



# Planning circular

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## PLANNING SYSTEM

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<b>Circular</b>	PS 21-033
<b>Issued</b>	2 December 2021 <sup>1</sup>
<b>Related</b>	Replaces PS 19-006

## Planning certificates: coastal hazards

This circular provides guidance on the disclosure of coastal hazards on planning certificates issued under section 10.7 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

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### Introduction

Chapter 2: Coastal management of *State Environmental Planning Policy (Resilience and Hazards) 2021* provides a framework for land use planning within the coastal zone, in a manner consistent with the objects of the *Coastal Management Act 2016* (Coastal Management Act).

The Coastal Management Act defines *coastal hazards* and establishes principle-based management objects for land identified as being within the 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.

Planning Circular 'PS 21-009 Planning for coastal hazards' should be read in conjunction with this circular. It provides guidance on assessing coastal hazards under Chapter 2 of *State Environmental Planning Policy (Resilience and Hazards) 2021* and the *Coastal Management Act 2016*.

### Section 10.7 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.

A planning certificate under section 10.7(2) discloses matters relating to the land, including whether or not the land is affected by a policy that restricts the development of land.

A planning certificate may also include information under section 10.7(5). This allows a council to provide advice on other relevant matters affecting land that Council holds on a property that is relevant to the land but is not disclosed in a Section 10.7(2) certificate. This can include past, current or future issues.

In NSW it is a mandatory part of the property conveyancing process to include a planning certificate containing information prescribed under section 10.7(2). The conveyancing process does not mandate the inclusion of information under section 10.7(5), but any purchaser may request that information.

Planning certificates may be purchased through the NSW Planning Portal or from a council by anyone, at any time and for any purpose.

### Coastal hazards and planning certificates

Where land affected by a coastal hazard is identified in a policy adopted by a Council (or another public authority that has notified the Council), this information is to be included on a planning certificate.

The information requirements relating to coastal planning and coastal hazards for planning certificates are specified in sections 10 and 19 of Schedule 2 of the EP&A Regulation and include:

- **Coastal hazards** where land is affected by a policy adopted by the Council or adopted by any other public authority and notified to the council for the express purpose of its adoption by that authority being referred to in planning certificates issued by the council. These would include where a Council or other public authority have an adopted policy that restricts the development of the land because of the likelihood of coastal erosion, tidal inundation or any other risk

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<sup>1</sup> Revised 10 August 2023 to include updated references to the *Environmental Planning and Assessment Regulation 2021*, consolidated State Environmental Planning Policies and address outdated provisions.

- **Annual charges for coastal protection** under section 496B of the *Local Government Act 1993* (LG Act) where the owner of the land (or any previous owner) have consented in writing to the land being subject to annual charges for coastal protection services relating to existing *coastal protection works*. For the purposes of the LG Act, 'existing coastal protection works' are defined as 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 LG Act.

## 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, 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 also be 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 adoption 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 and Schedule 2 of the EP&A Regulation.

The EP&A Regulation requires the disclosure of matters relating to the land, such as what environmental planning instruments apply to the land (including *State Environmental Planning Policy (Resilience and Hazards) 2021* 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.

### 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

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 reliable<sup>2</sup>, 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 policy<sup>3</sup> 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 EP&A Act 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

### Further information

PS 21-009 Planning for coastal hazards provides guidance on assessment of coastal hazards under Chapter 2 of *State Environmental Planning Policy (Resilience and Hazards) 2021* and *Coastal Management Act 2016*.

For further information please contact Service NSW on 13 77 88.

Department of Planning and Environment circulars are available at: <https://www.planning.nsw.gov.au/policy-and-legislation/planning-system-circulars/>

### Authorised by:

**Marcus Ray**

**Group Deputy Secretary Planning and Assessment**

**Department of Planning and Environment**

**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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<sup>2</sup> 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.

<sup>3</sup> ‘Policy’ refers to any document adopted by a council to inform its planning and decision making.

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