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Our reference: SS126-14

10 March 2014

Ms Santina Camroux
Coastal and Natural Resources Policy Branch
Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001.

Dear Ms. Camroux,

Re: Submission on the draft Planning Circular - Coastal hazard notations on Section 149 planning certificates

Summary of submission

We agree that there is merit in distinguishing between current and future exposure to coastal hazards on planning certificates. However, the Circular can be improved in a number of respects and our suggested improvements are articulated in the Table attached. We also make general comments regarding how the State can assist councils address coastal hazards more effectively.

Sydney Coastal Councils Group Incorporated (SCCG)

The SCCG is a voluntary Regional Organisation of Councils (ROC) representing 15 Sydney coastal councils (www.sydneycoastalcouncils.com.au/). We are the peak NSW local government association representing coastal councils and the third largest NSW ROC based upon population¹. We have over 20 years' experience in providing coastal stewardships through a coordinated approach to sustainable management. We are uniquely able to play a key role in the delivery of a strategic and sustainable planning system, especially in relation to the coasts and estuaries.

In relation to significant coastal policy and legislative initiatives we make comprehensive submissions which harness the individual and collective knowledge of our Member Councils, a suite of technical and academic experts as well as other stakeholders. Consultation is undertaken through workshops, information sessions and publications. This submission incorporates input from workshops conducted with our Technical Committee and echoes recommendations we continue to promote, for example, in our Strategic Plan, and in relation to our submissions to other Government 'reforms' such as [A New Planning System for NSW](#) and [Coastal Reforms to Coastal Management in NSW, 2010](#).

¹ Gooding, A. 2012. A Comparative Analysis of Regional Organisations of Councils in NSW and Western Australia, Australian Centre of Excellence for Local Government, University of Technology Sydney.

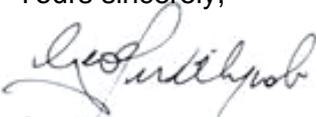
Response sought from Planning and Infrastructure

We respectfully request a response to each submission made in the attached Table.

On 4 February 2014 we attended a *Briefing about coastal hazards and Section 149 certificates* convened by Planning and Infrastructure. Questions that could not be addressed at the briefing were taken *on notice*. We submitted five questions that were taken on notice and these were confirmed in an email on 14 February 2014. We look forward to receipt of your report on the outcomes of the Briefing and your considered reply to our questions.

If you wish to discuss any element of the above, please do not hesitate to contact Stephen Summerhayes, Manager Projects and Programs on 9246 7326 or via email at Stephen@sydneycoastalcouncils.com.au.

Yours sincerely,



Geoff Withycombe
Executive Officer



SYDNEY COASTAL COUNCILS GROUP INC.

SUBMISSION ON THE DRAFT PLANNING CIRCULAR - COASTAL HAZARD NOTATIONS ON SECTION 149 PLANNING CERTIFICATES

	Statement in Circular [in chronological order]	Supporting comments	Recommendations
1.	<p><i>The purpose of this draft circular is to provide councils with guidance on section 149 planning certificate notations relating to coastal hazards.</i></p>		<p>a) To ensure consistent disclosure among Councils across the State, best practice guidance be provided in relation to:</p> <ul style="list-style-type: none"> i) what hazard and climate change information councils should procure ii) how hazard and climate change information should be assessed and considered iii) the nature of the duty of disclosure iv) how the duty can be discharged v) what statutory indemnities and the like can accrue to councils for action taken in relation to the above vi) insurance implications in relation to the disclosure or non-disclosure of hazard information vii) the development of appropriate policies addressing hazard and climate change information (this may necessarily involve an audit of policies currently utilised by councils) viii) when, how promptly and how councils should develop policies after becoming 'aware' of a relevant matter pertaining to coastal hazards. <p>b) The information provided in relation to future hazards and the policies that are developed in relation to them under a) above appropriately address assets with a design life leading up to or exceeding the 'relevant future'.</p> <p>c) Councils be required to adopt a precautionary approach in relation to the disclosure of hazard and climate change information.</p>

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2.	<i>The NSW Government has identified a need to improve the way councils disclose coastal hazard information in planning certificates.</i>		See submission 1 above.
3.	<i>References to coastal hazards in this circular include coastal erosion, tidal inundation, coastal inundation and coastal flooding.</i>		<p>a) For consistency and accuracy, coastal hazards should be defined by reference to the definition of coastal hazards in the <i>Coastal Protection Act 1979</i>, which includes instability of cliffs and the entrances to estuaries.</p> <p>b) Reference should be provided to key resources concerning coastal hazards. See for example our project addressing Landslide Risk Management: Geotechnical Investigations and the Guideline for Landslide Susceptibility, Hazard and Risk Zoning for Land Use Planning.</p>
4.	Section 149 planning certificates	The discussion under this heading in the Circular addresses the nature and content of s.149 planning certificates. Planning certificates are addressed by Councils' planning departments. However, often, management of risks such as coastal hazards are within the responsibility of Council's risk management department, environmental department or other department.	<p>a) Capacity must be provided to coastal risk managers regarding the nature, effect and content of planning certificates.</p> <p>b) It would also be useful to provide capacity in relation to what constitutes a 'policy' which must be disclosed under Schedule 4 of the Regulation and how such policies can be formulated.</p> <p>We would be happy to facilitate such capacity for Sydney coastal councils with support from Planning & Infrastructure and OEH.</p>
5.	<i>A section 149(5) planning certificate does not contain information relating to restrictions on development, however, it does allow a council to advise on other relevant matters affecting land. This can include historical, current or future issues.</i>	<p>Section 149(5) provides that '[a] council may, in a planning certificate, include advice on such other relevant matters affecting the land of which it may be aware.' [emphasis added]</p> <p>Page 2 of the circular provides:</p> <p><i>The section 149(5) planning certificate provides the opportunity for the council to advise of a known hazard during the time between the</i></p>	<p>a) There is inconsistency among Councils regarding the hazard 'advice' to be 'included' on s.149(5) planning certificates. The specific advice to be included should be prescribed.</p> <p>b) The State Government also provide generic comprehensive coastal hazard information for inclusion in s.149 planning certificates including standard definitions, overview of coastal processes and their impacts, relevant policies and legislation. This standard information can then be supported by local site specific information provided by the relevant council. The information is</p>

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		<p><i>Council coming into sufficiently reliable knowledge regarding the existence and extent of that hazard and the council having the opportunity to develop and implement a policy or planning instrument to manage that hazard.</i></p>	<p>important, especially because there is no obligation to include it in a s.149(2) certificate.</p> <p>c) There is also uncertainty as to what constitutes ‘aware’ in any given circumstance. Clear guidance be provided.</p>
6.	<p>Section 149(5) planning certificates do not form part of the contract for the sale of land</p>	<p>If a s.149(5) planning certificate is not procured by a prospective purchaser, that purchaser may be unaware of important hazard information. This may have future implications for Councils, including an argument that Council has failed to adequately inform its community.</p>	<p>The Act be amended to incorporate the information in a s.149(5) certificate into a s.149(2) certificate.</p>
7.	<p>Information about the local land characteristics (such as its geomorphology) and the probability and consequence of storms, floods and similar events, can help identify the land and assets at risk.</p>		<p>a) State government in partnership with councils undertake border to border hazard assessments at an appropriate resolution.</p> <p>b) Resources be provided to councils to commission up-to-date and detailed mapping and related information to assist them identify land and assets at risk.</p> <p>c) Standard procedures be developed for commissioning up to date mapping and related information, for example, standard technical briefs, competencies required of consultants and sources of authoritative information.</p>
8.	<p>Current exposure to a coastal hazard</p> <p>If a relevant policy applies to the land because of a current exposure to a coastal hazard, it is recommended that councils include a notation on the planning certificate in the following form ...</p> <p>...</p> <p>Future exposure to a coastal hazard</p>	<p>It is incongruous to recommend a form of words to adopt in noting a current or future hazard on s.149 planning certificates and then require legal advice be obtained regarding the use of such form of words.</p>	<p>a) A review of international best practice in hazard disclosure notations be undertaken.</p> <p>b) The recommended notations be reviewed to ensure they meet best practice.</p> <p>c) The publication Audit of Sea Level Rise, Coastal Erosion and Inundation Legislation and Policy prepared by the EDO of NSW for the SCCG be updated.</p> <p>d) Details of the legal advice obtained, if any, be provided in relation to the wording recommended.</p>

	Statement in Circular [in chronological order]	Supporting comments	Recommendations
	<p><i>If a relevant policy applies to the land because of a future exposure to a coastal hazard, it is recommended that councils include a notation on the planning certificate in the following form...</i></p> <p>...</p> <p><i>Legal Advice</i></p> <p><i>It is suggested that councils seek their own legal advice on the specific wording to be included on section 149(2) and section 149(5) planning certificates.</i></p>		<p>e) If legal advice was not obtained, a detailed legal advice be commissioned for NSW councils regarding matters to be considered when formulating the wording of notations and provide a copy to councils. This will save the considerable cost of each council having to obtain separate legal advice.</p>
9.	<p><i>Counter-balancing the need to disclose information as soon as possible is the need to avoid adverse property market and other impacts by the disclosure of information prematurely, or by disclosing information that lacks the necessary rigour and certainty.</i></p>	<p>Councils have an obligation to their communities in relation to safety and to provide information to enable them to decide whether or not to take action to mitigate impacts to themselves and their assets. Thus, for example, Councils have a duty to prospective purchasers to inform them of coastal hazards affecting properties.</p> <p>The property market is independent of Councils' obligation. The market will make appropriate corrections based upon a property's level of risk and other relevant factors. Councils should not withhold information based upon a perceived response by the property market, especially when such information is necessary for the community to make informed decisions. Whether information should be released depends upon the nature of the information, not merely the perceived response of the property market.</p>	<p>Delete this section of the circular.</p>

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10.	Consider current research and any technical advice from the Climate Change Adaptation Research Hub		<ul style="list-style-type: none"> a) Detail in the circular the research and technical advice available from the Hub. b) Provide details of the process of how councils can obtain technical advice from the Hub.
11.	A section 117 Direction will be issued to ensure compliance with an evidence-based approach and consistency in application of coastal hazard certificates along the coast by councils.		<ul style="list-style-type: none"> a) Provide the proposed wording of the s.117 Direction. b) Advise how the s.117 Direction will integrate with the Coastal reforms. c) Full and genuine consultation take place with councils regarding the form of words to be adopted.
12.	Councils are encouraged 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. This may include information about the extent of exposure to that hazard and the time period within which that hazard is projected or modelled to arise. This information may be contained in policies, plans or maps or the council website.		<ul style="list-style-type: none"> a) Confirm in the circular that such information should also appear in relevant s.149 planning certificates. b) Define the use of the words 'clear' and 'full'. c) Provide guidance on the structure and level of detail expected in such information to ensure consistency between Councils. d) Provide details of the funding that will be made available to Councils to procure, assess and disseminate such information.
13.	Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.	It is appropriate for Councils to rely upon the Circular.	<ul style="list-style-type: none"> a) Please delete this disclaimer. b) Confirm in the circular that Councils can avail themselves of a similar disclaimer on their s.149 Certificates.