



# Flood-prone land package

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Summary of submissions from public exhibition

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## Acknowledgment of Country

The Department of Planning, Industry and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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# Introduction

## Purpose of report

This document summarises feedback received during the exhibition of the flood-prone land package and responses to key issues raised.

## Background

There have been significant flood events in recent years (2011 Brisbane floods, 2017 Lismore and Murwillumbah) that have highlighted the need to re-examine previous approaches to floodplain management. All these floods events were more severe than a 1% annual exceedance probability (AEP) flood.

The 2007 Planning Circular for Flood-Prone Land no longer aligns with the NSW Government's approach to flood risk management. The 2007 Planning Circular provided advice to councils on the Guideline on Development Controls on Low Flood Risk Areas, Ministerial Direction No. 4.3, and the Environmental Planning and Assessment Regulation 2000 clauses relating to notations on planning certificates.

The 2007 package has restricted councils in NSW from applying residential development controls on land between the 1% AEP and the Probable Maximum Flood (PMF). As a result, development has occurred in floodplains, above the 1% AEP but below the PMF, with limited or no flood-related development controls to manage the risk or build flood resilience into communities. This poses a risk to the physical and economic safety of communities, results in less resilient communities and creates an increasing risk to the NSW Government when extreme floods occur.

The revised flood-prone land package allows a more contemporary approach to better manage flood risk beyond the 1% AEP, including building greater resilience to the effects of climate change. The updated package addresses the key concerns over the safety of people, the management of potential damage to property and infrastructure, and the management of the cumulative impacts of development, particularly on evacuation capacity.

The updated flood-prone land package provides advice to councils on considering flooding in land-use planning and consists of:

- amendment to schedule 4, section 7A of the Environmental Planning and Assessment Regulation 2000
- a new planning circular
- a revised local planning direction regarding flooding issued under section 9.1 of the *Environmental Planning and Assessment Act 1979*
- new standard instrument local environmental plan flood clauses (one mandatory and one optional)
- a new guideline: Considering Flooding in Land Use Planning (2021).

The updated package aims to increase resilience and reduce potential property damage and loss of life in recognition of increasing extreme flood events throughout NSW.

The key aim is to protect the safety of people, property, infrastructure and emergency services, through the management of the cumulative impacts of development.

## Consultation

The revised flood-prone land package was exhibited for 8 weeks from 30 April 2020 to 25 June 2020.

## Overview of consultation

During the exhibition period, the flood-prone land package was exhibited on the Department of Planning, Industry and Environment's website. Three webinars were held during the exhibition period:

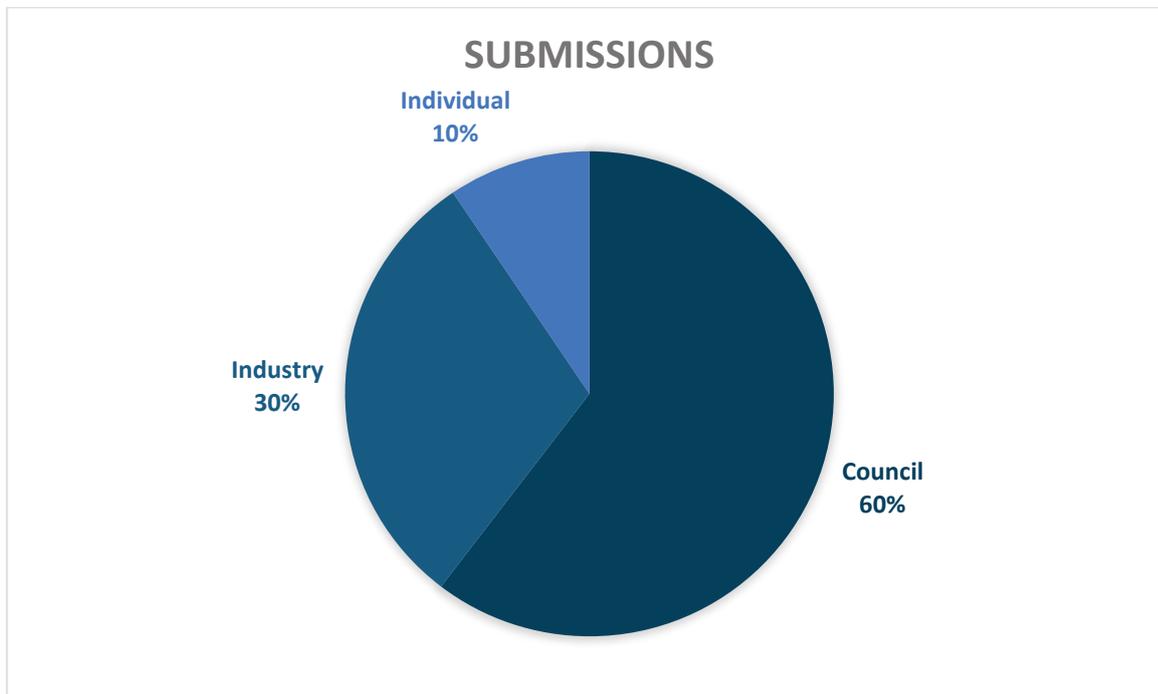
**Table 1. Webinars during the exhibition**

**Table 2 Table listing webinars held during the exhibition**

| Date        | Webinar   | Attendees |
|-------------|---|-----------|
| 14 May 2020 | Flood-prone land package – council briefing                         | 121       |
| 21 May 2020 | Flood-prone land package – industry briefing                        | 39        |
| 28 May 2020 | Flood-prone land package – Floodplain Management Australia briefing | 30        |

## Overview of submissions

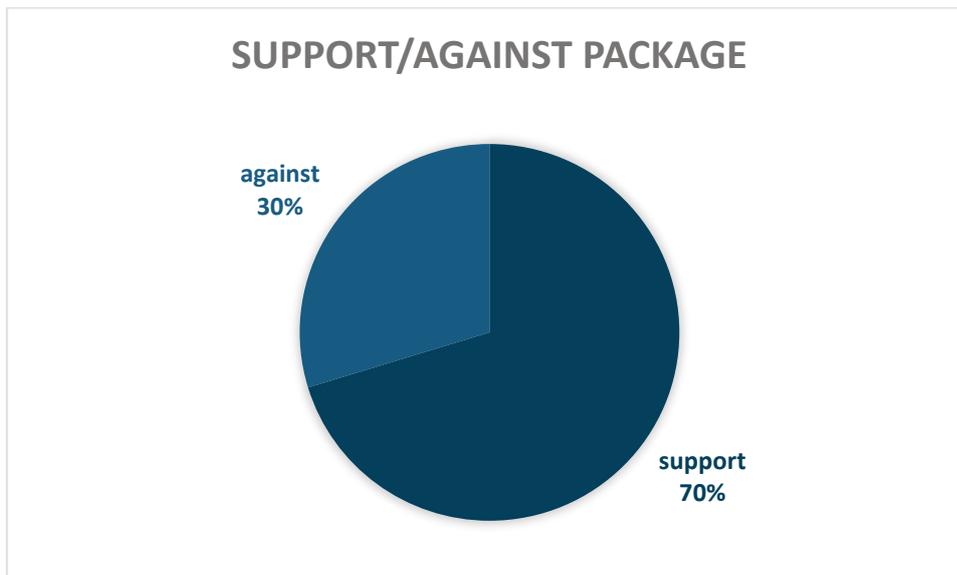
We received 53 submissions in response to the exhibition. Of these, 32 were from councils, 16 from industry and 5 from individuals.



**Figure 1. Submission categories**

Submissions from the development industry were generally not supportive of the package, with a common theme that the 'existing package is adequate to manage flood risk in NSW', and that 'the 1% AEP is adequate for defining flood risk across NSW'.

Submissions from the planning and floodplain industry were generally supportive of the package. Submissions from councils were generally supportive of the package.



**Figure 2. Proportion of submissions for or against the package**

We have published the submissions received, excluding those requesting confidentiality, on the department's website.

## Issues raised in submissions

The following summarises the key issues raised in the submissions:

- Evacuation is an important planning issue.
- Need to review the state environmental planning policies to ensure consistency with the flood-prone land package.
- It is not practical to map all areas where flood-related development controls apply.
- Failing to recognise and identify hazards up to the probable maximum flood is negligent.
- Councils need time to update S10.7 planning certificates to align with the proposed local environmental plans (LEP) clauses.
- Three flood LEP clauses are unnecessary and should be drafted into one flood clause.
- Identification of regional evacuation consideration area is likely to involve consultants to update floodplain risk management plans and is likely to generate new maps. Significant financial and staff resourcing implications.
- Definition of flood planning area is confusing as the use of 'majority' is not self-explanatory.
- Proposed amendments introduce concepts that are already adequately referenced and implemented through the Floodplain Development Manual.
- Aspects of the package are open to interpretation, which will create uncertainty for industry as it varies from council to council.
- The existing flood-prone land planning regime has been successful in delivering safe and appropriate development within the floodplains of NSW.
- The package removes the NSW Government's oversight with respect to flood-prone land planning in NSW.

- This issue needs state-wide leadership and control that can only be exercised by the NSW Government – it shouldn't be delegated to councils.
- The existing flood-prone land planning system has been operating successfully, providing safety for the community and certainty for the industry.
- The flood-prone land package during COVID-19 goes against economic recovery efforts – it 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.

## Responses to submissions

The department has reviewed and considered the feedback and suggestions provided by the submissions. We have updated the package to include the following key considerations:

- We have added additional text to the guideline document regarding mapping and that some areas where flood-related development controls are not mapped.
- The revised flood-prone land package acknowledges that flooding beyond the 1% annual exceedance probability (AEP) should be considered and only suggests that the 1% AEP should be used as a starting point. The package allows council to consider the risks of larger events and if additional controls are required.
- The special flood consideration area considers flood impacts beyond the 1% AEP.
- The department will give councils time to update documentation and systems in response to the package, before the package begins.
- We identified that there is a lack of available information for councils to determine regional evacuation route capacities – as a result we have removed the regional evacuation consideration outlined in the package.
- Hazardous material was removed from the direction following feedback that it is too restrictive.
- We have updated directions so that a planning proposal will also need to be consistent with any adopted flood study and/or floodplain risk management plan.

In response to the submissions not supportive of the package:

- Local councils are the primary manager of flood risk and are responsible for properly considering flood risk in land-use planning.
- The updated flood-prone land package will allow councils to apply appropriate controls for flood risk as assessed through the floodplain management process outlined in the manual.
- Flood risk in NSW is varied; the use of a single defined flood event across NSW has resulted in areas with higher flood risk not being adequately managed. The flood-prone land package ensures that flood risk is appropriately identified and managed in NSW.
- While the 1% AEP might be appropriate in some areas of NSW to manage the flood risk, it is not appropriate in others and therefore a variable approach that uses a flood risk assessment and merit-based approach is needed to ensure the flood risk faced by NSW communities in new and existing developments is identified and appropriately managed.
- The manual requires a merit-based approach and to look at the full range of flooding up to and including the PMF – the guideline requires that 'where councils propose alternative FPLs, they are required to demonstrate and document the merits of this approach based on a risk management approach that is consistent with the FRM process and the principles of the manual'.

- The existing local planning direction and associated guideline are not in compliance with the manual, which identify that all flood risk is to be considered.
- Controls above the FPA are for sensitive and hazardous developments and risk to life considerations – this enables specific land uses to have controls placed to ensure risk is not increased as a result of the development.
- The 1% AEP does not always address risk appropriately in catchments with significant risks – such as greater depth of inundation in events greater than the 1% AEP.
- The package will ensure both existing and future communities are more resilient to flooding through addressing flood risk appropriately, as not all flood risk is the same for the same AEP flood events. This needs to be considered when undertaking land-use planning.