

Our Reference. E10.4158

3 March 2014

Ms Santina Camroux
Natural Resource & Hazards Policy
Dept. of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001

Dear Ms Camroux

SUBMISSION – UPDATE ON COASTAL HAZARDS AND PLANNING CERTIFICATES

Thank you for the opportunity to comment on the proposal to amend advice about coastal hazards provided on Planning Certificates issued under Section 149 of the NSW Environmental Planning and Assessment Act 1979. Given the short exhibition period available to comment on the proposal this submission has not been able to be reported to Council formally, and as such is based on staff professional opinion. It is requested that the Department consider Council meeting cycles and ability for Councillors to formerly have input into such matters, especially when the issue has generated such significant community interest as sea level rise.

Council supports the concept of providing advice on Section 149 Planning Certificates to inform potential property buyers of the likelihood of risk from 'coastal hazards'. This is consistent with current practice. However, Council is concerned about the content and advice given in the draft Planning Circular and associated fact sheet. Both imply that a problem exists with the current Section 149 Planning Certificate process, without providing any evidence or analysis of the problem. Without such it is not possible to ensure that the changes proposed will in fact provide for improvement.

As you would be aware Section 149 Planning Certificate requirements are stipulated by the Environmental Planning and Assessment Act 1979 and Regulation and are without discretion.

In accordance with the Act, Section 149 Planning Certificates (2) and (5) are issued by councils for conveyancing purposes to advise potential property buyers of the any restrictions on development. This advice is based upon evidence from planning studies and policies relevant at the time of the Section 149 Planning Certificate's issue. This information is accurate, complete and current at that time.

The Practice Note proposes to include a delineation of 'current exposure' and 'future exposure' to 'coastal hazards' only. This ostensibly is in response to concerns that property buyers may mistakenly believe a property is impacted by future projected coastal hazards at the time of purchase and may not be aware that current and or future coastal hazards require different management controls and will affect a property differently.

Council concerns about this draft Practice Circular are provided below.

1. Definition of “current and future exposure to a coastal hazard”

The draft Planning Circular and associated Frequently Asked Questions (FAQ) fails to specify the acceptable process by which a Council is to identify current and future exposure to a property. Current practice relies on the preparation of Flood and Coastal Hazard Studies prepared in accordance to manuals published by the State Government, however no reference to this current practice is made in the draft Planning Circular, nor is there any consideration of the consistency between what is being required and what is currently provided via the State Government Coastal Planning process.

In response to a question raised about acceptable studies during a recent teleconference, the Department proposed that Council employees apply their best professional judgement in assessing the rigour and validity of coastal and flood hazard studies to determine the delineation between current and future exposure. We do not believe that this is an acceptable proposal.

Progression down a less regulated pathway for determining the extent and scope of coastal hazards may lead to inconsistent assessment processes within and between local councils. A lack of rigor in the studies and subsequent assessment process may lead to challengeable actions for which a Council’s protection from liability under Section 733 of the Local Government Act may be brought into question.

2. Confusion about coastal hazard and flooding


The intent of the Planning Circular needs to be made clearer in terms of applying to coastal hazards or flooding. It may be simpler to provide separate advice for flooding to more clearly delineate the issues. Delineating between the two hazards is of importance to property owners seeking insurance and finance.

3. Provision of specific wording of 149 advice

The draft Planning Circular does not provide specific wording to local Councils on how to draft coastal hazard related advice on 149 certificates.

Whilst suggested wording is provided, the draft simply 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.”

Given the Planning Circular is being issued as guidance for Section 149 notations for use by affected councils, it is imperative that a sample draft wording be included that has been reviewed and is supported by the Crown Solicitor prior to issue. Should a council seek to deviate from that wording it can then seek its own legal advice. Failure to do this will not provide the consistency and clarity being sought.



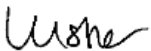
4. Coastal Hazards Development Policy

Comments are made in the Planning circular about how councils must develop a policy for coastal hazard and exposure to coastal hazards. Compliance with a section 117 Direction is mentioned however the content of which is not provided. Council's should be provided the opportunity to review and comment on this direction concurrently with the proposed changes to Section 149 Planning Certificates.

This is an important issue that requires significant consideration prior to implementation. It is strongly recommended that the Department re exhibit the draft Planning Circular and Section 117 Direction after considering submissions received. The re exhibition should be for a period which enables formal consideration and input by Councillors.

Any further questions may be directed to Shannon Burt Divisional Manager Strategic Services at:
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Yours sincerely



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