

**Submission
No 31**

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS
OF CLIMATE CHANGE ON THE ENVIRONMENT AND
COMMUNITIES**

Name: Mr Justin Hickey

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My Submission asks the State government review the process of selection of a Vertical 1.3km seawall as central coast councils preferred action at Wamberal Beach. I ask that the state government ensure the proposed seawall comply with its reformed SEPP 18 and the coastal management act 2016 . This proposed coastal action action, whilst mentioned in the ratified czmp, did not receive community support(the only evidence was a 2003 survey of 78 people with the result plagerised in 2016 used to reflect the community view) Despite this and not being able to provide evidence, Central coast council claims widespread community consultation. The community has been consulted in good faith in or around 2020 ,only after a seawalls only solution was selected by our council (please review councils actual public submissions to assess the publics view as required in the act).This is untrue projection of community view and education is contrary to current requirements of the SEPP and act and is this governments carriage and responsibility. It has been proposed by central coast council the seawall be built "where possible " on the DA applicants private land. This implies that some part of the public beach will be used to build the seawall, an action that is illegal and against the requirements of the coastal management act. Much is unknown about the proposed seawalls end effects but experts Professor Andrew Short and coastal engineer Angus Gorden agree it will likely lead to loss of beach, increased swimming risk and impact on flooding of lagoon residents. Again ,this Government must ensure the proposed seawall comply with the SEPP and act. It is unacceptable to pass all responsibility to a our local council. I have attached some of my past letters and submissions. Please act in this mater as per the principles of the public trust doctrine. Regards justin Hickey

SUBMISSION ON WAMBERAL TERMINAL PROTECTION ENGINEERING DESIGN REQUIREMENTS

Coastal erosion at Wamberal beach is a complex issue that has pitted the need to protect private property against the need to maintain the public beach for the community and future generations. Hard revetment proposed asks the community to accept the protection of private property ahead of the maintenance of the beach amenity, It is my view that you can't have both and the broad community is unaware of this possible outcome.

I am yet to find an example of satisfactory beach nourishment maintaining a beach over 30years with a 1.6 km dome shaped seawall despite so called expert reassurances. The reason a seawall was rejected in 2003 was for the fact that there is no guaranteed ongoing sand source that could be found or paid for and this has not changed despite the efforts of council and the advisory taskforce.

The science and MHL studies are clear on this issue that hard revetment does interact with natural processes by trapping sand in a fixed position and by changing the cycle of accretion and loss of the dune at Wamberal beach.

Section 27 of the *Coastal Management Act 2016* (NSW) identifies criteria where public interest could be affected by construction of coastal protective structures. In doing so, it prioritizes the rights of the public consistently with the internationally recognized principles of the public trust doctrine ("PTD"). The PTD principles are absolute and does not for example consider a viewing platform to be just compensation for lost beach or access, it does not state or accept that a Terminal protective structure having the "least" effect on amenity or natural processes as acceptable. In the four engineer reports on proposed seawalls at Wamberal I have read, all have described the seawalls creating a need for ongoing sand replenishment. This proposal to change a closed chain system (natural sand replenishment with an open chain system (sand added from an external source). By definition, this does not comply with the requirements of section 27 of the *Coastal Management Act 2016* (NSW) and *State Environmental Planning Policy 2018* (NSW) (coastal SEPP) which does not allow a TPS to affect natural processes. A core principle of the PTD is the responsibility of state/council to protect and maintain public access and use of the beach as per the planning established in the *Coastal Management Act 2016* (NSW) and coastal SEPP.

In 2018 the N.S.W land and environment court set a precedent on the application of section 27 of the *Coastal Management Act 2016* (NSW), affirming the key role and purpose of section 27 in protecting the public's right to use and occupy public beaches. In my view, the proposed TPS "mostly" on private land would not comply with the requirements of the act.

Section 27 of the CMA provides that development consent must not be granted under the act to development for the purpose of coastal protection works unless the consent authority is satisfied that:

b satisfactory arrangement has been made (by conditions imposed on the consent) for the life of the works:

I the restoration of a beach if any increased erosion of the beach or adjacent land is caused by the presence of the works.

If consent for TPS was given observational assessment post storm is not an adequate trigger for sand replenishment due to the subjective nature of it. The MHL study, modelling, ideal beach width has

provided council with objective data on acceptable beach amenity. Sand replenishment should be triggered objectively with funding source guaranteed and for the life of the TPS. As an example, if you consider the number of days, you could safely walk from Wamberal to Terrigal along the beach. The MHL study estimates 1.4% to 3.4% days with beach width <5m (impassable) and the proposed vertical wall would reduce the beach<5m by 2.7%. This should be a benchmark trigger for sand replenishment. Despite climate change predictions this should be a minimum standard ensuring future generations have the same amenity available today. The community cannot and should not be left with the need to lobby for or pay for sand replenishment to restore the beach to its current amenity if a TPS is approved.

In the recent case in the LEC with regards Belongil beach, justice Preston CJ on section 27 of the CMA. In his ruling he referred to the unlawfulness of existing works: "The assessment of the degree of the limitation, impediment or diminishment of public access to use of the beach and any unreasonableness of such limitation, is to be undertaken without regard to existing seawalls and to the extent to which they limit, impede or diminish public accessor use of the beach. The existing seawalls are not lawful. No development consent has been sought or obtained for the carrying out of seawalls in front of each homeowners' properties. By law the seawalls should not exist on the beach". I see many similarities with the current situation at Wamberal in particular the use of possibly illegal walls to infer cost benefit of a vertical seawall and to assess the publics current amenity.

The LEC has set a very high bar when assessing the permissibility of the private use of a public beach for the purposes of private property protection. The CMA requires consent authorities to priorities public rights when making decisions regarding coastal protective works. A TPS must not pose a threat to public safety or unreasonably diminish public access to or use of beach. I would urge council to comply with legislation and strengthen the minimum requirements for TPS in order to protect our beach. Please also consider making computerized modeling in DAs and any EIS available to the public.

Sincerely,

Justin Hickey