

23 August 2024

Disaster Adaptation Planning Team
NSW Reconstruction Authority
Via Portal and email: dap@reconstruction.nsw.gov.au

Re: UDIA submission to Draft NSW Disaster Adaptation Plan Guidelines

Dear DAP Team,

The Urban Development Institute of Australia NSW (UDIA) is the peak industry body representing the leading participants in urban development across NSW through our over 450 member organisations. UDIA invests in evidence-based research that informs our advocacy to local, state, and federal government, so that development policies and critical investment is directed to where it's most needed to shape the places and cities where people will live for generations to come.

UDIA writes to provide our views on the exhibited draft NSW Disaster Adaptation Plan Guidelines (Draft Guidelines).

UDIA's members are developers, consultants, local councils and government agencies; together, the urban development industry is a central stakeholder in planning and delivering safe and resilient communities.

The establishment of the NSW Reconstruction Authority (RA) aims to better assist the state in disaster preparedness and recovery, and UDIA is keen to support this critical work, including disaster adaption planning.

We offer the following recommendations to improve the Disaster Adaptation Plan (DAP) Guidelines. These are explained in more detail in our submission and highlighted in our Appendix on Flood Planning.

Recommendations:

- 1. The DAP should operate within the framework of the existing planning system and its tools, which integrate environmental, social, and economic factors into planning decisions, rather than having the DAP dictate the planning processes.**
- 2. The DAP should be clearer on the roles and responsibilities of the RA relative to state and local government stakeholders.**
- 3. The NSW Government should ensure that timely and confident planning decisions are made based on current hazard management arrangements while**

new data is being evaluated. This commitment must be clearly communicated in the Final Guidelines and Implementation Plans.

- 4. Councils must have more certainty that existing hazard studies or processes underway will not void liability exemptions.**
- 5. Transparent transitional arrangements must apply in the implementation of the DAP, and upon the finalisation of any new assumptions or policies.**
- 6. Clarify how and when the acceptable tolerance of risk for hazards will be developed and implemented, and how social and economic considerations will be considered, relative to the development potential of an area.**
- 7. Clarify who will be responsible for funding the development of the DAP.**
- 8. Implementation funding must not add costs to already overly taxed and levied home buyers and should rely on a broad-based beneficiary-pays model.**
- 9. Add expected timeframes to deliver the final DAP overall, including for each development stage.**
- 10. Clarify who is responsible for providing the independent assurance for each stage.**
- 11. Add the development industry to the list of industries for early and ongoing consultation. The development industry should also be part of technical working groups for any DAP considering changes to development planning controls.**
- 12. Provide more detail on how the Guidelines and the DAP will “create efficiencies by streamlining the process to understand risk and assess options”.**
- 13. Clarify how to evaluate “anticipated future risks”, and how the assessment process will consider social and economic trade-offs such as loss of housing or land for new jobs.**
- 14. Exhibit Implementation Plans by all relevant state and local government entities including councils and agencies as part of each draft DAP.**
- 15. The NSW Government should consider gaining Cabinet-level approval for the DAPs, to confer greater confidence for funding and delivery.**
- 16. The DAPs should be reviewed on a 5-year basis. Partial reviews should be avoided given their potential to add inappropriate uncertainty and undermine other social and economic goals for a region.**
- 17. Outline how DAP actions will be enabled through local and/or state government budget processes with long-term financial commitments.**

Introduction

UDIA strongly supports the primary object of the NSW Reconstruction Authority Act to promote community resilience to the impact of disasters in NSW through disaster prevention, preparedness and adaptation, and recovery and reconstruction following disasters. UDIA supports the establishment of the RA to facilitate that primary objective.

We agree there is a need for coordinated disaster planning and support the aim of DAPs to ensure NSW is well-prepared and successfully manages natural hazard risks to reduce the costs and impacts of disasters on communities.

UDIA welcomes processes that will bring more certainty and a more solutions-focused approach to a very complex planning system.

However, UDIA is concerned that the implementation of the Act, which is inevitably accompanied by a transition to new processes and policies, has added to the complexity of the NSW planning system and created enormous uncertainty and stagnation for development projects trying to navigate that system.

We are further concerned that the development of DAPs as outlined in the Draft Guidelines could exacerbate those uncertainties. While the goals are good, the process will be lengthy and has the potential of adding rather than solving for confusion.

We note the functions conferred on the RA are extensive and incorporate activities, either fully or in part, that previously have been managed by other state agencies or local government. We also note that in many cases, it is unclear under the functions listed in the Act where the specific lines of responsibility are drawn between the RA and those other state agencies or local government.

We are concerned the Draft Guidelines do not offer a sufficient framework to correct the situation. For example, they are not explicit enough about roles and responsibilities.

Currently, the uncertainty around disaster preparedness is especially prevalent around flood planning. The current lack of clarity is reducing the ability of industry and councils to plan for and deliver new housing to help meet the NSW Government's National Housing Accord commitments. This challenge also extends to commercial and employment generating developments. **See Appendix A** for more detail on the example of flood planning.

Taking the existing experience with flood planning as the salient example, the key questions for industry that must be answered in disaster planning overall are:

1. what is the acceptable / tolerable level of risk, and
2. who is the ultimate decision maker?

To assist the NSW Government in meeting its Housing Accord commitments, the draft DAP Guidelines could be improved by providing more clarity around acceptable risk, roles and responsibilities, and implementation.

Decision making

The Draft Guidelines are specific to a process to develop a Plan. The more complex issues are captured in the planning system and how decisions around DAPs integrate with consideration of strategic planning processes, rezoning proposals or development assessment. UDIA believes the DAP should operate within the framework of the existing planning system and its tools, which integrate environmental, social, and economic factors into planning decisions, rather than having the DAP dictate the planning processes. This relationship should be more explicit in the Guidelines.

As a general comment, the Draft Guidelines need to be clearer on the roles and responsibilities of the RA relative to state and local government stakeholders.

The Draft Guidelines state that once in effect DAPs are embedded in legislation under the *NSW Reconstruction Authority Act 2022* and any planning authority is required to give them due consideration when undertaking strategic planning and decision making. Thus, the DAPs need to provide certainty for clear decision making.

UDIA strongly agrees that decisions should be based on reliable data and risk assessment.

We believe just as strongly that confidence to plan for, invest in and deliver new development requires policies that are transparent, dependable and accountable.

The Draft Guidelines state that “where actions are being or have been implemented through council-led hazard management plans, these will be supported.” UDIA welcomes this statement. Nonetheless, there is still need for NSW Government to enforce policy to use existing common planning assumptions and existing council-based hazard management arrangements and policies to make timely and confident planning decisions up to and until a clear and transparent update has been finalised and transitioned for future decisions.

Of equal importance for decisions, any NSW Government policy must provide confidence to planning authorities that relying on existing hazard studies or processes will not void liability exemptions. The Guidelines should explicitly confirm and reference these policies.

The Draft Guidelines state that the RA will “coordinate the provision of risk information to regions” to develop their DAPs. UDIA requests more clarity on what is involved in this coordination. For example, does this mean that RA will fund and conduct all risk assessment studies for each region?

The Draft Guidelines state that climate scenarios and associated hazard scenarios and datasets prescribed by the NSW Government in the NSW Common Planning Assumptions will be used in the preparation of DAPs. We note that data is constantly changing, and there are active questions around how to apply climate change scenarios.

UDIA recommends clarifying how the evolution of data will be managed through the lifecycle of the DAP to ensure that planning decisions can continue to be made with

confidence through the life of the DAP based on the arrangements that underpinned its finalisation.

The Draft Guidelines rely heavily on the presumption of “risk” evaluation and use terms such as “lower risk areas” and “higher risk areas.” We note that the uncertainty that plagues flood planning is based on the underlying unanswered question: what is the acceptable risk tolerance? Until there is an agreed acceptable level of risk for any hazard, evaluation and decisions will continue to be stymied. UDIA strongly recommends that the final Guidelines outline how and when the acceptable level of risk for hazards will be determined and communicated.

The Draft Guidelines state that while a DAP will not specify emergency management requirements, emergency management considerations including evacuation constraints, workforce requirements and emergency management costs in the short, medium and long term will inform a DAP. UDIA notes that emergency services currently apply a very low risk tolerance that often seems like a “zero risk” tolerance. A current example can be seen where Probable Maximum Flood (PMF) has become the effective new flood planning level in some areas because of uncertainty resulting from the Flood Inquiry. Such very-low risk approaches have the potential to remove some tools from the risk reduction toolkit, such as shelter in place from flood, that could otherwise have utility to support social and economic benefits from new development. UDIA strongly recommends that the Guidelines clarify how and when the acceptable tolerance of risk for hazards will be developed and implemented, and how social and economic considerations will be considered, relative to the development potential of an area.

Stages of DAP Development

UDIA offers the following comments to the Draft Guidelines overall, and to each of the five stages as presented.

Overall

The Guidelines state that RA will be the convening body and secretariat and will coordinate NSW Government support for the DAP process. While that suggests RA will play the leading role in the development of the DAPs, the Guidelines are silent on who will fund the development of the DAPs themselves. UDIA requests clarification on who will be responsible for funding the development of a DAP.

Overall, it is very unclear how the implementation of final DAPs will be funded. RA has committed to develop a business case for a NSW Mitigation Fund that would help to resource risk reduction actions set out and prioritised in DAPs, and this Fund would be welcomed if delivered. It must be acknowledged that such a Fund would be unlikely to fully resource risk mitigation efforts such as major infrastructure projects that would benefit a DAP region. Any NSW Government funding support to implement actions will be welcomed. UDIA strongly cautions against any assumptions that the development industry and by extension, home buyers, could or should pay for regional risk reduction measures.

The Draft Guidelines specify 5 stages, each of which will involve substantial work plus independent assurance evaluation, but no timeframes are provided. UDIA recommends adding expected timeframes to deliver the final DAP overall, including for each stage.

The Draft Guidelines state each of the 5 stages will undergo independent assurance before moving to the next stage. Figure 3 shows “RA support, capability building and independent assurance”. This appears to imply RA will conduct the assurance. We question whether this would be truly independent, given RA is also the convening body and secretariat in the process. We recommend clarifying who will provide the stages’ independent assurance.

The Draft Guidelines outline how the DAP will be developed under an “inclusive, participatory approach”. When referring to “industries”, only the insurance and banking industries are listed, in addition to “private businesses”. Noting the significant impact on development per the legislative effect and implementation of DAPs via functions under the EP&A Act, early input by the development industry into the development and assessment of options and adaptation pathways is critical to avoid unintended impacts on future housing supply. UDIA recommends adding the development industry to the list of industries for early and ongoing consultation. The development industry should also be part of technical working groups for any DAP considering changes to development planning controls.

The Draft Guidelines state the intention to “create efficiencies by streamlining the process to understand risk and assess options.” We welcome this intention. We would like to learn more about how that will be achieved, given the process outlined involves many stakeholders and will be lengthy and complex.

Stage 1: Readiness

UDIA supports a regional approach to DAPs. While noting it may be unrealistic to expect different types of disasters to fit neatly into the same regional framework, we nonetheless see opportunities for a centralised and coordinated disaster plan for towns and regions that otherwise would be fragmented and inconsistent in how they proactively deal with disasters. Having clear planned egress routes, community agreement, wayfinding, and regionally agreed processes could ease concern about the uncertainty of projects subject to disaster risk.

Stage 2: Understanding place

This stage is critical to get right and could be quite a lengthy process. This has the potential to create uncertainty while the process is underway. In practice there needs to be a solid cost benefit framework around risk reduction options which need to be considered on a multi-hazard basis, and should include consideration of social and economic trade-offs such as loss of housing or land for new jobs.

Stage 3: Option and adaptation pathway assessment

UDIA strongly recommends that the development industry should be consulted early, during the evaluation phase where potential adaptation pathways are being considered. This is especially so if changes to land use planning controls are being considered in order to avoid unintended and unnecessary constraints to housing supply.

UDIA strongly recommends a beneficiary-pays approach, noting the whole DAP region and often the state will benefit from the mitigation measures. Costs to reduce overall risks should not be borne by new home owners, who already bear disproportionate costs in the planning system. We reiterate our earlier recommendation that funding must not add costs to already overly taxed and levied home buyers and should rely on a regional and state-wide beneficiary-pays model.

Stage 4: Plan finalisation

Overall, the Draft Guidelines are very generic on this stage.

UDIA strongly recommends that Implementation Plans by all relevant state and local government entities including agencies and councils should be exhibited as part of the draft DAP. This is critical for transparency and accountability with the community and broader stakeholders including government entities.

We recommend this stage should focus heavily on funding mechanisms that explicitly call out what is needed via government budgetary processes.

It may be beneficial to gain Cabinet-level approval for the plans, to confer greater confidence for funding and delivery.

Stage 5: Implementation and monitoring

It is noted earlier in the document that the DAPs “should” be reviewed on a 5-year basis, with partial reviews “when a relevant policy has changed, or significant decisions are made which impact other options or adaptation pathways, or at points pre-identified in the DAP, such as a particular scale of disaster.”

UDIA supports statutory regular reviews on a 5-year basis. Partial reviews should be avoided given their potential to add inappropriate uncertainty and undermine either the overall Plan or other social and economic goals for a region.

Implementation should be focused on the actions from the Implementation Plans, which will primarily be about how to spend funding. There are likely to be delivery and implementation responsibilities that lie with state agencies. In such a scenario, how is it proposed that the DAP outcomes be tied back to local and/or state government budget processes? There must be confidence that these actions will be delivered. Thus, there should be long-term financial commitments to ensure the agreed actions are implemented.

Conclusion

UDIA appreciates this opportunity to offer feedback to the Draft Guidelines. We would be pleased to discuss our recommendations further. For any follow up, please contact UDIA NSW Regional and Policy Manager Elizabeth York on eyork@udiansw.com.au or 0434 914 901.

Kind Regards,



Stuart Ayres

CEO

Appendix A – Flood Planning Example

Currently, the uncertainty around disaster preparedness is especially prevalent where there are questions around risks from flooding. The current lack of clarity is reducing the ability of industry and councils to plan for and deliver new housing to help meet the NSW Government's National Housing Accord commitments. This challenge also extends to commercial and employment generating developments.

The lack of clear directions on the acceptable level of risk and who is the ultimate decision maker has created confusion and long delays for development proposals, due to planning authorities waiting on advice from other parts of government (including RA) or unwilling to make decisions in this interim period of reconsidering approaches to flood risk management. There have been several new State-led policies released, which are ambiguous and difficult to implement.

The current challenge is the NSW Flood Inquiry and creation of the RA has called into question the validity of flood risk management objectives for new development and set in motion a review of existing flood hazard management arrangements (e.g., flood planning levels (FPL)), with no defined (new) acceptable level of risk to apply. Flood evacuation capacity, recognised as an important community safety objective, is an equally important consideration. Like FPLs, the ability for industry to navigate their way through the complexity of the issue, and the ability to obtain clear guidance on this matter, is a source of much frustration.

At the heart of the issue, since the NSW Flood Inquiry there has become an overall risk aversion and reticence to accept any perceived risk by state or local government. This is exacerbated by the fact that all floods are different and carry different levels of risk. However, in industry's recent experience, the NSW Government departments and many councils have been conflating these different types of floods and applying an almost zero risk tolerance to any development proposal.

With existing FPLs called into question, UDIA has observed state and local planning authorities using Probable Maximum Flood (PMF) as the de facto FPL for residential

proposals. We do not believe this is appropriate. The social and economic costs of using PMF could be disastrous for many communities, while delivering very little benefit in the way of reduced real flood risk.

Applying PMF can easily eliminate project viability primarily because of the loss in development yield (e.g., number of dwellings), meaning that development is unable to deliver the new housing on that site for which the NSW Government and council were planning. We are told in these instances that PMF likely would not be used once flood modelling has been updated and applied, but those actions are still years away because of the complexity of the work being led by RA. In the meantime, development is stalling, and the Housing Accord targets will become harder to achieve.

UDIA supports a risk-based approach to disaster planning. In the case of flood planning, we are told the approach in NSW is risk-based. However, it is extremely unclear how to apply the current approach to development proposals across the varied local government areas. Planning Circular PS 24-001 was issued in March 2024 and attempts to summarise and provide further advice on how to apply existing flood-related planning policies. The circular exposes the complexity of flood planning by referencing 13 different government policies, guides, plans, directions and provisions across RA, DPHI, DCCEEW and councils. Unfortunately, it does not clarify a hierarchy for decision making, nor do any of the referenced materials clearly define a tolerable risk appetite. The circular adds this catch-all sentence at the end which could relate to work underway by RA, DPHI, DCCEEW and others, again demonstrating the subjectivity in the process, and leaving industry and the planning authority unsure how to meet their requirements:

Planning authorities should also refer to plans or studies that provide broader context for considering flood risks (including cumulative impacts) if available (for example, strategic plans, infrastructure plans, regional flood studies and local/regional evacuation capacity studies).

It is not possible to fully eliminate risk and also cater for the growing needs of the increasing NSW population. The NSW Government needs to determine what residual risks it is willing to accept across all hazards given all the other social and economic benefits that flow from developing in areas that may be vulnerable to one or more hazard(s). The acceptable level of risk needs to be better defined and consistently applied to enable development proposals to be delivered.

In summary, there is currently huge uncertainty around the timing and approach for new flood planning levels and this is reducing the ability of industry and councils to plan for and deliver new housing to help meet the NSW Government's Housing Accord commitments.

UDIA wants to work with NSW Government to establish practical interim solutions to flood planning so that safe development can proceed while RA works on updating disaster mitigation planning – including flood planning and evacuation.

As an immediate first step, NSW Government should provide more clarity around acceptable risk, and roles and responsibilities.