

Gosford Beaches Coastal Zone Management Plan (Terrigal Wamberal) Implementation Review

(Report DOC20/333100 Extract: Key Findings and Recommendations)

Key findings:

The following key findings address each of the six questions on which advice is sought by the Minister in regard to Terrigal-Wamberal (TW).

1. Is the certified CZMP being implemented, if not why not?

The answer to this question is a qualified yes in that a considerable number of the identified actions for management of the public domain have been undertaken, or substantially initiated. The actions relating to the private asset vulnerability have been frustrated for a range of reasons but basically because there is currently no robust methodology for implementation that overcomes questions of land ownership, a private/public funding pathway, and an integrated whole-of-embayment approach that does not expose both the CCC and individual landowners to subsequent liability.

2. Are council on track to implement the certified Plan against the identified implementation schedule?

As indicated, CCC is continuing to undertake a range of actions in the certified Plan which they will transition to the new CMP (Stage 1 Scoping Study for the CMP is due to commence shortly); but the key issues associated with implementing a robust management plan for TW involving private landowners remains unresolved. . To progress the matter, it is understood Manly Hydraulics Laboratory (MHL) is shortly to undertake for CCC (with 50/50 funding support from the NSW Coastal and Estuaries Grants Program – Planning Stream) the investigation and design of the terminal protection (seawall) identified as preferred option in the CZMP.

3. How has the plan been incorporated into Council's planning and reporting framework?

The CZMP is in the CCC operational plan and annual capital works program, and as Attachment C demonstrates projects in the public domain are being actioned.

4. Are some categories of actions more easily implemented than others, and, if so, why?

Yes, major capital works as envisaged in the CZMP have historically been difficult to obtain approvals and to receive funding from governments and landowners. It is noteworthy that the terminal protection (seawall – with/or without beach nourishment) as included in the CZMP 2017 has been the preferred coastal management option since The Gosford City Open Coast Beaches Coastal Management Study and Plan was adopted by Gosford Council in 1995. There are competing interests for capital works funds and community acceptance to use funds at TW where private land interests are likely beneficiaries is yet to be secured. CCC has difficulties in determining its role in the delivery of a TW works program. This is believed to be a legacy of the lack of a robust, and legally sustainable methodology for implementing and funding of works that afford protection to private property.

5. Are council mindful of the fact the certified CZMP will cease to have effect on 31 December 2021 and further, are they on track to transition the agreed actions in the CZMP into a CMP under the new framework beyond 2021?

Yes, CCC is progressing with CMP development in other parts of the LGA. New staff in CCC

are mindful of the need to learn from other councils in working on a CMP for TW. Council will shortly commence Stage 1 Scoping study for the Open Coast and Coastal Lagoons CMP with the appointment of a selected consultant.

6. What issues might have impeded implementation of the certified CZMP?

CCC staff have indicated that the process of amalgamation post May 2016 has proved difficult as a result of:

- major internal restructuring and associated uncertainty as to responsibilities;
- a large turnover of senior staff;
- the person who developed the CZMP left soon after certification;
- other projects related to public asset management have taken priority over the difficult TW issue of addressing the effective implementation of integrated protective works for private property;
- occurrence of litigation in 2017-2018 on south end TW involving 6 owners and Coastal Panel, then CCC, constrained decisions on the CZMP actions;
- difficulties in communicating to community and CCC activities of State government supported Wamberal Terminal Protection Project Working Group (see Attachment E);
- changes to legislation Crown, Planning, Coastal, placing increased demands on reduced staff resources;
- demands on staff involved with TW CZMP from other disasters like bushfires;
- concern that actions should best proceed after TW CMP developed and advice received on terminal protection (seawall) from MHL;
- attempts by State officers to assist in implementing actions in the CZMP have at times been strongly resisted, some initiatives involving former OEHL in undertaking preliminary Cost Benefit Analysis have created confusion and perhaps distrust.

However, the major impediment identified by CC, and communicated to officers in DPIE who assisted the review, **is the lack of a, legally robust, and readily implementable methodology for undertaking works that provide protection to private assets.** The two key issues that such a methodology requires are: (1) a way to construct a competent, integrated protective structure that is part of a whole of embayment solution and is likely to be on land that is partially within private ownership and partially on Crown land; and (2) how to fund the initial construction costs and ongoing maintenance in such a way that the project governance is vested in one authority. This would enable the issue of the legal exposure of individual DAs to be overcome, and yet the beneficiary pays principle to be upheld. The best placed authority to do so, in the view of the CC, is clearly the CCC.

The current *Local Government Act* does provide a way forward but it has proven problematic in the past and so has not been utilised by any council. However, it is believed that some minor changes to the Act, along with the methodology for recovering expenditure on both construction and maintenance, from the beneficiaries, would provide a methodology for implementation of a whole of embayment solution that would cater for the currently vulnerable private property. Details on this method are contained in Attachment G which has been previously suggested to the Minister by the CC. There is also a need for Crown Lands to develop a workable, practical policy that enables the construction of protective works that may in part be on Crown Land (e.g. a leasehold arrangement, for example).

Recommendations:

- a. Changes to the *Local Government Act* as per CC recommendations previously submitted (Attachment G) to make “whole of embayment solution” possible. Failure to do so will

continue to frustrate progress of a legally robust whole of bay solution as envisaged by the CZMP or any future CMP.

- b. Crown Lands develop a policy that will enable protective works to be constructed on Crown lands in situations where alignment of the overall solution necessitates it.
- c. Ensure the current CCC brief to MHL goes beyond just a design solution for a terminal seawall (whole of embayment) but looks at overall implementation given issue of whatever structure considered a solution will involve public land and require protection of both property along length of TW and ensure that a public beach remains for the use of the broader community. Community consultation is required with a broad range of stakeholders including Planning who owns the Ruins, and Crown Lands. MHL study must include a distributional analysis of benefits and costs for construction, beach amenity and nourishment and overall scheme maintenance.
- d. The activities of the Wamberal Terminal Protection Project Working Group must be placed on CCC web site and all outcomes of future meetings must be communicated to the public; this group must unambiguously be a committee of CCC rather than its current “no man’s land” status.
- e. That the CMP that includes TW work embrace the work of MHL and not result in conflicting proposals and does not compromise the CCC actions underway with the CZMP.