



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: MM:LJB:Property Law 2010
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20 April 2010

Ms Sarah McGirr
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Policy, Planning Systems and Reform
Department of Planning
GPO Box 39
SYDNEY NSW 2001

Dear Ms McGirr

Review of Section 149 Certificate Process

Thank you for the draft background paper on possible options for reform of Section 149 Certificates. As indicated in our previous letter and in our meeting with you, the Law Society through its Property Law Committee (Committee) generally supports the initiatives being taken. Using your headings, the Committee has the following comments:

Issue: Increasing complexity and length of certificates

The Committee supports reducing the mandatory number of items to appear in the 149(2) Certificate to essential information required for conveyancing.

In relation to the content of that certificate and the supplied table, there are two matters of concern:

1. The reference to hazard risk restrictions is indicated on the table as moderate – high, depending on the level of restriction and relevance to the site. However, the Department proposes making that matter mandatory on 149(5) Certificates only. The Committee does not support this change and considers this item should be included in the 149(2) Certificate. However, the question posed in the certificate should be twofold:
 - (a) Is there a council policy or public authority policy that applies to the Local Council area, or otherwise, which imposes restrictions for development due to:
 - i) land slip,
 - ii) bush fire,
 - iii) tidal inundation,
 - iv) subsidence,
 - v) acid sulphate soils or
 - vi) other risks ?

- (b) Has the land been identified under such a council policy or public authority policy as being subject to restrictions for development due to:
- i) land slip,
 - ii) bush fire,
 - iii) tidal inundation,
 - iv) subsidence,
 - v) acid sulphate soils or
 - vi) other risks ?

2. The second matter relates to Nation Building legislation. As the Committee understands it, the Nation Building disclosure only applies to public land. If the legislation extends the Nation Building legislative change to private land, then the matter should be reviewed.

Issue: Absence of Important Information

Two other matters arise and which have been previously sought to be included:

1. The matter of outstanding notices – the Committee considers this matter is very important as part of the conveyancing process and information should be readily available within council. The zoning certificate is an appropriate place to include information about outstanding notices, and we ask that this item be reconsidered.
2. Further, the question of whether or not section 28 of the *Environmental Planning & Assessment Act 1979* has been addressed in the relevant Local Environmental Plan (LEP) should be reconsidered. It can be a standard item and the question can simply pose as to what clause, if any, in the LEP contains such restrictions.

It is considered that this reference to section 28 could be added to the section 149(5) certificate.

Otherwise, the Committee supports the initiatives proposed in this part of the paper.

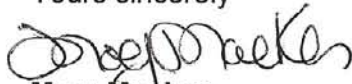
Issue: Challenge of managing s149 information

The Committee strongly supports the prescription of a planning certificate template for both 149(2) and 149(5). Ideally, the certificate should be framed so that the majority of questions can be posed in a form that admits only a "Yes" or "No" answer. As the planning system moves to adopt the standard instrument state-wide, there should be no reason for different certificates being provided in different forms. To the contrary, variances should be discouraged.

However, to achieve this process it may be necessary to make a minor alteration to s149 (5) as that subsection does not make provision for prescribing the form and manner in which the information is provided (unlike s149 (4)).

Thank you for the opportunity to provide these comments.

Yours sincerely


Mary Macken
President