

Circular	PS 19-006
Issued	26 November 2019
Related	PS-14-003

Planning for coastal hazards

This circular **replaces PS14-003** on the disclosure of coastal hazards on planning certificates issued under section 10.7 of the *Environmental Planning and Assessment Act 1979*. It also provides councils and other consent authorities with guidance on the assessment of coastal hazards under *State Environmental Planning Policy (Coastal Management) 2018*.

Overview

State Environmental Planning Policy (Coastal Management) 2018 (the Coastal Management SEPP) came into effect on 3 April 2018. The aims of the SEPP include establishing a framework for land use planning within the coastal zone, in a manner consistent with the objects of the *Coastal Management Act 2016* (the Coastal Management Act).

The coastal zone is defined in the Coastal Management Act as being the area of land comprised of one or more of four coastal management areas:

- Coastal wetlands and littoral rainforests area
- Coastal vulnerability area
- Coastal environment area
- Coastal use area

Land may be mapped by the Coastal Management SEPP as more than one management area. Development controls for all applicable management areas apply according to the hierarchy of controls in clause 18 of the Coastal Management SEPP.

The Coastal Management Act defines coastal hazards and establishes principle-based management objects for land identified as being a coastal vulnerability area, which is land subject to coastal hazards. For example, these objectives include:

- to ensure public safety and prevent risks to human life; and
- to mitigate current and future risks from coastal hazards, taking into account the effects of climate change.

These management objectives, as a whole, recognise the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline.

Clause 15 of the Coastal Management SEPP applies to all land within the coastal zone and requires that:

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

As councils develop Coastal Management Programs (CMP), these CMPs may identify land subject to one or more of the defined coastal hazards. This land will then be considered for inclusion in the Coastal Management SEPP to be identified on the relevant map as part of the Coastal Vulnerability Area (CVA), which will also trigger a requirement for disclosure in planning certificates which is discussed further below.

No Coastal Vulnerability Area map has yet been adopted under the Coastal Management SEPP. Consequently no CVA has yet been identified and the relevant development controls applying specifically to development on land within the coastal vulnerability area in clause 12 of the Coastal Management SEPP are not yet active for any local government area.

However, despite this, clause 15 of the Coastal Management SEPP requires all consent authorities, in the context of considering proposed development in the coastal zone generally, to be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Where a council has existing coastal risk provisions in its Local Environmental Plan (LEP), these generally continue to have effect, although this must be determined on a case by case basis as the LEP may be inconsistent with the Coastal Management SEPP. The Coastal Management SEPP prevails only to the extent of any inconsistency with an LEP. Any Development Control Plans (DCP) will continue to apply as they did prior to the commencement of the Coastal Management SEPP, noting they only provide

guidance to consent authorities and people proposing to carry out development. An LEP or the Coastal Management SEPP will always prevail over a DCP if the DCP is inconsistent with them.

In future, once a Coastal Vulnerability Area map has been adopted under the Coastal Management SEPP, and more land in the coastal zone (for all local councils) is identified as coastal vulnerability area, clause 15 will become increasingly redundant and may eventually be repealed.

Defining coastal hazards

A 'coastal hazard' is defined by the Coastal Management Act as:

- a) beach erosion
- b) shoreline recession
- c) coastal lake or watercourse entrance instability
- d) coastal inundation
- e) coastal cliff or slope instability
- f) tidal inundation
- g) erosion and inundation of foreshores caused by tidal waters and the action of waves, including the interaction of those waters with catchment floodwaters.

Identifying the risk of exposure to coastal hazards

The NSW coast is dynamic and complex. Because hazards can migrate over time, coastal land may have a current exposure to a coastal hazard and/or a future exposure to a coastal hazard.

Current exposure to a coastal hazard - refers to a situation where land is identified, through an adopted evidence-based study, as being exposed to a coastal hazard at the time the study was prepared.

For example, land which would be subject to beach erosion if a prescribed storm ('the design event') occurred today would be land with a current exposure to a coastal hazard.

Future exposure to a coastal hazard - refers to a situation where land is identified in an adopted study as being exposed to a coastal hazard at some point in the future.

For example, if the shoreline and related coastal hazards migrate landward over time, then land which is not currently exposed to beach erosion may become exposed to that hazard in the future.

Coastal hazards identified through local councils' CMP and then identified as such in the coastal vulnerability area map when adopted under the Coastal Management SEPP, or coastal hazards identified by the NSW Government by a direct amendment to the Coastal Management SEPP will

take into account potential risks from all seven coastal hazards forming part of the definition of coastal hazard under Coastal Management Act.

Assessing development proposals for likely risk of coastal hazards

Clause 15 of the Coastal Management SEPP applies to development within the entire coastal zone and requires consent authorities to be satisfied that any development proposal is not likely to cause increased risk of any of the seven types of coastal hazard identified under the Coastal Management Act on that land or other land.

The threshold test established under Clause 15 is intentionally low. Councils and other consent authorities should take a precautionary approach to assessing risks associated with current and future coastal hazards pending the adoption of relevant CMPs.

When assessing the risk of a current or future coastal hazard, councils and other consent authorities have discretion to consider:

- Any relevant floodplain risk management plans or estuary management plans prepared by or on behalf of a council or public authority that take into account tidal inundation in combination with catchment flooding
- Coastal hazards identified in a relevant environmental planning instrument or development control plan
- Relevant coastal hazard, risk and vulnerability studies prepared by an appropriately qualified expert
- Historic data, such as past storm event data and impacts, that identify risk exposure of coastal land (such as shoreline recession, coastal inundation, or geomorphic trends)
- Relevant scientific modelling (such as relating to sea level rise and climate variability)
- Relevant advice in the NSW Coastal Management Manual and associated Toolkit
- Any other relevant information.

When assessing proposed development on land within the coastal zone, including where there may be a risk of a current or future coastal hazard, councils and other consent authorities must consider any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan adopted under the *Coastal Protection Act 1979* that continues to have effect under clause 4 of Schedule 3 to the *Coastal Management Act 2016*.

Once a CVA map is adopted under the Coastal Management SEPP, clause 12 of the SEPP will apply to land identified on that map as CVA. Clause 12 states:

Development consent must not be granted to development on land that is within the area identified

as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- (b) the proposed development:
 - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
 - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and
 - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

The matters listed in clause 12 are specifically aimed at strengthening the level of assessment of proposed development on CVA land, in keeping with the levels of risk in developing that land, and to significantly reduce uncertainty about current and future coastal risks on that land.

It is also important to note that the objectives and controls for each coastal management area are not mutually exclusive. On the contrary, they may overlap if land is identified as being in more than one different type of coastal management area. For example, matters such as potential impacts on coastal processes, the natural environment, public safety, access and amenity need to be assessed for proposed development within the coastal environment area as well as in the coastal use area, even if the proposed development is not subject to current or future coastal hazards.

Assessing proposed coastal protection works

Development for the purpose of coastal protection works, including emergency coastal protection works, may be carried out in accordance with the rules for permissibility for that type of development set out in clause 19 of the Coastal Management SEPP. Some of these rules of permissibility change depending on whether a certified CMP applies to the particular land or not (or any Coastal Zone Management Plan adopted under the *Coastal Protection Act 1979* that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act).

In any case, the general aim of the coastal management framework is to ensure that eventually all

proposed coastal protection works are identified in a relevant Coastal Management Program (or a preserved Coastal Zone Management Plan) to ensure they are well-designed and have had their benefits and potential impacts comprehensively assessed in the context of the relevant part of the coastal zone in the particular local government area.

Section 27 of the Coastal Management Act is a precondition to granting development consent for development for the purpose of coastal protection works. Section 27 only applies to development if the main purpose of the development is for coastal protection works. Councils and other consent authorities are encouraged to seek independent legal advice if unsure whether the main purpose of a proposed development is for coastal protection works or if the relevant works are ancillary or subordinate to development for another purpose. Advice must be based on the specific facts of the situation and consideration of any relevant case law.

If section 27 of the CM Act applies to proposed development, councils and other consent authorities must satisfy themselves that the requirements under section 27, including the imposition of appropriate conditions and legally binding obligations, have been addressed, prior to determining the relevant development application.

Councils and other consent authorities must also satisfy themselves of the requirements under clause 15 of the SEPP, if this clause is relevant to the particular proposed development being assessed, and also of the requirements under clause 12 if the land subject to the development application is identified as CVA on a CVA map under the Coastal Management SEPP. This requires consent authorities to draw on any relevant information to assess whether the proposed coastal protection works are exposed to current or future coastal hazards, and to determine or condition the proposed development accordingly. This decision will also be taken in the context of other relevant considerations, such as the objects and development controls in any applicable LEP and/or DCP applying to the land the proposed coastal protection works are proposed to be constructed upon¹.

Coastal hazards and planning certificates

Planning certificates are a means of disclosing information about a parcel of land, including any relevant information, policies and land use controls that apply to the land at the time of issue.

Planning certificates may be purchased from a council by anyone, at any time and for any purpose. Councils issue them under section 10.7(2) and (5) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Schedule 4 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

Identifying coastal hazards in planning certificates

Given the irregular and episodic nature of some coastal hazards, exposure of land to hazards can change suddenly and intermittently. For this reason, expert studies and the controls or policies that rely on them should be considered a point-in-time assessment. However, it should also be acknowledged that hazards in coastal areas are dynamic and fast changing, and expert studies etc., while accurate at the time they were completed, may in time become superseded, sometimes quite quickly, depending on the nature of the relevant land, the types of development to be carried out upon the relevant land and the dynamism of the particular coastal hazard/s.

Planning certificates should reflect the information required by the legislation at the time a person applies for the certificate, however, it may be also prudent to encourage interested parties to make further inquiries to establish the specific exposure of any given site and the potential for evolving risks that may occur on it into the future.

It is also therefore helpful to give people applying for planning certificates a clear indication of the currency of the information, such as by articulating the date of the relevant study or policy.

In the interests of transparency, it is good practice to make available the variables that have been considered in formulating the planning certificate and the assumptions on which the analysis relies. This information should be readily accessible as an adjunct to information presented in a planning certificate.

Mandatory information disclosed under Section 10.7(2)

A planning certificate must contain information prescribed under section 10.7(2) of the EP&A Act. This is a mandatory part of the property conveyancing process in NSW.

The information to be included in a planning certificate under section 10.7(2) is outlined in the *Environmental Planning and Assessment Regulation 2000*, Schedule 4, clauses 1, 7 and 7A.

It includes the mandatory disclosure of matters relating to the land, such as what environmental planning instruments apply to the land (including the Coastal Management SEPP and other relevant environmental planning instruments), whether these policies restrict development on land due to a coastal hazard, and whether development on the land is subject to flood related development controls.

Where a relevant policy or development control does relate to the land and the policy or development

control arises due to a coastal hazard, then notations should:

- clearly identify the **type of hazard(s)**, and
- for each hazard identified, classify whether that hazard is a **current or future hazard**.

Councils should, as a priority, take all necessary steps to be able to identify the type of coastal hazard affecting the land and to stipulate whether it is a current or future hazard. In the short term, if a council is not in a position to clearly identify whether a hazard is a current or future hazard, the council should clearly note this on the certificate.

The implementation of these changes is a necessary improvement in how councils disclose information about coastal hazards. The option to amend Schedule 4 of the EP&A Regulation to further prescribe the way these matters should be recorded by councils and to achieve any necessary changes to coastal hazard notations on planning certificates can be considered in the future if required.

Suggested wording for current hazards

If a relevant policy or development control applies to land because of a current exposure to a coastal hazard, it is suggested that councils include a notation on the planning certificate in the following form:

This land has been identified in the *[insert name of council policy or development control]* as having a current exposure to *[insert type of hazard(s)]*. The *[insert name of council policy or development control]* is based on a study dated *[insert date adopted by council]* and reflects information available at the time. Contact council for more information.

Suggested wording for future hazards

If a relevant policy or development control applies to land because of a future exposure to a coastal hazard, it is suggested that councils include a notation on the planning certificate in the following form:

This land has been identified in the *[insert name of council policy or development control]* as having a future exposure to *[insert type of hazard(s)]*. The *[insert name of council policy or development control]* is based on a study dated *[insert date adopted by council]* and reflects information available at the time. Contact council for more information.

Additional information that may be disclosed under Section 10.7(5)

Under section 10.7(5) of the EP&A Act, the content of planning certificates may also include advice on such other relevant matters affecting the land of which the

council may be aware. This can include past, current or future coastal hazard issues.

NSW conveyancing law does not mandate the inclusion of information under section 10.7(5). However, any purchaser may request that such information be provided, following payment of a fee to the issuing council.

Section 10.7(5) provides the means for a council to disclose information about a hazard from the time a council comes into knowledge regarding the existence and extent of that hazard (typically evidenced by the adoption by council of a completed investigation or study), and the time a council has a policy or planning instrument to manage that hazard.

To assist councils in ensuring reasonable care when disclosing information about current and future coastal hazards to the community of which it is aware, the following guiding principles should be applied:

- 1) If, in the opinion of the relevant council, the information is sufficiently accurate, complete and reliable², that it allows the characteristics of the hazard to be described and understood, and if the matter affects the land, the information should be included in a planning certificate under section 10.7(5), and
- 2) If, in the opinion of the relevant council, the above test has been satisfied and a constraint on development is warranted, the council should take steps to include relevant provisions within a local environmental plan and/or development control plan or adopt a policy³ that manages development on the land.

If the policy or plan restricts development on the land, once the policy or plan is formally adopted by council, the disclosure of the matter should more appropriately occur on a planning certificate under section 10.7(2).

Councils should also be aware of the 'good faith' liability protections afforded to them by section 10.7(6) of the *Environmental Planning and Assessment Act 1979*, and section 733 of the *Local Government Act 1993*.

Councils intending to provide the community with ongoing and general advice about research and analysis relating to coastal hazards should consider disseminating this information via their website.

NSW councils within the coastal zone

Ballina Shire Council
Bayside 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
Cessnock City 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
Ku-ring-gai 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
Penrith City Council
Port Macquarie-Hastings Council
Port Stephens Council
Randwick City Council
Richmond Valley Council
Ryde City Council
Shellharbour City Council
Shoalhaven City Council
Strathfield Municipal Council
Sutherland Shire Council
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

¹ Accuracy and completeness would be enhanced by a competent process of assessment (e.g. as described in the Coastal Management Manual 2018 or the NSW Floodplain Development

Manual 2005). Reliability would be enhanced by credible and broadly accepted scientific and coastal engineering advice.

² 'Policy' refers to any document adopted by a council to inform its planning and decision making.

Further Information

For further information please contact Service NSW on 13 77 18.

NSW Government planning circulars are available at:

<https://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-System-Circulars>

Authorised by:

Tim Hurst
Deputy Secretary Local and Regional Planning

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.

© State of New South Wales through the Department of Planning, Industry and Environment dpie.nsw.gov.au

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.