Notations on section 149 planning certificates for land affected by the draft Coastal Management SEPP

The purpose of this circular is to provide councils with guidance on how section 149 planning certificates should specify whether land is affected by the draft Coastal Management State Environmental Planning Policy (SEPP).

Introduction

The draft State Environmental Planning Policy (Coastal Management) 2016 (Coastal Management SEPP) will map the four coastal management areas (CMA) that comprise the proposed coastal zone under the Coastal Management Act 2016. These are the Coastal Wetlands and Littoral Rainforests Area, the Coastal Environment Area, the Coastal Use Area and the Coastal Vulnerability Area.

The mapping will be based on values and features, modelling, or defined distances. Some lots may be partially covered by a CMA whilst others will be wholly within a CMA. The draft Coastal Management SEPP also identifies development controls that apply to land within a CMA.

Under s149(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) councils are required to include notification of certain relevant prescribed matters on any planning certificate for land.

Potential purchasers of land rely on the information provided in section 149 planning certificates to make an informed decision. Providing accurate and relevant information is an important consideration for purchasers.

This Circular provides guidance to councils aimed at ensuring that planning certificates under section 149(2) of the EP&A Act contain accurate notifications under clause 1(2) of Schedule 4 to the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) for land in the proposed coastal zone under the draft Coastal Management SEPP. Note this obligation is in addition to a council’s current obligation to notate matters relating to the existing coastal zone under clauses 1(1) and 7 of Schedule 4 to the EP&A Regulation on planning certificates under section 149(2) of the EP&A Act.

Planning Certificates: Information under Section 149(2)

The information to be included in a planning certificate under section 149(2) of the EP&A Act is prescribed by clause 279 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) and set out in Schedule 4 to the EP&A Regulation.

Environmental planning instruments

Under clause 1(2) of Schedule 4 to the EP&A Regulation, councils are required to include on any planning certificate issued under section 149(2) of the EP&A Act, “The name of each proposed environmental planning instrument that will apply to the carrying out of development on the land and that is or has been the subject of community consultation or on public exhibition under the Act (unless the Secretary has notified the council that the making of the proposed instrument has been deferred indefinitely or has not been approved).”

If land is wholly or partly mapped as the proposed coastal zone under the draft Coastal Management SEPP, a planning certificate for that land issued under section 149(2) should record that the draft Coastal Management SEPP applies to that land.
If a lot is partly mapped as proposed coastal zone under the draft Coastal Management SEPP, and the rest of the lot is not within the proposed coastal zone, it is recommended that the planning certificate also record that the draft Coastal Management SEPP applies to “part of the lot”. See the next section titled “Suggested wording” for such planning certificates.

**Suggested wording for notations under clause 1(2) of Schedule 4 of the EP&A Regulation**

Where a lot is wholly included in a CMA, it is suggested that councils include a notation relating to clause 1(2) of Schedule 4 to the EP&A Regulation on the section 149(2) planning certificate in the following form:

\[ \text{draft Coastal Management SEPP 2016 (whole of lot).} \]

Where a lot is only partially included in a CMA, it is suggested that councils include a notation relating to clause 1(2) of Schedule 4 to the EP&A Regulation on the section 149(2) planning certificate in the following form:

\[ \text{draft Coastal Management SEPP 2016 (part of lot).} \]

**Further circular**

A further planning circular will be issued just before the draft CM SEPP 2016 and the Coastal Management Bill 2016 commences to guide councils on how to notate planning certificates under section 149(2) of the EP&A Act in relation to clauses 1(1) and 7 of Schedule 4 to the EP&A Regulation. Clause 1(1) of Schedule 4 to the EP&A Regulation requires the name of each environmental planning instrument that applies to the carrying out of development on the land to be noted. Clause 7 of Schedule 4 to the EP&A Regulation requires the name of each council or other public authority policy on hazard risk restriction that affects the land to be noted.

**Identified Councils**

This circular is pertinent to all councils with land that lies within the proposed coastal zone under the draft Coastal Management SEPP 2016 as identified below.

- Ballina Shire Council
- Bega Valley Shire Council
- Bellingen Shire Council
- Blacktown City Council
- Burwood Council
- Byron Shire Council
- Campbelltown City Council
- Canterbury-Bankstown Council
- Central Coast Council
- City of Canada Bay Council
- City of Parramatta Council
- Clarence Valley Council
- Coffs Harbour City Council
- Council of the City of Sydney
- Cumberland Council
- Dungog Shire Council
- Eurobodalla Shire Council
- Fairfield City Council
- Georges River Council
- Hawkesbury City Council
- Inner West Council
- Kempsey Shire Council
- Lake Macquarie City Council
- Lane Cove Municipal Council
- Lismore City Council
- Liverpool City Council
- Maitland City Council
- Mid-Coast Council
- Mosman Municipal Council
- Nambucca Shire Council
- Newcastle City Council
- North Sydney Council
- Northern Beaches Council
- Port Macquarie-Hastings Council
- Port Stephens Council
- Penrith City 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
- Waverley Council
- Willoughby City Council
- Wollongong City Council
- Woollahra Municipal Council
Further Information

Relevant legislation is available at http://www.legislation.nsw.gov.au
For further information regarding the Coastal Management SEPP please contact the Department of Planning and Environment’s information centre on 1300 305 695.

Circulars are available from http://www.planning.nsw.gov.au/circulars

Authorised by:

Carolyn McNally
Secretary

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.

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 any thing or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.