



22 June 2020


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

Dear Sir/Madam

Re: Submission for the Flood Prone Land Package

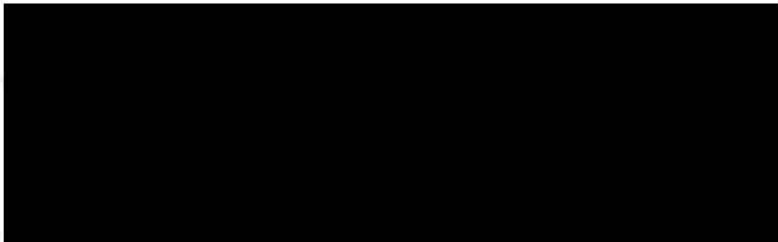
 welcomes the opportunity to provide comments concerning the recently exhibited Flood Prone Land Package.

 welcomes the flood prone land package overall and agrees that although 1 in 100 chance per year flood risk needs to be a major consideration in statutory and strategic planning, it is also essential to consider the flood risks up to the Probable Maximum Flood (PMF) level which is proposed in this package.

In relation to the proposed flood local environmental plan (LEP) clauses, the  would like these to be standard clauses in all LEP's across the state so that development in identified flood prone areas can be consistent across all local government areas.



Yours faithfully





[REDACTED]

Submission:

The proposed new guideline includes the following: Maps 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. It is not practical to map all areas where flood-related development controls apply in council areas that cover large areas with thousands, or even hundreds of thousands of waterways, creeks and ephemeral waterways, the majority of which would not have a Flood Study and Risk Management Plan. [REDACTED]

[REDACTED] provides general guidance for proponents of new development in rural areas regarding setbacks from the top of banks for waterways, but a site inspection is usually required to determine if the 'general' setback requirement is sufficient. It would be possible to map areas where flood-related development controls apply if a Flood Study and Risk Management Plan exists. But a disclaimer is required that unmapped locations may be subject to flood-related development controls as well.

Your Ref:
Our Ref:

24 June 2020

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

Dear Sir/Madam

Flood Prone Land Package

I refer to the abovementioned Flood Prone Land Package, which is on exhibition, and open for comment until 25 June 2020.

This response provides [REDACTED] understanding of the purpose of the proposed Framework, identifies potential issues arising from the new legislation and provides suggestions to resolve these identified issues.

Following a detailed review of the proposed amendments, [REDACTED] have identified a number of matters for consideration by the Department of Planning, Industry and Environment in finalising the Flood Prone Land Package.

[REDACTED] is formally considering these matters at its [REDACTED] and should there be any changes based on [REDACTED] consideration of the matter then the Department of Planning, Industry and Environment will be notified.

[REDACTED] understands that the purpose of the Flood Prone Land Package is to provide changes to land use planning to manage flood risk up to and beyond the 1 in 100 chance per year flood and consider flood risks up to the probable maximum flood level 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.

The Flood Prone Land Packages proposes to:

- Amend Schedule 4, Section 7A of the *Environmental Planning and Assessment Regulation 2000* in regard to information provided on Planning Certificates in relation to flood related development controls;
- Revise Planning Circular PS07-003 – *Considering flooding in land use planning: guidance and statutory requirements*;
- Revise Section 9.1 Ministerial Direction 4.3 relating to flooding;
- Revise Local Environmental Plan flood clauses;
- Introduce a new guideline: *Considering Flooding in Land Use Planning (2020)*.

It is understood that the Flood Prone Land Package applies to the whole of New South Wales and therefore needs to be able to function for the many differing flood situations statewide.

A detailed discussion of the implications of the proposed legislation and policies relating to flood planning is provided below:

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

The purpose of the revised Planning Circular is to provide advice on the introduction of the proposed changes to:

- Planning Certificates;
- Ministerial Direction 4.3 – *Flooding*
- Flood clauses in local environmental plans,

and to introduce the new Guideline: *Considering flooding in Land use Planning (2020)*.

Comment:

No objection is raised to the content or function of the proposed amended Planning Circular – *Considering flooding in land use planning: guidance and statutory requirements*, as it is considered that it will provide an explanation of the new legislation when enacted.

Guideline: Considering Flooding in Land Use Planning (2020)

The proposed new *Guideline: Considering Flooding in Land Use Planning (2020)* relates to the application of the flood related development controls introduced through the proposed new model local provision clauses:

- Flood Planning Area
- Special Flood Considerations
- Regional Evacuation Consideration Area

Comment:

The Guideline states:

"It is at the discretion of the individual councils when they 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 the information would support the implementation of this guideline."

Councils are not required to use all three categories outlined in this guideline..."

It is evident from the proposed changes to the legislation and policies suggested in the Flood Prone Land Package, that [REDACTED] will have no choice but to adopt the 'flood planning area' concept at some point.

These new clauses introduce a new definition for 'flood planning area' as follows:

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 (sic) related controls apply.*

The guideline advises that *"all areas where flood-related development controls apply should be mapped and maps made publicly available. This could entail being published in Development Controls Plans, Local Environmental Plan, other relevant environmental planning instruments or on a council website."*

The current model clause for flood planning defines 'flood planning area' in terms of a mapped area shown on a Flood Planning Map associated with a local environmental plan. The amendment of the definition of 'flood planning area' does not make reference to a map and therefore will remove the requirement of having a legislated map. This is supported, as whilst this still allows [REDACTED] to map the flood planning area (not linked to local environmental plans or development

control plans), it also provides the flexibility to amend such maps to maintain their currency and accuracy based on the best available data, and to provide this information to the public in an accessible and easy to interpret format.

However, it is considered that the new wording of the definition of 'flood planning area' may cause confusion in its interpretation. The wording '*may also extend to include other areas of land where the majority flood (sic) related controls apply*' is ambiguous and may include areas up to and beyond the Probable Maximum Flood depending on how a [REDACTED] structures its controls. In this regard, [REDACTED] will be required to map the 'flood planning area' to eliminate any confusion for the community.

In addition, this clause assumes that one flood planning level will apply to all types of land uses. It is considered that different 'flood planning levels' and hence 'flood planning areas' could apply to different land use types. For example, the 'flood planning level' for residential development could be different to that applied to industrial or commercial development (which could be appropriately located on land that is more frequently affected by flooding and to a larger extent), or to that applied to critical or sensitive uses which would more appropriately have a 'flood planning level' at the Probable Maximum Flood, or above.

The concept of a 'flood planning area' being applied only to an area of land below a defined 'flood planning level' is considered to be misleading. The community does not understand that a 'flood planning area' is where, in general, flood related development controls will apply. The term 'flood planning area' gives an impression that a 'flood planning area' is where floods occur, and any area not designated as a 'flood planning area' is flood free. This is the current problem with the concept of a 'flood planning level' and the disclosure of information within planning certificates where it is advised as to whether or not flood related development controls apply to a property. Property owners can wrongly interpret a 'No' answer to mean that the property is not affected by flooding, when in fact it could be affected by more extreme flood events, not just the 1 in 100 year flood event. The review of the flooding controls under this Package is an opportunity to rethink the wording of controls in order to give clear messaging to the community about the impacts and risk of flooding on all properties within a floodplain.

As a result, it is considered that the 'flood planning area' should be used for all areas that are potentially impacted by flood events, including those areas not impacted by flood waters but may need to be evacuated due to isolation or lack of services, infrastructure or supplies, and that it should be used in conjunction with a range of 'flood planning levels' for different types of land uses.

The limitations imposed by the perception of the term 'flood planning area' and its definition is considered to be contrary to the purpose of the proposed amendments 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*.

In this regard, it is requested that the Department of Planning, Industry and Planning consider a concept where the 'flood planning area' is the area where the impacts of flood events up to and including the Probable Maximum Flood are evident, and that 'flood planning levels' for different types of development be used to develop and apply development controls.

Flood Clauses within Local Environmental Plans

The Flood Prone Land Package proposes three local environmental plan clauses relating to:

- Flood Planning Area
- Regional Evacuation Consideration Area
- Special Flood Considerations

Model Local Provisions for Standard Instrument Local Environmental Plans will be updated by amending the existing 'Flood Planning' model clause, and introducing two new model clauses titled 'Regional Evacuation Consideration Area' and 'Special Flood Considerations'.

Comment:

Flood Planning Area Model Clause

This amended clause includes additional considerations in relation to climate change and pollution of the environment from hazardous materials during a flood event.

It is noted that subclause (4) relating to considerations of the impact of climate change on flooding will be onerous for property owners to address in the absence of such considerations being addressed within floodplain risk management studies and plans.

Subclause (3)(h) requires development not to result in an increase in "*the potential for hazardous materials to pollute the environment*". It is considered that the intent of this subclause is to ensure that if a development that uses or stores hazardous materials is being considered then the way the development is managed will minimise the likelihood of the use polluting the environment during a flood event. It is further considered that the wording is confusing and could possibly result in its actual intention to minimise pollution from hazardous materials during flood events not being fulfilled. This requirement may also unintentionally be prohibitive to many developments, especially those within areas that are serviced by onsite sewer management facilities. The appropriateness of this clause applying to onsite sewer management facilities needs to be considered, especially in relation to size and frequency of flooding.

It is therefore requested that the Department of Planning, Industry and Environment review the wording of subclause (3)(h) to ensure that it is clear as to what circumstances the requirements of the subclause are applied, as well as the intention to minimise pollution during a flood event.

Special Flood Considerations Clause

The Flood Prone Land Package proposes to introduce a new model clause relating to controls for more sensitive, vulnerable and critical land uses that can be adopted by within their local environmental plans.

The purpose of this clause is to provide considerations for critical, sensitive, vulnerable or hazardous uses on land between an adopted 'flood planning level' and the probable maximum flood, including consistency with any flood related policy or development control plan, or adopted floodplain risk management plan. In this regard, the introduction of this clause is supported.

However, given that many local environmental plans, including the , have adopted flood clauses that relate to 'flood planning levels' and not 'flood planning areas', adoption of this clause would only be desirable with the adoption of the Flood Planning Area clause as well, for the purposes of continuity and consistency. However, as discussed above, the concept of the 'flood planning area' is not considered desirable given issues relating to interpretation and application.

In addition, these controls only apply to the types of development listed when they are located on land between the 'flood planning area' and the probable maximum flood level, and as a consequence these considerations do not apply to sensitive, critical, vulnerable or hazardous uses on land below the 'flood planning area', where it would be more crucial to control the development of these types of uses if permissible.

It is considered that these considerations should be applied to critical, sensitive, vulnerable or hazardous uses irrespective of the flood liability of the land. As a result, the Department of Planning, Industry and Environment is requested to amend the Model Local Provision Clauses to ensure that sensitive, critical, vulnerable or hazardous uses are subject to appropriate flood related development controls in all situations.

Regional Evacuation Consideration Area Clause

The Flood Prone Land Package proposes to introduce a new model clause relating to regional flood evacuation matters that can be adopted by [REDACTED] within their local environmental plans.

[REDACTED] support the intent of this proposed clause in ensuring that the regional evacuation routes have the capacity to support the evacuation of communities during extreme flood events and are not compromised by further development resulting in increases in residential population or the number of people needing to be evacuated.

If the Department of Planning, Industry and Environment is to introduce this clause, then the Department is to ensure that relevant information is made available to [REDACTED] in order to satisfy the requirements of this clause. In this regard, it is requested that the Department ensure that the following is resolved:

- how the evacuation capacity of the regional evacuation routes is determined;
- which authority/s are responsible for and determines what that capacity is, what the current capacity of the regional evacuation routes is, is there additional capacity at present and if so how many more vehicles can be accommodated; and
- which authority is responsible for informing [REDACTED] of that capacity;
- a plan of the 'Regional Evacuation Consideration Area' be readily available;
- the new evacuation information is available to [REDACTED] prior to the new provisions coming into effect.

The wording of Clause (3)(b) raises concern in respect to the interpretation of the Clause, as it is unclear as to what is meant by rising road access. Does it refer to driveway access between a building and a road, as well as local road access to the regional evacuation route?

In addition, the term 'rising road' also needs to be clarified. Given that many areas have undulating topography does this term require [REDACTED] to ensure that the Regional Evacuation Route has a higher elevation than the land in which a development is situated? If this is the case, this does not address situations where a dwelling is located on the highest point of a property, and to exit the property there is a need to drive through lower lying areas with a higher hazard before reaching higher ground, or areas that are flood islands during a flood event. These situations are prevalent in the [REDACTED], and therefore it would appear that Clause (3)(b) could be unnecessarily prohibitive to many developments within the [REDACTED]

Concern is also raised in regard to the requirement that a development "will provide" rising road access. This requirement assumes that in all cases it is appropriate to carry out works, including excavation and filling of land, to provide rising road access. The difference in land levels could be significant enough to have both an adverse visual impact, as well as detrimental impacts on the nature of flooding in the locality. In addition, road works to establish a rising access between a development and the regional evacuation route is likely to be cost prohibitive to development depending on distance.

It is considered that it is more relevant to determine at what time a person needs to leave their property having regard to the flood hazards present along the evacuation route, and whether any hazards are prohibitive to evacuation.

As a result, it is requested that the Department of Planning, Industry and Environment delete proposed Clause (3)(b).

Section 9.1 Ministerial Direction 4.3 – Flooding

Planning proposals and draft local environmental plans are required to be consistent with directions issued under Section 9.1 of the *Environmental Planning and Assessment Act, 1979*.

It is proposed to revise Section 9.1 Direction 4.3 – *Flooding* to remove the need to obtain exceptional circumstances to apply flood related residential development controls above the 1 in 100 year flood level.

Comment:

This Direction still requires the adoption of 1 in 100 year flood level as the 'flood planning level' in accordance with the Floodplain Development Manual unless a Floodplain Risk Management Study and Plan justifies an alternative. In this regard, the proposed Section 9.1 Ministerial Direction will remove the requirement for a specific 'exceptional circumstances' approval.

The proposed amendments to the Section 9.1 Ministerial Direction 4.3 maintains the requirements of the existing Direction, whilst introducing new considerations in relation to critical, sensitive, vulnerable and hazardous uses.

Given the above, no objection is raised to the proposed amendments to Section 9.1 Ministerial Direction 4.3 – *Flooding*.

Schedule 4, Section 7A of the Environmental Planning and Assessment Regulation 2000

The Flood Prone Land Package proposes to amend Clause 7A, Schedule 4 of the *Environmental Planning and Assessment Regulation 2000* to require councils to include notations on planning certificates issued under Section 10.7 of the *Environmental Planning and Assessment Act, 1979* as follows:

1. Clause 7A(1) will be amended to require councils to provide a notation if flood-related development controls relating to the Flood Planning Area apply to the land.
2. Clause 7A(2) will be amended to include a notation 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.
3. Clause 7A(3) will be introduced to require 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).

Comment:

Proposed Clause 7A(1) maintains the intent of the existing subclause to disclose what development is subject to flood related development controls, and therefore no objection is raised to this amended Clause.

In regard to the Proposed New Clause 7A(2), it is considered that "*where risk to life considerations apply outside the Flood Planning Area*" would apply to all types of development not just the critical, sensitive, vulnerable or hazardous uses subject to the proposed new *Special Flood Considerations* model local provision clause. This statement is therefore contrary to the principle of only applying flood related development controls on development carried out within the 'flood planning area', as required by the *Flood Planning Area model local provision clause*. In addition, this is the only place where these considerations have been required, that is 'risk to life considerations outside of the 'flood planning area' is not proposed to be a consideration under Local Environmental Plans.

It is therefore requested that the Department of Planning, Industry and Environment limit proposed Question 7A(2) of Planning Certificates to matters subject to the new *Special Flood Considerations* model local provision clause, and remove the wording "*or where risk to life considerations apply outside the Flood Planning Area*."

The introduction of Clause 7A(3) to advise if development of a property will require consideration of the impact of a development on a regional evacuation route and its ability to accommodate additional capacity from the development is supported, as this will provide advice and education to prospective land owners and the community of an important issue.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

In the review of legislation, policies and controls, the Flood Prone Land Package has not considered the appropriateness or effectiveness of the existing controls contained within *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, especially those in relation to complying development. At present the Policy only provides requirements for flood controlled lots under the Housing Code, Rural Housing Code, Low Rise Medium Density Housing Code, Greenfield Housing Code and Commercial and Industrial (New Buildings and Additions) Code.

In the context of the [REDACTED], where the consequences of flooding for different flood events vary greatly, especially in relation to depths of flood waters and evacuation capacity, it is considered that the 'one size fits all' flooding controls of the State Environmental Planning Policy are not appropriate. In particular, the Flood Prone Land Package does not propose changes to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* aligned with the proposed changes to include 'Regional Evacuation Considerations'.

It is further considered that the flood related controls within this State Environmental Planning Policy undermine the controls developed by [REDACTED] through floodplain risk management studies and plans to protect communities from risk to life and property from the consequence of flooding.

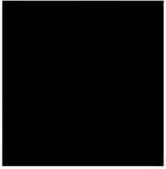
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 does not take into consideration the legacy of existing development, where existing dwellings are located within areas subject to high hazards, and the redevelopment, alterations or additions to these existing dwellings are inappropriate in consideration to the risks to life and evacuation capabilities. For example, the Housing Alterations Code permits alterations of existing dwellings to allow for additional bedrooms. The creation of additional bedrooms within existing dwellings provides opportunity for increased occupancy of high hazard areas, thereby placing more lives at risk.

Flood related development controls have also not been provided for the Housing Alterations Code.

The Department of Planning, Industry and Environment could review the flood clauses within *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* relating to Complying Development as part of the Flood Prone Land Package, and amend the Policy to ensure that the controls relate to or are consistent with [REDACTED] flood policies, development control plans, or floodplain risk management studies and plans. However, it is considered that this complex matter would not cater to all [REDACTED] areas and their circumstances.

It is therefore requested that the Department of Planning, Industry and Environment amend *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to prevent complying development on land at or below the flood planning level within the [REDACTED] [REDACTED] under the Housing Code, Rural Housing Code, Commercial & Industrial (New buildings and Additions) Code, Greenfield Housing Code, Low Rise Medium Density Housing Code and Housing Alterations Code.

In relation to the provisions of exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* it is noted that 'farm buildings', with a building footprint of up to 200m² within a rural zone, do not require approval as exempt development. In general, the requirements for exempt development do not include considerations in relation to flooding impacts. This results in the construction of farm buildings, including machinery sheds and the like, on agricultural land that, more than likely is located within floodway areas and high hazard areas, and would therefore also have an adverse impact on flood behaviour, including changes to depths of flooding, and blocking or diverting of flow paths. In addition, there are no requirements in





respect to the engineering of these buildings to ensure that they withstand the impacts of flood waters, including damages or being washed away.

As such, it is also requested that the Department of Planning, Industry and Environment review the appropriateness of some forms of exempt development, such as farm buildings, on flood controlled lots.

General

With the introduction of the new and amended legislation proposed by the Flood Prone Land Package, [REDACTED] will need greater certainty in relation to the timing of the implementation of the new provisions and the availability of the evacuation information to ensure that they are prepared for when the new provisions come into effect. For this reason it is requested that the Department of Planning, Industry and Environment ensure that all necessary information is available to [REDACTED], and that [REDACTED] receive adequate notice prior to the commencement of any new provisions.

Thank you for the opportunity to provide comments.



24 June 2020

Specialist Planning Office – Floodplain Management
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Sir/Madam

Public Exhibition of Amendments to the Flood Planning Package

Thank you for providing [REDACTED] the opportunity to provide feedback on the draft amendments to the flood planning package. [REDACTED] review of the draft documents provided on the Department's website has identified the following items:

1. The amended LEP is worded in a manner which will prevent development from occurring in areas which experience flooding and where it is not possible to safely evacuate. This is an onerous requirement for areas such as [REDACTED] where:
 - a. [REDACTED] flood modelling shows evacuation is not possible because [REDACTED] chose to model overland flow as part of its flood study. Had overland flow not been modelled, the ability to evacuate would have been based on mainstream flooding and in most instances, this would not have been an issue.
 - b. The flash flooding caused by overland flow will occur with insufficient warning to allow evacuation to be successfully and safely completed.
 - c. The flood events have a duration of no more than 2 to 3 hours.
 - d. The appropriate response for anyone in an area experiencing flash flooding caused by overland flow is to shelter in place, in most instances.
2. In light of the above points, [REDACTED] requests clarification if the proposed amendments to the LEP regarding evacuation refers to mainstream flooding only or refers to both mainstream flooding and flooding caused by overland flow. If the proposed amendments to the LEP do refer to overland flow, [REDACTED] requests that the proposed LEP and Flood Planning Package be amended to refer to emergency response rather than evacuation to allow [REDACTED] to safely develop flood prone land.
3. [REDACTED] requires further technical guidance on modelling the impacts of climate change on flooding. Will any guidance provided be done so in a manner which would apply consistent climate change factors to all [REDACTED] with similar circumstances? For example will [REDACTED] who are not impacted by sea level rise apply the same climate change factors in their flood modelling?
4. [REDACTED] seeks clarification regarding the manner in which the proposed Standard LEP clauses will be implemented. If these clauses will be automatically inserted in existing LEPs to replace current flooding provisions, savings and transitional provisions/arrangements will also be required.

This will ensure applications already under consideration can continue to be assessed having regard to the provisions that were in place at the time of lodgement.

5. Should amendments to the required information furnished in a Section 10.7 Planning Certificate be made, it is requested that a deferred commencement be made to provide councils with sufficient time to update their information systems.

[REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

[REDACTED]

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Dear Sir/Madam

Thank you for the opportunity to comment on the Flood Prone Land Package, currently exhibited on the Department of Planning, Industry and Environment (DPIE) Website.

██████████ attended a Webinar session ██████████ regarding the Flood Prone Land Package and identified some concerns regarding the status of this exhibition information, most notably the three draft Local Environmental Plan (LEP) flood clauses that form part of the exhibition information. ██████████ has been advised through discussion with DPIE staff, that a formal submission could be lodged to gain clarity regarding the status of the exhibition information.

A Response to Questions from the Webinar provided to Webinar participants [REDACTED]
With regard to the status of the draft LEP flood clauses, the following advice was provided

“a consent authority will need to consider the proposed draft Planning Circular and draft LEP flood clauses under section 4.15 of the Environmental Planning and Assessment Act 1979, but only when assessing and determining a development application”.

It is noted that in Webinar it was indicated decision has not been made as to whether the draft LEP flood clauses are proposed model or standard clauses at this stage. Accordingly the above advice was unexpected.

██████ therefore seeks clarification as to how this consideration should be identified on s.10.7 Certificates in accordance with Schedule 4 1(2) of the *Environmental Planning and Assessment Regulation 2000* in relation to proposed Environmental Planning Instruments? It is unclear whether the proposed LEP Clauses are proposed changes to the Standard Instrument LEP, relevant ████████ LEPs or should be identified by ████████ in some other way?

Further advice is required to provide [REDACTED] the required clarity as to the weight the draft clauses and their content can and should be given. [REDACTED] has ongoing development matters relating to flooding which will need to have particular regard to this information. [REDACTED] would appreciate clarity on this issue to be provided as soon as possible and would suggest that other [REDACTED] should also be provided with this clear advice.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Please note that this submission only relates to the status of this information and content and does not relate to the changes in flood considerations proposed. [REDACTED] may provide a further submission relating to this issue prior to the completion of the public exhibition period.

[REDACTED]
[REDACTED]

Yours faithfully

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

25 June 2020

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

Submitted via NSW Planning Portal and
via email: resilience.planning@planning.nsw.gov.au

Dear [REDACTED],

FLOOD PRONE LAND PACKAGE: [REDACTED]

1. INTRODUCTION

On behalf of the [REDACTED], we thank you for the opportunity to comment on the *Flood Prone Land Package (the Package)*, which the Department of Planning, Industry and Environment (**the Department**) has placed on public exhibition until 25 June 2020.

This submission has been prepared in collaboration between [REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED] has been the subject of a [REDACTED] [REDACTED], which commenced in [REDACTED]. The [REDACTED] process has been the subject of numerous studies and investigations relating to flooding and evacuation. The [REDACTED] [REDACTED], including draft planning land use planning controls and the various supporting technical investigations, were publicly exhibited in [REDACTED]. Whilst the [REDACTED] [REDACTED] is located within the Hawkesbury Nepean Floodplain, and partially below the Probable Maximum Flood (**PMF**) level, all of the proposed net developable land area is located above the 1% AEP flood level of either South Creek, Eastern Creek and the Hawkesbury River. Fundamentally, all precinct planning related documentation prepared to date for the [REDACTED] clearly anticipates the development of the Precinct with appropriate flood evacuation measures to land above the PMF level.

The [REDACTED] have reviewed and strongly support the [REDACTED], in particular the seven (7) key recommendations. The contents of this submission make reference to other matters for consideration, some specific to the [REDACTED].

[REDACTED]

2. EXISTING FLOOD PRONE LAND MANAGEMENT SCHEME IS ADEQUATE

While the Package is well-intentioned in that it seeks to better preserve life and property, which is supported by the [REDACTED], 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 the *Australian Rainfall and Runoff* guideline. This is particularly so for the following:

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

RECOMMENDATION: The package wording should be simplified with reference in particular to:

- Clearly defining what constitutes flood prone land?
 - In defining flood prone land, the package should provide 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 the above, more expansive definitions that cover different land use planning situations and types of developments need to be provided, to better assist local Councils in applying the flood prone land provisions consistently across catchments and throughout the State.

3. UNNECESSARY STERILISATION OF LAND

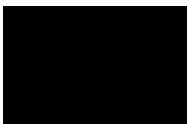
Although the intent of the Package is not to ‘sterilise’ land from development, it is considered that it will implicate certain common urban land uses within certain greenfield release areas. Once Councils adopt the proposed ‘Flood Planning Areas’, land between the 1%AEP and PMF level, may no longer be able to be rezoned for a majority of primary (urban) land uses. The area of land lost to urban development is likely to be vast, for instance within the [REDACTED] alone circa 4,050 dwellings are to be located on land between the 1%AEP and PMF level. The potential sterilisation of land is a crucial concern, given that there are many practical and widely used techniques and mechanisms to mitigate and minimise flood risk for the subject level of flood frequency and 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 to do so.

RECOMMENDATION: A more balanced approach would be to allow proponents to demonstrate the necessary flood resilience relevant to their proposal, without excessive and onerous blanket restrictions which do not take into account the individual characteristics of a site or the nature of the proposed land use or development.

4. 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 contrasting approach is likely to provide further uncertainty and confusion across the various stakeholder groups who reside within or deal with planning, design and development around flood prone land areas. The greatest concern relates to the potential variances in implementation of the content contained within the Package across individual Council areas, in particular within the Great Sydney Metropolitan Area.

5. POLICY DEVOLVEMENT

This land use planning in relation to flood prone lands requires State-wide leadership and control that can only be exercised by State Government, through a coordinated approach between key government agencies including DPIE, Transport for NSW, Infrastructure NSW and State Emergency Service. As noted above, should the Package be implemented in its current form it will more than likely result in numerous variations to flood planning policy at the local government area (**LGA**) level that could have unintended consequences, in particular at the interface of LGA boundaries across the Great Sydney Metropolitan Area.

RECOMMENDATION: In order to ensure consistency in the interpretation and application of flood prone land policy, Council should be required to satisfy the DPIE Secretary of the justification for all exceptional circumstances, variations or inconsistencies with the Floodplain Development Manual and associated controls/policies.

6. IMPACT OF ADDITIONAL FLOOD CONTROL NOTATIONS ON SECTION 10.7 CERTIFICATES

We note that the proposed amendment to Schedule 4 of the Environmental Planning & Assessment Regulation 2000 has not been exhibited with the Package; however, its contents can be inferred within the relevant documentation that has been exhibited as part of the Package. This proposed differentiation with Clause 7A(2) is likely to create confusion and alarm people who rely on Section 10.7 certificates (i.e. insurance companies, valuers and the like) cannot differentiate between the various reasons why the subject controls may apply.

Further to the above, it must be noted that there are significant differences between whether controls apply to a sensitive development type on the edge of the PMF, and whether the risk is high to a non-sensitive development.

RECOMMENDATION: It is suggested that a greater detailed and refined approach be taken, led by DPIE, in relation to any notations on Section 10.7 Certificates. This is a crucial issue that must not be left to individual Councils to resolve. It is the strong view of this submission that the State government needs to retain control of this crucial issue in devising the appropriate criteria and controls.

7. 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 where we are seeing thousands of jobs being lost. Part of this stimulus response includes;

- the fast-tracking of planning proposals and development applications;
- the HomeBuilder scheme, which aims to encourage the renovation to or and construction of homes; and

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- the commitment to and announcement of significant infrastructure investment projects across the State.

In light of the above, it is the view of the submission that the imposition of the Package at this time is at odds with the economic recovery that is desperately needed during this uncertain time. The Package will sterilise otherwise developable land, deter development and create uncertainty and confusion. All these will act to put a brake on economic recovery efforts.

8. CONCLUSION

In consideration of the above, it is the strong view of the [REDACTED] that the Department should not proceed with the finalisation of the Package in its current form, and carefully consider the seven (7) recommendations put forward by UDIA in their individual submission. Further the Department should retain control and oversight of any planning for flood prone land, rather than push such wide-ranging controls down to local Councils.

Please do not hesitate to contact the undersigned on [REDACTED] should you wish to further discuss the contents of this submission.

Kind regards,

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]