeable surfaces, promoting on-site stormwater retention for re-use, integrating stormwater management measures into the landscape and making provision for ongoing management and maintenance of stormwater management systems once emplaced.



Comments on Flood Prone Land Package

Dear Sir/Madam,

Thank you for the opportunity to comment on the Department of Planning, Industry and Environment's Flood Prone Land Package. The package of documents has been reviewed by internal planning and engineering staff at Wollondilly Council and we provide the following comments for consideration:

General Comments

Greater clarity is required on how these documents and *Floodplain Development Manual 2005* fit with the *Considering Flooding in Land Use Planning Guideline (2020)*, and the *National Best Practice Guidance Australian Institute of Disaster Resilience (AIDR) Handbook 7* and its supporting documents *AIDR Guideline 7.5* and *AIDR Practice Note 7.7*.

A Toolkit with a clear diagram/flow chart of the whole suite of flood and flood related planning documents could be prepared by DPIE to assist Councils in sifting through all the information of relevance.

Draft Section (9.1) Direction – Flood Prone Land

	Clause/Statement	Comment
1	Clause (3) of the Draft Section 9.1 direction reads as follows: 3) <i>This Direction applies when a relevant planning Authority prepares a planning proposal or a draft LEP that creates, removes or alters a zone or a provision that affects land due to flooding.</i>	Council recommends that this clause be reworded as follows: <i>This Direction applies when a relevant planning Authority considers or prepares a planning proposal or a draft LEP that creates, removes or alters a zone or a provision that affects land due to flooding.</i> The current wording limits the application of the Direction only when Council initially resolves to prepare a draft planning proposal or LEP for a Gateway Determination. Therefore, if additional information comes to light after that point, it is unclear whether Council can still use the ministerial direction to assist in making a critical decision based on flooding. It would be helpful to have more weight behind a Council decision at the end of the process after the after the work is

		<p>completed and agencies have provided comment.</p> <p>The proposed alternate wording above also ensures that the Ministerial Direction is considered early in the process when Council is undertaking an assessment of landowner initiated Planning Proposals.</p>
2	Council recommends that an additional sub-clause be inserted after Clause 4(c).	<p>It is recommended that the following sub-clause be added:</p> <p><i>4(d) any Flood Study adopted by Council.</i></p>
3	Clause (5)	This Clause is unclear when it discusses Special Purpose Zones. It should explain which Special purpose zones should not be rezoned to other Special Purpose Zones.
4	Clause 6(d)	Clarification is required as to whether the term 'land' used in this clause relate to flood planning area or high hazard area?
5	<p>Clause 6(e) of draft section 9.1 direction reads as follows:</p> <p><i>permit the development of centre-based child care facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the development cannot effectively self-evacuate,</i></p>	<p>A list of Sensitive, vulnerable, or critical uses has been provided in <i>Considering flooding in land use planning guideline</i> (which is part of the exhibited package).</p> <p>The following items should also be included in the clause 6(e) to keep consistency.</p> <ul style="list-style-type: none"> • <i>caravan parks</i> • <i>eco-tourist facilities</i> • <i>early education and care facilities</i> • <i>correctional centres</i> • <i>educational establishments</i> • <i>emergency services facilities</i> • <i>tourist and visitor accommodation.</i>

SECTION 10.7 Planning Certificates—Amendment to the EP&A Regulation

	Clause/Statement	Comment
1	Clause 7A(2) of the Regulation now requires councils to include a notation on section 10.7 planning certificates if flood related development controls apply to sensitive, vulnerable, or critical uses, hazardous industries, hazardous storage establishments, or where risk to life considerations apply outside the Flood Planning Area.	<p>The following uses should be defined/explained.</p> <ul style="list-style-type: none"> • sensitive, vulnerable and critical uses, • hazardous industries, • hazardous storage establishments
2	Clause 7A(3)	In relation to the <i>Regional Evacuation Strategy</i> and <i>State Emergency Sub-Plan</i> , Council is currently undertaking shire wide Local Evacuation Study and shire wide flood study.

		<p>Clarification is required as to how it will be ensured that the <i>Regional Evacuation Strategy</i>, <i>State Emergency Sub-Plan</i> and <i>Local Evacuation Study</i> will support each other and remain consistent.</p> <p>Clarification is also required on what differentiates a local study from a regional study. Is a local study simply an evacuation study which is confined to a Local Government Area and a regional study one which relates to multiple Local Government Areas? Some further guidance on this would be useful.</p>
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Draft Local Environmental Plan Flood Clause

	Clause/Statement	Comment
1	Clause 3(i)	Is DPIE considering to provide a standard format to prepare <i>Floodplain Risk Management Plan</i> to keep it consistent state wide?
2	Proposed new sub-clause– to be inserted after Clause 3(i)	<p>It is recommended that the following be added immediately after 3(i) as a matter which the consent authority must be satisfied of in relation to development proposed:</p> <p><i>(j) is not inconsistent with any flood study adopted by Council,</i></p>
3	Proposed new clause – to be inserted after Clause 3(j)	<p>It is recommended that the following be added immediately after 3(i) (or 3(j) if Council's suggested addition above is accepted) as a matter which the consent authority must be satisfied of in relation to development proposed:</p> <p><i>3(k) will not alter the flood behaviour and flood function of the land.</i></p>
4	Clause (4)	This Clause requires consideration of the ' <i>projected changes to flood risk as a result of climate change</i> '. Confirmation is required on how and when the information regarding impacts of climate change will be provided to Councils for assessment?
5	<p>Clause 4(b) reads as follows:</p> <p><i>evacuation and management of risk to life, and</i></p>	<p>This Clause should be reworded to consider the impact on the capacity of existing evacuation routes for the surrounding area.</p> <p>This Clause can possibly be reworded as follows:</p>

		<i>Evacuation, management of risk to life, and impact the capacity of existing evacuation routes for the surrounding area,</i>
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Should you have any questions regarding the matters discussed in Council's submission please contact Riz Afzal on (02) 4677 9579 or via email at riz.afzal@wollondilly.nsw.gov.au



Mark Ruddiman
Strategic Planning Team Leader
SUSTAINABLE GROWTH

25 June, 2020

Department of Planning, Industry and Environment

Your Ref:

Our Ref:

File:

Date:

Z20/133217

IW-090.014

25 June 2020

FLOOD PRONE LAND PACKAGE

General Comments

Wollongong City Council supports the aims of the Flood Prone Land Package which are to build resilience to communities located on floodplains and reduce the extent of property damage and potential loss of life from severe to extreme flooding throughout NSW.

The main flooding risk in Wollongong is associated with flash flooding. The Flood Prone Land Package is silent on flash flooding. Explicitly mentioning flash flooding in a risk to life and evacuation context within the flood prone land package would support Council's existing controls above the flood planning level (e.g. requirements for refuge above the PMF). Explicitly mentioning flash flooding in a risk to life and evacuation context would also support Council setting the Defined Flood Event (DFE) greater than the 1% AEP level in areas where flash flooding poses a significant risk to life in events greater than the 1% AEP.

In the Wollongong local government area, the measurement, modelling and prediction of flooding is a contested space. Council is often defending decisions related to development controls applied within the floodplain in the Land and Environment Court. Much contention relates to interpretation of flood clauses within the Wollongong LEP 2009 (WLEP 2009) as well as the floodplain development manual, and the DCP and indeed the assumptions and models used in flood studies. Whilst Any amendments proposed through the Flood Prone Land Package will be used by councils and industry to inform strategic land use planning and development potential within the floodplain, it is worth bearing firmly in mind that any ambiguous clauses, directions or guidance are likely to be the subject of contention at development application stage and before the Land and Environment Court.

Comments on the more specific elements of the Package.

Revised Planning Circular

Council understands *clause 7A(1)* , *Clause 7A(2)* and *Clause 7A(3)* within the revised planning circular are in draft form only.

- What information should be shown if a property is partially affected?
- What should be shown on section 10.7 planning certificates where land is known to be flood prone, but the Flood Planning Area has not been mapped? For example catchments where a flood study has been completed but a Floodplain Risk Management Study and Plan has not, or areas with anecdotal flooding evidence, or unstudied catchments?
- What should be shown on a section 10.7 planning certificate where there is an existing Flood Planning Area, and Council is preparing a new Flood Study and Floodplain Risk Management Study and Plan, that will result in a revised Flood Planning Area? For example, Council is currently reviewing all is existing Floodplain Risk Management Study and Plan and preparing new draft versions for exhibition.
- How do the proposed clauses affect information on Exempt and Complying Development required under clause 3 of the Schedule 4

Regarding Clause 7A(3), where is this information available?

Is it intended the Regional Evacuation Consideration area's will be defined throughout NSW or does this only apply to the Hawkesbury-Nepean Valley? If this clause is only targeting the Hawkesbury-Nepean Valley, there may be confusion regarding other Local and State emergency sub-plans. E.g. NSW State Flood Plan, Illawarra Flood Emergency Sub Plan.

Further, can DPIE clarify the intent of the following under the heading 'Section 10.7 Planning Certificates':

If councils do not have this information, then a 'no' response should be provided under the relevant clause until such time as the information is made available to council and council updates its flood related development controls.

What does the above mean in relation to unstudied catchments where the flood planning area is not mapped?

Proposed flood local environmental plan (LEP) clauses

Parts 1d) and 3b) refer to cumulative impacts. Council's experience is there is little agreement where a cumulative impact assessment is required and how an assessment should be carried out. For example, does it mean "if further developments of this kind in this location are carried out in future"? Or "this development plus all developments that have previously been approved taken together?" "Or all allowable developments under existing and future land zoning?"

Will DPIE through the Flood Prone Land Package or Floodplain Development Manual Review provide cumulative impact assessment guidance or best practice examples where such an assessment has been carried out?. Council's experience is that any such assessment is subjective and is a constant point of contention when raised.

With the commencement of the Low Rise Medium Density Housing Code on 1 July 2020 , how can the cumulative flood impacts of dual occupancies, manor houses and terraces within R1, R2, R3 and RU5 land be assessed or controlled?

A revised local planning direction regarding flooding issued under section 9.1 of the Environmental Planning and Assessment Act 1979

Section 9 (under 'consistency') – what is the intention of the wording 'and/or' at the end of points (a), (b), and (c) – this effectively allows a planning proposal to be inconsistent with the directions if either of points (a), (b), or (c) are addressed in isolation. For example, the proposed rezoning may be inconsistent with the planning directions to a major extent (e.g. up-zoning of land within a floodway area), and this clause effectively allows that to occur provided a developer submits a 'flood and risk impact assessment report' that is 'consistent with the relevant consent authorities' requirements'.

This is likely to see inappropriate and contentious planning proposals being presented to Council. Also, Council does not have any guidelines for a 'flood and risk impact assessment' specifically relating to re-zoning applications. It is considered that if re-zoning of land below the FPL or within floodway areas was to occur, then this should only occur where it is supported by a FRMS&P undertaken by Council (and not a developer) in accordance with the FDM, which holistically considered the full range of planning, social, economic, and flood risk implications.

It is unclear how this process could be undertaken in a transparent and impartial manner when funded by a developer. It is suggested that the words 'and/or' be replaced with 'and', such that up-zoning of land below the FPL or within floodway areas could not occur unless it is supported by a FRMS&P adopted by Council.

Specific Comments

Draft Local Planning Directions	
(3)	<p>The wording at the end of this clause should be changed to the following for clarity:</p> <p><i>"...prepares a draft planning proposal or a draft LEP that creates, removes or alters a zone or a provision on land that is affected by flooding."</i></p> <p>Or alternatively,</p> <p><i>"...prepares a draft planning proposal or a draft LEP that creates, removes or alters a zone or a provision that affects flood prone land."</i></p>
(4)(c)	<p>The word "in" should be included in the title for consistency.</p> <p><i>"The Considering flooding in land use planning guideline".</i></p>
(5)	<p>A full stop should be included to define the end of this sentence.</p>
(6)(d)	<p>The wording <i>"permit a significant increase..."</i> should be replaced with <i>"permit any increase..."</i>.</p> <p><i>"permit any increase in the dwelling density of that land,"</i></p> <p>Any increase in dwelling density within flood prone land would lead to an increased flood damage exposure, being contrary to the Floodplain Development Manual. Also, a 'significant increase' in dwelling density cannot be easily measured and would place Councils in a compromising situation during assessment. An increase in dwelling density of any kind would potentially increase the flood risk to the occupants of the additional dwellings. An increase to dwelling density would also have negative impacts for local/state governments, such as requiring additional funds to increase capacity for emergency services in times of flood, upgrading access roads for better flood immunity to those communities etc.</p>
(6)(f)	<p>Insert a comma between the words "buildings" and "structures".</p> <p>Does "road infrastructure" need to be included in the list of items requiring development consent or is this exempt?</p>
(6)(h)	<p>Clarification is required around the term "floods" for this line item – it should read "all floods" or "floods up to and including the DFE" or similar.</p> <p><i>"permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during all floods."</i></p> <p>Or alternatively,</p> <p><i>"permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during floods up to and including the DFE."</i></p>
(9)(a)	<p>The wording "the relevant" should be included in the sentence.</p> <p><i>"the planning proposal is in accordance with the relevant floodplain risk..."</i></p>
(9)(b)	<p>The wording "detailed" should be included in the sentence.</p> <p><i>"the planning proposal is supported by a detailed flood and risk impact assessment..."</i></p>
(9)(c)	<p>The nature of determining whether the inconsistency is of minor significance should be up to</p>

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	<p>the local authority and thus included at the end of the sentence.</p> <p><i>"the provisions of the planning proposal that are inconsistent are of minor significance as determined by the local authority."</i></p>
Note (a)-(g)	A full stop should be included for each point to define the end of the sentence.
Note (c)-(e)	The reference to the guideline 'Considering flooding in land use planning guideline' should be distinguished with inverted commas or similar.
Note (f)	<p>The words "the majority" should be deleted from this sentence, since there may be only one control that applies to these areas.</p> <p><i>"flood planning area - Is the area of land below the flood planning level (FPL) and may also extend to include other areas of land where the majority flood related controls apply."</i></p>
Draft flood Local Environmental Plan Clauses	
Flood Planning Area	
(1)(f)	<p>The words "and efficient" should be included in this point.</p> <p><i>"to enable safe and efficient evacuation from the land".</i></p>
(3)(b)	<p>The words "or subject property" should be included in this point to capture any potential adverse impact on the subject site.</p> <p><i>"will not adversely affect flood behaviour resulting in detrimental increases in the flood affectation on other properties or subject property, including cumulative impacts,"</i></p>
(3)(e)	<p>The words "permanent, failsafe and maintenance free" should be included in this point to prevent any sub-standard measures being proposed and also to align with the requirements of the NSW Floodplain Development Manual.</p> <p><i>"incorporates appropriate permanent, failsafe and maintenance free measures to manage risk to life from flood,"</i></p>
(3)(h)	<p>The wording at the end of this point should be changed to the following for clarity:</p> <p><i>"will not increase the potential for hazardous material to pollute the environment during any flood event,"</i> Or alternatively, <i>"will not increase the potential for hazardous material to pollute the environment during floods up to and including the DFE,"</i></p>
(3) new	<p>The following new point should be included:</p> <p><i>"all habitable floor levels of the development will be equal to or above the flood planning level,"</i></p>
(6)	<p>The words "the majority" should be deleted from the definition of 'Flood Planning Area', since there may be only one control that applies to these areas.</p> <p><i>"flood planning area (FPA) - Is the area of land below the flood planning level (FPL) and may</i></p>

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	also extend to include other areas of land where the majority flood related controls apply."
Special Flood Considerations	
(1)(b)	The wording "and flood function" should be included in this point: <i>"to ensure the land use is compatible with the flood hazard and flood function,"</i>
(1) new	The following new point should be included: <i>"to avoid significant adverse impacts including cumulative impacts on flood behaviour"</i>
(2)(c)	The word "flood" should be included in this point: <i>"any other land uses requiring controls in relation to flood risk to life considerations."</i>
(3)(b)	The word "efficient" should be included in this point: <i>"will not affect the safe occupation of and efficient evacuation from the land,"</i>
(3)(c)	The words "permanent, failsafe and maintenance free" should be included in this point to prevent any sub-standard measures being proposed and also to align with the requirements of the NSW Floodplain Development Manual. <i>"incorporates appropriate permanent, failsafe and maintenance free measures to manage risk to life from flood,"</i>
(3)(d)	The wording at the end of this point should be changed to the following for clarity: <i>"will not adversely affect the environment during any flood event due to hazardous materials,"</i> Or alternatively, <i>"will not adversely affect the environment during floods up to and including the DFE due to hazardous materials,"</i>
Regional Evacuation Consideration Area	
(3)(a)	<i>"will not exceed the evacuation capacity of the regional evacuation routes."</i> It is unclear how this point will be assessed by the Councils since this would require specialist knowledge/advice from the SES. This point would remain unanswered during the assessment of any Development Application unless (i) the SES is made a formal referral body to all the Councils by DPIE, or (ii) the information to address this point is published within the regional evacuation strategy or regional flood emergency subplan such that it can be readily accessed by the Councils during the assessment of developments.
(3)(b)	The wording "and designated evacuation centres" should be included at the end of this point to inform that a temporary destination refuge is also required and not just an exit route from the floods: <i>"will provide or has access to rising road access to regional evacuation routes and designated evacuation centres."</i>
Draft 'Considering flooding in land use planning guideline'	

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Page 1	The word "undertaking" should be included in the 3 rd paragraph: "...The FRM process involves undertaking studies to understand flood behaviour..."
Page 1	A full stop should be included for each point in the 4 th paragraph to define the end of each sentence.
Page 3	With respect to the Flood Planning Area and a situation where Council may propose a different FPL (4 th paragraph) for a particular catchment being different to the common FPL for the local government area, what is considered the best way to identify the different FPL to the public/applicants? Is it an amendment to the LEP, or within the floodplain risk management study and plan for that specific catchment, or other? The answers to the above questions should be included within the draft land use guideline for additional clarity and guidance to the Councils.
Page 4	The word "flood" should be included in point 3: "Circumstances, generally defined through the FRM process where development controls might be needed to address flood risk to life may include (but not limited to):"

Yours faithfully



Andrew Heaven
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