

8 June 2021

Danijela Karac
Director, Environment Policy
NSW Department of Planning, Industry and Environment
Locked Bag 5022, Parramatta NSW 2124

Via Planning Portal

Dear Danijela,

UDIA NSW Submission on the Strategic Guide to Planning for Natural Hazards and Toolkit

Urban Development Institute of Australia, NSW (UDIA) is the leading industry body representing the interests of the urban development sector and has over 500 member companies in NSW. UDIA advocates for the creation of Liveable, Affordable and Connected Smart Cities.

UDIA is pleased to provide a submission to the draft Strategic Guide to Planning for Natural Hazards (draft Guide) and its related toolkit for councils (toolkit) currently on exhibition. Like the NSW government, UDIA is committed to building sustainable and hazard-resilient communities through smart land use planning. We acknowledge the significant work done by the Department of Planning, Industry and Environment (DPIE) and the respective agencies involved in preparing the series of policies and tools referenced in the draft Guide and toolkit. We welcome the opportunity to comment on the direction of the draft Guide and how it could be used to improve planning, sustainability, and resilience for communities.

Our submission provides commentary to support the following recommendations to improve the draft Guide:

- 1. Clearly and specifically define how the Guide can be applied across a range of planning processes, and how decision makers, proponents and the community should use it.**
- 2. Clearly define the term ‘acceptable risk’ in the context of planning for natural hazards, acknowledging that “it is unrealistic to plan communities that are entirely risk-free” (as stated in the draft Guide). Numerous projects are already subject to extensive delays or last-minute amendments or refusals, due to the lack of a definition of ‘acceptable risk’.**
- 3. Apply a hierarchy for the use of reference documents and guidelines and simplify the toolkit accordingly. We appreciate the attempt to bring these together as a unified package of resources in the Guide’s toolkit, however, the draft Guide misses the opportunity to provide meaningful and needed practical guidance on how to integrate the myriad of resources.**
- 4. Work with stakeholders including industry to undertake robust analysis to ensure that the final Guide, toolkit and any supporting policy amendments can be implemented with confidence.**
- 5. Commit to regular review and updates of the Guide and toolkit and provide for ongoing education of all stakeholders.**

Summary

UDIA is grateful for the opportunity to engage in the development of the Guide and its toolkit for councils. A wide-ranging series of statutory and non-statutory plans, policies, guidelines and documents currently exist in relation to planning for natural hazards, along with associated tools, resources and references. State and local government authorities, agencies, the community and industry must navigate these vast and sometimes conflicting documents to agree on land use planning decisions. UDIA appreciates DPIE's acknowledgement of the complexity in this area, and we support the intention of the draft Guide to provide more clarity around planning for natural hazards.

The draft Guide has been prepared to inform the preparation of strategic plans of all levels (regional, district and local), and contains two key parts: the Guide itself and a toolkit of reference documents and resources. The draft Guide identifies 8 guiding principles for the role of strategic planning in assessing natural hazard risks, and then seeks to address how to manage natural hazard risks in the strategic planning framework. The resources and references in the toolkit span a wide-ranging series of sources, including the United Nations, national and state agencies and peak industry bodies.

In total, the draft Guide reads as a theoretical document that captures the challenges and identifies a series of best practice approaches to risk management, but does not provide firm guidance on how to make decisions or implement them on the ground. More refinement of the draft Guide and its associated toolkit is needed to offer clearer and more definitive direction for users of the final Guide. This is especially true, given the broad range of users envisaged to use the Guide, which will include local councils, state agencies, industry partners and the public. UDIA would be pleased to work with all parties in undertaking robust analysis to ensure that the final Guide, toolkit and any supporting policy amendments can be implemented with confidence.

UDIA notes that planning for natural hazards, either in new release areas, existing communities or through strategic or statutory processes is a fundamental component of the work that the development industry already does. Given the scale and significance of the issue of planning for natural hazards, UDIA calls on the NSW government to consult earlier and in a more meaningful way with industry for any proposed policy changes that impact the sector, with regards to planning for natural hazards.

Changes to the natural hazard risk management and planning process can have significant impacts on housing supply. Inconsistent planning for natural hazards, including the lack of definitive policy or standards, or reactionary or overly cautious approaches to planning for the hazards, almost always results in additional costs on industry and reduced housing supply.

UDIA agrees that a balanced and standardised approach to planning for natural hazards would be beneficial. By using a defined framework for planning for natural hazards, subsequent decisions (e.g., development approvals) become easier and less likely to be contested by proponents, the community or those responsible for mitigating and managing risks.

UDIA recommends the following improvements to the draft Guide and toolkit:

- **Clearly and specifically define how the Guide can be applied across a range of planning processes, and how decision makers, proponents and the community should use it.** An unfortunate reality of the current planning system is that many of the guidelines and tools referenced in the draft Guide are applied inconsistently during the statutory assessment phase of development proposals. The Guide is an opportunity to clarify their application and bring more consistency to assessment, in order to support the strategic outcome as understood by the community and industry partners.
- **Define the term 'acceptable risk' for planning for natural hazards.** Taking an 'all hazards' approach without due prioritisation creates uncertainty in the planning decision making processes. Planning

involves balancing competing priorities and acknowledging that “it is unrealistic to plan communities that are entirely risk-free” (page 17 of the draft Guide). This requires defining an acceptable level of risk that is agreed and applied consistently, rather than leaving its application open to varying interpretations by numerous different individuals throughout the strategic planning and development assessment processes.

- **Apply a hierarchy for the use of reference documents and guidelines and simplify the toolkit accordingly.** It is noted that there are a range of resources that can inform the approach to strategic planning for natural hazards. What is needed is a clear hierarchy of these guidelines and tools for all stakeholders to be able to contextualise and understand the planning, risk analysis and decision-making processes. A hierarchy of controls will also streamline the assessment of subsequent development plans and applications.
- **Commit to regular review and update of the Guide and toolkit and provide for ongoing education of all stakeholders.**

Application of the Guide

Clearly and specifically define how the Guide can be applied across a range of planning processes, and how decision makers, proponents and the community should use it.

The planning system in NSW addresses several different phases of planning, assessment and development. The guide as currently framed, does not appear to make a distinction between the different planning considerations within these varying phases of development. These phases can be grouped as:

- Strategic versus statutory planning processes

Whilst the draft Guide is focused on the strategic planning phase of the system, it needs to also consider the application of the risk management approach in the subsequent statutory approvals phases, and the need to translate guidelines into decision-making tools. The strategic plans that are prepared are translated into site-specific decisions on the ground. To avoid ambiguity and inconsistency, clarity is required as to how these decisions are made, and who can make them.

- Planning for the growth and renewal of existing or new communities

The guide is written to address both the strategic planning of existing areas and newly planned areas. In many ways, existing areas offer more complexity, especially those areas that already face floods, fires and other natural hazards. These are the communities that need clear guidance and policies to address and mitigate existing risks. For newly planned areas, the process of gaining approvals requires compliance with the suite of policies and tools as identified in the draft Guide. Projects often experience delays due to iterative and repetitive requests for additional analyses, or the emergence of new models or data. To provide more certainty and minimise disruption on development, requirements should be streamlined, and most modelling and data updates should be on known timeframes and ideally limited to the rezoning stage.

UDIA recommends that the Guide better addresses the interface between strategic planning and development assessment with respect to managing risk to natural hazards.

Acceptable Risk

The key issue that the industry faces in addressing natural hazards, is that the term 'acceptable risk' is not defined or is not applied consistently between the strategic planning process and the subsequent detailed statutory approvals process.

Indeed, the draft Guide states:

In some instances, NSW government guidelines and policy instruments define a standard for acceptable risk, such as the 1 % Annual Exceedance Probability (AEP) flood, beyond which development controls are applied to new development to limit the increase in risk.

In cases where there is no defined standard, the level of risk that is acceptable will need to be determined by local government in consultation with experts such as hazard leaders, risk and emergency managers and the community. (page 19)

The concept of planning for natural hazards needs to be expanded so that planners have a greater degree of risk literacy and can better balance decisions. These decisions need to include consideration of risks, outcomes and priorities. Without due risk literacy and an agreed definition of acceptable levels of risk, there is likely to be a tendency to deliver more conservative outcomes, which may be unnecessary from a risk perspective, which undermine strategic planning goals.

The draft Guide is intended to assist in the preparation of strategic plans. Strategic plans are seldom made with the level of analysis required to ascertain the 'acceptable risk' of development assessment decisions; interpreting 'acceptable risk' is therefore left to the project assessment and approval processes. These subsequent processes can then be overly cautious or continue to defer a decision, pending some future condition being satisfied. In these circumstances, a proponent is often forced to compromise on the initial proposal or site potential, defer or abandon the project altogether, in order to mitigate its financial risks. As a result, the strategic planning outcome may not be achieved.

DPIE should work with industry and councils to determine how to provide greater certainty throughout the planning process. One approach that should be considered is to apply mitigation measures at the planning proposal stage and certify those measures to carry them through the DA assessment stage. This allows DAs to proceed with confidence and frees up agencies from unnecessary concurrence and referral activity. The Rural Fire Service's Bushfire Attack Levels in new rezonings is an example where this type of approach could bring more certainty to the process of planning for natural hazards.

The draft Guide also states:

There can be instances where adopting the general standard for development controls results in a residual risk that continues to be intolerable to the community. In these circumstances, additional localised development constraints may be warranted to reduce residual risk further. (page 19)

This statement highlights that the management of risks in planning and development assessment can be subjective and *ad-hoc*. The draft Guide appears to support this variable approach to applying planning standards. If this is the case, the level of acceptable risk will be undefined, leading to likely disagreement and challenges to planning decision making (at strategic or statutory level). Numerous projects are already subject to extensive delays or last-minute amendments or refusals, due to the lack of a definition of 'acceptable risk'. Examples include projects that are subject to continuous remodelling (of flood, fire, or emergency management behaviours); or where the community's position changes on the actual or perceived acceptable level of natural hazard risk.

Toolkit of References

Apply a hierarchy for the use of reference documents and guidelines and simplify the toolkit accordingly.

UDIA submits that there is currently a vast oversupply of guidelines, strategies and advisory documents with which industry is expected to comply to ensure the best outcome for communities. Many of these overlap, some contradict others, and unexpected updates often add confusion and delay to development proposals. We appreciate the attempt to bring these together as a unified package of resources in the Guide's toolkit, however, the draft Guide misses the opportunity to provide meaningful and needed practical guidance on how to integrate the myriad of resources.

We note that the current operation of these numerous policies, guidelines and documents is far from seamless and that projects are often subject to inconsistent, overlapping and contradictory requirements or advice from the various agencies responsible for administering them. The current complexity of the process often results in inefficient costs and delays in development approval.

For example, implementation of the Rural Fire Service's (RFS) *Planning for Bushfire Protection 2019* has created conflicting requirements between RFS and other entities that impose safety and liveability requirements on development, including the Natural Resources Access Regulator (NRAR), electricity providers, other DPIE policies and local councils. The draft Guide offers no hierarchy or other guidance for assessors or industry on how to navigate such conflicts. UDIA would welcome more clarity on how to prioritise conflicting requirements.

Overall, the toolkit currently reads more as a directory, and therefore it is imperative that its purpose and intent is reviewed and discussed with key industry stakeholders prior to finalisation.

Review and Education

Commit to regular review and updates of the Guide and toolkit and provide for ongoing education of all stakeholders.

UDIA notes that planning guidance related to natural hazards is subject to frequent updates. The toolkit captures a moment in time, but it will quickly become out of date and should be reviewed and updated on a regular schedule with community consultation. How does DPIE intend to keep the toolkit, and therefore the Guide, updated? Will each undergo periodic review and if so, on what schedule?

The other key aspect that is clear from the draft Guide and documents, is that there is a pressing need for concurrent and ongoing education so that communities and councils understand the decision-making process and their roles in managing natural hazards. Where natural hazard management is imposed on a community after the planning process has been completed, conflicts often arise. For example, for rural interfacing communities, maintaining Bushfire Asset Protection Zones may conflict with residents' desire to live close to nature (especially second and third generation owners who may not be aware of the new risk management requirements associated with their properties). An ongoing community engagement and education campaign is needed to ensure the planned outcome is achieved and maintained (with associated mitigation or management works).

Flooding and Bushfire Risk

Recently, major announcements relating to planning for natural hazards have caught the industry by surprise, namely new policies related to planning for bushfire and flooding and the consideration of evacuation routes. The changes have severely affected and delayed planning decisions on many projects, creating uncertainty and deterring investment. UDIA contends that the government's responses to managing these risks reflect an overly

cautious, unbalanced approach to risk management, underpinned by a reluctance to implement solutions that adequately mitigate the identified risks.

The draft Guide uses the case study of Ingleside to promote a process for how communities need to plan for bushfire evacuation routes. Ingleside is a cautionary tale and UDIA contends it can also be used as a case study in what planning processes to avoid. The most recent planning of the Ingleside precinct commenced in 2013 and is ongoing due to continuous consideration of issues related to bushfire management and evacuation planning. The community and industry are left in a state of ongoing uncertainty due to changes in natural hazard management.

More recently, revised attitudes around flood risk are causing considerable development delay and uncertainty across NSW, for example in the North West Growth Area located in the Hawkesbury Nepean Valley. There is ongoing discussion on the appropriate risk assessment process, and whether to rely on the 1% Annual Exceedance Probability (AEP), or the more onerous Probable Maximum Flood (which can roughly be equated to a <0.0001% AEP (NSW SES Flood Plan Glossary)). While for sensitive land uses there may be grounds for using PMF, the use of PMF as the default is unreasonable and will undermine many strategic plans and erode value for many existing residents. The broadscale application of PMF will severely constrict the housing supply pipeline in NSW, and its current consideration and resulting uncertainty is directly delaying a range of development projects across the state.

DPIE has now finalised the flood-prone land package, which provides advice to councils on considering flooding in land-use planning. Councils are currently scrambling to firstly understand what this now means, as well as amend their land-use planning documents before the changes commence on 14 July 2021. We are disappointed that the flood-prone land package was finalised without further industry consultation, despite our requests for additional engagement.

UDIA has grave concerns with the finalised flood-prone land package which failed to take into account our proposed recommendations to ensure a balanced and consistent approach to flood planning in NSW. We stand by our chief concern that the final package could significantly reduce housing supply and worsen housing affordability, without a commensurate improvement in protection from floods. We are seeking further engagement with DPIE to discuss our concerns.

Conclusion

UDIA advocates best practice planning for natural hazards to ensure the most sustainable and resilient outcomes for all communities and urban land (including land for residential, commercial, infrastructure and enterprise). Our members, including developers and a wide range of design professionals and experts, work together to provide great places for our communities. The success of many developments delivered by our members through the existing planning framework stands testament to their focus, engagement, and commitment to providing great outcomes for communities.

UDIA recognises the need to better plan for and manage the natural hazards to which our existing and emerging communities are exposed. How this is achieved needs to be discussed further. The draft Guide is a key step to do this, however UDIA would like to highlight that:

- Given the significance of the issue of planning for natural hazards in all facets of the planning system (strategic, statutory and assessments), more detail is needed as to how the Guide will be implemented in practice, and how the Guide will assist strategic planning, statutory planning regulations and development assessment processes. The nexus and weight between this Guide and current and future statutory planning instruments in NSW requires further consideration (e.g., the development of the future Design and Place SEPP).

- Changes to the way natural hazards are planned for can have an oversized impact on project and development outcomes. Any new policies, guidelines and tools should be developed in consultation with the development industry. These new policies and guidelines need to streamline and encompass the broad number of existing documents, tools and policies, as contained in the toolkit. A streamlining of the toolkit references will clarify their use and support more transparent and timely decision making.
- The concept of 'acceptable risk' needs to be clearly and transparently defined and agreed to allow decision makers to progress planning and development projects. Leaving individual plans or assessments to define the levels of acceptable risks will elevate the already growing uncertainty in investment in land and housing supply, delay projects and deter the delivery of new homes.
- Ongoing education is required to ensure all stakeholders are aware of the decision-making processes involved in planning, assessment and delivery of projects, and of the need for ongoing maintenance and mitigation works to manage natural hazards.

Again, UDIA would be pleased to work with all parties in undertaking robust analysis to ensure that the final Guide, toolkit and any supporting policy amendments can be implemented with confidence. UDIA is focused on ensuring that any amendments deliver a better outcome for NSW communities. Should you have questions about any points raised in our submission or wish to schedule a follow up meeting, please contact Kit Hale at khale@udiansw.com.au.

Yours sincerely

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

Mr Steve Mann
UDIA NSW CEO