

Coastal Councils and Planning for Climate Change:

An assessment of Australian and NSW legislation and government policy provisions relating to climate change relevant to regional and metropolitan coastal councils.

Morrison, Craig ¹ and Ghanem, Robert ²

¹ Sydney Coastal Councils Group
² NSW Environmental Defenders Office



Presentation Outline

An assessment of Australian and NSW legislation and government policy provisions relating to climate change relevant to regional and metropolitan coastal councils.

Introduction:

- The Sydney Coastal Councils Group
- The NSW Environmental Defenders Office

Project Background

Key Findings

- Legislation
- Common Law
- Overarching Conclusions

Recommendations

Sydney Coastal Councils Group

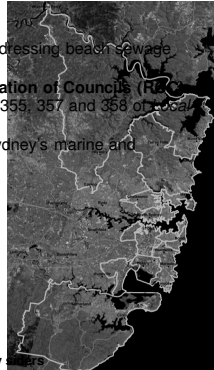
BACKGROUND

- Established in 1989 as 7 'ocean' councils addressing beach sewage pollution (pre ocean outfalls).
- The SCCG is a voluntary **Regional Organisation of Councils** (ROCs) established under the provisions of sections 355, 357 and 358 of the *Local Government Act, 1993*.
- SCCG consists of 15 councils adjacent to Sydney's marine and estuarine environments.

MEMBERSHIP

Botany	Sutherland
Hornsby	City of Sydney
Leichhardt	North Sydney
Manly	Warringah
Mosman	Waverley
Pittwater	Willoughby
Randwick	Woollahra
Rockdale	

SCCG represents over 1.3 million Sydney



The Environmental Defender's Office

- A community legal centre specialising in public interest environmental law
- Mission: To empower the community to protect the environment through law
- Functions
 - Legal Advice and Representation
 - Policy and Law Reform
 - Community Education
 - Scientific and Technical Advice

Honeysuckles owners may sue council

Properties devalued by climate scare

By BEN DOWERY

A GIPPSLAND council is facing action for damage already done to coastal property values as it weighs housing development in areas vulnerable to rising sea levels caused by climate change.

Following a report in The Age that the Victorian State Council was considering halting any new development at The Honeysuckles behind Ninety Mile Beach, up to 70 landowners in the area are joining to fight the move, potentially seeking hundreds of thousands of dollars each.

The Honeysuckles is a new coastal housing development on a 100-acre beachfront between Lake Renee and Lake Steele. The owners of 600 odd houses with subdivisions to build about 200 more - in what is a line of sand dunes which prevent it from Ninety Mile Beach.

Anger by consultant Edouard NEM found The Honeysuckles was vulnerable to rising sea levels, inundating houses, or from flooding by Lake Renee.

But other nearby settlements, such as Golden Beach, Paradise Beach, Sea Spray, and Lake Barramoon are just as vulnerable to rising sea levels.

Even Melbourne's Lyndale suburbs such as Elwood, Brighton and South Melbourne are at risk, according to CSIRO and State Government scientists.

Graham Scott, a landowner who insisted on build his retirement home at The Honeysuckles, said by stopping any new settlement Warringah Shire Council had depressed property prices forever, even before it makes a final decision on whether to outlay development.

"I have lost every cent we've put into that shore. Overlap I've lost \$120,000 because of an irresponsible council. That is not fair," he says.

"I have already contacted the council to see if they are starting a class action against the council. In the next few months, property values have been depressed since this announcement last Tuesday."

David Lawler, one of about

30 permanent residents at The Honeysuckles, said joining a class action against the council was being seriously considered by other affected residents and landowners.

Mullingrum Shire Council says this morning to decide whether to write to Victorian Planning Minister Justin Mackenzie for a 12-month suspension on all development in The Honeysuckles.

Shire chief executive Stephen Vero said the council was "caught between a rock and a hard place."

"If we continue to ignore this and allow people to proceed, we can expect people to say, 'Well, why didn't you act on this information that you said?' On the other hand, by putting it off there, there's a risk we are taking that action and the risk remains because this is not a precise science, it's a prediction."

Mr Vero said the council had not considered compensation for affected landowners, nor had the possibility of initiating a class action been discussed.

But in a submission it put to

KEY POINTS

- Residents say existing group action has been triggered by lack of a development ban.
- Up to 70 are considering a class action for millions of dollars in damages.

People
Over 80% of Australia's population lives within the coastal zone;

Property within 200 m of the coast
559,000 residential addresses in with replacement value \$104 billion replacement value plus contents \$128 billion

24,000 commercial and small - medium industrial buildings with replacement value \$33,581 billion

Future costs
Preliminary estimates of the value of property exposed to the impacts of sea level rise range from:
\$50 billion (a sea level rise of 1 metre); to \$150 billion (a sea level rise of 3 metres)



An assessment of Australian and NSW legislation and government policy provisions in relation to climate change relevant to regional and metropolitan NSW coastal councils.

- To Identify where and within what legal and implementation context the terms **climate change**, **greenhouse** and **sea level rise** occur within all legislation, planning instruments and policy relevant to coastal councils in NSW; and
- Provide a discussion of responsibilities of local government to implement the provisions identified.



Key questions

- What are the responsibilities of councils to address climate change under legislation and local plans?
- What are the responsibilities of councils to address climate change under the common law?

Key findings - legislation

- 16 legislative instruments out of 137 contained terms of interest:
 - 3 Commonwealth Acts
 - 4 NSW Acts
 - 9 Coastal LEPs
- 20 NSW Government policies contained terms

Key findings

The references to climate change we identified fell into clear categories:

- Objects clauses in LEPs
- Matters for consideration in LEPs
- Policies
- Other legislation

1. Objects clauses

- **Principal Local Environment Plan**
Clause 32- Development within the coastal zone

- (1) *The objectives of this clause are as follows:*
- (a) *to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development;*
- (b) *to implement the principles in the NSW Coastal Policy, and in particular to:*
- (iv) *recognise and accommodate coastal **processes and climate change***

Key Finding: objects

- Objects clauses impose no direct duties on councils to address climate change

2. Factors to consider

Principal Local Environment Plan- Clause 32(2)

Consent must not be granted in coastal zone unless the consent authority has considered:

...

(f) the effect of coastal processes and coastal hazards and potential impacts, including sea level rise:

Key Finding: factors to consider

- Impose limited responsibility on councils
- Where required, climate change impacts must be considered in a genuine manner
- No requirement that climate change is to have overriding weight

Key Findings: Policies

- Policies are non-legal documents
- Must be applied only where required by legislation
- They may be relevant considerations, but don't have to make decisions consistent with them

Eg NSW Coastal Policy 2008

Common law liability

- Exists separately from legislation
- Tort of negligence and nuisance most relevant to climate change
- Ability to take against councils significantly restricted by legislation

Local Govt Act 1993- Section 733 (b)

- Likely to provide significant protection from liability
- Exempts local councils from liability for advice, actions or omissions relating to natural hazards in coastal zone
- Covers granting of development consent, making of LEPs, flood mitigation works, etc
- Applies even where council is 'negligent' *but*
- Only applies where council has acted in 'good faith' – *NSW Coastline Management Manual 1990*

Coastline Management Manual 1990

- Assesses and identifies coastal management options for councils
- 4 key areas of management
 - Planning mechanisms
 - Development control conditions
 - Dune management
 - Protective works

Summary

- Currently, few legislative obligations on coastal councils to combat or even consider climate change impacts on coast
- Common law liability for negligence strongly restricted by legislation
- However, likely the law will be amended in future to impose stricter obligations on councils
- Councils should adopt clear policies to protect themselves

Overarching conclusion

- There is a need for state government guidelines to assist coastal councils in adapting to climate change
- Details needed on when and how to conduct adaptation activities to prepare for and prevent climate change impacts

Recommendations

A national assessment of climate change legislation and policy

The development of benchmarks, model provisions and guidelines

A national implementation plan for climate change adaptation roles and responsibilities supported by non competitive funding

Clear methods and protocols for the public disclosure of potential climate change impacts

Open debate about the legislative, policy and communication tools required to deliver an efficient allocation of existing and future resources in response to climate change.

For further information

- A copy of the full report is available by request from the SCCG – www.sccg.org.au

Email: robert.ghanem@edo.org.au