Submission re Draft Circular – Coastal Hazard Notations on Section 149 planning certificates
NSW Department of Planning & Infrastructure

We submit that the Planning Circular, whose purpose is to provide councils with guidance on S.149 planning certificate coastal risk notations, will not achieve the outcome the Government intends of relief to coastal property owners from Labor's damaging sea level rise benchmarks, if the problem we point out below is not addressed.

The draft Circular recognises that the further into the future we seek to predict an outcome, the more uncertainty is associated with that prediction. To address this uncertainty, it nominates three "guiding principles" when considering S.149 planning certificate contents dealing with land that may have an exposure to future coastal hazards.

The following extracts reveal the problem the draft Planning Circular runs into, which, if not addressed, will frustrate the Government's clear intention to give relief to coastal property owners from Labor's onerous heavy-handed benchmarks. The problem is that the draft Circular requires that a risk which is uncertain should not be included in a planning certificate, whereas, under the precautionary principle required by the NSW Coastal Policy 1997, an uncertain risk must be included. The extracts below are given with their sources.

1. First dot-point "guiding principle" under Section 149(5), DoP&I draft Planning Circular, page 2.
    - Firstly, if the information is not sufficiently accurate, complete and reliable, as supported by a competent process of assessment, then the information should not be included in a section 149(5) planning certificate.

2. The above "guiding principle" conflicts with the NSW Coastal Policy 1997 in which the fourth dot-point under ESD principles, at page 14, requires the application of the precautionary principle.
    - The precautionary principle. Requires a risk averse approach to decision making. Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty is not to be used as a reason for postponing measures to prevent environmental degradation.

We are aware that at least 50 councils have obtained advice from the law firm Beatty Legal, as follows:

Uncertainties can be accommodated by application of the precautionary principle. Under this principle where there is a threat of serious or irreversible environmental damage, and scientific uncertainty as to the nature and scope of the threat, the decision maker must assume the threat is a reality and take appropriate measures to avoid or mitigate the potential harm.

The underscored advice to councils that they must assume the threat is a reality clearly conflicts with the first guideline in the draft Planning Circular, which instructs councils not to include information that is insufficiently accurate, complete and reliable.

We submit that a solution must be found before the S.149 Guidelines reach finality. If this conflict is not resolved, the Guidelines will not achieve their obvious intended purpose, and councils will continue to adopt the IPCC's highest sea level rise projections, applying the precautionary principle required by law.

The NSW Liberal Government has made it clear from Ministerial public statements and media releases that it intends to give relief to coastal property owners from the negative impacts and other adverse effects of Labor's compulsory sea level rise benchmarks of 40cms by 2050 and 90cms by 2100. Coastal owners have welcomed these statements with heartfelt relief. In a media release on 8 September 2012, Minister Hartcher said that "*the heavy-handed application of Labor's sea level rise benchmarks for 2050 and 2100 would go*". On 30 January 2014 The Australian reported that Minister Hazzard stated that "*We just needed to get councils to jump away from that doomsday scenario*". If, despite these statements, councils continue to apply Labor's benchmarks, the Government's avowed intention will not be achieved, and the Ministers' statements will resonate very hollowly with NSW coastal residents, whose hopes for relief from these punishing scenarios have been raised by them. They will be devastated when it turns out that the worst-case scenarios are still adopted by their councils, and that the Liberal Government's assurance of the dropping of Labor's onerous benchmarks has not eventuated.

Even if the precautionary principle requirement was removed from the NSW Coastal Policy 1997, we think that it is highly likely, almost a certainty, that local councils will continue to adopt the upper level IPCC benchmarks on sea level rise. Even though the Liberal Government removed Labor's benchmarks, many councils have since continued to adopt them. We cite as an example the statement in the Lake Cathie Coastal Zone Management Plan adopted by Port Macquarie-Hastings Council in November 2013, that "*While the current NSW Government has unendorsed the Sea Level Rise Policy (benchmarks), this is the best available information, and all work has been undertaken on this basis*".

This approach by councils in maintaining the worst-case risk scenarios would at least provide consistency up and down the NSW coast, but would provide no relief for coastal property owners. Nothing will have changed. Perhaps an even worse situation would arise if the fifty-five coastal councils were to adopt benchmarks varying between the lowest and the highest IPCC projections, and over varying time horizons, creating feelings of injustice and hostility in those adversely affected. In neighbouring councils, even adjoining beaches, or sections of the same beach, might be assessed for risk on widely differing benchmarks and time horizons.

Our suggested solution for consideration is that the Government should mandate a time horizon of 40 years for residential areas, and a sea level rise projection for that period in the middle of the IPCC's latest range, as the basis for hazard studies. Major developments should have a time horizon of 2100, again with a sea level rise in the middle of the IPCC range. Alternatively, major developments could be prohibited if located under 10m AHD and less than 500m inland. In order to monitor future circumstances, the Government should mandate that councils review their coastal hazard risks every 10 years, with LEPs and S.149 notations to be adjusted in accordance with such reviews.

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