

COASTAL RESIDENTS

INCORPORATED ASSOCIATION INC9894844 Friday, 8 June 2012

Submission – Barriers To Effective Climate Change Adaptation

Coastal Residents Incorporated (Coastal Residents) is an association representing families whose homes have been identified as potentially affected by forecasts of sea level rise & coastal erosion.

The association is not an environmentalist group or an anti-climate change group. The primary concern of Coastal Residents is to promote and defend the livelihood & wellbeing of people whose properties have been identified as affected by forecast sea level rise & coastal erosion.

Our submission will focus on the impact of current planning for climate change adaptation associated with sea level rise and coastal erosion projections within Gosford and Wyong Local Government Areas (LGA). With 9000 properties in Gosford LGA and possibly up to 10 000 properties potentially affected by these projections in Wyong, these two areas comprise a significant proportion of the Central Coast Region, claimed to be one of or the most affected regions in Australia.

As this region is part of New South Wales (NSW) it is also subject to one of the most flawed and draconian legislative regimes designed to address sea level rise and coastal erosion- legislation designed to fail.

The NSW version of Coastal Protection as a tool for the adaptation of communities affected by sea level rise and coastal erosion should never be considered as a model by the Productivity Commission because it offers what the current NSW State Government in Opposition renamed as, "The Coastal Destruction Act".

Coastal Residents is of the opinion that for any adaptation strategy to succeed, it must provide a reasonable level certainty for the future, no less than the level of certainty that the community as a whole will experience as a consequence of adapting to climate change.

To achieve that we believe that adaptation must focus on the defence of assets threatened by coastal erosion and sea level rise and must not become a focus on retreat as the first priority.

Significant Barriers to Adaptation – NSW Central Coast, Wyong and Gosford

1. A flawed and draconian framework of Policy, Legislation and Guidelines
2. The so-called "precautionary principle".
3. An ideology that prioritizes retreat and rejects defence of public and private assets –"planned retreat".
4. No honest effort to consult
5. Poor understanding and poor implementation of legislation
6. A focus on protecting local councils from litigation will impact on local economies and home insurance

1. Summary of Coastal Protection Policy & Legislation Issues in NSW

Background

In October 2010 the previous NSW State Labor Government amended the Coastal Protection Act and other Legislation causing the introduction of a regime of draconian legislation designed to fail.

In Opposition, every Liberal Member of the NSW Parliament stood against this legislation, calling it the Coastal Destruction Act but it is still in place after more than a year since the last NSW State Election.

Beach-front residents in NSW have lost the right to protect their homes against the damaging storms associated with East Coast Low Pressure Systems. Some councils such as Tweed Council, and Wyong Council, provide protection while others neither provide nor allow any protection at all.

Role of the NSW State Emergency Services (SES) in the NSW Coastal Zone

Coastal Erosion – SES has no role

Under the current NSW State Disaster Plan, the NSW SES cannot be used to co-ordinate protection services or to provide protection services for private property.

Coastal Inundation Flooding – SES has a co-ordination role only

Under the current NSW State Disaster Plan, the NSW SES can only co-ordinate sandbagging, SES personnel cannot actually install protective works for coastal flooding.

NSW State Disaster Plan 2010 - SES has no role

“Planning for and construction of physical mitigation works required for the protection of coastal property during storm events is the responsibility of local government councils as per section 55B (1) and 55C (b) of the Coastal Protection Act.1979(as amended).” Page 32, NSW State Disaster Plan – Displan 2010

State Storm Sub-Plan – No role in protecting homes against Coastal Erosion and only a co-ordination role for coastal flooding

6.13.5 The SES is not responsible for controlling or conducting any physical mitigation works to protect property or structures at risk of collapse or undermining from coastal erosion either during or outside the period of storm activity. This includes but is not limited to:

- a. The placement of rocks or other materials on beaches or foreshore areas; and
- b. The construction of temporary walls made of sandbags, geotechnical tubes or other materials.

6.13.6 Local Government Councils are responsible for controlling or conducting physical mitigation works to prevent coastal erosion, either during or outside the period of storm activity, when the works have been deemed appropriate.

6.13.7 Where emergency physical mitigation works to protect coastal property or other structures have been identified as being required in a Coastal Zone Management Plan, Local Government Councils may construct works. Where no Coastal Zone Management Plan exists Councils should seek appropriate technical, legal and environmental advice before constructing or allowing the construction of physical mitigation works to protect coastal property or other structures. These works should ensure protection of beach environments and beach amenity and allow continuing and undiminished access to beaches, headlands and waterways;

6.13.8 SES will coordinate the sandbagging of facilities and properties where flooding from coastal inundation is occurring.

Emergency Protection Works for Coastal Erosion

1. Emergency Protection Works to protect homes against Coastal Erosion may only be used at 14 "hotspots" along the whole of the NSW coastline. For all other beaches property owners have no right at all to construct emergency protection works.
2. Wamberal Beach and Pearl Beach are two official hotspots for Gosford Beaches. Cabbage Tree Bay, The North Entrance Beach and Hargreaves Beach are three official "hotspots" for Wyong beaches. The remaining beaches in Gosford and Wyong have no access to emergency protection under the current legislation.
3. At the 14 "Hotspots" the following constraints apply for Emergency Protection Works:
 - Emergency works can only be used once –emergency protection works can't be placed for a second storm event. This applies to the land, not to different property owners.
 - Works can only be 1.5 m high – useless in most storm events
 - Can't place the emergency works without a certificate from government first.
 - Does not apply to vacant land – but unprotected vacant land would threaten neighbouring properties and render their attempts at protection futile
 - Have to wait until the erosion is within 20 metres of the house – but then can't act if there is a storm unless written opinion is provided by an engineer that it is safe to proceed.
 - Emergency protection works must be constructed from sand filled geotextile bags up to 0.75m³ by volume. The manufacturer recommends 2.25m³ minimum if used for open coastal beaches.
 - Sand forming the beach to be protected, cannot be used
 - Sand must be certified as meeting required specifications for sieve size, colour and must be predominantly quartz crystal
4. Some councils have been preparing emergency plans with no plan for the protection of any property at all e.g. Byron Shire Council, Pittwater Council and Warringah Council

Permanent Protection Works for Coastal Erosion

Owners of properties on NSW Beaches are faced with the reality that they cannot obtain approval for Permanent Protection Works for Coastal Erosion because the compliance requirements cannot be achieved:

- Owners must agree to maintain the beach in front and adjacent to their land and to make good any damage to the beach caused by the permanent works. Under the Act, **"beach" means the area of unconsolidated or other readily erodible material between the highest level reached by wave action and the place where tidal or lake waters reach a depth of 10 metres below Australian Height Datum.** In most cases this is a distance of at least 150 metres from the shore and in many cases more than 150 metres.
- Owners are required to enter into an agreement to provide security for the payment of the cost of making good any damage caused or to pay for coastal protection services on an annual basis.
- All future owners will be responsible for these guarantees
- Information related to permanent protection works is placed on S149 Planning Certificates that are then required to be attached to contracts for the sale of property.

References: NSW Coastal Protection Act 1979; NSW Coastal Protection Regulation 2011; NSW Code of Practice under the Coastal Protection Act 2011; NSW State Displan 2010; NSW State Storm Plan 2007; NSW Coastal Protection and Other Legislation Amendments Act 2010.

2. Inappropriate Use of the “Precautionary Principle”.

The so-called precautionary principle does not take into account the potential for preferred cost-effective measures to be more damaging than the risk of a specific outcome actually occurring. A local council may believe it is more cost-effective to slowly damage the value of a property before seeking voluntary acquisition as opposed to allowing property owners the choice of defending their property. The decision on what is “cost-effective” must be determined by those actually affected especially if they are prepared to contribute to the cost.

In Gosford, both the NSW State Government and Gosford City Council have determined that it is cost effective to give away public waterfront reserves; sell off a public school for peanuts; and fill in flood affected land for a major commercial development while proposing plans for the abandonment of thousands of homes in some of the oldest suburbs in Australia. The estimated costs to raise land for the commercial project and supporting infrastructure, is around \$300 million in public funds. In this case the “precautionary principle” has been discarded and replaced with a political economic agenda.

The application of the “precautionary principle” by Gosford Council has resulted in 9000 homes being identified as potentially affected by forecasts of sea level rise. On the coastal strip, every beachfront property is now subject to rolling easements that deny any future development of property unless it is 20 metres or more landward from projected hazard lines. Wyong Council has implemented a Coastal Zone Management Plan that can impose taxes and that removes the rights of property owners by forcing them to demolish or relocate homes and to agree as part of a development approval process, that their home or home renovation can be forcibly removed when it is decided that property is within a hazard zone.

These plans are well beyond any normal planning period and are entirely focussed on preventing or reducing future litigation against local councils as a consequence of properties being affected by coastal erosion or sea level rise.

The “precautionary principle” is being used to justify an attack on personal rights and to damage the wellbeing and livelihood of a heavily marginalised minority.

The residents and community members are being made responsible for an event forecast to occur by 2100 that is claimed to be a consequence of the world’s use of fossil fuels but a minority of the community are expected to pay now.

3. Planned Retreat

“Planned Retreat”, “Timed Consent”, “Abandonment” and “Managed Retreat” have overnight been elevated to a status that was never intended. This has become a hackneyed term, a cliché that very few people understand or have analysed. No-one offering this adaptation strategy has established how those affected by such an imposition will be compensated. The NSW Sea Level Rise Policy asserts that there will be no compensation for sea level rise.

These concepts do not have any official status in the new Coastal Protection framework for NSW and have maintained a presence as a consequence of the ideology of public officers determined to grab back private land for the public good but without any thought for how those private owners will be compensated if there is a superior plan.

All levels of government in Australia have stepped away from this issue at an official level and instead have relied on the activities of public officers resulting in incremental changes that facilitate “planned retreat” as opposed to any defensive plan.

In some cases defence of property has been supported but often this is not as a result of a perceived need to support affected property owners but out of concern for future litigation or damage to areas that would result in political damage. In Gosford the foreshore, road and retail/tourist/hospitality industry of Terrigal has been protected by the installation of a substantial seawall while residents living on Wamberal Beach are still waiting on the promise of a protective revetment since 1974. Despite the fact that Federal, State and Local Government benefits from taxes and the productivity of those communities along these coastal strips, there appears to be no urgency to protect this source of revenue.

This same issue applies to those properties forecast to be affected by future coastal flooding and permanent inundation. Planning for retreat now does come at a high cost to any local economy. Simply attempting to shift that cost onto the communities most affected by these plans does not mean there will be no cost to the community and our local, state and national economies.

“Planned retreat” as an adaptation tool will fail and will prove far more costly than planning for defence.

4. Lack of Consultation – Non-existent Consultation

The failure to consult on this issue will ultimately cause any plans for adaptation to fail. The experience in Gosford has been that Gosford Council has promised forums, public meetings and as they say – “an opportunity for you to have your say”. Unfortunately the forums have not been offered and the very poor process of consultation is driven by affected residents. Even some Councillors have taken the opportunity to disparage community representatives when they attempt through public access at local council meetings, to present the views of those affected by a decision that is seen as highly flawed. Despite copious guidelines, policy statements and assertions claiming people will be consulted, it is business as usual.

Local councils do not seem to understand that a highly complex study or plan that may take years to develop cannot simply be exhibited for a period of three weeks in the forlorn hope that the affected community will be able to make an informed comment regarding that study or plan. Communities must be taken along for the same journey experienced by those who have access to these studies and plans as they are developed.

Consultation as normal for an event never before experienced in our short history of occupation of Australia is unacceptable and will also result in the failure of any adaptation strategies that have not been developed in a truly consultative and transparent manner.

5. No Understanding of Complex Legislation and the “Good Faith” Argument

The Coastal Protection framework of policy, legislation and guidelines in NSW is so highly flawed that it is impossible for it to be implemented in any consistent manner. Over 50 different Coastal Councils in NSW have implemented this framework in as many different ways. Each council that is engaged in developing Coastal Zone Management Plans (CZMP) uses different consultants, adopts highly varying processes of consultation and attempts to produce a plan that will be very different to those produced by a neighbouring council. This is

the case when Wyong Council and Gosford Council are compared. Both have similar environments with very similar risks and coastal geomorphology but the difference in implementation is stark by its contrast between the two LGAs.

The same issue applies up and down the coast of NSW.

Largely this difference is based on the politics, culture and ideology of the local council. It isn't a result of major environmental differences or demographics that vary wildly. This is a significant issue and barrier to the implementation of a sustainable adaptation strategy that will be accepted not just by the local community but across all communities in the state and across the country.

One of the problems faced by affected communities is the misuse of power and the failure to properly consult and agree on how this framework can be implemented. Argument between a community and local government about a point of law is a waste of time and energy. Local Councils have the power and on this issue our experience is that they wield it with abandon.

In NSW councils are protected by the principle of "acting in good faith". The "good faith" argument has been strengthened under new Coastal Protection legislation and there have been suggestions that it should be strengthened again.

Combined with a general lack of understanding of highly complex and flawed legislation and the "good faith" argument, this facilitates the very worst implementation of a legislative and policy framework that addresses planning for adaptation to climate change in a way that will result in failure.

The best approach would be to reduce the protection that councils currently enjoy because with this issue it is being used to create a barrier to adaptation to climate change that will be accepted by all community members.

6. Protection Against Litigation Impacts on Home Insurance & Local Economies

Gosford Council has been very open in asserting that their decisions related to adaptation to climate change such as the placing of sea level rise information on Section 149(5) Planning Certificates and the implementation of hazard lines to control development on beach frontage properties, is designed to minimise the risk to Council of future litigation.

Such an approach transfers huge unsustainable costs onto individual property owners.

Councils may be saving on additional insurance costs or future litigation costs but such a strategy imposes huge costs on local communities.

Applying such a strategy has affected property values and the ability to sell properties; insurance companies have taken the opportunity presented by councils where they now are spoilt for choice in terms of properties being identified as affected by current and future flooding scenarios. Increases of over 1000% in insurance premiums have been experienced while many property owners have been denied flood insurance or any insurance at all.

Continuing to apply such policies and planning strategies will be highly counterproductive in the medium to longer term. If the strategy for adaptation to sea level rise and coastal erosion results in declining property values and increased home insurance or no insurance, people will be forced to reduce spending on their

homes. This must impact on the local economy causing loss of business activity, particularly for small local business and with it a decline in employment.

Any strategy with these results is doomed. It will not survive more than one political term once such outcomes become obvious. Not only will those residents immediately affected have their livelihoods damaged, the same damage will gradually move across the whole local economy.

Pat Aiken

Secretary - Coastal Residents