

Collingwood Beach Preservation Group Monthly Report – October 2018

1. Action Plan for the Collingwood Beach Dune Vegetation Management Plan “CBDVMP”.

Work commenced on the Action Plan for two demonstration sites in August. Pruning, planting, fencing and removal of vandalism signs are amongst the works undertaken.

Any benefits of the plantings are currently overshadowed by the works yet to be completed in respect of the felling and spreading of deadwood. Some consider the deadwood is a blight on the vista of Jervis Bay which is shared by the community and thousands of tourists to the Shoalhaven.

The planting regime near Berry Street specifies the inclusion of 4 gum trees that could grow to 30m tall but excludes any plan to manage propagating new growth banksia. The owners do not endorse these two decisions, namely, the gums for safety reasons and the environmental risk of planting them on a fore dune potentially damaging the dunes in a major storm event and the lack of any plan to manage the propagation of new growth banksia has been the cause of all of the issues for over 30 years.

The link to the action plan is:

<http://doc.shoalhaven.nsw.gov.au/DisplayDoc.aspx?record=D18/280894>

Members of the Collingwood Beach Preservation Group (CBPG) note with regret the news reported in an article on the South Coast Register (SCR) website on 26th September that a number of trees on the foredune at Collingwood Beach were deliberately poisoned by persons unknown. The CBPG has been working collaboratively with the Shoalhaven City Council (SCC) for the last five years, with a particular interest in dune vegetation management. The CBPG deplores tree vandalism, and has always looked for a different solution to the problems encountered by all at Collingwood Beach.

The CBPG would, however, impress upon the reader two important points. The article published in the SCR on 26th September suggested that the poisoned trees were “80 years old” and “multigenerational”. Firstly, from the photographs taken in the mid-1970s show there were no trees on the affected patch of Collingwood Beach at the time, so the trees are not “80 years old”. It is likely these trees were planted by a bush-care group in the early 1990s. Secondly, the term “multigenerational” is meaningless and pejorative. *Banksia Integrifolia* self-propagates without any encouragement, and forms a monoculture, one of the prime problems discovered by any visitor to Collingwood Beach wishing to view the foreshore and Jervis Bay.

The CBPG continues to encourage SCC to develop a meaningful and effective Dune Vegetation Management Plan for Collingwood Beach. The CBPG looks forward to a positive outcome from the two demonstration sites currently underway on Collingwood Beach.

2. The status of the Coastal Panel's certification of the 2012 (now 2018) Coastal Zone Management Plan "CZMP".

The 2012 Coastal Management Plan was adopted by Council at the end of June 2018 was certified by the Minister for Environment and gazetted on Friday 21st September 2018.

https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2018_2018-98.pdf

It is heartening to see the Minister and Coastal Panel have endorsed the pragmatic Shoalhaven SLR Policy, which confirms Councillor Wells reporting to one of the Shoalhaven Council meetings "he had met with the former Minister of Environment, Rob Stokes", at one of the Coastal Conferences and Rob informed him of his support for the Shoalhaven Sea Level Rise Policy "SLR" 2014 because Shoalhaven SLR policy of 2014

- is pragmatic,
- of integrity,
- founded on scientific approach,
- is defensible
- and is reviewable
- and Councillors are covered under s733 as acting with duty of care.

Furthermore Councillor Wells stated Council only approved submitting the 2012 version of the CZMP to obtain grant money to address works required across the Shoalhaven from the June 2016 when Staff acceded they would submit the outcomes from the mapping of the 2014 Sea Level Rise Policy.

GRANT FUNDING. The CBPG trust the staff at Shoalhaven will be as proactive as other Coastal Councils in seeking grant funding which opens on 15th October 2018. The likely competition for funding from other active communities can be seen from the below informative media release by Honourable Adam Crouch, the member for Terrigal

The CBPG consider this is a real opportunity for Council to get on the front foot to seek funds to address the risks addressed in the CBPG submission to Council on the CZMP for the stormwater drainage at Collingwood Beach together with reviewing the extent of property inundation due to flawed assessment.

From: **Ben Sheath** <Ben.Sheath@parliament.nsw.gov.au>

Date: Tue, 9 Oct. 2018, 4:59 pm

Subject: Adam Crouch med rel - Grants available to help manage coastal and estuary environments

To: Ben Sheath <Ben.Sheath@parliament.nsw.gov.au>

MEDIA RELEASE

Tuesday, 9 October 2018

GRANTS AVAILABLE TO HELP MANAGE COASTAL AND ESTUARY ENVIRONMENTS

Member for Terrigal Adam Crouch is encouraging Central Coast Council to apply for the NSW Government's Coastal and Estuary Grants Program, with the 2018-19 funding round opening on Monday 15 October.

Mr Crouch said the new funding round would allow Council to plan and implement coastal erosion projects.

"Earlier this week, Council unanimously resolved to submit a compliant application for all coastal erosion 'hot spots' on the Central Coast, including Wamberal/Terrigal, The Entrance North, Norah Head and Noraville," Mr Crouch said.

"I welcome this proactive approach led by Councillors Rebecca Gale Collins and Jilly Pilon, and will be fully supportive of applications that Council submit for this new funding.

"I will continue to fight to ensure our region receives its fair share of funding from the State Liberal Government."

Mr Crouch said unique coastal and estuary environments are not only enjoyed by locals and visitors, but also provide habitat for a vast range of animals and marine plant species.

"These grants were designed to support councils in managing the risks from coastal hazards, such as coastal erosion, restoring degraded coastal habitats or improving the health of local estuaries, wetlands and littoral rainforests," Mr Crouch said.

The \$63 million Coastal and Estuary Grants Program is part of the NSW Government's \$83.6 million coastal reforms funding package to support local councils to implement works in their certified coastal zone management plans (CZMPs).

There are five streams under the program:

- one for planning and studies which includes investigation, design and cost-benefit analysis, and
- four for implementing works under each of the coastal management areas in the Coastal Management Act.

For more information, go to: www.environment.nsw.gov.au/coasts/coastalgrants.htm.

FLAWED ASSESSMENTS IS NOT UNCOMMON to many other Coastal communities. The article in The Australian on October 6th 2018 refers to OEH “is likely to lose” with findings in favour of the property owners from Blueys and Boomerang beaches in a court case taken against The Office of Environment and Heritage in the Land and Environment Court. This is an example showing the challenges from flawed assessments is not uncommon.

Beach residents inch closer to rezoning

- **EXCLUSIVE**
EAN HIGGINS
REPORTER

- 12:00AM OCTOBER 6, 2018
- NO COMMENTS

NSW Environment Minister Gabrielle Upton has dodged a direction by a Land and Environment Court judge to defend her decision to rezone two beaches as being at “immediate and intolerable risk of erosion”, with a hearing set for yesterday morning called off at the last minute to allow mediation.

Sources close to the case said Ms Upton initiated the move after an assessment she would likely lose the lawsuit brought by property owners at Blueys and Boomerang beaches on the state’s mid-north coast, who say their property values have been decimated by the rezoning when the government’s experts judge the beaches “stable” and “in balance”.

The sources said the government was applying pressure on the property owners to not talk to the media, hoping to negotiate a face-saving backdown through mediation behind closed doors.

Early last month, NSW Land and Environment Court judge Terry Sheahan delivered an extraordinary rebuke to Ms Upton.

“In essence, and crucially, the applicant (the residents) argues that the evidence before the minister, and the advice given to her, was that these two beaches were ‘stable’ and ‘in balance’ so her finding was not supported by logical or rational grounds,” he said.

Ms Upton's lawyers argued that the residents' decision to issue her with a "notice to admit facts", - demanding she explain how she arrived at her decision, was "oppressive" and an "abuse of process".

But Justice Sheahan said "despite the valiant attempts of counsel for the minister", Ms Upton's arguments had "no authority". He said the use of an NAF had been "entirely appropriate" and ordered the minister to respond to it.

"I accept the submissions of the applicant (the residents) on each aspect of this dispute ... and reject those of the minister who has so far failed to identify for the court, as required by the Civil Procedure Act, the matters she genuinely disputes," he said.

Justice Sheahan had set yesterday's hearing to review Ms Upton's response to the NAF, effectively requiring her to defend her position or accept the plaintiffs' evidence as sound, which would likely mean admitting defeat in the case.

The sources said Ms Upton's legal team contacted lawyers for the property owners on Thursday ahead of the scheduled hearing set for 9am yesterday.

A spokeswoman for the Land and Environment Court said: "Today's listing was vacated yesterday at the directions of the list judge and it has been relisted on 9 November."

A spokesman for Ms Upton said "all parties agreed to defer today's directions hearing, to explore avenues to resolve the matter, not because of concerns in relation to outcome", and denied any pressure on the owners not to speak to the media.

The spokesman declined to comment further, saying the matter was before the court.

One of the property owners is said to have described the view of their legal team as being: "We have them on toast."

The legal action by Blueys and Boomerang residents amounts to a direct challenge to the right of local councils and the minister to impose zoning restrictions without a legitimate basis.

Property owners on the beaches have said the sand dunes have been growing rather than eroding over the past 50 years — a not uncommon process in coastlines, which can expand or contract over short and long periods of time.

Ms Upton, who is a lawyer and worked in senior international banking roles, has had a troubled time as minister, with reports of a heavy staff turnover in her office and mishandling of a number of policy and administrative issues.

Last month, the government was forced to back down on a proposal, championed by Ms Upton, to ban fishing in 25 new marine park sites between Newcastle and Wollongong.

<https://www.theaustralian.com.au/national-affairs/state-politics/beach-residents-inch-closer-to-rezoning-victory/news-story/9ee3d0897e83e147b09bedae530b7ff9>

FURTHER EXAMPLES of issues with OEH are identified in questions put to the Minister for Environment by the former Mayor of Shoalhaven the Honourable Paul Green at the **NSW BUDGET ESTIMATES** in September 2018. The extract from the transcripts of the Budget estimates session are:

The CHAIR: Thank you. Minister, the New South Wales Coastal Alliance has estimated 60,000 properties that are potentially affected by the State's coastal protection laws where land is deemed to be in an environmental hazard area. In 2016, the New South Wales Coastal Panel gave written advice that there was a legal precedent that land affected by environmental hazards could revert to the Crown without any compensation. Minister, what is the Government's policy on paying compensation to affected landowners and, if so, what has been allowed in the future budget estimates for compensation payments?

Ms GABRIELLE UPTON: Thank you for your question, Chair. You would be well aware that we have a new coastal management legislative framework. We have a new coastal council, which met on 26 June for the first time. There is a funding program that backs up that support of our coastal communities and our coastal councils and urges them—we are in the process of going through this—to put together coastal zone management plans [CZMPs] or conservation management plans [CMPs] that are acquitted by the department and that set a framework of the kind of work that local areas will want to undertake to best protect them for the future from coastal erosion.

The Government committed to that reform, has delivered that reform. It will help not only in relation to public land but private land. It also provides councils with an exemption from liability, where they follow the steps that are under the CZMPs that are either acquitted by myself as Minister or by the head of the Office of Environment and Heritage. When it is private land, that, I would think, it is a matter for another ministry of Government for compensation if there is an allegation, perhaps, of there being some public damage that has led to private diminution of wealth or value. I am happy to take the specific details which you are concerned about on notice and revert to you.

The CHAIR: With the deadline drawing near for councils to have their coastal zone management plans completed, does the Government intend to ensure that councils advise owners whose properties are deemed to be at risk, either now or sometime into the future?

Ms GABRIELLE UPTON: I am being advised by Anthony Lean that the deadline is 3 October for the CMPs or the CZMPs to be finalised. My head of agency is in contact with all of those councils to be able to ensure that they have the best opportunity—

The CHAIR: It is about the property owners.

Ms GABRIELLE UPTON: I am sorry?

The CHAIR: It is to ensure the property owners are informed if their properties are affected; to ensure that either the councils are going to do that or—

Ms GABRIELLE UPTON: Sorry, I am not understanding your question, Chair.

The CHAIR: To ensure that councils advise owners of those properties that are deemed to be at risk.

Do you have some sort of plan of what you are going to do to ensure that the councils are making contact with those property owners?

Ms GABRIELLE UPTON: I will ask Anthony Lean to comment on that.

Mr LEAN: The role of the Minister or myself under delegation is to certify CZMPs before they are formally gazetted by the council. One of the things that we specifically look at when we do that is the adequacy

of consultation that has occurred with the community. Off the top of my head, I think there is a requirement that

the draft CZMP has to be released for a period of 21 days before it is submitted to the Minister.

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PORTFOLIO COMMITTEE NO. 6 - PLANNING AND ENVIRONMENT

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The CHAIR: But with all due respect, Mr Lean, you do not want people having a sudden surprise that their property is caught up in this. Whether they are building on it, selling something or whatever they are doing,

the last thing they want to find out is that actually they have been affected by this coastal zone management plan.

That is all I am saying. Have you got a checklist of what you are doing to make sure councils are ticking the box saying that they have been informing the people who are affected by these particular outcomes?

Mr LEAN: As I said, we put guidelines out to council that specified what they need to do to make a CZMP that will get certified at the end of the process and one of the core requirements is that they have a program

of community consultation in developing that plan.

The CHAIR: Yes, but that is different—anyone who has been in local government knows that community consultation and making property owners aware that their property has suddenly become affected by

either a planning zoning or some sort of impact from local government. They should be made aware.

Mr DAVID SHOEBRIDGE: Or climate change or the world.

The Hon. PAUL GREEN: That is right. That is a classic example where we did the SEPP 70, I think it was.

Mr DAVID SHOEBRIDGE: They need to know.

The CHAIR: Property owners should be informed and I am hoping you have got a box that you tick to ensure that council met that obligation with those affected landowners. Minister, can you comment in regard to

submissions that are received from community groups, for example, commenting on coastal zone management

plans? Will responses be provided to community groups following their submissions, especially where technical

experts have provided their expertise?

Ms GABRIELLE UPTON: I will ask Anthony Lean to respond to that.

Mr LEAN: My understanding is that many councils do in fact respond directly to submissions that have been received. Certainly one that I have been dealing with quite recently, it was quite clear that the council did

go back to the stakeholders and respond to their submissions. What they are also required to do before they come to

us for certification is to prepare a summary of all of the issues that are raised and explain in that document how

those concerns raised in the submissions have actually been responded to. So I am confident that it is covered by

the guidelines that were issued.

The CHAIR: Minister, I understand that the role of the Office of Environment and Heritage is to ensure that due process is followed when it comes to establishing policy and guidelines for the management of New South Wales coastlines. What is the role of OEH in regard to investigating the science and technical assessments

when making decisions on coastal management? Who is responsible within the department for making evidencebased decisions?

Ms GABRIELLE UPTON: A Minister makes decisions based on evidence. The department head makes decisions based on evidence to frame the right policy framework. I really do not understand your question.

The CHAIR: We just talked about threatened species and you said you are not the expert.

Ms GABRIELLE UPTON: That is right, but I am given advice by experts and I make policy decisions.

The CHAIR: With all due respect, you are not the expert; that is right. So I am asking what is the role of OEH in regard to investigating the science and technical assessments? I understand that you are not the expert

but I am asking who is in your department, and who within the department is responsible for making evidence-based decisions on coastal management?

Ms GABRIELLE UPTON: I will ask Anthony Lean to comment on that.

Mr LEAN: The responsibility for developing coastal zone management plans and also coastal management plans under the new legislation is the responsibility of local councils.

The CHAIR: Let me just clarify that, if I could; I do not mean to be rude and interrupt but it is just a clarification. You are saying that the science and technical experts are not in OEH; they are actually in the local councils environment sections?

Mr LEAN: No. The point that I was making was that it is the responsibility of councils to prepare these plans. In doing that, OEH can play an advisory role and we frequently do that in a number of areas of the State.

The CHAIR: So do you co-opt expertise from outside the department?

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Mr LEAN: Councils will often do that themselves. They will get their own technical engineering expert reports to inform the development of the coastal plan.

The CHAIR: But does the department do that too, if need be?

Mr LEAN: If we need to get that advice, but because the plans are developed by councils it is more likely that it is them that would obtain that advice themselves. Now if there is an issue that we think we may need

to get advice on, we would do that. The other thing is the Coastal Council—

Ms GABRIELLE UPTON: Yes, I was going to say that if you look at the membership of our Coastal Council, headed by Bruce Thom, there are experts sitting on that council who then of course rely on other expertise. But they are acquitted for their credential to sit on that council, which is the body that is advising OEH

and myself as to whether we should acquit CZMPs and CMPs.

The CHAIR: Minister, what role do you think community-based expertise has in this process?

Ms GABRIELLE UPTON: As Minister, I always welcome feedback from people across the State about what they think we should do in response to why the policy settings were set up, announcements we have

made, frameworks, laws or regulation, and our process around CZMPs and coastal management is one that takes

account of their feedback. Did you want to talk, Mr Lean?

The CHAIR: No, that is okay. I will keep moving, if that is okay. Do you think that the evidence and expertise of qualified experts from local communities should be fully considered by the department and those within the department that are making scientific and technical decisions on behalf our State?

Ms GABRIELLE UPTON: When a government makes decisions about policy settings and law you want all stakeholders' views to be known, so those views are made known through to the department, from local

councils, when they have a chance to work out their coastal management plans or the coastal zone management

plans and that forms part of all of the information that comes together to be able to form policy decisions.

The CHAIR: Thank you. I will finish with this. Minister, are you aware of the concerns raised by Collingwood Beach Preservation Group? I am concerned that whatever decisions are made in regard to this particular issue will have ongoing implications for every other beach, particularly in the Shoalhaven. My understanding is that the OEH has classified the Collingwood Beach Preservation Group as an unreasonable complainant based on eight pieces of correspondence relating to the current Collingwood Beach Dune Vegetation

Management Plan submitted over a period of 12 months. I note that my time is over. I will pause and come back

to that question.

Mr DAVID SHOEBRIDGE: And there is huge support for the great work that the mayor is doing there to protect that beach.

The CHAIR: I do thank the Minister. She did come down, go onsite and gave all her time to actually understand the issues. So I do acknowledge the Minister's presentation on that. We will go now to the Opposition.

The CHAIR: I refer again to my understanding of the Office of Environment and Heritage classifying the Collingwood Beach Preservation Group as an unreasonable complainant based on eight pieces of correspondence related to the Collingwood Beach Dune Vegetation Management Plan submitted over 12 months.

Is that true? Has anyone in the office done such a thing?

Ms GABRIELLE UPTON: I have met with representatives of that group on site—

The CHAIR: Yes, you have, and it is much appreciated.

Ms GABRIELLE UPTON: —and they took me through some of the issues. However, I will ask Mr Lean to address your specific concern.

Mr LEAN: I can confirm that a letter was sent to the Collingwood Beach Preservation Group. However, when I was made aware of the matter it became clear to me that the issue they had most recently written about did

not relate to the historical issue that they had written about in the past. It was a new issue relating to the Shoalhaven

CZMP. I have apologised to the president or chair of that organisation.

We are currently considering the Shoalhaven CZMP and looking to establish whether it has met the requirements to be certified under the Act. That includes looking at the consultation that was undertaken, which

was one of the key issues raised by the preservation group. We have also looked at some of the other issues the

group has raised, including the legal authority for the plan to be certified. We are satisfied it is possible under the

transitional provisions of the legislation. As I said, I have apologised to the gentleman.

The CHAIR: That is fine and it is good that you acknowledge that. It appears that some of the correspondence simply related to inquiries about why OEH personnel had not responded to correspondence from

the Collingwood Beach Preservation Group. The chief executive officer personally directed the group to contact

certain people in the office. Does the OEH have a policy of shutting out community groups simply because they do not accept what the office is telling them? We talked about experts earlier, and I appreciate them and all they

have to offer. However, my experience coming off the land is that there is a lived experience. The people living on the foreshore have been there for 30 years or 40 years and they have an understanding of it because they built

it, and they "get" that area.

Mr DAVID SHOEBRIDGE: Some of them keep chopping down and poisoning the trees.

The CHAIR: Some people do, and it is not right. We are not trying to justify vandalism—in fact, it is criminal. These people have lived there for 40 years. Does the OEH have a policy of shutting down communication

if people do not accept what it determines in terms of scientific and technical findings?

Ms GABRIELLE UPTON: I would like to make a general statement.

The CHAIR: With all due respect, Minister, I should have directed my comments through you.

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Ms GABRIELLE UPTON: I would be most concerned if an agency under my oversight took that approach. We should welcome all views, as long as they are not abusive or harassing or breach any other law or

expectation of behaviour. I would want to hear all of those views, even if they were voiced numerous times, which

they often are.

The CHAIR: The chief executive officer has confirmed in correspondence with the Collingwood Beach Preservation Group that technical advice is being provided by OEH personnel to Shoalhaven City Council in the case of the Dune Vegetation Management Plan for Collingwood Beach. The acting team leader has stated that the

proposed dune clearing works at Collingwood Beach are likely to set a precedent for similar works to be

undertaken at other localities in the local government area and that this could create unsustainable expectations

for council. Why has the OEH advised the council that vegetation on dunes should not be removed in case it sets

a precedent for other locations?

Mr LEAN: I cannot recall the specifics of that particular issue. I know that we were having a debate with the preservation group about the appropriate plants or trees to be planted as part of the dune management

program. I think we had a different view from the preservation group's about what was appropriate and was not.

Our view was that it was appropriate to use, I think, banksias in that circumstance. I would imagine, based on what you have said, we would have been concerned that it would create a precedent if that sort of vegetation were

removed. As I understand it, it is used frequently and is valuable in preserving dune integrity.

The CHAIR: I think they planted most of that beach 40 years ago to save its integrity. Surely the OEH focus should be on maximised dune resilience for each specific location while ensuring that vegetation on the dunes complies with the New South Wales Coastal Dune Management Manual. Do you agree?

Mr LEAN: I do agree, and we believe that that complies with the manual. I think that is the fundamental issue and we simply have a difference of opinion that we have not been able to reconcile.

3. Beach Erosion – Risk assessment on discharge of Storm water.

The CBPG as key stakeholders are working with Council on a risk assessment of the stormwater discharge into the dunes of Collingwood Beach.

4. Slow Down LBD - Safety Signage.

The CBPG/VRRA will work with the Council's Road Safety Officer who has expressed interest in working with interested communities in continuing the Little Blue Dinosaur campaign and identifying any safety issues arising from incidents, near misses or injuries etc on the shared cycleway/pathway.

Any members or guests who are subject to near misses are encouraged to report such incidents to Kym Snow on 4429 3484 or to vrra.ccb@gmail.com in order to ensure the shared pathways/cycle ways provide a safe environment.

J Stuchbery Chairman

Collingwood Beach Preservation Group

MOTION:

**Collingwood Beach Preservation Group – Sub Committee Monthly Report
The CCB adopts the sub committee's report and that the Minutes including the report are distributed to All Councillors.**

The CBPG and Council continue to work together towards the risk and safety assessments on the consequences of erosion from storm water and the LBD signage and cycleway near misses. There be an allocation of \$150 by the VRRA to replace damaged or lost "slow down" or "hold my hand" signage.