
That sinking feeling: A legal assessment of the coastal planning system in New South Wales

Zada Lipman and Robert Stokes*

Recent evidence indicates that the New South Wales coast faces increasing risks from erosion and inundation as a consequence of the enhanced greenhouse effect and rising sea levels. At the same time, a rapidly expanding population in coastal New South Wales is fuelling demands for more subdivision and development. Both of these trends are increasing the likelihood and quantum of damage to private property in oceanfront or low-lying locations along the coast. An escalating threat of damage generates an increase in the likelihood of claims against public authorities with responsibility for land-use planning in coastal areas. This article examines the measures New South Wales has adopted to deal with coastal erosion and climate change flood risks. An analysis of recent initiatives, including the legislative changes to the Coastal Protection Act 1979 (NSW) and the Local Government Act 1993 (NSW), as well as a case study of coastal erosion at Belongil Beach, will be undertaken to assess the efficacy of the current system. The article then considers the capacity of current measures to protect public authorities from future litigation arising from land-use planning decisions on the New South Wales coast. Finally, the article offers some suggestions for replacing the current system with an integrated sustainable coastal planning framework.

INTRODUCTION

One of the greatest challenges for land-use planning in New South Wales is the increased threat of coastal erosion and inundation posed by anthropogenic climate change and rising sea levels. Like other coastal areas throughout the world, New South Wales' demographic pressures are intensifying the pace of private residential development in low-lying coastal areas and on the coastline. Two and a half billion people – approximately a third of the global population – currently live in the coastal zone.¹ In Australia, the percentage of the population living in the coastal zone is ever higher, at approximately 86%, while in New South Wales 80% of the population live within 3 km of the coast.² Coastal populations are particularly susceptible to natural hazards from storms and fluctuating sea levels. These hazards are likely to be exacerbated by climate change.

Climate change is predicted to lead to an expansion in the range of tropical storm activity and in the frequency and intensity of storm surges. Rising sea levels could potentially inundate wetlands and other low-lying lands, erode beaches, intensify flooding, and increase the salinity of rivers, bays and groundwater tables.³ Beach and dune erosion will make coastal properties more vulnerable to storm waves and affect areas further inland. These hazards present a threat to private and public assets in affected areas. Industries such as agriculture, aquaculture, tourism and construction are likely to suffer

*Zada Lipman, Emeritus Professor, School of Law, Macquarie University, Sydney Australia; Dr Robert Stokes MP, Member for Pittwater, Parliament of New South Wales, Australia.

¹ Agenda 21 suggests that up to three-quarters of the global population could be living within 60 km from the coast by 2020: *Report of the United Nations Conference on Environment and Development*, UN Doc A/CONF.151/26 Vol ii (1992), <http://www.ionemvis.in/czm.php> viewed 29 March 2011.

² New South Wales Government, *New South Wales Coastal Policy 1997* (1997) p 12, <http://www.planning.nsw.gov.au/plansforaction/pdf/PPARTA.PDF> viewed 29 March 2011.

³ United States Environment Protection Authority, *Coastal Zones and Sea Level Rise* (2010), <http://www.epa.gov/climatechange/effects/coastal/index.html> viewed 29 March 2011.