

SUBMISSION ON DRAFT PLANNING CIRCULAR – COASTAL HAZARD NOTATIONS ON SECTION 149 PLANNING CERTIFICATES

Dear Allan

1. Thanks for providing the opportunity to hear about the Draft Circular and its intent through the Departmental briefing session on 4 February 2014 that Clarence Valley Council staff tuned in to via teleconference.
2. Management of 'coastal hazards' in NSW is a dynamic process.
3. The intent of the Draft Circular to clarify or better define notations offered in terms of coastal hazard is supported in concept.
4. 'Coastal hazard' (as defined in the *Coastal Protection Act 1979*) covers a range of threats to the coastal environment. The Draft Circular has targeted certain hazards and remained silent on others.
5. During the briefing session (in response to a question) it was suggested that geotechnical coastal hazards are not subject to the Draft requirements as such hazards tend not to move or are only current. We are not convinced that this is the case, eg cliff or slope instability. In addition, other coastal hazards of tidal inundation or riverbank erosion would not be expected to be static threats.
6. This Draft Circular comes at a time when the NSW Government is yet to announce, let alone finalise, details of Stage 2 Coastal Reforms, yet this change was not part of the Stage 1 reforms issued in September 2012. So what is the Policy context for this change?
7. Managing coastal hazards is highly complex and while the Circular intends to deliver more certainty through clear and accurate advice on coastal hazards for councils, property owners and property buyers (as per 30 January Media Release) this Draft Circular does not provide any clarification on several other 'coastal hazards' as defined in NSW legislation, and further, it does not address how notations on 'coastal hazards' are issued for all components of section 149 Certificates. Hence, instead of providing clarity and certainty as promised by the Ministers, the new notations may make property owners and property buyers more confused.
8. Pursuant to Section 149 of the *Environmental Planning and Assessment Act 1979* and Schedule 4 of the *Environmental Planning and Assessment Regulation 2000* (including amendments effective from 22 February 2014 and Planning Circulars PS 13-004 and PS 13-005) Councils are typically required to provide advice concerning coastal hazards in several parts of a 149 certificate including restrictions on complying development (Sch 4, cl 3) on certain land (under relevant Codes) and hazard risk restrictions (Sch 4, cl 7). All these are in addition to the notations regarding coastal protection (Sch 4, cl 4), certain information relating to beaches and coasts (Sch 4, cl 4A), annual charges for coastal protection services (Sch 4, cl 4B). This seems confusing enough to a practitioner let alone a layperson.
9. Notations in section 149 certificates on whether complying development can be carried out on land are further complicated as Council now needs to advise [pursuant to subcl 1.19 (1) and 1.19(5) of the SEPP (Exempt and Complying Development Codes) 2008] whether complying development can occur on land that is identified by an environmental planning instrument, a development control plan or a policy adopted by the council as being or affected by (i) a coastline hazard, or (ii) a coastal

hazard, or (iii) a coastal erosion hazard and if so whether the whole or part of the land is so affected for the purposes of carrying out complying development. So now we have 'coastal hazard' (item ii) which is defined in legislation and two undefined terms – 'coastal erosion hazard' which originated in the pre-22 February 2014 version of the Codes SEPP and 'coastline hazard' which while undefined would appear to be the same as 'coastal hazard'. None of these notations require the status of the hazard (current v's future) to be clarified.

10. In Clarence Valley Councils case there is also a local exclusion for complying development under the General Housing Code [pursuant to subcl 1.19 (2) and Schedule 5 of the SEPP (Exempt and Complying Development Codes) 2008] for land in the Clarence Valley Complying Development Land Map (Sheet LCD_001) as the subject land is subject to coastal erosion hazard.
11. The incremental increase in the information required to be disclosed on a 149 is making the certificate of questionable value to the intended user. The certificates have become overly complex and detailed to the extent that the key planning issues are becoming lost. More importantly, the increased detail encourages an 'implied warranty' in that the Certificate may be perceived as addressing all relevant planning issues affecting the land. This is clearly not the case.
12. The Draft Circular addresses advice in section 149 certificates provided pursuant to clause 7 of Schedule 4 for a selection of coastal hazards however, as indicated above there appears to be inadequate attention to the detail needed to ensure a consistent and clear message on 'coastal hazards' to property owners and property buyers as the Ministers have promoted through release of the Draft Circular.
13. Council recommends that:
 - (a) the NSW Government not adopt the Draft Circular;
 - (b) the NSW Government reconsider how Councils should provide notations on the range of 'coastal hazards' and associated coastal protection matters on section 149 certificates as part of the Stage 2 coastal reforms package and ensure integration with other components of the Stage 2 reforms;
 - (c) the NSW Government increase the prescribed fee for a section 149(2) certificate to a minimum of \$150; and
 - (d) the Section 149 certificate in total be reviewed in consultation with the conveyancing industry and local government.

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