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Department of Planning & Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

Dear Sir/Madam

**Interim Gosford City Council Submission: Draft Planning Circular regarding Coastal Hazard Notations on Section 149 Planning Certificates**

I refer to the draft planning circular that is currently on exhibition. The purpose of this circular is understood to provide councils with guidance on Section 149 Planning Certificate notations relating to coastal hazards.

Gosford City Council supports the Department of Planning and Infrastructure's aim to improve the clarity of information provided on Planning Certificates in reference to coastal hazard matters. This planning circular is welcomed following a decision by Council held on 3<sup>rd</sup> July 2012 to remove the s.149(5) planning certificate message that relates to sea level rise until such time as the NSW State Government Legislate/Regulate that all Local Government Councils in NSW give a clear direction to all property owners who are affected by this event. In addition the Council resolved to write to its local members seeking their support in the State Government providing a clear direction on a consistent approach across the state regarding sea level.

The suggested changes outlined in the planning circular are a step closer to moving towards the clarification of encoding, however we suggest that further enhancement of the planning circular and consultation is required to develop a more beneficial outcome for councils and the public that is easy to implement.

The Planning Circular, called "*Coastal hazard notations on Section 149 planning certificates*", focuses on how councils refer to current and future hazards and provides some advice around those issues. Council feels that these are only some of the issues faced by councils and a wider perspective of the issues is needed.

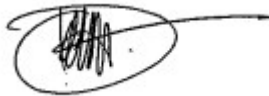
Council suggests in the spirit of effective consultation that the Department form a working party with representatives from affected councils and the Office of Environment and Heritage to hold workshops where any ambiguity or issues of concern can be clarified and resolved.

Council's elected body will consider this submission at its meeting of 11 March 2014. Following consideration of the submission, any additional issues will be documented and a further submission will be forwarded to the department by Council if necessary.

Council encourages the NSW Government in finalising this circular to move towards clear and consistent terminology across relevant legislation and policy relevant to coastal management and land use planning.

The following attachment outlines the main issues that affect this Council and the recommended action to address these matters. Please feel free to discuss any of these issues with Vic Tysoe Advisor Flooding and Drainage Planning with regard to flooding hazards and Tim Macdonald Senior Environment Planner with regard to coastal hazards.

Yours faithfully

A handwritten signature in black ink, consisting of a series of vertical and diagonal strokes, enclosed within an oval shape.

Danielle Dickson

**Director Environment & Planning Environment & Planning**

## **GOSFORD CITY COUNCIL'S RECOMMENDATIONS**

- 1. The Department re exhibit the draft Planning Circular and section 117 Direction, and after considering all submissions form a working party with representatives from affected councils and the Office of Environment and Heritage to clarify the issues of concern and work together towards a better outcome.**

The encoding of s.149 planning certificate messages as they relate to sea level rise has received its share of controversy over recent years. Gosford City Council resolved at its meeting of 3<sup>rd</sup> July 2012 to remove the s.149(5) planning certificate messages that relates to sea level rise until such time as the NSW State Government Legislate/Regulate that all Local Government Councils in NSW give a clear direction to all property owners who area affected by this event.

The planning circular aims to address these issues however it needs to provide more direction to some matters of concern which are detailed below. This can only be done by holding discussions with affected councils and the relevant government departments that are involved with planning for sea level rise and coastal hazards.

- 2. Recommend that Planning Certificates under Section 149(5) be reviewed to clarify their purpose and value, and the benefit of using one certificate that references additional information, where applicable.**

Councils are acutely aware that information contained in planning certificates is relied on by potential purchasers and interested parties that are likely to act on that information. Hence, all information contained in planning certificates is based on facts and evidence-based data.

Various councils have developed a variety of practice on the use of s.149(5) certificates which has led to inconsistency across councils. In addition the public is often unaware of the role of the s.149(5) certificate and hence information on these certificates can be overlooked by the public.

All councils should be open and transparent when providing information to the public. For this reason, this Council issues planning certificate messages for s.149(2) and (5) in one certificate. It is recommended that the department reconsider applying this approach across all NSW councils.

- 3. Recommend that information relating to Coastal Hazards, which is referenced on Section 149(2) Certificates, be clarified to provide:**
  - a. Reference to the relevant Coastal Zone Management Plan that applies to the land**
  - b. Any current development controls that apply to the land under the relevant Development Control Plan**
  - c. Further information on the Certificate or elsewhere as to whether the controls relate to managing a current hazard and/or a future hazard**
  - d. Any future controls that may apply to the land – Yes (see policy/name) or NA**

- e. **Information on Coastal / Flood hazards included on Section 149(5) Certificates should reference the relevant Technical Report within which the risk has been identified relevant to the land parcel (i.e. Coastal Processes & Hazard Definition Study or Flood Study).**

The planning circular provides some advice on what to include on planning certificates however it is considered that further detail and examples be provided to form a more consistent and uniform approach across all councils. For this reason the above recommendations are made for your consideration.

- 4 **Recommend that clear and consistent terminology is applied across legislation and policy relevant to coastal and flood management and land use planning.**

The use of the word 'Policy' within the circular and legislation is confusing as it could be referring to the *NSW Coastal Policy* 1997, a NSW planning instrument (i.e. SEPP), a Council DCP/LEP or even an internal policy of an individual council. This ambiguity does not allow for clear application of the intent in issuing s.149 certificates.

Further, Clause 1.19(f) of the *State Environmental Planning Policy (Exempt & Complying Development Codes) 2008* uses various terminologies for coastal hazards, i.e. coastline hazard, coastal hazard, and a coastal erosion hazard. These should be consistent with the *Coastal Protection Act 1979* (and associated manuals). In addition the *Environmental Planning & Assessment Regulation* (schedule 4, clause 7) should specifically refer to coastal hazards. Similarly reference to hazards in section 149(2) *Environment Planning & Assessment Act 1997* need to be consistent with the *Coastal Protection Act 1979* (and associated manuals).

For these reasons the NSW Department of Planning & Infrastructure should review relevant terminology in the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, *State Environment Planning Policy* (Exempt & Complying) to ensure consistency with the NSW Government's *Floodplain Management Manual 2005* and *Guidelines for the development of Coastal Zone Management Plans 2013*.

- 5 **Recommend a process be included to advise when Council should provide information on 149 planning certificates.**

The Planning Circular could be improved by providing direction to councils on how to reference coastal hazards on Section 149(2) and Section 149(5) certificates. In particular, the Planning Circular provides little clarity on when information on coastal hazards should be provided on a Section 149(5) certificate and appears to focus on principles guiding the veracity of information, which equally applies to how information is referred to on Section 149(2) certificates. Further guidance is therefore sought as to what stage when information on a coastal hazard is received should property enquirers be made aware.

As an example, Council has completed its Coastal Process & Hazard Definition Study (CPHDS) which contains updated coastal risk information for eight beach embayments (i.e. approximately 1,200 land parcels). The question is whether this study information should be placed on s.149(5) at receipt of the draft information or when Council has adopted the CPHDS.

Where environmental planning instruments are under preparation, it is accepted practice for the Draft LEP to be referenced in the Section 149(2), when the Draft LEP has been officially placed on public exhibition. This is agreed practice, even though Council is aware that aspects of that plan may be amended before the LEP is approved by the Minister, which may be some years later.

It is suggested that a similar practice be applied to coastal hazard information. The coastal information should be referenced on the Section 149(2) when they have been adopted by Council to be placed on public exhibition. Item 3 above outlines the type of information that should be included on the planning certificates.

Councils are also aware that the information on planning certificates is constantly under review and there needs to be an agreed practice on how to reference plans and studies that are in progress.

**6 Recommend that the planning circular recognise the separation of flood hazard from coastal hazard under Schedule 4 of the Environmental Planning & Assessment Regulation 2000.**

Under Schedule 4 of the EP&A Regulation 2000 the content is dictated by sections 7 and 7A. Coastal hazards are included under section 7 with all other hazards e.g. bushfire, landslip, tidal inundation, etc whilst flood hazard has been separated out of section 7 into its own section 7A. Under section 7A flood hazard is required to be split into two messages addressing 2 different types of development.

By applying a current and future message as recommended in the planning circular will mean that there will now be up to four flood messages on an individual property. This number of messages could have the effect of confusing the property enquirer about the flood hazard and development controls applicable to the property.

For this reason it is recommended that the department review the planning circular for consistency with Schedule 4 of the EP&A Regulation 2000.