

Coastal Hazard Notations on Section 149 Certificates

Comments by the Coastal Expert Panel

1. The aim of changes to s149 certificates in coastal areas arose out of matters discussed under Stage 1 Coastal Reform. The NSW Government identified a need to improve ways local councils disclosed coastal hazard information in planning certificates. Difficulties had arisen with some councils in the application of the previous government's directions on assessing coastal hazards whether they are from coastal erosion, tidal inundation, coastal inundation and coastal flooding. It has been recognised for many years that many private homes, commercial buildings and public infrastructure are at risk from such hazards under **current** conditions as documented by historical storm events and by numerous hazard studies. These structures and lands are potentially at greater risk in **future** under projected changes in climate (more intense storms) and sea level rise.
2. The CEP welcomes the attempt by DP&I to make changes to planning certificates in order to assist councils. We were invited at short notice in December to meet with staff of Minister for Planning and staff of DP&I to make suggestions on a draft version of the Draft Circular that was released on 30 January. While we wish to acknowledge that several of our suggestions were accepted, we were not provided with a copy of the document that is currently on exhibition, prior to its release and have a range of concerns about this latest draft.
3. There are problems in the differentiation of the terms "current" and "future". The first problem arises when there is no consistent statewide definition as to what constitutes a future hazard. If it is left to individual councils then "Council A" may adopt a sea level rise policy based on IPCC projections, but next door "Council B" may reject those projections and assume no future sea level rise for purpose of the notations on planning certificates. Yet coastal processes could be shown to be similar between A and B so risks to property would be similar. Justifiably residents in A may feel disadvantaged in the present property market compared to B. This problem can be solved by having regional Coastal Zone Management Plans (CZMP), as being conceived by the CEP, in which risks associated with

particular hazards would be defined by impacts of coastal processes and not arbitrary council boundaries.

4. The second problem arises in the different way “future” is referred to in the circular. On page 2 what is termed the “immediate” (=current?) coastal erosion area is based on a design event or a particular historic event; fair enough? But for coastal flooding (should be inundation) the document reverts only to land within a 1% (1 in 100 year Average Recurrence Interval ARI) inundation event, meaning any event with a lower probability is “future”, yet, for example, a 1 in 200 ARI event has a 0.5% probability of occurring each year! This is serious given the greater number of properties at risk from coastal flooding and tidal inundation in the vicinity of NSW estuaries and lakes than on the open coast (ratio of 10 to 1, DCC report 2009). Again we suggest that this problem could be best addressed in a regional CZMP.
5. The CEP is very concerned about the content of the **box** on page 3 of the Circular entitled **Coastal Hazards Policy Development**. It foreshadows facilitating a “consistent approach” for councils developing a policy to manage a coastal hazard “particularly future exposure”. We understand that this Policy is going to be developed within DP&I as part of the planning reform process but we have no direct knowledge of how it is progressing, or whether officers from OEH are involved. As noted above, there is no reason under Stage 1 for councils to be consistent. Nor is there any mechanism for councils to obtain the necessary technical advice; our understanding is that the Research Hub referred to is not an advice centre and should NOT be mentioned in this context (nor should the CEP have been referred to as it was in the Q&A accompanying the Circular). Further we do not know what will be expected as compliance under “the relevant s117 Direction”; as, to the best of our understanding it does not currently exist. Finally, the use of the term “coastal hazard certificates” is very misleading. One interpretation is that an additional certificate (perhaps for only coastal erosion?) is required. However, we assume it is for all coastal hazards to be covered by s149 certificates. Our **recommendation** is that the box not be included in the final Circular in this form.
6. Reference to indemnity on page 2 is also confusing. It should be explicit as to what provision of the EP&A Act is referred to. More important is the need to clarify where indemnification sits with respect to s733 of the Local Government Act that

explicitly refers to coastal and flooding matters and more broadly covers the information that leads to what is on the s149. Here again we see the link between what a council must do if it is to proceed with CZMPs and what should go onto a planning certificate. The circular fails to provide this critical nexus by referring only to the EP&A Act indemnity that could be seen as a subset of the Local Government Act requirement under s733.

7. We would submit that the whole thrust of the Circular is lost if the statutory provision of s149s in contracts of sale does not include s149 (5) as well as s149 (2). The Circular is supposed to assist councils and make it clear to property owners what they may face in terms of current and future hazards. Councils are directed to produce policies that show their understanding of the hazards and the potential impacts of those hazards as well as likelihoods. In the draft Circular, if a purchaser buys a property that is potentially impacted by a hazard, but the council is still in the process of developing and implementing a policy, then the purchaser is not formally forewarned as such information is not yet on the s149 (2). The purchaser is likely to be upset if at a later date the policy comes into effect and strictures are placed on the landowner for any further development of the property. Once a hazard has been identified, and has been assessed to be sufficiently understood to be placed on an s149 (5), then many management actions and review of options may arise which will finally allow councils to develop a policy for management of the hazard which can then be noted on s149 (2). Hence purchasers should be made aware of what is on **both** s149 certificates through the contract of sale. This is seen as a major issue for councils because many land owners believe there is only one s149 and that is 149 (2). If the Government wants people to be properly informed then we **recommend** inclusion of both (2) and (5) on contracts of sale and that any process for identification and assessment of the hazard follow guidance contained in a Manual referred to in s733 of the Local Government Act. To this end, we also note that the relevant coastal manual was withdrawn some time ago and has not been replaced so that currently there is no relevant coastal manual for use by councils in determining coastal hazards in a manner that would provide protection under s733.
8. We note that the Circular encourages councils to “ensure there is clear and full information available to the public and landowners about the nature of coastal hazards referred to in planning certificates” (p.3). This should require the State

Government providing generic information, technical support and a process of compliance which will ensure that no property owner is disadvantaged if a particular council is unable to meet this requirement. It also raises the question of funding the investigations needed to provide “accurate, complete and reliable information”. These are matters that the CEP is working on and will separately provide the Minister with advice.

9. The wording around recurrence intervals and “current” and “future” exposure on page 2 is poor – suggested rewording follows:

“Current exposure to a coastal hazard” describes situations where the land is currently at threat from a coastal hazard arising from an event having a prescribed design probability or a particular historic event. For example, land within an immediate coastal erosion or inundation area arising from a 1% annual exceedance probability AEP (1 in 100 year average recurrence interval ARI) coastal storm event would be land with a “current exposure to a coastal hazard”.

“Future exposure to a coastal hazard”shoreline recession.

“Future exposure to a coastal hazard” is different to the probability of an event occurring. The probability of a 1 in 100 year ARI coastal storm event occurring does not mean that the event will occur 100 years in the future. It means there is a 1% chance of it occurring each year. That is the event could occur today, next year (1% chance) or at some time in the next 50 years (about 50% chance). If a property is exposed to the 1 in 100 year ARI hazard today, then this is a “current exposure to a coastal hazard”. If a property is projected to be exposed to a 1 in 100 year ARI coastal hazard if sea levels rise to a certain level in the future then this is a “future exposure to a coastal hazard”. Further, there are many areas on the NSW coast that are currently experiencing long term recession due to sediment imbalances, not climate change, given that this trend is expected to continue, the question arises as to whether this is a current or a future hazard? Particularly as such recession tends to occur in discrete steps rather than as an average annual process.