

SUBMISSION TO MINISTERS HAZZARD, PARKER, PAGE AND GALLACHER, 7 March 2014.  
RE: Draft Planning Circular – Coastal Hazard notations on section 149 planning certificates.

Dear Ministers,

As the four Ministers quoted in the Government media release on 30 January 2014 headed *'Councils urged to think local as well as global when dealing with coastal hazards'*, we bring to your urgent attention the crucial flaws in the DoP&I draft planning circular headed *'Coastal hazard notations on Section 149 planning certificates'*. We are also submitting a copy of this email to the DoP&I public exhibition of the draft, with our request for extension of the 3 March deadline.

On 30/01/2014, Minister Hazzard was quoted in The Australian as saying, *"we just needed to get councils to jump away from that doomsday scenario"*. He was discussing the new S.149 Guidelines, and he clearly meant that councils will stop applying the 90 cms sea level rise by 2100. This was clear because no council has adopted a sea level rise projection greater than 90 cms. It is councils' worst case scenario, and therefore has to be 'that doomsday scenario' which Minister Hazzard says they will now 'jump away from'.

Councils will not do this, unless the crucial flaws in the draft are corrected. The draft says that an erosion risk will now only be included on the basis of *'sufficiently accurate, complete and reliable'* evidence. Anyone reading this principle will say *'of course, notations on S.149 certificates would be quite unjust otherwise'*. But it's not that easy. The first problem is lack of any guidelines or tests for 'sufficiently' (what might be 'sufficient' for one person, might be quite 'insufficient' for another). Accordingly, one of our submissions is that sufficiency criteria must be added. That is the flaw which can be fixed, but there is an even more critical flaw.

The Precautionary Principle in the NSW Coastal Policy 1997 entirely negates the above guiding principle in the draft. To draw on legal firm's Beatty Legal advice to the 50 coastal councils attending a conference in Ballina in March:- when there is scientific uncertainty of a coastal threat, the decision maker must assume the threat is a reality and take appropriate action. That is the long-standing Precautionary Principle, and the liability-defensive fall-back position for councils, who will continue to apply the worst case scenario as things stand.

Thus we have the situation of the draft's new principle saying ignore a risk if not accurately, completely and reliably established, and the Precautionary Principle saying exactly the reverse. We can only wonder how this got through the drafting process in DoP&I. Coastal Group members' submissions lodged under the DoP&I public exhibition establish in detail how the principle in the draft cannot co-exist with the Precautionary Principle, and call for the critical flaw to be resolved.

In this submission to yourselves, we offer fresh thought and simplification in our proposal to resolve the flaws that have been revealed. Specifically, we address the issue of how the objective of S.149(5) certificates can best be met in application to private coastal and estuarine land and dwellings.

Carrying out coastal hazard studies is required to inform the S.149(5) process. Every hazard study requires an arbitrary decision as to how far forward it will look, and what, if any, sea level rise will be factored in, over that horizon. So far, and set to continue, the horizon is to 2100, and the sea level rise is the extreme IPCC projection. Neither of these arbitrary starting points bears scrutiny when looked at on the basis of coastal communities' wants, needs and benefits.

Consider a dwelling on a typical portion of coastal land. Over the next 86 years, the present hazard study horizon, experience shows that the dwelling will almost certainly be demolished and re-built, or extended. In the course of this, the character of the land will change, and should there be looming erosion or inundation, the owner at the time has the option to take remedial action, usually collaboratively with neighbours. The Stage 1 legislative changes ensuring this option were most welcome.

It is not the role of coastal councils, and surely not the role of state government, to inhibit or remove, by premature imposition of building restraints or embargos, the rights of coastal property owners to optimal pleasure, use and benefit from their properties, or to devalue their properties. Likewise, it is not the role of either level of government to usurp property owners' rights to protect their properties, if the need should ever arise.

The important words above are 'premature imposition'. Looking out 86 years is clearly premature. IPCC sea level rise projections, on which hazard studies will continue to be based, albeit with slight local adjustments, vary in uncertainty from 26 cms to 98 cms. Additionally, the draft Planning Circular requires that S.149(5) certifications be followed by planning instruments to manage these uncertain hazards, which may or may not eventuate. If this applies, it is likely that development requirements called for in premature planning instruments will be found to be inappropriate, even unnecessary, as time proceeds.

In necessarily arbitrary decisions, realistic and practical balance is required. In this case, the arbitrary decisions to be scrutinised are the time horizon and the sea level rise projection to be used in hazard studies. We believe that a 40 year horizon, updated 10-yearly, with initial adoption of the mid-range projection of 20cms rise in IPCC AR5 RCP 6.0 from 2020 to 2060, is now the realistic and practical decision for government to take and mandate for coastal hazard studies, specifically in application to coastal and estuarine dwellings.

The adoption of 40 year sea level rise projections would require legislative change to waive the Precautionary Principle in the case of hazard studies applying to coastal and estuarine dwellings, and what flows from these studies. Application of the other three Ecologically Sustainable Development principles would continue as part of the Triple Bottom Line cost-benefit assessments in Coastal Management Studies and Coastal Zone Management Plans.

We believe that the adoption of this starting point for hazard studies will provide the necessary alerts of any looming erosion or inundation risks, and give adequate time for the response options to be studied and acted on. We commend these fresh thoughts and simplified approach, and we ask Ministers to act rapidly and decisively to mandate our proposal, thereby resolving the years of indecision, vacillation and disputation which have arisen for councils and coastal property owners in grappling with sea level rise.

Paul Flemming, for Lake Cathie Coastal Residents Group (LCCRG)

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