

What have we learned, what have we achieved?

- 27 years of coastal hazard planning in Byron Shire

The information expressed within this presentation, does not necessarily represent the views of Byron Shire Council.



Traditional home of
the Bundjalung people



Summary

- Part J planning provisions since 1988
- Audit of planning provisions 2011 and 2015
- Mapping of erosion escarpment
- Assessment of case law
- Assessment of contemporary issues
- What have we learnt, what have we achieved?

'Part J' planning controls



- Byron Local Environment Plan 1988 – statutory component
- Byron Shire Development Control Plan July 1988 – design controls and guidelines
- Part J Coastal erosion lands

3 Planning Precincts

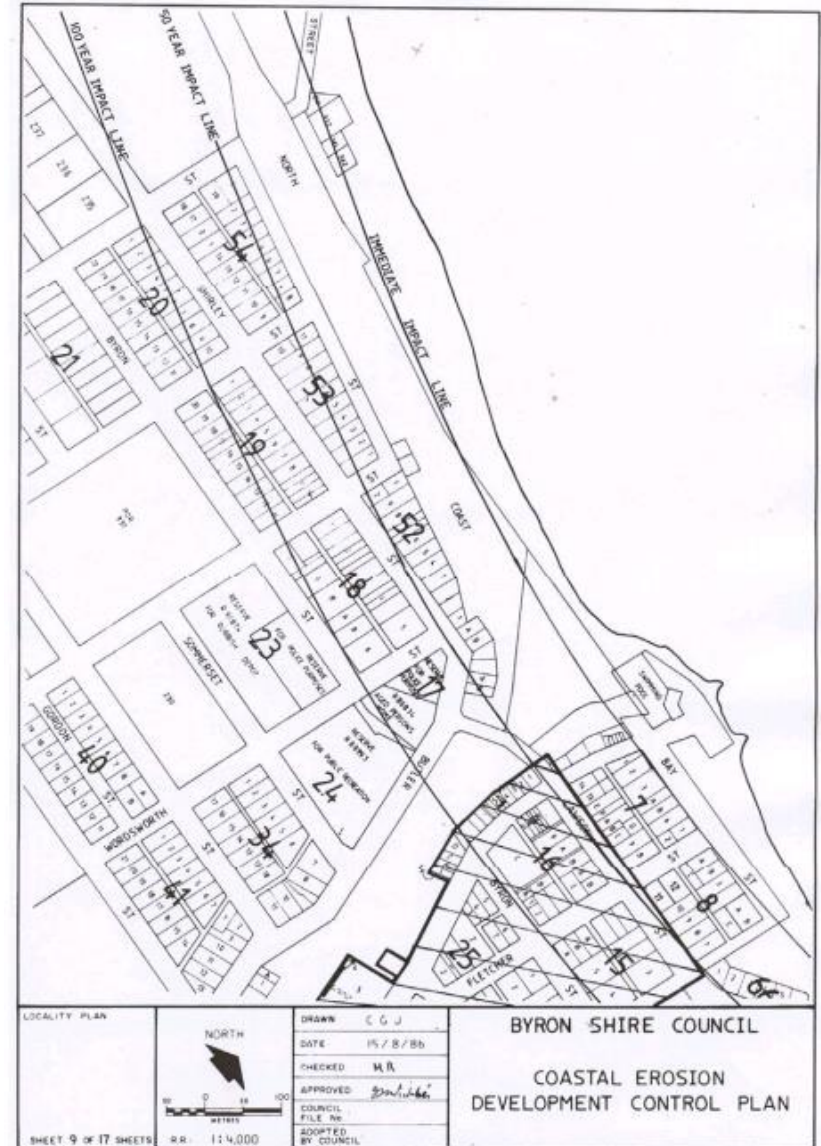
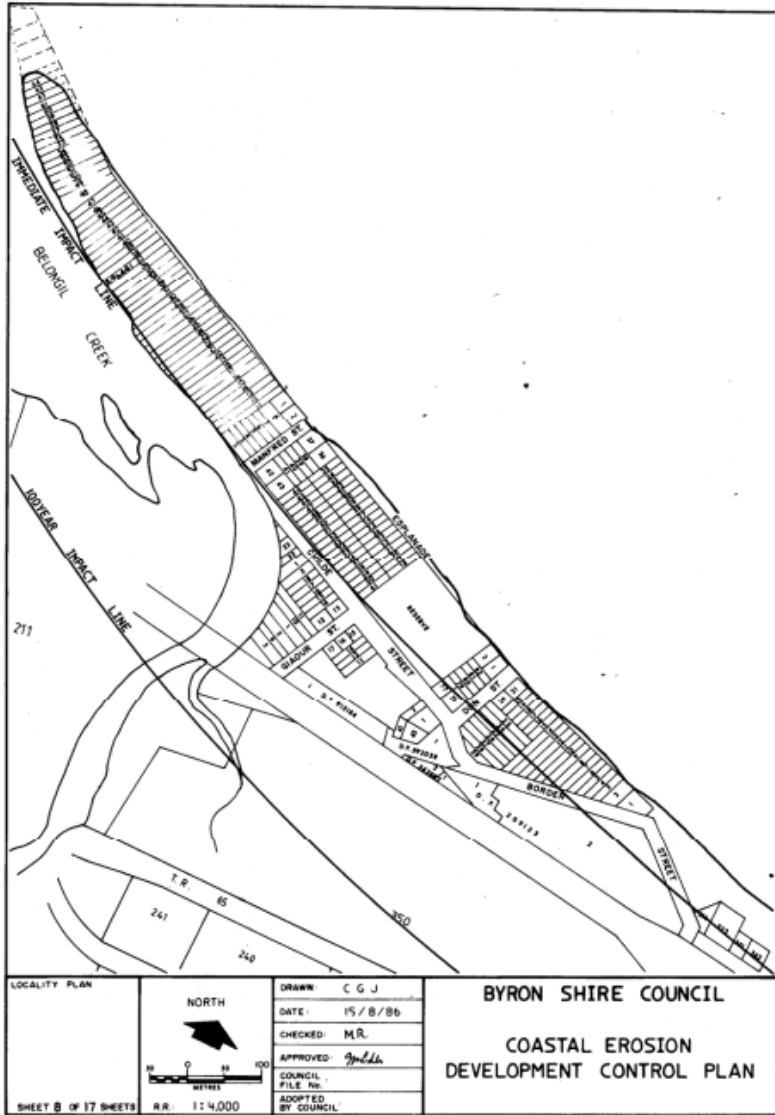


Table 1 Current Part J Coastal Hazard planning precinct provisions (DCP 2010)

DCP 2010 Part J planning precincts	DCP 2010 Part J planning precinct provisions
Planning precinct 1 From the beach escarpment to the immediate impact line Immediate coastal hazard	<ul style="list-style-type: none">▪ Trigger distance for relocation of development – 20 m from the erosion escarpment▪ No buildings to be located within 20 m of escarpment▪ Buildings to be entirely modular and relocatable▪ No more than 3 modules, relocated by 4WD▪ Alts / adds – not greater than 100m², if already > 100m², then not more than 10 % increase, one extension since 1989
Planning precinct 2 Between the Immediate Impact line and the 50 year erosion line 50-year coastal hazard	<ul style="list-style-type: none">▪ Trigger distance for relocation and/or demolition of development – 50 m from the erosion escarpment▪ All Class 1 buildings – (house residential) must be relocatable
Planning precinct 3 Between the 50 year and 100 year erosion lines 100-year coastal hazard	<ul style="list-style-type: none">▪ Trigger distance for relocation and/or demolition of development – 50 m from the erosion escarpment

Section 88E Instrument

- 20m trigger accommodates a significant storm bite

Documentary evidence is to be provided to the Principal Certifying Authority that a restriction-as-to-user, pursuant to the provisions of S.88E of the *Conveyancing Act, 1919*, has been placed on the title to the land, the subject of this consent, stating:-

The development granted via development consent number ~~XXXXXX~~ must cease if at any time the coastal erosion escarpment comes within 20 metres of the building subject of the consent. The development the subject of this consent must be demolished and removed immediately. Further the landowner must suitably revegetate the land.

In this restriction coastal erosion escarpment means the landward limit of erosion in the dune system caused by storm waves.

Audit 2011 and 2015

- Belongil beachfront property
- Erosion escarpment line mapped
- Distance to structures measured
- Application of Part J controls on development since 1988
- 2015 update – Belongil beachfront

Lots vs 'properties'

- Property
=
multiple
lots,
same
land
owner



Lots vs 'properties'



Belongil beachfront

- 31 beachfront ‘properties’
- 9 properties have ‘whole dwelling consent restrictions’
- 3 more properties have new DAs with ‘whole dwelling consent restrictions’ (not built yet)
- 7 more properties have ‘partial dwelling consent restrictions’
- 12 properties without restrictions, legitimacy of development unknown

Erosion escarpment line and 'triggered' development

- 5 triggered 'whole dwelling consents'
- 3 triggered 'partial dwelling consents'
- 17 properties with a dwelling within 20 m of escarpment line

May 2011 erosion escarpment line



Changes since 2011

- 3 new 'properties' in beachfront precinct
- 3 new beachfront properties have approved DAs for re-locatable, modular development, up to 6 modules
- 1 property has an approved additional module
- Development intensifying, but re-locatable
- Still have 12 properties without any restrictions, legitimacy of development is unknown
- Triggered development hasn't been relocated to Council's knowledge



Part J

Case

Law

Date	LEC No.	Matter	Decision
21/6/06	10734/05	BSC ats Van Haandel Appeal against refusal of application to replace a previously existing building in the same location.	Dismissed, Court upholds Council's refusal
15/6/04	10897/01	BSC ats Parkes Appeal against refusal of application for 'change of use' of house to 'bed and breakfast'.	Dismissed, Court upheld Council's refusal. House already at a distance from the escarpment that is '...unacceptable...it is not acceptable for a new development, albeit a change of use, to be approved with such constraints.'
2/3/04	40059/02	BSC ats Kendall Street Developments Appeal seeking declaration that property has 'existing use rights', being of a commercial nature.	Appeal refused by the Court. The realisation of the section 88E Restriction on Use rendered the commercial development unlawful and it had no 'existing use rights'.
30/8/89	10472/88	BSC ats Vella Challenge to validity of a condition of consent requiring the coastal erosion s88E Restriction on Use	Court upheld the s88E Restriction on Use as valid.

Case Law lessons – Van Haandel

- Erosion escarpment –historical, landward limit of erosion (1970/80s), not the current position of the seawall
...landward limit of erosion in the dune system caused by storm waves...
- Accidentally demolished dwelling – the rebuild was a ‘new dwelling’, therefore 20m trigger could be applied

Van Haandel cont'd

The principal of planned retreat was upheld:

...there can be no doubt that the Belongil Spit is highly susceptible to coastal erosion and the council has adopted the legitimate principal of planned retreat to address this coastline hazard...Clearly, the site calls for a cautious approach to any form of development” [at para 23].



Case law lessons

- Parkes - The use of DCP provisions to give effect to the LEP was upheld...

In construing the condition in a practical way...it is clear that it is intended to give effect to these provisions of the Byron Local Environment Plan 1988 and to the practical consideration that when a development site is threatened with coastal erosion then the use should cease.”

- Vella - because of significance of threat, it is right to warn purchasers using the S88E instrument
- General – cases have decreased over time, last case 2006



Contemporary Issues

- The Part J planning precincts are based on Gordon *et al.*, 1978, Public Works Department, **predictive model**.
- The most recent hazard study (BMT WBM, 2013) concluded that previous hazard assessments were:
... influenced by both the substantial storm erosion loss between 1947 and 1973 and medium term variability involving a shoreline recession phase up to about 1980.
- Contemporary lines are seaward of planning precincts.

Overlay BMT WBM S2 hazard lines with Part J Planning Precincts (blue)



Legend

- Land Parcels (-150k)
- BB2 Erosion Haz - Immediate
- BB2 2050 Erosion Haz - Min
- BB2 2050 Eros - Best Estimate
- BB2 2050 Erosion Haz - Max
- BB2 2100 Erosion Haz - Min
- BB2 2100 Eros - Best Estimate
- BB2 2100 Erosion Haz - Max
- Erosion Precinct 1
- Erosion Precinct 2
- Erosion Precinct 3
- AP Shire Sep 2009



Disclaimer: While all reasonable care has been taken to ensure the information contained on this map is up to date and accurate, no warranty is given that the information contained on this map is free from error or omission. Any reliance placed on such information shall be at the sole risk of the user. Please verify the accuracy of the information prior to using it.
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Scale = 1:21,689
Metres 500 1,000 1,500
(Scale correct at A4 size)

12/11/2014

Contemporary issues - planning reforms?

- Standard instrument LEP, fewer zones, no 'coastal hazard' zone.
- Role of DCPs
- Planning reforms... streamlining local plans and controls with less reliance on DCPs?



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What have we learnt, what have we achieved?

- Court cases have upheld the legitimacy of 'planned retreat' as a strategy.
- The Court has defined the 'erosion escarpment' as the most landward limit of erosion in the dune system.
- Developers have taken Council to Court, but Council has been successful in defending its decisions.

What have we learnt, what have we achieved?

- Developers have worked within the provisions and designed buildings that can be relocated.
- To our knowledge, triggered development has not been relocated voluntarily.
- Provisions can only be placed on re-development and this means that progress has been slow, with 12 properties without any restrictions, and 7 with only partial restrictions (of 31), yet many of these properties have dwellings within 20 m of the erosion escarpment.

Conclusion:

We need to avoid creating legacy issues



Photo by: Daryl Jones – September 2015



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