

PLANNING SYSTEM

State environmental planning policies

Circular	PS-11-001
Issued	24 January 2011
Related	

Amendments to s149 planning certificates related to coastal matters

The purpose of this circular is:

- to advise coastal councils, property owners and the community about changes to the *Environmental Planning and Assessment Regulation 2000* requiring coastal councils to include certain coastal matters in section 149 certificates; and
- to provide councils with guidance on notations relating to hazards that are affected by projected sea level rise.

Introduction

This circular outlines amendments to Schedule 4 of the *Environmental Planning and Assessment (EP&A) Regulation 2000* that require certain information to be included in section 149 certificates relating to emergency coastal protection works and information on coastal protection service charges for existing coastal protection works.

The amendment to the EP&A Regulation will commence on 25 February 2011. The deferred commencement is to give coastal councils time to update their systems.

This circular also provides councils with guidance on the wording of notations relating to coastal hazards associated with projected sea level rise.

Coastal Protection Changes

The *Coastal Protection and Other Legislation Amendment Act 2010* was passed by the NSW Parliament on 21 October 2010 and largely commenced on 1 January 2011. This Act amended the *Environmental Planning and Assessment Act 1979* and EP&A Regulation. Further detail is provided in Planning Circular No. PS 10-032 issued on 24 December 2010.

Provisions include:

- Allowing landowners to undertake emergency coastal protection works to reduce the impact of coastal erosion on their property.
- Requiring consent authorities assessing development applications for long term coastal protection works such as seawalls to

be satisfied that appropriate arrangements are in place to restore beaches if they are eroded by the works.

- Allowing councils to levy a coastal protection service charge on land where the current or past landowners have consented to the land being subject to annual charges for coastal protection services that relate to existing coastal protection works. This charge covers council's costs of maintaining the works and restoring the beach if the works cause erosion.

New information in s149 planning certificates

The amendments to Schedule 4 are to ensure landowners, prospective purchasers and other interested parties are able to obtain additional information relating to coastal matters affecting the land. (Clauses 4A and 4B of Schedule 4 will require the inclusion of the following information in s149 Certificates.) The provisions only apply to coastal councils (see attached list).

4A Information relating to beaches and coasts

- whether an order has been made under Part 4D of the *Coastal Protection Act 1979* in relation to emergency coastal protection works (within the meaning of that Act) on the land (or on public land adjacent to that land), except where the council is satisfied that such an order has been fully complied with.
- whether the council has been notified under section 55X of the *Coastal Protection Act 1979* that emergency coastal protection

- works (within the meaning of that Act) have been placed on the land (or on public land adjacent to that land), and
- (b) if works have been so placed—whether the council is satisfied that the works have been removed and the land restored in accordance with that Act.
- (3) such information (if any) as is required by the regulations under section 56B of the *Coastal Protection Act 1979* to be included in the planning certificate and of which the council has been notified pursuant to those regulations.

4B Annual charges for coastal protection services under *Local Government Act 1993*

Whether the owner (or any previous owner) of the land has consented in writing to the land being subject to annual charges under section 496B of the *Local Government Act 1993* for coastal protection services that relate to existing coastal protection works (within the meaning of section 553B of that Act).

Note. “Existing coastal protection works” are works to reduce the impact of coastal hazards on land (such as seawalls, revetments, groynes and beach nourishment) that existed before the commencement of section 553B of the *Local Government Act 1993*.

Categorisation of land subject to coastal risks

Recent amendments to the *Coastal Protection Act 1979* allow the regulations under section 56B of that Act to make provision for the categorisation of land within the coastal zone according to the level of its exposure to coastal hazards.

The amendments further provide that the regulations may require the inclusion in section 149 certificates of a statement of the risk category of the land (and of the likely response of public authorities to the risks posed by coastal hazards) as determined by the Minister administering that Act.

At the time of writing this circular, there are no relevant regulations under the *Coastal Protection Act 1979*.

Notations relating to hazards affected by projected sea level rise

Clauses 7 and 7A of Schedule 4 of the EP&A Regulation require that section 149 certificates include information on where development controls relating to coastal hazards or flooding apply to the subject land.

In November 2009, the NSW Government released the *NSW Sea Level Rise Policy Statement*, which specifies sea level rise planning benchmarks and the Department of Planning released the *NSW Coastal Planning Guideline: Adapting to Sea Level Rise* in August 2010 providing guidance on how sea level

rise is to be considered in land use planning and development assessment across NSW.

The identification of coastal risks, including coastal erosion, tidal inundation and coastal flooding should now include consideration of the sea level rise planning benchmarks of 40cm by 2050 and 90cm by 2100 relative to 1990 levels.

Section 149(5) of the *Environmental Planning and Assessment Act 1979* states that a council may, in a planning certificate, include advice on such other relevant matters affecting the land of which it is aware.

The Department recommends that, where land is subject to coastal risks as a consequence of projected sea level rise, councils consider including a notation on the planning certificate in the following form:

This land has been identified as being affected by projected sea level rise. In identifying coastal risks caused by projected sea level rise, council is to consider the NSW sea level rise planning benchmarks. Those benchmarks specify an increase above 1990 mean sea levels of 40cm by 2050 and 90cm by 2100.

- In the event of a 40cm sea level rise, this land will be affected by (coastal erosion / tidal inundation and / or coastal flooding).
- In the event of a 90cm sea level rise, this land will be affected by (coastal erosion / tidal inundation and / or coastal flooding).

This notation should indicate the type of hazard (whether it is coastal erosion, tidal inundation or coastal flooding).

Coastal councils

The amendments to Schedule 4 of the EP&A Regulation only affect coastal councils. The EP&A Regulation defines *coastal council* as a council whose area, or part of whose area, is included within the coastal zone (within the meaning of the *Coastal Protection Act 1979*) or whose area includes land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries.

An alphabetical list of coastal councils is set out overleaf.

Coastal Councils of NSW

Auburn City Council
Ballina Shire Council
Bankstown City Council
Bega Valley Shire Council
Bellingen Shire Council
Burwood Council
Byron Shire Council
Canterbury City Council
City of Canada Bay Council
Clarence Valley Council
Coffs Harbour City Council
Council of the City of Sydney
Eurobodalla Shire Council
Fairfield City Council
Gosford City Council
Great Lakes Council
Greater Taree City Council
Hawkesbury City Council
Hurstville City Council
Kempsey Shire Council
Kogarah City Council
Lake Macquarie City Council
Lane Cove Municipal Council
Leichhardt Municipal Council
Manly Council
Marrickville Council
Mosman Municipal Council
Nambucca Shire Council
Newcastle City Council
North Sydney Council
Parramatta City Council
Pittwater Council
Port Macquarie-Hastings Council
Port Stephens Council
Randwick City Council
Richmond Valley Council
Rockdale City Council
Ryde City Council
Shellharbour City Council
Shoalhaven City Council
Strathfield Municipal Council
Sutherland Shire Council
The Council of the City of Botany Bay
The Council of the Municipality of Ashfield
The Council of the Municipality of Hunters Hill
The Council of the Municipality of Kiama
The Council of the Shire of Hornsby
The Hills Shire Council
Tweed Shire Council
Warringah Council
Waverley Council
Willoughby City Council
Wollongong City Council
Woollahra Municipal Council
Wyong Shire Council

Further information

Copies of the *Environmental Planning and Assessment Act 1979*, the EP&A Regulation and the *Coastal Protection and Other Legislation Amendment Act 2010* are available online at <http://www.legislation.nsw.gov.au>

Note: This and other Department of Planning circulars are published on the web at <http://www.planning.nsw.gov.au/PlanningSystem/Circularsandguidelines/>

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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