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09/10/2021

DR Christina Kirsch
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 [REDACTED]

RE: DA2021/1612 - 1 Clarke Street NARRABEEN NSW 2101

Ref: DA2021/1612

Mandatory conditions of development consent (if granted) for coastal protection work

Under the NSW Coastal Management Act 2016 there are clear requirements for the consenting authority (council or LEC) to ensure that the costs of beach remediation are covered by those responsible for the coastal protection work.

In this case the coastal protection work is funded to 10% by the local council, 10% by the state government and 80% by the property owners. Therefore the responsibility for beach remediation needs to be apportioned accordingly.

Granting of consent - which maybe in breach of the Coastal Management Act 2016 Clause 27 (1a) - needs to be conditional on binding legal agreements made by the local council (10%), state government (10%) and property owners (80% - as per 27 (3)) to cover in perpetuity the remediation work required to restore the beach (via beach nourishment). The costs can and should not be covered by the Northern Beaches ratepayers (via council) and the main owners of the seawall need to be responsible for beach remediation and the ongoing maintenance of the seawall.

Council has no right to socialise the costs of the damage created of works that have been erected to protect private properties and underwrite the risks that property investors willingly and knowingly took (property risks are listed on the Section 149 Certificate (now Section 10.7)).

The relevant clauses are:

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(1) Development consent must not be granted under the Environmental Planning and Assessment Act 1979 to development for the purpose of coastal protection works, unless the consent authority is satisfied that-

(b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works-

- (i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,
- (ii) the maintenance of the works.

(2) The arrangements referred to in subsection (1) (b) are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following-

(a) by legally binding obligations (including by way of financial assurance or bond) of all or any of the following-

- (i) the owner or owners from time to time of the land protected by the works

Council - that is the Northern Beaches ratepayers - should not have to cover costs incurred by private investors.

In order to ensure that adequate arrangements are made,

Section 80A (6) of the Environmental Planning and Assessment Act 1979 provides that a development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of making good any damage caused to any property of the consent authority as a consequence of the doing of anything to which the consent relates.

(b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the Local Government Act 1993).

(3) The funding obligations referred to in subsection (2) (a) are to include the percentage share of the total funding of each landowner, council or public authority concerned. (--> 10% council, 10% state and 80% property investors / owners)