



BYRON PRESERVATION
ASSOCIATION INC
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SUBMISSION

1 Introduction

- 1.1 This Association represents members interested in the coastal community of Byron Bay.
- 1.2 The Byron Bay embayment and particularly Belongil Beach have long been seen as a coastal erosion hotspot. To a large extent, the problems at Belongil Beach have been caused by a man-made structure at Jonson Street, built to protect the town of Byron Bay. Recent advice to the Council confirms this impact of the structure and that the underlying rate of recession is much lower than previously thought.
- 1.3 The Council has done nothing to ameliorate the erosion impacts caused by the structure at the town. Instead, the Council when it had a Green majority has pursued a policy for a fully developed residential area called "planned retreat".
- 1.4 The Council staff continue to pursue such a policy. Although Council was forced to withdraw its first attempt at a coastal zone management plan, Council continues to pursue radical steps which would have a very detrimental effect on the environment, economy and social fabric of Byron Bay.
- 1.5 In connection with the preparation of a new coastal zone management plan, Council staff instructed the experts who had been engaged to prepare a hazard assessment update that they were to consider only one option. This option was for the protection of the town and for the removal of all other protective sea-walls which presently extend along Belongil Beach and protect the properties of the residents to negate the impact of the Jonson Street structure. Were this protection to be removed the impact would be devastating on the community with the loss of homes, infrastructure, private and public land and damage to the natural wetlands and estuary through coastal inundation. The residents do not believe any rational council could embark upon such a policy of destruction lawfully. Nevertheless the Council continues to consider it its prime option.
- 1.6 The experts advising the Council, BMT/WBM noted in their first draft that they understood that the removal of the residents' rock walls was consistent with "Council current policy".
- 1.7 We have described the situation at Byron in this introduction in order to give policymakers within State Government details of the type of extreme policies currently being experienced in coastal communities in New South Wales. This should assist in determining what reforms are appropriate having regard to those issues.

2 Promised Coastal Reforms

- 2.1 The history of coastal protection and planning reform prior to the March 2011 election is dominated by the amendments which were made by the outgoing Labor Government, with the support of the Greens, at the end of 2010 and which for the most part became effective on 1 January 2011.
- 2.2 These reforms were vigorously opposed by the then Opposition on their journey through Parliament in the latter half of 2010. The Coalition labelled the amendments as the "Coastal Destruction Act". The Coalition campaigned on a promise to reverse the amendments to the Coastal Protection Act and to prohibit "the imposition of planned retreat" on existing built communities.
- 2.3 To date, no such reforms have been implemented. In the three years since the Coalition has been elected, the local councils have been able to continue to prepare their coastal zone plans and other planning instruments containing provisions about the coastline under the planning regime as left by Labor and the Greens.
- 2.4 It is extremely disappointing to residents up and down the coast that the promised reforms have not been made.
- 2.5 We repeat, in the absence of those reforms, local councils continue to seek to impose extremely radical and destructive coastal policies on their existing built communities. The plan to take down residents existing protection along Belongil Beach is a good, but not the only example of the activities of this nature along the coast in New South Wales.
- 2.6 We submit that the degree of reform now required should be informed both by the promises which the Coalition Government made prior to its election and the ongoing issues which are being experienced along the coastline.
- 2.7 These issues are important for the well-being of New South Wales. It has often been quoted that more than 80% of the population of this State lives within a few kilometres of the coastline. There are key densely populated areas of the State both in the metropolitan Sydney area and the Central Coast which are affected by these issues. Both these areas contain some of the key erosion hot spots as do points along the way to our particular location at Byron, just short of the border with Queensland.
- 2.8 New South Wales needs strong policies to deal with this important area of coastal protection. The economic well-being of the State depends on the protection of its existing built communities and infrastructure. The State cannot afford the destruction of its existing communities and infrastructure by radical policies being pursued at a local government level.
- 2.9 It is clear that the role of the State Government must be to provide clear and binding guidelines as to what is permissible and what is not permissible. This should be done with the aim of having clear and consistent policies followed by each council up and down the coastline. Obviously, a position where different councils are able to pursue different policies is highly undesirable and leads to a variety of results up and down the coastline, some more extreme than others. This is the current position. This was one of the areas of the Coalition promised to reform.
- 2.10 Accordingly, we suggest that it is necessary for the Coalition to make legislative reform both to the Coastal Protection Act and the Environment Planning and Assessment Act to ensure that the State Government is able to set the relevant principles that are to apply in a general way up and down the coastline – leaving it then to the local councils to apply those rules or guidelines in their own location.
- 2.11 Experience at Byron dictates that those guidelines must have some ability to be enforced by the State Government. In every area of planning other than coastal protection at the moment the Minister of Planning has the last say. It is the Minister who must give the final approval to a LEP for example.

- 2.12 This is no longer the position in relation to coastal zone management plans – but reforms should be made to ensure that that returns to the position as it were before the Labor/Green amendments in 2010. We now turn to look at the areas of reform in more detail.

3 Coastal hazards policy development

- 3.1 The draft circular on which we are asked to comment, proposes that the Coastal Hazards Policy states that it is essential for Councils when developing a policy or planning instrument to manage a coastal hazard to satisfy the following:

“use evidence based data and information”.

- 3.2 We completely support the concept that hazard policies should be based on evidenced based data and information. However, in the short period since the draft policy was issued it has become apparent that the phrase “evidence-based” needs some clarification.
- 3.3 For example, we understand that Great Lakes Shire Council proposes to impose hazard lines on the basis of a desktop study which assumed that two of its beaches (Blueys and Boomerang) had no dune and were not accreting. This is contrary to the known facts. However, Great Lakes Shire Council apparently believes that a desktop study of this nature is an “evidence-based” approach.
- 3.4 It is clear that some amplification and guidelines as to what is meant by evidence-based data and information is necessary.
- 3.5 Furthermore, it is very clear that the State Government must have full powers to issue directions to Councils to enforce compliance with the evidence-based approach. The existing section 117 powers should be extended to ensure that they apply to all aspects of coastal hazards policy development including the all important development of a Coastal Zone Management Plan under the Coastal Protection Act. It would seem sensible that that Act and the development of those plans be brought into the planning regime and subject to the same level of control and scrutiny as other planning instruments.
- 3.6 The relevant Minister, whether that be the Minister for Planning, or the Minister for the Office of the Environment, must have the power to approve or not approve a coastal zone management plan in the same way that the Minister of Planning has the power to approve or not approve a LEP and other planning instruments. There is no reason for coastal zone management plans not to be subject to this final sign-off at State Government level. In fact, it is essential that that be the position. This is the well accepted mechanism through which the State Government retains residual control over the planning and development of the State generally. It is vital that it has that control in relation to the very important issue to the economy of this State of the development and protection of the coastline and its community.

4 Planned retreat and other planning restrictions

- 4.1 As set out above, various Councils up and down the New South Wales coastline continue to contemplate and seek to impose draconian and unrealistic burdens and restrictions on coastal property owners.
- 4.2 We set out earlier in this submission the irrational policies that Byron Shire Council continues to contemplate and continues to seek to impose on property owners and ratepayers in its community seemingly without any regard to the social, economic and environmental costs of the policies they are contemplating.
- 4.3 This Government promised an express campaign to abolish the policy of planned retreat being imposed on existing built communities with no ability to “retreat” in any sense at all.
- 4.4 In the recent decision of the Land and Environment Court in *Newton v Great Lakes Council* (Dec 2013) the Commissioner recognised that different policy considerations apply to these type of restrictions when dealing with a greenfield site on which there is no development and in dealing with an already developed community where people have expended their resources

on buying land and property in the expectation that they would be able to reside in that property and not have illusory "planned retreat" foisted upon them.

- 4.5 The original Coastline Manual dating from 1990 also recognised that planned retreat was a planning tool for green field sites – not a tool for the management of coastal issues in developed communities.
- 4.6 The Government has promised to act to abolish planned retreat being imposed on existing communities. The same position should apply also to concepts such as "time limited consents" and the ability of Councils to threaten to take down the existing coastal protection of an existing developed community - designed to achieve the same end – the destruction of private property as it presently exists.
- 4.7 The cost to a community such as Byron if such a policy were to be allowed is enormous and must be in the hundreds of millions of dollars in relation to the loss of infrastructure alone.
- 4.8 Notwithstanding the seemingly irrational and unaffordable nature of such a proposal, Byron Shire Council continues to spend a large amount of ratepayers' money in promulgating such a proposal, holding community workshops about it and engaging experts to write long reports about it.
- 4.9 Our economy cannot afford the diversion of resources onto these destructive activities.
- 4.10 The State Government should honour its promise to abolish these types of draconian regimes being threatened upon the existing built community. The Government must ensure that it has the powers to veto these type of proposals when they are clearly irrational and inappropriate and to ensure that a measured consistent approach to the protection of existing communities and property owners is applied up and down the coast.
- 4.11 We urge the Government to take action as soon as possible to bring a rational sense of order to coastal planning. We know that we are not the only community that has been affected by this sort of behaviour and that many communities up and down the coast will be writing in response to the draft planning circular, telling their own story of problems encountered up and down the coast.

5 Section 149 Certificates and Other reforms

- 5.1 The now Government committed the reform to the Coastal Protection Act when they were made. Almost three years have passed since the Government came into power, the situation is urgent. We urge the Government to reverse the amendments made by Labor and the Greens to the Coastal Protection Act. We attach a schedule of the amendments we submit are urgently necessary.
- 5.2 In relation, to Section 149 Certificates, we submit that the responsibility of Councils should be confined to dealing with clear and present dangers which are known to the Council. Councils should not be forced into responsibility for predicting scenarios a century ahead such as global warming and sea level rise. Councils have no particular knowledge or expertise about these matters. Councils have been forced to expend large amounts of rate payer funds engaging experts to attempt to predict what might be the position in 50 or 100 years. Council should not have to be expending funds in this way – which would be better spent on the delivery of services and infrastructure to their communities.
- 5.3 We submit that reform should be made to clarify that councils have no responsibility for predicting how properties might be affected in the years to come by sea level rise or global warming in the decades to come. The community has no expectations that Councils should be doing this and prospective purchasers of properties near the water should do so on the basis that it is not the responsibility of councils to predict how sea level rise might affect their properties.
- 5.4 Different considerations may apply when consideration is being given to the release of Crown land for development for the first time. As noted above, the Land & Environment Court has

SCHEDULE

1. Amend section 55G of the Coastal Protection Act (1979) to re-establish power of the Minister to either approve or disapprove a coastal zone management plans.

This is consistent with other planning instruments such as LEPs which also have to be approved by the relevant Minister both prior to exhibition and before coming into force. This is an essential provision to ensure the State Government has oversight and direction over the approach taken by each council to coastal management. This is necessary to avoid a piecemeal approach along the NSW coastline as each local council pursues its own course. The previous power of the Minister was removed by the previous Government – evidently to strip the incoming Minister of power before the March 2011 election.

2. Remove section 55M of the Coastal Protection Act (1979) which unfairly and unreasonably puts the entire cost of protection on the beach front property owner, despite the benefits protection provides for the whole community.

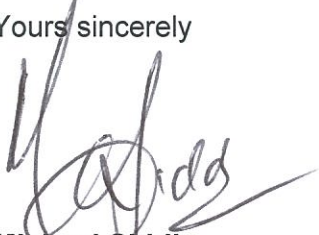
An approach which places the entire burden on individual property owners is clearly at odds with modern thinking recognising that the protection of our coastline is a matter in which all Australians are vitally interested. The recent report of the Productivity Commission highlights how much of Australia's economic wellbeing and prosperity is connected to protection of the existing built communities and infrastructure along the coastline. This cannot be left to be dealt with on an individual lot owner approach. Furthermore, the recent decision of the Coastal Panel in relation to Old Bar shows how unattainable the requirements of Section 55M are. In that case, individual property owners wished to protect their properties with geo-bags paid for by them. The Coastal Panel refused to give permission for this urgently needed protection because of a failure to comply with Section 55M.

This underscores that the section is unworkable and prevents rather than promotes protection of the coastline and community and private assets.

3. Enable and facilitate reasonable permanent protection without unreasonable constraints.
4. Make it clear that councils are not to impose so called "planned retreat" in already built communities on property owners who have no ability to "retreat" their home anywhere.
5. Establish a "whole of community" approach to coastal protection.
6. Reform the nomination and constitution of the Coastal Panel to make it more representative.

recently recognised that different policy considerations apply. Councils should not have any responsibility or liability to predict sea level rise for existing developments for prospective purchasers. It simply is not something in which they have the expertise or which they should be required to attempt.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Siddle', with a long horizontal flourish extending to the right.

Michael Siddle
President

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3 March 2014