THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EP&D:RHlb1966176

31 August 2020

Planning Policy
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Sir/Madam,

Proposed Natural Disasters Clause

The Law Society appreciates the opportunity to comment on a proposed optional provision for inclusion in the *Standard Instrument (Local Environmental Plans) Order 2006* to support the rebuild and repair of dwellings following a natural disaster. The Law Society's Environmental Planning and Development Committee contributed to this submission.

We note that the clause provides that despite any other provisions in the relevant Local Environmental Plan ("LEP"), approval to repair or rebuild a dwelling, including a secondary dwelling, can be granted if the original lawful dwelling was destroyed or damaged in a natural disaster. A merit assessment is still required, however the rebuild or repair cannot be refused based on any development standards in the LEP.

Councils will be able to elect whether the optional provision should be inserted into their LEP and participating councils will be able to nominate which zones the clause will apply to. This will allow councils to identify areas in their local government area where the clause would be appropriate and prevent it from being included in areas that are unsuitable for residential development.

While we can see the merit in the proposed optional clause, we consider that its application may still be problematic in some cases. Although councils can exempt land within certain zones, some land within the zoning designated by the council as a permitted zoning for this purpose might still be unsuitable, for example as 'bushfire prone land" or 'flood prone land'. If an application is made, for example, to replace or rebuild a dwelling which is located on land which is now unsuitable for the rebuilding of a dwelling due to, say, the risk of flooding, the proposed clause would appear to operate to override all other provisions of the LEP, including the flood prone land provisions. While any application will be considered on its merits, it may be useful to have an additional or alternative opt out mechanism for land in high risk categories (ie. high risk of flooding, coastal erosion or bushfire).

We also consider that the drafting of the clause may need tightening to prevent an application which involves moving the dwelling to a different location or erecting a replacement dwelling in lieu of one just damaged, but still reparable. We appreciate that this is the intent of the words 'to be repaired or replaced' in proposed clause 5.9 (3), but we suggest that the sub- clauses in that proposed clause should expressly specify that it has to

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be a repair or replacement associated with the former dwelling being demolished if it is a replacement, and with the location on the land to be generally consistent.

We also note the following extract from the Frequently Asked Questions:

> **Does the replacement or repair of a dwelling house or secondary dwelling have to be identical to the original building?** No. The replacement or repair of a dwelling does not have to be identical to the original dwelling which was destroyed or damaged. Changes to the design and location of a proposed dwelling may be required to meet the relevant provisions of development control plans or other relevant planning instruments and associated legislation.

This seems to be at odds with the stated purpose of the clause.

The Law Society appreciates the opportunity to participate in the reform process. If you have any questions about this submission, please contact Liza Booth, Principal Policy Lawyer, at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours faithfully,

Richard Harvey
President