

12 June 2024

NSW GOVERNMENT: INQUIRY INTO THE PLANNING SYSTEM AND THE IMPACTS OF CLIMATE CHANGE ON THE ENVIRONMENT AND COMMUNITIES

Response to Question taken on Notice

Question:

The CHAIR: I've just got one question on that. In relation to retreat, what is the consideration of any planned retreat and where is that sitting at the moment?

YIANNI MENTIS: As you can appreciate, planned retreat is a consideration in terms of different methods that might be used to deal with coastal erosion in particular, but also any hazard. But as you can also appreciate, the difficulty for council and generally for State and Federal governments is the cost associated with that, in particular in locations like the northern beaches or, arguably, Mosman and the other areas where the land values are significantly higher. The consequence of planned retreat would be, I think, astronomical.

The CHAIR: Just to finish on that, when you say it's a consideration, to what extent and where does that happen? Is it put forward and then it's not an option, or is it put forward as a discussion? Is it something that is within our planning scope?

YIANNI MENTIS: I don't think I can answer that, Chair. I'm not familiar with that specific area of how we deal with that in the planning regime.

The CHAIR: Is it possible to take that on notice and provide it to us? It seems like it's the hard edge of adaptation, obviously, and it would be very good for the Committee to understand what does Council do. Obviously, we build walls, we talk about beach nourishment—all those sorts of things—but what do we do and where do we talk about planned retreat, if at all?

YIANNI MENTIS: Yes, of course.

Response:

The feasibility of planned retreat and property buy-back has been considered in Coastal Zone Management Plans prepared by Council, and voluntary purchase was also a consideration in Council's Narrabeen Lagoon Floodplain Risk Management Plan (2019) and other similar plans. With respect to planned retreat, in all cases it was determined that this strategy is not practical nor feasible due to the level of existing development, small lot size of the properties and current legislation protecting the

“existing use” rights of existing development, which can continue to exist and be subject to renovations and additions despite adoption of any planned retreat strategy for new development. Property buy-back, particularly on the Northern Beaches but also in a Sydney metro regional context, was also identified as being cost-prohibitive given the high property values, especially those with water frontage where the value of individual homes frequently surpasses \$5,000,000. This far exceeds Council’s financial capacity to fund such an undertaking, especially across multiple sites.

Managed relocation is and has been undertaken in a number of high disaster risk areas including Grantham, in the Lockyer Valley Shire of Queensland, which was subject to a significant flood in 2011. This comprised a voluntary land swap that resulted in more than 130 houses being relocated on higher ground in an effort to protect the town from future disasters. That land swap was funded by the Lockyer Valley Regional Council and significant contributions from the Queensland and Commonwealth governments.

Further, the NSW Government in partnership with the Southern Cross University, Landcom and the NSW Reconstruction Authority is currently facilitating the relocation of existing homes from flood affected areas of Lismore in response to the 2022 floods. Further information can be found here <https://www.nsw.gov.au/media-releases/400-new-homes-for-lismore>.

As articulated in the [NSW State Disaster Mitigation Plan](#), the NSW Reconstruction Authority is responsible for the development of a “*State policy for large-scale multi-hazard managed relocation, drawing on the experience of the Northern Rivers and other jurisdictions, to decide the appropriateness of this response in disaster adaptation planning*”. It is anticipated this body of work will be delivered by mid-2025.

Should you require any further information or assistance in this matter, please contact my office on

Yours sincerely,

Yianni Mentis
Executive Manager Environment & Climate Change

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Response to Question Taken on Notice

Question:

The Hon. Jacqui Munro: You might want to take this on notice as well. It says that Councillorsⁱ identified inconsistencies between the resilience and hazards SEPP and the Coastal Management Act. I just wondered if you could provide on notice what those inconsistencies are, please.

YIANNI MENTIS: Yes, we can take that on notice and provide that to you.

Response:

Council's concerns relate to inconsistencies with the wording and interpretation of the Act as well as clauses within *State Environmental Planning Policy (Resilience and Hazards) 2021*. These inconsistencies relate to the assessment of coastal protection works such as seawalls and acceptable impacts to adjoining lands from erosion that may result from the works.

The inconsistencies between the *Coastal Management Act 2016* and *State Environmental Planning Policy (Resilience and Hazards) 2021* exist because sub-clause 27 (1)(b)(i) of the *Coastal Management Act 2016* specifically anticipates that coastal protection works may increase erosion but that this is acceptable if conditions can be imposed to restore it. This is inconsistent with the subclause sub-clause 2.12 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* that deems any impact as unacceptable.

Additionally, there is inconsistency between clauses within the *State Environmental Planning Policy (Resilience and Hazards) 2021*. Subclauses 2.7, 2.8, 2.10 and 2.11 all acknowledge that impacts may occur from approved works. Subclause 2.12 prevents approval for any works that cause any increase of coastal hazards. The best example of this inconsistency is between sub-clauses 2.9 and 2.12.

Clause 2.9 *Development on land within the coastal vulnerability area*, requires that development consent cannot be granted unless the consent authority is satisfied that the proposed development:

- *is not likely to alter coastal processes to the detriment of the natural environment or other land.*
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This clause indicates that while the approved works may have some impact on coastal processes, including coastal erosion on adjoining land, this is acceptable if the impact is not to the detriment of the natural environment or other land, for example, where the erosion is minor or short term in nature and does not significantly alter coastal processes on the land adjoining the development or within an embayment. Council considers this a reasonable threshold for the impact assessment of coastal protection works.

Clause 2.12 *Development in coastal zone generally—development not to increase risk of coastal hazards* which states that:

- *Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

This clause indicates any increase in coastal hazards, including coastal erosion irrespective of its significance or duration, is unacceptable. This is inconsistent with clause 2.9 and when applying a strict interpretation of clause 2.12 seawalls of any nature cannot be approved at any location.

This issue could be resolved if the wording of clause 2.12 was amended to:

- Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to significantly increase the risk of coastal hazards on that land or other land.

In summary, the assessment and approval of coastal protection works such as seawalls is a complex process that requires a thorough understanding of coastal processes and a degree of professional judgement. This process is made more difficult as a result of the inconsistencies in legislative frameworks highlighted above.

Yours sincerely,

Yianni Mentis
Executive Manager Environment & Climate Change

ⁱ Note – Council has also provided a proposed correction to this statement in other correspondence from “...*Councillors identified*...” to “...*Council has identified*...”.