

Environmental Defender's Office Of Northern Queensland Inc.

ABN: 32 017 484 326



9th January 2006

Hon Ms Desley Boyle

Minister for Environment, Local Government, Planning and Women
PO Box 31
BRISBANE ALBERT STREET
QLD 4002

Dear Minister,

Risk of Cyclone/Storm Surge and Coastal Development: Mackay Conservation Group Inc. v Mackay City Council and East Point Mackay Limited

As you may be aware, the EDO-NQ recently acted for the Mackay Conservation Group in their appeal against a development at East Point Mackay. One of the issues highlighted by that case was that there is inadequate provision in the development of planning schemes for cyclone and storm surge issues. This decision has demonstrated the urgent need for reform in these areas.

State Coastal Management Plan

The State Coastal Management Plan ("the State Plan") at Section 2.2.4 deals specifically with storm tides, cyclone effects and related inundation. These are recognised as coastal hazards, which are not rare events in Queensland. The State Plan's policy regarding coastal hazards seeks to achieve principles including that the associated risks of these hazards are minimised. The policy sets out, as a means of achieving this, that development in areas on the coast identified as having a risk of being affected by coastal hazards needs to be carefully considered and wherever possible, retained undeveloped.

In accordance with section 50 (1) of the *Coastal Protection and Management Act 1995 (Qld)*, the State Plan must be incorporated into the assessment process for development applications under the *Integrated Planning Act 1997 (Qld)*. The State Plan's clear principles for minimising the associated risks of these coastal hazards should be reflected in coastal land use and planning decisions. The approval of the above development at East Point, and the affirmation of this approval by the Planning and Environment Court demonstrates that this is not occurring. This is because the State Plan is not binding on local councils. Expert evidence adduced during the court hearing additionally demonstrates the serious threat that is posed by development occurring on the coast where the risks associated with these hazards are not adequately taken into account.

The site of the development is a low-lying sand spit. Mackay City Council's internal planning report recognized that "there are significant concerns raised by a number of state government agencies over the potential risk to human life and infrastructure as a result of approving the proposed development at East Point because of storm surge". Despite this, the Council approved a material change of use to facilitate the integrated tourism and resort development, which will incorporate accommodation units, residential uses, multiple dwelling units, retail and commercial premises and several other uses over the 67.67 hectare site. The Council's report, in reference to these considerations concerning site safety, stated that "designing the whole site for ultimate events is impractical".

Dr Jon Nott (Professor in Geomorphology and Natural Hazards, School of Tropical Environment Studies and Geography, JCU) provided expert evidence during the court appeal regarding the risk to the site posed by cyclone or storm surges, and the inadequacy of the safeguards required by local governments in these circumstances. Dr Nott's evidence was based on the findings of his recent critically acclaimed research into tropical cyclonic activity in northern Australia. Dr Nott has concluded that due to a reliance upon records of intense cyclone frequency assembled in the short period of European settlement, the frequency and intensity of major cyclones has been significantly under-estimated, with far north Queensland predicted to have experienced intense cyclones ten times more frequently than previously assumed.

The Court recognized the importance of Dr Nott's arguments, recognizing that "it may well be that some cautious people in the circumstances will prefer to keep away from East Point". However, the Court referred to the need to balance risk and economics, and stated that it is not the court's responsibility to set standards for land use planning. The Court therefore upheld the development approval.

The conditions placed on the approval in relation to the risk posed by cyclones and storm surge are that the developer must prepare a Community Evacuation Management Plan, including an onsite evacuation center, a non-erodible bund must be built on three sides, and development must be 100 metres from the shoreline. In light of the site's recognized vulnerability to the risks adduced by the Dr Nott's expert evidence, the approval of this significantly large development with minor conditions attached is far from complying with State Coastal Plan's requirement that such an area should, where possible, be retained undeveloped to minimise the risks posed by these hazards.

It is clear therefore that the State Plan does not go far enough in imposing effective and binding constraints on development to recognize storm tides, cyclone effects and related inundation as serious coastal hazards. The current provisions, as is shown by this case, do not have adequate enforcement mechanisms, as they are easily overridden where local government planning schemes allow development in areas affected by these hazards.

A major overhaul is required of the system by which land use and planning decisions are made for the Queensland coast to ensure this serious issue is adequately addressed.

We wish to highlight Dr Nott's recent comments based on his post-tsunami studies in India, and earlier, in Papua New Guinea. Dr Nott asserted that the devastation caused by these events could be reduced significantly if buildings were located just a few hundred metres back from the beach, with a strip of thick vegetation along the foreshore.

These issues need to be urgently addressed so that such conditions are reflected in all new coastal developments in Queensland.

The role of the State Government

This decision also highlighted the importance of the State Government's role in the sale of state land. The Court rejected the assertion by Mackay Conservation Group about weight being given to the State Plan in this case because the site was state land. The Court stated that, as the lessor of the land, the State Government was well placed to look after state interests and could be presumed to have done so to the extent considered appropriate.

If the State Government therefore chooses not to use its role as the seller to place conditions on development of the land to take into account these coastal hazard issues, it will be near impossible for members of the community to exercise their appeal rights to enforce such measures. We would therefore ask that the State Government look to ensure that where coastal development is to occur on state land affected by cyclones or storm surge, effective and enforceable conditions which adequately address the risk posed by these hazards are placed on development. In particular, we ask that the above recommendation that all coastal development should be significantly set back from the shoreline with a frontage of substantial vegetation, be considered.

If you have any further queries please do not hesitate me on 4031 4766.

Yours faithfully

Kirsty Ruddock
Solicitor/Coordinator

