

6 March 2014

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Draft Circular – Coastal hazard notations on 149 planning certificates.

Thank you for the opportunity to comment on the Feb 2014 – Draft Circular - Coastal hazard notations on Section 149 planning certificates.

This submission has been prepared by Council officers and has not been presented to Council as it could not be reported prior to the closing date. In this context we would like to provide the following comments on the Draft Circular.

The move by the NSW Government to provide more guidance on coastal hazard notations on Section 149 Planning Certificates is welcomed. With the completion of the Shellharbour Coastal Hazard Study in 2010, Council placed coastal hazard notations on all potentially exposed properties in its Local Government Area. Following the release of stage one of the coastal reforms the notations have remained on affected properties, given that, in September 2012, the State Government announced that it would be providing clarity on this matter.

The draft planning circular appears to require Council to clearly distinguish between current and future exposures to coastal hazards in any notations on Section 149 Planning Certificates, and assess any exposures disclosed on Section 149 Planning Certificates against the local conditions, using reliable and evidence-based data and information.

Shellharbour City Council has no objection to the requirement to separate current exposures notations from future ones on Section 149 Planning Certificates subject to further clarifications by Planning and Infrastructure. Council also agrees, in principle, to the need to assess the exposures against the local conditions, using reliable and evidence-based data and information. The concern, however, is the interpretation of this requirement, especially as it relates to sea level rise. Currently, there is inadequate support for councils to obtain locally relevant data and information, and the task is too complex and expensive for councils to undertake on their own. In recent years, Council has had difficulties understanding, managing and realising its obligations in accordance with the State's rapidly changing policy direction in coastal management. Council understands that the present government is still working through its coastal reform agenda, including looking at setting up the necessary structures to provide councils with the knowledge and tools necessary to undertake locally relevant coastal hazard assessment studies.

Without the necessary support in place to assess locally relevant coastal exposures, implementing the draft planning circular would be difficult. Our current coastal hazard notations are based on hazard assessments completed using the best information available to us at the time of the studies. This included the use of the previous NSW sea level rise planning benchmarks, which have now been revoked.

Council requests that the State Government co-ordinate and provide regionally specific information, prior to giving formal direction to councils to use locally relevant data and information.

With the current state of knowledge available to councils about sea level rise, Council needs guidance on whether any existing notations can be retained while the support for councils to update this information is being established.

Council requests the State Government seek legal advice on council obligations on placing Section 149 notations on the basis of the best knowledge available to them at any particular time, as Council has legal advice that such notations are currently necessary.

The draft planning circular indicates that references to coastal hazards in the circular include coastal erosion, tidal inundation, coastal inundation and coastal flooding. Geotechnical instability is another hazard that can be influenced or exacerbated by coastal processes, both now and going into the future, and can therefore be considered a coastal hazard.

Council requests that the State Government explain why coastal geotechnical risk is not considered in this planning circular on coastal hazards?

The draft planning circular explains that inclusion of a notation under Section 149 (2) or Section 149 (5) is dependent on whether or not there is a council policy that restricts the development of land on the property. Councils are generally aware of this, but need better clarity on what constitutes a "council policy" in this context. Legal advice is that a resolution of Council adopting the coastal hazard study and making a decision to use the information for development assessment going forward is a policy decision of Council that warrants notation under Section 149 (2).

Council requests that an interpretation is provided of the type of council policy that would warrant a Section 149(2) notation.

In the draft planning circular, an attempt is made to distinguish between current and future exposures to coastal hazards. Council's concern is that distinguishing between the current and the future exposures can be difficult without reference to any timeframes. Is current exposure considered to be the exposure that was determined in the year that the hazard assessment was undertaken? If so, further guidance is required on the timeframe over which a hazard study can be considered current? Clarity is also required on what should be the reference timeframes for determining and planning for future exposures.

Council requests that reference timeframes provided for what should be considered "current" and "future" exposures for determining and planning for coastal hazard exposures.

The draft planning circular refers to the need to distinguish between current and future exposures, and the type of hazard to which properties are exposed, if disclosure on Section 149(2) Planning Certificates is required. Terminology to be used for the notations is also recommended. In light of the previous comments about the currency of the exposure determinations, should Section 149 notations also include the reference timeframes for the current and future exposures? On the recommended terminology for the notations, further

guidance is required for properties affected by more than one type of hazard. Should there be a separate notation for each hazard or can the hazards be combined in one notation? Also, in most cases, properties with a current exposure will also have a future exposure. Therefore, should all current exposure notations be accompanied by notations on future exposures?

Council requests that further clarity be provided on the level of detail to be provided in Section 149(2) notations in regard to timeframes of exposure, type or types of exposure, and the inclusion of future exposures wherever there is current exposure.

The draft planning circular indicates that disclosure of coastal hazard exposures, particularly future exposures, can be made via a Section 149(5) Planning Certificate, if the information is sufficiently accurate, complete, and reliable, as supported by a competent process of assessment. Under the Coastal Protection Act (1979), for example, coastal zone management plans need to be certified by the respective Minister before they can be implemented. Will the State consider a similar vetting mechanism for Section 149 certificate disclosures?

Council requests that further guidance be provided on what the State considers a "competent process of assessment".

The box on page 3 of the draft circular presents the three requirements that councils need to satisfy when developing a policy or planning instrument to manage a coastal hazard, particularly future exposures to a coastal hazard. As adoption of such a policy is required for disclosure of coastal hazard exposures via a Section 149(2) Planning Certificate, these requirements also apply to all Section 149(5) disclosures.

The first requirement is the need to use evidence-based data and information. Council needs further guidance on the interpretation of evidence-based data and information, especially as it relates to the sea level rise projections to be used for assessing future exposures. Projections of sea level rise at the local or regional scale is beyond the capacity of local councils, and we must rely on the advice of technical experts. Guidance is therefore required on where and when reliable, evidence-based data and information relating to sea level rise can be sourced.

The second requirement is that councils must consider current research and any technical advice from the Climate Change Adaptation Research Hub. It appears that this hub has only recently been created and its publicised website does not give any contact or other information for councils to follow up on at the current time. This again highlights the difficulty for councils to implement the draft planning circular in its entirety, in the immediate term to short term.

The third requirement is compliance with a Section 117 Direction, which is proposed to be issued to ensure councils comply with the above two requirements. Given that support required by councils to meet the first two requirements is not currently in place, it appears premature for a Section 117 Direction to be issued at the current time.

Council requests that any decision to issue a Section 117 direction await the completion of the work being undertaken in the Stage 2 of the coastal reform process.

Council supports the need for more detailed supporting information about the coastal hazards to be made available to interested parties, and has provided this information through its website since its hazard study was completed in 2010.

Councils are advised to seek their own legal advice on the specific wording to be included on Section 149 Planning Certificates. If the wording recommended in legal advice is substantially different from the directions in the draft planning circular, what would be the State's advice for councils?

Council requests that the State Government provide mandatory wording for Section 149 notations for coastal hazard exposures.

The opportunity to comment on the Draft Circular is greatly appreciated. If you require any further information in relation to this submission please feel free to contact me on (02) 42 216127.

Yours sincerely

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