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COUNCIL REFERENCE:

27314E (D14/56020)

CONTACT PERSON:

Lauren Turner

6 March 2014

Ms Santina Camroux
Coastal and Natural Resources Policy Branch
NSW Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001

Email: information@planning.nsw.gov.au

Dear Ms Camroux

**Submission – draft Planning Circular
Coastal Hazard Notifications on Section 149 Planning Certificates**

Thank you for the opportunity to comment on the draft Planning Circular relating to Coastal Hazard Notifications on Section 149 Planning Certificates and for providing an extension until Friday 7 March 2014 to allow Council to consider the issue. Council's Development Committee resolved (under delegation) on 4 March 2014 to:

- a) *Make a submission to the Department of Planning and Infrastructure (DP&I) on the draft Planning Circular – Coastal Hazard Notifications on Section 149 Planning Certificates based on the issues outlined in this report;*
- b) *Seek independent legal advice on the wording suggested in the draft Planning Circular should the National Sea Change Taskforce not facilitate coordinated legal advice in this regard for their member councils;*
- c) *Subject to independent legal advice, implement the planning circular when finalised using only Council's current information, identifying current and future risk where Council has this information and identifying all other areas potentially at coastal hazard risk; and*
- d) *Undertake further investigations to address the potential hazards for properties located in areas where existing information indicates there is a potential affectation by coastal hazards.*

Council has identified a number of issues with the proposed changes to Section 149 Planning Certificates and a detailed submission outlining Council's concerns/queries is attached.

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Should you require further information about this matter, please contact Lauren Turner, Strategic Planning & Infrastructure Group on (02) 4429 3139. Please quote Council's reference 27314E (D14/56020) in any correspondence.

Yours faithfully



Gordon Clark
Strategic Planning Manager

cc: National Sea Change Taskforce Inc

Draft Planning Circular – Comments - Shoalhaven City Council

The approach set out in the draft Planning Circular raises a number of concerns and queries which are outlined below:

- State Government should amend the overall regulations that govern what is included in Section 149 certificates, rather than issuing a Planning Circular in order to implement this change of approach and leave it to Council's discretion whether they comply with the circular or not. The lack of legal status of planning circulars is problematic for councils. For example, is Council exposed to greater legal liability if we do not follow the advice set out in the planning circular even if we are legally consistent with the regulations?

Recommendation: Any change to the Section 149 Certificates be made by amending Schedule 4 of the *Environmental Planning & Assessment Regulation 2000* and other relevant legislation.

- Does the proposed approach increase Council's level of legal liability in the event that the information included in our Section 149 certificates is found to be inaccurate, for example if a risk identified as a 'future' risk happens in a 'current' time frame. Council has a duty to provide advice relating to development constraints affecting the land. This advice allows the potential purchasers of a property to inform themselves of the potential risk associated with that investment. Withholding relevant information about future risks affecting the land could result in prospective purchasers and landowners facing potential risk of financial loss and physical injury.

Recommendation: It is recommended that Planning & Infrastructure seek Parliamentary Counsel Opinion or legal advice to enable informed advice to be provided to councils before requiring any changes to Section 149 Planning Certificates.

- There is lack of guidance and clarity as to what comprises **current** and **future** risks. The ability to identify what are **current** and **future** risks, and the resourcing required to make the change is a significant concern.

Recommendation: Remove subjective terms such as 'future' from the proposed coastal hazard notations for Section 149 Certificates. The term 'future' does not clearly define when a hazard will occur.

- Council is currently required to disclose in Section 149 (2) certificates whether a property is affected by a policy that restricts development e.g. a policy relating to coastal hazard risk. Council has an Interim Policy which triggers this requirement and identifies immediate, 2025, 2050 and 2100 coastal hazard lines for a number of beaches and headlands.

Council's contemporary flood studies also include a separate sea level rise component and properties solely affected due to projected sea level rise are noted in Section 149(2) Certificates. Does the proposed approach require councils to update studies on a regular basis and to reassess studies in the event of episodic event to ensure that our identification of current and future risk is accurate? This is a massive undertaking for councils with large expanses of coastline such as Shoalhaven. This planning circular has been released in isolation and should be part of the package of reforms relating to the Coastal Management Manual to provide more complete direction for councils.

Recommendation: The manual should require studies into coastal risk to identify **current** and **future** risk and define what is meant by these timeframes. Changes made to the manual can then be incorporated into Section 149 Certificate changes.

- Lead in time is required to make a change of this nature to our Section 149 certificates should Council decide to comply. This should be articulated in the planning circular when it is released so there is not an expectation that this change will be made immediately.

Recommendation: Deferred commencement of at least 2 – 4 weeks is required to allow the necessary changes to Section 149 Certificates and amendments to data to occur.

- Council has consistently identified that there should only be a single planning certificate rather than separating the certificate into two parts. This ensures greater transparency and ensures that important information is included, particularly by potential purchasers of land as only a Section 149(2) certificate is required to be part of a contract for the sale and purchase of land.

Recommendation: Amend the Regulation to combine Section 149 Certificates Part 2 and 5 into one Planning Certificate.