

Submission by Clarence Valley Council to the *Barriers to Effective Climate Change Adaptation Draft Report* by the Productivity Commission

The Clarence Valley Council is geographically one of the largest Councils on the eastern Australian seaboard located in northern NSW with a population approaching 53,000 people. Council has the Clarence River, the largest easterly flowing river in NSW, over 70 kilometres of coastline and one third of the Council area is either national parks or state forest. This means that Council is exposed to three major risks as a result of climate change; increased flooding due to more extreme weather events; greater levels of coastal erosion and inundation due to storm events and sea level rise; and greater frequency of bushfires due to increased temperatures and greater climate variability.

Council has adopted a number of strategic documents on climate change including a Climate Change Policy (which can be found on Council's website); and has considerable experience in using guidelines developed as part of the NSW Government coastal zone planning regime and the risk assessment approach under the Flood Prone Land Policy. Council has a community-based Climate Change Committee and is undertaking a risk assessment process with its insurance providers.

Council also has a very good relationship with local emergency response organisations especially the Police, SES and RFS. It also has developed a good recovery process helped by key agencies including Centrelink, and at State level, Departments of Community Services and Primary Industries in particular; aided by the many splendid volunteers, especially Red Cross. Recovery Centres established after the two recent large floods in 2009 and 2011 have provided excellent support to flood victims.

Flooding Risk

Clarence Valley Council, a 2004 amalgamation of four former general purpose and two county councils, has a long history of managing flood risk. Flooding patterns combined with the early use of the river for transport explain much of the geographic settlement of the Clarence Valley. Due to the many floods the Clarence Valley Council, aided by NSW State and Commonwealth Governments, has developed a comprehensive response to flood risk. Many of the responses are due to the history of the Clarence as a series of river ports. The City of Grafton and the three smaller towns of Maclean, Yamba and Iluka were all located and developed in flood prone areas as were smaller villages adjacent to the river. Grafton, Ulmarra and Maclean have flood protection levees.

The Clarence Valley Flood Strategy is multifaceted and has involved a long history of strategic flood risk planning, flood levee construction, house purchases and house raising in high risk areas, guided by the NSW Floodplain Manual. These activities, in combination, have meant that the Clarence Valley has been able to withstand three major floods in recent years compared for example to recent flooding in South East Queensland. There is no doubt that this multifaceted strategic approach has reduced flood risk in the Clarence Valley, and dramatically reduced household and business insurance claims. Road infrastructure damage constitutes the principal areas of Clarence Valley claims under National Natural Disaster relief provisions. It is Council's view that funding support to 'flood proof' roads, in addition to flood damage repairs, would reduce future flood damage claims and liabilities.

Clarence Valley Council makes a number of observations in relation to the Draft Report and these are highlighted.

Observation 1 - The Productivity Commission should explore the option of funding to not only flood damage repair costs, but should encourage and support Councils to 'flood proof' as much as feasible against future damage implementing the concept of 'betterment'.

Council is currently modelling the effects of climate change on flooding regularity and intensity to adapt strategic planning to better address flooding impacts. Council, with a population growth of around one per cent per annum, has also taken a precautionary approach to approving new developments to better accommodate flooding and climate change impacts. For example, a new 1,100 lot subdivision at Yamba requires filling of up to one metre to address traditional flooding and predicted additional climate change impacts.

Coastal Erosion and Inundation Risk

Clarence Valley Council has responsibility for 70 kilometres of coastline and two of the NSW State classified 'hotspots' under the Coastal Protection Act 1979, namely Woolli and Brooms Head. Furthermore, Council has a very large estuarine system in the Lower Clarence floodplain which extends from the river mouth at Yamba to over 90 kilometres up the estuary and inland well past the City of Grafton.

Although Council conducts its strategic planning under the NSW State Government Coastal Protection legislative framework, affording Council some legal protection if it acts in good faith, Council as the frontline decision-maker, argues that it is substantially exposed to the ongoing risk of coastal erosion and also to a relatively unknown, although modelled effect of sea-level rise and greater storm surge. As has been the experience of Byron Shire Council, although the Coastal Protection Act provides some legislative protection to Councils, the Act does not guarantee that this protection will be supported by the Courts. Furthermore, the NSW Government has left Councils to undertake the legal challenges without funding support and these costs can run into millions of dollars.

The move by the State Government (and also implied in the Draft Report by the Commission) to transfer risk to landholders might seem appropriate to policy makers removed from the coastal frontline. However, with the exception of some cities such as the Gold Coast, the cost to landholders to undertake the required environmental studies, and implement protective works, is unrealistic and excessive for many, especially those residing in smaller coastal towns and villages.

If the Commission was agreeable, Clarence Valley Council in association with the Woolli Coastal Protection Alliance could talk to the Commission about the major coastal erosion problem at Woolli, where over 40 houses are at immediate risk of coastal erosion and hundreds within the next 50 years. Preliminary costs for major protection works here are in excess of \$30 million.

Observation 2 - Council agrees with the Commission that Local Government is ill-equipped with the resources - financial, staff, and legal to address these complex problems. Furthermore, NSW State legislation is constantly changing as is the science, making it for Councils to develop coherent, effective policy, in an increasingly sceptical community.

Observation 3 - At present, there is no apparent genuine commitment by State and Commonwealth Governments to financially assist Councils with the high resource level task of adaptation to climate change impacts. Fortunately, in the flood prone localities of the Clarence Valley there has been a well coordinated and funded adaptation package over time where Councils have shared adaptation costs with the higher tiers of government. Unfortunately however, in recent years Commonwealth funding support in this regard has reduced.

Inevitably, resources for adaptation to climate change will need to be substantially increased. The recent flood emergencies across eastern Australia highlight that the cost of not being prepared and we are all paying such cost through the special flood levy.

Bushfire Risk

Council has 6 towns and villages which adjoin national parks and are vulnerable to bushfire damage. In cooperation with the Rural Fire Service (RFS) Council has developed emergency plans for all these localities which rely on a combination of asset protection zones and personal safety bushfire plans.

Similarly, Council in terms of its statutory planning responsibilities is conscious of the impacts of bushfire risk and of the dangers of allowing new dwelling construction in high fire risk areas, especially in the rural and rural residential zones. With advice from the RFS, Council takes a proactive in ensuring that new dwelling houses are not put at risk. This causes some community tension especially in rural areas.

Observation 4 - The impact of climate change on increased bushfire risk in the Clarence Valley is in scientific terms, probably for Council the least understood risk. Given that Council has responsibility for large rural areas surrounded by national parks and state forests, a two degree temperature increase, as now predicted, could have far reaching effects in the Clarence Valley.

Clarence Valley Council Specific Responses to the Draft Productivity Commission Report Recommendations

Draft Recommendation 4.1

A logical response would be to prioritise low up-front cost for more substantial benefits. This would not be applicable however, for a Council faced with immediate high cost risks, accentuated by climate change, for example coastal erosion 'hotspots'. Already it can be argued that many NSW coastal 'hotspots' are 'over studied' and provide some rationale to defer expensive solutions. Furthermore, some studies disguise inadequate policy development and funding at the State and Federal levels. It is inevitable that some of the high cost coastal protection works will need to be funded, to prevent irreparable damage to homes and critical public infrastructure.

Draft Recommendation 6.1

Council agrees this is a vital role for the Commonwealth Government and should be expanded to a level of detail so that the flood risk information can be readily used at a local level and supports Local Government decision making and assists in addressing and mitigating legal risks.

Draft Recommendation 7.1, 7.2 and 12.3

Council concurs that there is considerable uncertainty especially about legal risk to Local Government, including under the NSW system, where both flood and coastal legislation provides some protection if plans are prepared in accordance with Guidelines.

Climate change adaptation, especially for existing settlements, is presently ill-defined under planning legislation and coastal policy.

Draft Recommendation 8.1

Council already adopts a climate change risk management approach to incorporating these risks into planning decisions. A relevant case study of Council's approach was the West Yamba development which involved considerable community input over an extended period and examined cost and benefits of developing in an 'at risk' area in regard to future climate change impacts. In this instance Council adopted a precautionary approach requiring land filling to manage inundation risk.

Council agrees that review of the building codes would be useful, but cautions that a cost benefit approach needs to be adopted, given that coastal property prices are arguably becoming unaffordable.

Draft Recommendation Emergency Management 10.1

Council argues that the Natural Disaster Relief funds do not flood proof for example, roads, levees, and boat ramps against future floods, with present emphasis being excessively on repairs and maintain the status quo in terms of asset condition. The result is often that the same or similar repairs are again required after subsequent floods. However, Councils do rely on this funding to make roads trafficable and to repair flood protection infrastructure after major events. Without this funding, many Councils could not independently resource repairs.

Draft Recommendation 13.1

While Council supports the role of the Commonwealth to formulate national policy responses, this recommendation ignores the fact that ultimately only the Commonwealth has the revenue raising capacity to finance implementation of key adaptive works. Already, in natural disaster relief, the Commonwealth directly funds works. In future such funding should be extended to assist Local Government adapt to the impacts of climate change, given that such costs will be potentially very large.

Council responses to specific information requests

A. Hazard Risk Information

Council has some evidence that the property market in the past has ignored risks listed on property titles especially along the coastal fringe.

Since 1996, Council has notified residents at Woolli, for example, on property sale Section 149 Certificates if the property in focus is located in a high risk area due to present or potential coastal erosion. Far from discouraging property purchases, prior to the Global Financial Crisis prices dramatically escalated for the most at-risk properties, from around \$500,000 to over \$1 million. Byron Shire Council experienced a similar response in their coastal 'hotspot' at Belongil Spit, where some allotments sold for over \$7 million. Naturally, real estate agents prefer to not highlight the potential risk to property.

Similarly a detailed Clarence Valley Council study relating to landslip on Yamba Hill ascertained that there was no correlation between houses at risk and those that were not so listed. The market was the dominate force and dictated prices with little if any differentiation between the two categories.

Even though the property market and intending purchasers may choose to ignore the risk as indicated on the Council's Section 149 Certificate and/or through the Conveyancing Act provisions, it is important Council continues to include these provisions to reduce Council's future legal risk. Risk listings are backed by Coastal Zone Management Plans which are endorsed by the NSW Government.

B. Local Government Legal Liability

Importance of protection from liability for Councils for 'in good faith actions in NSW'.

Section 733 of the Local Government Act exempts Councils from liability for a range of actions or advice in relation to coastal hazards, flooding or bushfires. However, this exemption only applies if the Council is acting in good faith and substantially in accordance with the principles contained in the relevant manual.

Furthermore, this exemption does not preclude legal action being taken against Councils in the event that loss or damage results from any of these three hazards. Even if Council is successful in defending such claims, utilising the s733 defence, such proceedings are costly both in financial and staff resources.

In order to ensure that Councils are adequately protected against claims arising from natural hazards, State and Federal Governments should:

- (a) jointly and/or severally take responsibility themselves for determining the communities' response to the hazards arising from climate,
- (b) determine and take responsibility for the strategies to manage these hazards,
- (c) determine the role that Councils should have in these strategies, and
- (d) provide an adequate level of funding to Councils to carry out that role (some of which may require a co-contribution from the council), and
- (e) legislate to exempt Councils from liability both in carrying out that role and from any loss or damage that may result from natural causes, such as sea level rise, increased temperatures, coastal or riverbank erosion, increased or more widespread flooding.

Responsibility for managing the hazards that are, and will in the future, arise from climate change should not rest with Councils. The communities' response to these hazards should be determined by the State and Federal Governments on a state and nation-wide basis. This will ensure a consistent and equitable approach throughout the country. Councils would then have a role in implementing the strategies so determined, but in doing so should be both adequately funded and legally protected.

C. Planning and Building Regulation

Clarence Valley Council is using 'triggers' as part of its planned retreat policy in the coastal erosion 'hotspot' at Wooli. Any development application approved since 1996 included a requirement (in the 1 in 50 year line) which is triggered when a dwelling becomes too close to the erosion escarpment. There is a condition on these dwellings that they be constructed to allow them to retreat and, if necessary, relocated. In one situation at Wooli village there is a dwelling constructed on railway line. Council's imposed conditions at Wooli are supported by the Coastal Zone Management Plan and conditions are validated under the Environmental Planning and Assessment Act.

Council argues that these types of responses, specifically developed and applied at the Development Application stage, and supported by an appropriate planning and community consultation framework, are of value and are supportable under existing NSW legislation.

The more problematic issue for Clarence Valley Council and Local Government is the existing development which does not have time or event triggered controls.

In NSW, settlements at risk referred to as 'hotspots', have been identified by the NSW Government with Councils issued directives to develop coastal zone management plans (CZMP) in these at risk localities and within specific timeframes. The NSW Government funds half cost of these plans. The difficult issue concerns what should be the appropriate response as sea levels rise and the number of communities at risk increases.

A further problem is that, while it is appropriate to develop a well and good to develop a CZMP plan, most adaptive options are too expensive for either private landholders or the public purse to fund, especially along the coastal fringe. Therefore in this respect, clearly the identification of a coastal 'hotspot' and the State Government direction to develop a plan without a clear funded solution or solutions will lead to conflict within at risk communities. Furthermore, the community finds itself tagged and discriminated with few, if any, viable or affordable options and potentially with their real estate of lesser worth.

While Council has used buy ups and house-raising aided initially by 2:2:1 funding from Commonwealth, NSW and Council for flooding; on the coastal strip, dwellings are too expensive to buy-back and there is very limited State and no Commonwealth funding for this purpose. For example, at Wooli alone, in a relatively small village, to purchase the front row of 40 houses at major risk of coastal erosion would cost in excess of \$50 million.

Protective works combined with sand nourishment, which would require extensive environmental assessment and special approval, given the location in a Marine Park, would conservatively cost over \$30 million and more than \$250,000 per annum to maintain. Furthermore, in the longer term, the community would lose public beach amenity as occurs when a rock wall replaces a sand dune, the beach cannot renourish from the dune and sand to renourish from the near shore is soon lost.

On the question of when Government should use protect, accommodate or retreat options, the village of Wooli is a good case study, as is the Belongil spit at Byron Bay. The communities in these villages would consider that they have as much right to dwelling protection as their large city counterparts. The politics of houses falling into the ocean is exceptionally difficult and it would be most difficult for a Government to not opt for an intervention strategy.

Taking a cost benefit analysis perspective, it is obvious that Governments already favour the larger population centres in the cities, which would explain the NSW and QLD Governments' expenditure initially of over \$30 million and subsequently up to \$5 million per annum, to move sand past the Tweed break water to the Gold Coast beaches.

In respect of according priority private or public assets, obviously public assets need to take priority, given the fact that roads are essential as part of emergency management escape routes and water and sewerage services are obviously fundamental services to communities.

Clarence Valley Council appreciates the opportunity to contribute to consideration of the *Draft Report on Barriers to Climate Change Adaptation*