

SUBMISSION ON NSW COASTAL MANAGEMENT REFORMS
from Ms Karen Coleman

1 Introduction

- 1.1 As concerns continue to grow about global warming and sea level rise, there is growing attention around the world to the number of cities, towns, communities and infrastructure which will be threatened in such a scenario and how countries can best respond to those type of issues.
- 1.2 No one could doubt that New South Wales has a considerable amount of its most valuable assets, both natural and built, on the coastline. The majority of its population live on this coastline.
- 1.3 In 2011 the Department of Climate Change and Energy Efficiency issued a Supplement to the First Pass National Assessment which sought to quantify the exposure of coastal assets to sea level rises associated with climate change around Australia.
- 1.4 This report looked at risks to commercial buildings, transport infrastructure, light industrial buildings and residential buildings.
- 1.5 The statistics and data assembled in relation to New South Wales are very sobering and underscore the significant importance of coastal protection issues to the State of New South Wales going forward. Some statistics from that Report are as follows.
- (a) *Risks to commercial buildings*
- *In NSW there are between 700 and 1,200 commercial buildings at risk. The replacement value for these commercial buildings is between \$5-\$9 billion;*
 - *In Wollongong there are between 153 and 203 commercial buildings at risk;*
 - *In Newcastle there are between 72 and 158 commercial buildings at risk.*
- (b) *Risks to light industrial buildings*
- *In NSW there are between 600 and 1,000 light industrial buildings at risk. The replacement value for these light industrial buildings is between \$0.8-\$1.1 billion;*
 - *In Newcastle there are between 89 and 136 light industrial buildings at risk;*
 - *In Wollongong there are between 60 and 80 light industrial buildings at risk;*
 - *In Wyong there are between 35 and 60 light industrial buildings at risk;*
 - *In Gosford there are between 25 and 55 light industrial buildings at risk.*
- (c) *Risks to transport infrastructure*
- *In NSW there is approximately 4,700 km of road at risk;*
 - *In Wollongong there between 150 and 175 km of road at risk;*
 - *In NSW there is between 250 and 310 km of railway at risk;*
 - *In Newcastle there is between 49 and 56 km of railway at risk;*
 - *In Wollongong there is between 43 and 51 km of railway at risk.*
- (d) *Risk to residential buildings*
- *In NSW there are between 44,000 and 68,000 residential buildings at risk. The replacement value for these residential buildings is between \$14-\$20 billion.*
- 1.6 In this submission I do not propose to make detailed comments on the draft reform package. This I shall leave to various coastal community groups and individuals who are responding.
- 1.7 In this submission I wanted to make some points of principle which should, I believe, inform the development of coastal protection law at this time.

2 Test for Protection –flexibility and resilience required

- 2.1 Not all the coastal erosion problems which are currently being experienced in so called coastal erosion hot spots and anticipated problems are of the same nature and there should not be one single, rigid test for whether protection can be deployed as a solution. A single rigid test is not what is needed at this time to build resilience and flexibility in communities.
- 2.2 Some problems may be naturally occurring erosion problems and some may be the result of other causes.
- 2.3 Sea level rise as a result of climate change is not regarded by anybody as a “natural” occurring event – but rather arising from a man-made impact. This cannot be treated as “naturally” occurring erosion.
- 2.4 Thus, coastal erosion problems should not be labelled together with a one size rigid test for all coastal problems. Flexibility is needed.

3 Wider Decision Making

- 3.1 There are other factors which militate against having an inflexible one size fits all test. Some of these factors are:
- (a) in many cases larger damage could ensue to the existing natural environment and habitats if protection of some sort is not in place.
 - (b) an example of this is the Belongil Spit. That Spit protects the freshwater wetlands behind it and the habitat of the bird and other life which live there.
 - (c) the value of that ecosystem was taken into account by the Land and Environment Court in its judgment in proceedings commenced by the EDO against Byron Shire Council last year. I will discuss this further below. However, it is a very good example of a natural wetlands environment which needs the on-going protection of a dune that has stood for 6000 years. It is not really possible to place an economic value on that dune or the natural ecosystem behind it in monetary terms in a cost benefit analysis. Nevertheless, most people would regard destroying a natural wetlands habitat as an extremely negative occurrence and place a high value on its retention.
 - (d) aside from environmental issues, important assets of the existing New South Wales community may be at risk at any particular location. These may be commercial buildings, light industrial buildings, road, rail or other trunk network. There are many examples of this up and down the coast where the front line of protection is protecting not only recreational or private land but valuable community assets such as roads, trunk lines, etc
 - (e) in some instances, important regional centres or tourist destinations which feed a local economy are protected by the front line of protection and at risk of destruction if the front line of protection is not maintained for any reason.
- 3.2 The approach of the Land and Environment Court in the decision concerning the interim rock wall at the Byron Bay last year is illustrative of the wider issues that can arise in considering the desirability of protection. In that decision, the Court declined an interim injunction because it was concerned about a greater risk of environmental harm that outweighed any potential harm caused by the construction of the wall. The Court held:

59. “The opinion of Mr Carley is supported by the evidence of Mr Jackson. Not only does he state that “in another severe storm” the present wall would be expected to fail but also opines that such a failure would threaten a breach of the Belongil Spit. That would involve ocean waters moving across the narrow and low lying strip of land that separates Belongil Beach from the Belongil estuary, thereby

occasioning "extensive environmental and property damage" with a risk to the safety of residents and emergency workers. ...

61. In short, the evidence presently available indicates that there is a risk of harm to both the public and private domain if the stabilisation works proposed by the Council are not carried out. For reasons that will shortly become apparent, that potential for harm is greater than the potential for harm if the injunction is granted."

82. In short, the environment harm that may occur by construction of the wall is outweighed by the potential environmental harm to the public and private domain that may occur if the injunction is granted and a major storm occurs causing further beach erosion."

- 3.3 The reasoning of the Court here illustrates that a test that does not permit any off-site impact at all may not only be impossible to comply with but may, because of this inability, lead to a result where greater harm to the environment is caused. This is a very serious concern and is a risk inherent in the rigidity of the test for protection that is currently proposed in the draft reforms. The risk is that a test which is so rigid that it cannot be complied with will result in greater damage to the natural environment and unnecessary damage to our built communities.
- 3.4 It certainly does not permit a balancing of environmental risks and benefits.
- 3.5 It is not sufficient to say that all of these matters can be dealt with by a cost benefit analysis. They simply cannot. It is not really possible to place a value on the loss to a community of a part of its natural environment that has existed for thousands of years such as an ecosystem which will be lost if protection is not permitted.
- 3.6 The cost benefit analysis may be a useful tool as part of the overall consideration – and if factors to be measured could be objectively set and evaluated. But it cannot be the key decision making tool, coupled with a rigid inflexible test before any effective protection can be deployed. The stakes are too high to burden this State with such a test.
- 3.7 In other areas of environmental law, a principle has been developed of environmental off-sets. These off-sets are measures that compensate for the residual impacts of an action after avoidance and mitigation measures are taken. In these areas, it is not a requirement that there be no impact at all. This is nigh impossible test to meet for most works. Rather, there is flexibility for the decision maker to take into account the extent that any residual impacts are outweighed by other benefits or off-set by other measures. These are considered as part of the assessment of the proposed development. Concepts like these, which are well-established in other areas of planning and environmental protection should be considered in the area of coastal protection. For example, should 20 metres of slight impact on a coastline be weighed against the advantage of saving an estuary or wetlands area? The proposed reforms currently do not permit this kind of flexible evaluation of all advantages and disadvantages.
- 3.8 The assessment of possible solutions for a community or erosion problem should have an element of flexibility so that advantages and disadvantages can be weighed in the circumstances of a particular physical compartment, community, region and the State. It is not only the problems and causes that should be analysed in a wider way than may presently be the case – but also the potential solutions and their potential impacts. The rigid test propounded in the reforms is way too rigid and inflexible. It runs the risk of causing greater damage.
- 3.9 That assessment of solutions needs to be considered in the wider interests of the location and the State - and not by a rigid assessment looking at particular lots at particular locations. By looking at potential solutions for a location as a whole balancing any residual impacts with off-setting benefits a better equilibrium and solution is more likely to be found.

- 3.10 It is essential in my opinion that the State Government be the responsible entity, the key decision maker and the level of government which provides leadership in making the key decisions that have to be made about coastal protection.
- 3.11 These decisions about the ongoing shape of the New South Wales coastline, its existing natural assets and communities, are not ones that should be made at a local level applying a very inflexible test for protection applied on a lot by lot basis. We live in different times with different challenges and with a modern coastal engineering profession able to provide new and innovative solutions. We should not turn our backs on these type of solutions by introducing a rigid and inflexible test for all solutions. .

4 The State Government should be in Charge

4.1 In my submission, any reforms to deal with future threats along the New South Wales coastline should:


- (a) place the ultimate decision making power in the New South Wales government and not local councils;
- (b) permit a wide assessment to be made of the interests of New South Wales and in Australia in making planning decisions for our coastline;
- (c) permit a flexible approach to identifying solutions rather than specifying inflexible narrow tests of the assessment of solutions;
- (d) should allow all of the developments in modern coastal engineering to be deployed in a flexible way.

In this way, we can work to build resilience on our coastline.

- 4.2 It is my assessment that the draft reforms as presently drafted do not satisfy any of these tests. They risk unnecessary damage to the environment and/or our communities and property by applying two narrow and restrictive "once size fits all" test for coastal protection.
- 4.3 Commonwealth Minister Hunt at the Paris conference in December last year has recognised that the threat to the current Australian communities around the coastline from sea level rise is of national importance. Minister Hunt has suggested it needs a national solution.
- 4.4 New South Wales has the opportunity to show leadership here in how Australia can approach these issues.
- 4.5 However, in order to do so the current reforms need to be the subject of further consideration and consultation.
- 4.6 There is a wealth of new knowledge and understanding which could be brought to bear on these problems from coastal engineers, coastal scientists, economists, other professionals and those communities who are on the coast and who have faced or fear coastal erosion issues.

5 Conclusions

- 5.1 There is an opportunity in this area to show leadership by vision, innovation and flexibility. The current reform package fails to live up to this standard and it should be the subject of further consideration and consultation. NSW has the opportunity to lead thinking in this area and create new opportunities for its coastal professionals to export their services about building coastal protection and resilience for coastal communities.
- 5.2 For these reasons **I object** to the reforms in their current form.


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