

The Future of Coastal Protection Works on Public Land in NSW

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INTRODUCTION

Case Study

Ralph Lauren Pty Ltd v New South Wales Transitional Coastal Panel; Stewartville Pty Ltd v New South Wales Transitional Coastal Panel; Robert Watson v New South Wales Transitional Coastal Panel (2018) NSWLEC 207

BACKGROUND

- Belongil beach seawall – 1km, unapproved, inconsistent.
- Extensive litigious history – divisive local topic – tensions between public and private interests.
- 10 development applications – 1 abandoned, 6 'minor' and 3 'major'.
- 3 'majors' went to full hearing: *Ralph Lauren Pty Ltd v New South Wales Transitional Coastal Panel; Stewartville Pty Ltd v New South Wales Transitional Coastal Panel; Robert Watson v New South Wales Transitional Coastal Panel (2018) NSWLEC 207*.



MAP OF PROPERTIES ALONG BELONGIL BEACH



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- Northernmost properties.
- Seawall on public land.
- NB: End effects.



COMPLICATING FACTORS

- 2 applications for 3 of the properties.
- Inconsistent alignment and composition.
- Subject properties not contiguous.
- Existing structure unapproved and unknown.
- Varying sand supply and tide.
- Landowner's consent – works and transport proposed on private land, and public land owned by either Crown Lands or Byron Shire Council.
- Coastal Zone Management Plans (now CMP's), legislative amendments, and transitional consent authority.
- Significant public interest – 70 submissions received for majors.

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RESOLUTION

- One minor application resolved in mid-2018 by way of s34 agreement -- *Siddle v NSW Transitional Coastal Panel* (2018) NSWLEC 1383.
- Five other minor applications resolved collectively by s34 agreement in late 2018, including for three properties the subject of the major Proceedings.
- Minor approvals involved amendment of plans and proposals (lesser rock volume, duration of works, strict conditions, removal condition).
- Three major applications refused by Preston CJ following hearing.

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KEY COURT FINDINGS

- Consent refused:
 - Works will unreasonably limit public access and use (contrary to s 55M)
 - Works will impede or diminish public land based right of access not and along the foreshore (contrary to clause 88(3) of the BLEP).
- Cumulative impacts also sufficient to refuse consent.
- Public safety not an issue
- Preliminary views expressed regarding proposed time limited consent

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IMPLICATIONS

- Simple and clear application of s55M (now s27) – step by step process to determine when a work will or will be likely to "unreasonably limit" public access
- Important precedent for consent authorities required to assess applications for the replacement/improvement of illegal works
- Demonstrates hurdles for private applicants seeking to use public land
- Demonstrates critical role of certified CMPs in coastal management framework: funding and streamlining of approval process for coastal protection works



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