



Flood Prone Land Package

UDIA NSW Response

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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.

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