Climate change and coastal hazard planning

An important facet of the Western Australian Planning Commission’s (WAPC) recently updated State Planning Policy 2.6 – State Coastal Planning Policy (SPP 2.6) is the concept of “coastal hazard risk management and adaptation planning”. The updated SPP 2.6 represents a significant step toward providing certainty to regulators and developers alike in relation to developments on the coast.

There is a serious question, however, about whether the planning exercise will take place at all or whether it will be well enough resourced to be meaningful – because unfortunately, SPP 2.6 is ambiguous as to who is ultimately obliged to conduct coastal planning studies.

To ensure that the process is effective, it has been argued that it would be most appropriate if a government authority undertook coastal hazard risk management and adaptation planning, be it on a local government level or by a State agency, on as large a scale as possible to ensure holistic and rigorous analysis. To rely on proponents of individual developments to undertake this planning would likely compromise a coordinated approach of what is an important issue – particularly in light of the expanse of urban development edging towards and along the coastal fringe of metropolitan Perth.

As WA progresses its efforts in the sphere of coastal planning, it is well worth noting the recent developments in NSW in respect of coastal hazard notations on section 149 planning certificates provided by local governments in respect of matters that affect a parcel of land and sought by prospective landowners as a matter of prudence.

The recent decision of the NSW Land and Environment Court (NSWLEC) in Newton & Anor v Great Lakes Council [2013] NSWLEC 1248, examined the reasonableness of two conditions of development approval which were based on the likelihood of sea level rise and the potential consequential risk of damage to buildings in the vicinity of a foreshore development on the central coast of NSW.

The development proposal in question received development consent subject to conditions that:

- prescribed a 20 year time limit on the approval; and
- required enhanced structural footings and foundations to support the building structure consistent with the anticipated sea level rise according to predictions for a 2033 sea level rise contained in climate change policy.

In this decision, Senior Commissioner Moore of the NSWLEC found that the condition prescribing a time limit on the development approval was unreasonable primarily because:
development had been taking place in the immediate vicinity of the proposed subject proposal for a number of years;

- the development applicants were not made aware of a particular hazard study relied on by the local government to justify the condition, nor was a coastal hazard identified on the section 149 planning certificate; and

- further, if the condition requiring enhanced structural integrity was to be maintained, the subject development would be better protected against the anticipated risks associated with an increase sea level rise than any of the surrounding developments which had been permitted to be constructed nearby, over the years, without similar obligations.

This decision, and the issue of planning for potential impacts of climate change on residential development generally, attracted media scrutiny and has also become a hot political issue. It did not take long for the NSW Planning Minister to speak out on coastal hazards and planning certificates and distribute a draft planning circular for comment intended to provide guidance to councils on what to disclose in relation to coastal hazards in their planning certificates, and to improve the way in which hazards including coastal erosion, tidal inundation, coastal inundation and coastal flooding are identified with regard to climate change policy.

Given the updated SPP 2.6 introduces a mechanism for a placing notification on titles to identify “vulnerable coastal areas” as well as the notion of coastal hazard planning, the opportunity to learn from the NSW experience – which has been utilising such measures for some time now – is sure to be valuable for WA.

Tom Mouritz