



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Ep&d REIb822900

3 March 2014

Ms Santina Camroux
Coastal and Natural Resources Policy Branch
Department of Planning and Infrastructure
GPO Box 39
Sydney NSW 2001

Dear Ms Camroux,

Draft planning circular: advice on coastal hazards ("draft circular")

Thank you for the opportunity to comment on the draft circular.

The draft circular and the second exhibited document *Update on coastal hazards and planning certificates* ("FAQ document") have been reviewed by the Law Society's Environmental Planning and Development Committee ("E P & D Committee") and its Property Law Committee ("PL Committee") (together "the Committees").

The E P & D Committee has responsibility to consider and deal with environmental and planning law matters, and to advise the Council of the Law Society on all issues relevant to these areas of practice. Membership of the Committee is drawn widely from experienced professionals whose expertise has been developed variously in representing the interests of local government, government instrumentalities, corporate and private clients.

The PL Committee has responsibility to consider and deal with any matters relating to property law and to advise the Council of the Law Society on all issues relevant to that area of practice. The members of the PL Committee are senior property law practitioners and experts. Their focus in considering the draft planning circular relates mainly to its impact on conveyancing practice.

The Committees are very interested in any initiative designed to ensure a better outcome for all users of planning certificates.

The proposal to clearly distinguish between a current and a future exposure to a coastal hazard in planning certificates is supported by the Committees.

The E P & D Committee is concerned, however, that it may not always be clear on what basis a particular council has identified a future exposure to a coastal hazard.

Lack of consistency in the standard of information provided

The draft circular notes that:

There are complexities in coastal processes and inherent limitations in the tools used for future coastal hazard analysis.

While these inherent limitations are acknowledged, a lack of consistency in the standard of information provided is likely to be exacerbated by not being able to apply across-the-board benchmarks. The development of local models by individual councils, as envisioned in the FAQ document, is bound to result in a variable standard of information in relation to future hazards. Where a council has not formally adopted sea level rise projections, it will assist to make the notation in the planning certificate more relevant and informative if the model used as a basis for identifying the exposure to the hazard is indicated.

Lack of consistency in the way information is delivered

The draft circular states:

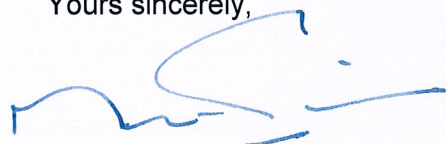
It is suggested that Councils seek their own legal advice on the specific wording to be included on section 149(2) and section 149(5) planning certificates.

With individual councils seeking legal advice on the specific wording of these notations, the E P & D Committee is concerned that there is likely to be a lack of consistency in the way the information is delivered. This does not promote certainty and clarity for users of planning certificates.

The Committees have previously, in submissions made to NSW Planning advocated a more prescriptive form of certificate. Ideally, the certificate should be framed so that questions can be posed in a form that admits of a "Yes" or "No" answer. This prescription should apply to all councils so that information received is consistent across the State.

The Committees would welcome the opportunity to be involved in any further discussions designed to improve the delivery of information in planning certificates. Once again, thank you for the opportunity to provide these comments to you.

Yours sincerely,



Ros Everett
President

