



3 March 2014

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

Dear Santina,

RE: Coastal Hazards and Section 149 Certificates

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

Council appreciates the concern of Planning and Infrastructure regarding coastal hazards and the way they are disclosed on Section 149 Certificates. As well Council supports the proposition of providing information on current exposure to hazards and flooding and to separately articulate future exposure due to sea level rise.

This Council has completed recent studies relating to coastal hazards and also flood studies for most catchments. Council would thus be able to satisfy:-

1. "Use evidence based data and information"

In relation to the development of coastal hazards policy. Council's current studies and plans have been prepared by experts in the particular fields with funding support from the Office of Environment and Heritage.

However Council will have major concerns regarding the second and third parameters, which are:

2. "Consider current research and any technical advice from the Climate Change Adaptation Research Hub"
3. "Compliance with the relevant section 117 Direction"

Council's concern is when will the advice at (2) be available, and will this advice mean that Council has to revise current studies and plans? Noting that some of these studies and plans, for example the Byron Shire Coastline Hazard Study Update (BMT WBM, 2013), have only recently been updated at considerable expense to Council and the state government. These studies and plans have or are also being used to inform and underpin planning instruments and policy, for example the coastal zone management plan for the Byron Bay Embayment, currently under preparation and the subject of a Ministerial Direction, will likely inform planning provisions in coastal precincts. In summary, it will be costly and time consuming to amend the studies and plans that are already available and, as is the case for the coastal zone management plan for the Byron Bay Embayment, it is unclear how criteria (2) will impact on a plan that is currently under development without any further information to comment on.



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Further to this, it is important for the Coastal Hazards Policy Development criteria, as described above, to be consistent with the Guidelines for Preparing Coastal Zone Management Plans (OEH, 2013) and that any changes to how CZMPs are to be developed consider the affect (financial and otherwise) on those Councils currently preparing CZMPs under the current Guidelines (OEH, 2013).

As an interim measure, will councils be able to rely on our recent flood studies and coastal hazard studies which have been prepared by experts as the basis for Section 149 Certificates and for the development of policy and planning instruments?

Provided that councils can rely on consistent and clear technical advice from the Climate Change Adaption Research Unit, that such advice aligns with the Guidelines (OEH, 2013) and transitional arrangements are considered, and that the Section 117 Directions are clear and protect councils which issue this information in "good faith" under the provisions of Section 733 of the Local Government Act, then this concern may be alleviated.


Oddly, your draft circular then suggests that Council's seek their own legal advice regarding the specific wording on Section 149 Certificates.

If the Department is regulating the information regarding coastal hazards and flooding, then surely it can confirm the wording of how Council's disclose coastal hazards and flooding, rather thea individual Council's having to seek costly legal advice on these issues.

If the preparation of planning instruments or policies to manage coastal hazards (which in turn provide the information to be included on planning certificates) is going to rely heavily on the provisions of a Section 117 Direction then a draft of this document should have been exhibited as supporting information with the draft Planning Circular. It is difficult for Council to comment on the potential resource or other implications of such requirements if the scope of the Ministerial direction is not known.

In conclusion, it is imperative that the State government formulate a consistent approach to climate change and sea level rise, accept a leadership role rather than leaving Councils with limited resources to come up with their own individual (and potentially inconsistent) approaches to managing the NSW coastline. In this regard it would be preferable for the Department to have a clear coastal and flooding policy that applies to all Councils.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'R. E. Darney', written in a cursive style.

Ray Darney
Executive Manager, Environment & Planning