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26 June 2020

Ms Santina Camroux
Director Resilient Places
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Email – resilience.planning@planning.nsw.gov.au

Dear Ms Camroux

Flood Prone Land Package

The Property Council welcomes the opportunity to provide comments to the Department of Planning, Industry and Environment (Department) on the flood prone land package.

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes. Our members are associated with the management and development of land in many areas impacted by flooding, including Western Sydney, the Hunter region and Illawarra-Shoalhaven region.

We are pleased to provide the comments below for your consideration having reviewed the package released for comment, which includes:

- Proposed Planning Circular: "Considering flooding in land use planning: guidance and statutory requirements,
- Proposed Local Planning Direction – Flooding
- Proposed Local Environmental Plan clauses
- Proposed guideline "Considering Flooding in Land Use Planning"
- Proposed amendment to Schedule 4 of the *Environmental Planning and Assessment Regulation 2000* (this has yet to be released for comment).

It is also understood that as a consequence of this package, Planning Circular PS 07-003 "New guideline and changes to section 117 direction and EP&A Regulation on flood prone land" will be superseded and "Guideline on development controls on low flood risk areas – floodplain development manual" will be revoked.

Planning Circular

We support the Department's intention to provide clear policy guidance to councils and the community for the development of all flood prone land within the floodplain, including

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consideration of all floods up to the Probable Maximum Flood (PMF) level. We also agree that, apart from exceptional circumstances, residential flood level should be set at 1% AEP (annual exceedance probability).

Local Planning Direction

The objectives and intent of the proposed Direction are generally appropriate.

The proposed Direction removes the current requirement that prevents a flood related development control being imposed above the residential flood planning level for residential development on land unless adequate justification for those controls are provided to the Director General (now the Planning Secretary). We argue that this is an important part of the current Direction and should be retained. There has been no justification provided for its removal from the updated Direction.

In regards to consistency with the Direction, a planning proposal may be inconsistent with the Direction where the Secretary can be satisfied that the planning proposal is in accordance with a floodplain risk management plan prepared by the relevant council (and consistent with the 2005 Floodplain Development Manual) or the planning proposal is supported by a flood and risk impact assessment or Council adopted flood study consistent with the relevant planning authorities' requirements.

We note that both of these consistency provisions have not been carried over from the current Direction that was issued on 1 July 2009. It would be helpful to understand how these provisions will be applied and in what circumstances the Secretary would agree to a planning proposal that was inconsistent with these requirements.

Local Environmental Plan Clauses

The proposed standard LEP clauses, namely flood planning area, special flood considerations and regional evacuation consideration area, are appropriate.

However, to increase public awareness and support for planning for all floods there must be more information made available relating to these clauses through their publication on the NSW Planning Portal. As a minimum this should include each council without exception providing the digital mapping of each of these three flood areas. There must be wider availability of any current flood study for each catchment within a local government area, including any flood risk management plans that have been prepared. Any relevant State Emergency Sub-plan prepared by the NSW State Emergency Service should also be made available on the Planning Portal where the regional evacuation consideration area clause has been applied.

Considering Flooding in Land Use Planning Guideline

The Property Council supports initiatives to help NSW communities become more resilient to flooding beyond the 1% AEP. The proposed Guideline is a useful tool to better understand how many of the different flood planning categories operate.

It is important that the draft Guideline makes a clear statement that the 1% AEP is more than a starting point for determining a defined flood event (DFE) for development purposes. It should indicate that except in exceptional circumstances, 1% AEP is the appropriate DFE. We acknowledge that there will be some instances where a higher standard is required to protect sensitive and vulnerable land uses and agree that it is appropriate for those to be identified in the draft Guideline.

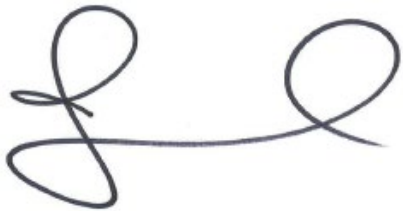
On page 2 of the draft Guideline there is a reference to several documents that are currently in draft form and will be released as part of a future update of the *Floodplain Development Manual* (2005). We would be interested to participate in any consultation undertaken by the Department as part of the update of the manual.

Amendment to *Environmental Planning and Assessment Regulation 2000*

It is understood that a change to section 7A of Schedule 4 of the EP&A Regulation is proposed to be made concerning the content included in Planning Certificates. As this amendment has not been drafted, it is unavailable for comment at this time. We would be grateful if a copy of the proposed amendment be circulated to relevant stakeholders before this Regulation is finalised and made.

Should you have any questions regarding the content of this submission, do not hesitate to contact Troy Loveday, Senior Policy Advisor, on 0414 265152 or tloveday@propertycouncil.com.au

Yours sincerely

A handwritten signature in dark blue ink, appearing to read 'Jane Fitzgerald', with a stylized, flowing script.

Jane Fitzgerald
NSW Executive Director
Property Council of Australia