



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: SW:lb:Coastal
Direct Line: 9926 0202

23 February 2011

The Executive Officer
Waters, Wetlands and Coast Division
Department of Environment, Climate Change and Water
PO BOX A290
SYDNEY SOUTH NSW 1232

Email: coast.flood@environment.nsw.gov.au

Dear Sir,

Proposed Coastal Protection Regulation 2011

The Law Society appreciates the opportunity to comment on the consultation draft of the Coastal Protection Regulation 2011.

The Society's Environmental Planning and Development Committee (Committee) has considered the provisions of the draft Regulation, focussing solely on the amendments relating to the information to be included in planning certificates issued under section 149 of the *Environmental Planning and Assessment Act 1979* (planning certificate).

Clause 16

The proposed Regulation requires that from 45 days after the commencement of a coastal zone management plan (i.e. after gazettal), the relevant council will be required to include, in any planning certificate in respect of any land covered by the plan, a statement of the following:

- where applicable, the risk category of the land for each coastal hazard from the coastal zone management plan.
- where applicable, the likely response of the council to risks posed by beach erosion and shore recession to the land from the coastal zone management plan.¹

¹ (page 14 of the Regulatory Impact Statement)

The Committee is concerned that it is intended to include items in a planning certificate without particularising the details as a discrete item in Schedule 4 of the *Environmental Planning and Assessment Regulation 2000*.

By failing to include these items as enumerated Schedule 4 matters, a purchaser will not have a statutory right of rescission under the *Conveyancing (Sale of Land) Regulation 2010* if the information in the planning certificate is incorrect in relation to the matters specified in clause 16 as at the date of the contract.

The prescribed warranty in contracts for the sale of land set out in Schedule 3 Part 1 paragraph 1(c) of the *Conveyancing (Sale of Land) Regulation 2010* relevantly provides:

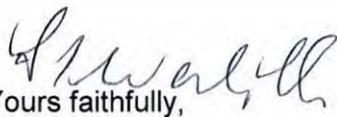
“The vendor warrants that, as at the date of the contract and except as disclosed in the contract ... the section 149 certificate attached to the contract specifies the true status of the land the subject of the contract in relation to the matters set out in Schedule 4 to the *Environmental Planning and Assessment Regulation 2000*”

It is the Committee’s view that, given the importance of the statements required under clause 16, this information should form the subject of an enumerated item under Schedule 4 of the *Environmental Planning and Assessment Regulation 2000*.

Conclusion

The Committee Chair would be happy to discuss this matter further if desired.

Once again, thank you for the opportunity to comment on the consultation draft of the Regulation.


Yours faithfully,

Stuart Westgarth
President