

Date: 16 January 2015 3:56:16 PM AEDT

To: [Council@eurocoast.nsw.gov.au](mailto:Council@eurocoast.nsw.gov.au)

Subject: **Council supports a financially responsible rate rise - A submission**

In accordance with Council's advice dated 19 December 2014 my submission follows:

EUROBODALLA SHIRE COUNCIL'S EXPLANATION AS TO WHY IT HAS VOTED TO PROGRESS COUNCIL'S ADOPTED PROPOSAL FOR A SPECIAL RATE VARIATION IS A TRAVESTY OF GOVERNANCE AND PROBITY BECAUSE IT SEEKS A CONTINUATION OF ITS ENTRENCHED INCESTUOUS CULTURE

Submission by Neville Hughes

**Perpetuating the culture.**

"Council supports a financially responsible rate rise" was the lead heading of Council's 19 December 2014 advice to residents and ratepayers. Submissions in response are required by Friday 23 January 2015.

But, as to how the advice will be judged will depend on the level of trust the reader possesses in the 'total' Council. In this context it is not just elected members who make up the corporate body of council as the decision maker, but all the senior professional staff who play vital roles in influencing that corporate body through the individual elected members. The significant factor in determining this matter of trust will be the real-time behaviour and conduct of those involved in meeting the attitudinal, governance and probity standards of the Council as experienced and/or observed over time.

My experience and observation, over about fifteen years, is reinforced by extensive research of the outcomes resulting from the real-time self-interested behaviour and conduct of those involved in meeting the attitudinal, governance and probity standards of the Council.

In 1989 Mr Tony Fitzgerald QC's report on corruption in Queensland recorded that, "Institutions become corrupt or inefficient because of the attitudes of those who work within them.....If the community is complacent, future leaders will revert to former practices".

Unchallenged power is apt to corrupt the minds of those who possess it.

This describes the well entrenched incestuous culture in this Council. Some councillors and staff have been there far too long.

In making this statement I am very conscious that the ethical human factor which determines "what ought one to do" is an immensely practical question which confronts all of us, whenever we have a choice or decision to make.

This adds to the need for a community to overcome its inherent constraints, particularly inertia and dominance of self-interests which add to that inertia, in order to empower themselves to take remedial action. Not to do so, is to erode the democratic rights and freedoms gained through exhaustive struggle over eons. History has shown that dramatic tipping points have occurred when a community has acted as one and asserted its will on oppressive authorities.

The headline "Thousands sign rates petition" in the Bay Post front page on Wednesday January 14, 2015 is a strong indication that the Shires' residents and ratepayers are at a point to take the remedial action they seek.

The leadership and work of [REDACTED] is undoubtedly proving to be an important catalyst in this process.

**My experience of ESC's real-time behaviour and incestuous culture, began in the 1990s.**

**Here are listed some major matters that I found necessary to research in order to ascertain the realities. The consistency of the recurring incompetent outcomes revealed, present strong evidence of the incestuous, self-perpetuating culture that exists within Eurobodalla Shire Council.**

NB This evidence is especially important having regard to the financial capacities of the ratepayers in the shire.

1995 - The Friend & Brooker affair. A 10 year legal battle which cost, a legal bill of about \$1.6 million, and council ordered to pay the contractor settlement for work done, interest, damages and legal expenses of \$2,748,802 on top of the original \$2,531,061 paid for work done in constructing rising mains sewers and pump stations on the north Narooma sewerage scheme. Originally estimated to cost about \$7 million, the final cost was \$11,411,658.

2002 - The Shire came dangerously close to being without water due to inaction.

2004 - The building of the "Spine Road" an important by-pass, to relieve pressure on Beach Road in particular, was budgetted at \$10.812 million. Four months later Council was informed it would receive a grant of \$10 million from the Federal Government. Ten years later the road is only partially finished at a cost of about \$20 million. Council has been informed that a grant of \$10 million is available from the State Government. Council is still resolving the connection to the Princes Highway with State Roads Authorities.

Over this extended period the benefits in all their forms of the finished road being denied to the community.

2006 - A major bulky good project failed at Surf Beach because Council gave wrong information to the developer. In December 2006 Council publicly announced it had signed a 99 year lease with the developer. No rental figure was mentioned but the \$600,000 per annum was built into Council's budgets and plans - it was intended to help fund the Spine Road. The community was led to believe this scenario until the 'Friends of our Beaches' community group forced the Council to admit in September 2007 that the lease did not exist.

2008 - The Moruya to Deep Creek reservoir pipeline, completed at a cost of about \$32 million in November 2008 had no water pass through it until late in 2010. Excess piping material from this project with an estimated value over \$500,000 was left in the bush. A resident located it in 2009.

2008 - Council Minute No 08/38A of 26 February 2008 records approving [REDACTED]

[REDACTED] DLG circular to councils No 05/25 dated 31 May 2005 dealt with "Payment of Gratuities and Other bonuses to Employees On Termination".

Inter alia, it stated - "*The payment of gratuities and other bonuses on termination can put at risk public confidence in councils as responsible custodians of public assets. This is particularly so where there is no legal obligation to make such payments. There is less risk where bonuses are paid under a properly documented and performance based salary bonus scheme*".

Also, just prior to this secret decision, an annual meeting of councils took place in Mudgee. The issue of gratuities was extensively discussed and it was resolved that councils not make such payments. It was well publicised in the Sydney Morning Herald. Those who attended that meeting made no report of this resolution to ESC.

I with others pursued this deficiency, requesting ESC to introduce a policy to prevent future similar bonus payments. This was rejected in April 2010 by the then mayor, "*Council acts in compliance of the Local Government Act. It is unlikely that any future Council would make a similar decision in rewarding any retiring staff members in such a fashion. Therefore, your suggestion that Council give consideration for a policy to prevent future similar bonus payments is not warranted*".

I and others thought differently.

NB I made a presentation to ESC on 27 July 2010 in support of Agenda item NM10/06 "Recognition for long and meritorious service, using public funds, demands a properly documented policy, transparently available and practiced openly, or, be completely vetoed".

My submission traced through Councils inadequate Minutes. However, I found sufficient references to indicate that the subject gratuity was being anticipated from 2005. You can study it - see pdf attachment.

I include this piece from my presentation:

**"This sequence of "WHAT" happened is a manifestation of ill-considered "Why" and "How" it happened. That history, and the quality of Council's response, reflect Tony Fitzgerald's findings:**

**"Ethics are always tested by incumbency".**

**Those payments were derived from rates and taxes, and the payers want certainty that these circumstances will never be repeated.**

**Properly instituted policy direction and openness is essential and prevents repeats of "Why" and "How".**

**Only then, will ESC begin building a carrier wave of trust on which effective reciprocal communication with the community can occur.**

**There is no other way!"**

Tragically, this has not happened.

2012 - Council and its "Greenhouse Action Plan 20012-2017" (GAP)

There were about eight or so submissions received following the public exhibition in July 2012 of the draft GAP. One was from me and one from [REDACTED]. I understand that the others were from Green organisations or their members.

My submission and that made by [REDACTED] were ignored because it was claimed that we offered "no peer-reviewed scientific references to support our position". This is manifestly wrong and untrue. Yet, in those two submissions and in the presentation I made to the Council meeting held on 24 July 2012, information was presented to Council, which time and events have shown to be correct. They reveal the glaring errors made by Council.

I list some of the key points made in [REDACTED] and my submissions and my presentation to Council on 24 July 2012 which Council ignored:

"Agenda Report 012/158. Under 'public submissions', states, "Two respondents questioned aspects of the science behind climate change but offered no peer-reviewed scientific references to support their position". This is a total misrepresentation.

The part of the ESC GAP, that seeks to improve the quality of life for all people through applying the "idea of efficiency to smarter use of energy and water" should be the constant focus by council within the practicalities of its responsibilities.

To the extent that the GAP attempts to find ways to increase the energy efficiency of Council operations that provide cost savings over a period of about five years, this is laudatory. However, these actions must always be taken within a strict and thorough cost accounting framework.

The extent to which the GAP attempts to mitigate climate change is completely wasteful in light of the failure of the world to agree on a common, global effort. Efforts by our local Council to reduce emissions will have no effect whatsoever on global climate. We, the taxpayers, should not be spending our money on a futile objective.

The Council should not take measures against the economic interests of residents for reasons of apprehended catastrophe unless and until predicted effects of climate change becomes far more certain.

In section 7, the GAP poses the question of what will this cost Council? It should be retitled what will this cost the taxpayers?. As such the complete failure of the GAP to answer its own question is an appalling failure of governance. The GAP should not be approved and implemented until and unless a properly costed program and accompanying budget is approved AND made visible to all ratepayers.

Section 7.3 Resourcing and Funding explains how ESC's bureaucracy must be expanded to deliver on GAP: [REDACTED]

Following the rejection of these submissions, I wrote to Dr Catherine Dale General Manager of ESC on 13 October 2013 from which these extracts are taken:

"Further contemplation of the background to the adoption by Council of its second Greenhouse Action Plan (GAP) prompts these additional comments and questions to those made in my email to you dated 10 October 2013. Particularly in regard to your published claim that "the completed and committed actions from the former 2007-2012 and current 2012-2017 GAPS generated financial savings of \$1 million annually in energy and water costs".

You will understand that it is one thing to make such a claim, but another to show that it amounts to a worthwhile return on investments of ratepayers funds, because the annual savings have little meaning until the savings add up to more than the up-front cost.

In the case of energy efficiency it is critically important to look at both the sunk costs up front and eventual returns over time. Ongoing maintenance costs should not be overlooked.

Therefore, it is important to ensure that a rigorous cost/benefit analysis has been made, and is available to ratepayers regarding your published claim that "the completed and committed actions from the former 2007-2012 and current 2012-2017 GAPS generated financial savings of \$1 million annually in energy and water costs".

So, I respectfully ask what have been the costs associated with producing the GAPs and funding the measures resulting in your claim?

A full, fair and professional cost/benefit accounting is required so that a 'return on investment' can be calculated.

I am sure that ratepayers would expect this accounting to embrace all the relevant matters listed in my earlier email of 10 October 2013."

Dr Gale's response essentially relied on the point that it is the Council's decision to make. The need to address the matters I raised were by-passed.

#### 2014 - South Coast Regional Sea Level Rise Planning and Policy Response Framework

Re: **PSR14/062 South Coast Regional Sea Level Rise Planning and Policy Response Framework - 14/336 Motion**

Councillor Pollock/Councillor Burnside

(The Motion on being put was declared **Carried**.)

Councillor Innes and Leslight voted against the motion.)

I have presented necessary evidence in my email of 29 December 2014 to all Councillors, the General Manager and three State Government Ministers calling for this decision be repealed.

It has been copied to our State Member Hon Andrew Constance and the media.

The chicanery involved on the part of ESC is breathtaking.

#### Additional Comment.

[REDACTED]

ii) The need to use specialist consultants and legal advisers is of course part and parcel of governmental and commercial life. However, the extensive research of the 'Friends of our Beaches' highlighted the excessive way in which ESC [REDACTED] encapsulated themselves in the use of selected consultants using desk-top studies to justify their cases: some with palpably inflated and unjustifiable projections.

Allied to this protective shield was the excessive use of legal advice to conveniently deflect key questions.

iii) Is our society to languish in this grey area of incompetence and questionable behaviour?

**Conclusion.**

The choice before the ratepayers and residents of Eurobodalla Shire is whether to allow the self-perpetuating incestuous culture of the 'total' ESC Council to continue, or to demand that the process to remove it be implemented by the authorities of the NSW State Government.

Neville Hughes

Ratepayer and Resident

**Sent:** Wednesday, 11 March 2015 4:27 PM

**Subject:** Eurobodalla shire council - Neville Hughes - ratepayer submission - 11 march 2015

Please treat this email as my formal submission.

I ask that you treat my submission to ESC dated 16 January 2015 as the first part of this formal presentation. I titled it “Eurobodalla Shire council’s Explanation As To Why It Has Voted To Progress Council’s Adopted Proposal For A Special Rate Variation Is A Travesty of Governance And Probity Because It Seeks A Continuation Of Its Entrenched Incestuous Culture”. The examples I give are significant in terms of the criteria you use to make your assessments and, in presenting the substance supporting the title I used.

I drew particular attention to ESC’s adoption of the “**South Coast Regional Sea Level Rise Planning and Policy Response Framework**”, pointing out that I have presented the necessary evidence in my email of 29 December 2014 to all Councillors, the General Manager and three State Government Ministers calling for this decision to be repealed. Also, that it has been copied to our State Member Hon Andrew Constance and the media.

The second part of my submission is a detailed analysis of ESC’s adoption of the “**South Coast Regional Sea Level Rise Planning and Policy Response Framework**”.

This analysis is titled “SEA LEVEL RISE PROJECTIONS - AN EXPOSURE - ‘Degraded governance - A reflection on unrestrained bureaucratic megalomania and inadequate inquiry by elected politicians’.

It is attached in pdf.

Yours sincerely

Neville Hughes

Resident and Ratepayer in Eurobodalla Shire

# SEA LEVEL RISE PROJECTIONS - AN EXPOSURE

by Neville Hughes

‘Degraded governance - A reflection on unrestrained bureaucratic megalomania and inadequate inquiry by elected politicians’

## 1. THE WHAT

Re: Eurobodalla Shire Council (ESC) Meeting held on Tuesday 25 November 2014,  
Re: PSR14/062 Adoption of the South Coast Regional Sea Level Rise Planning and Policy Response Framework - 14/336 Motion Councillor Pollock/Councillor Burnside  
(The Motion on being put was declared Carried. Councillors Innes and Leslight voted against the motion.)

## 2. THE OBJECTIVE

“That Council repeal the Resolution “ PSR14/062 South Coast Regional Sea Level Rise Planning and Policy Response Framework - 14/336 Motion Councillor Pollock/Councillor Burnside” in its entirety”

## 3. THE REASON

The “South Coast Regional Sea Level Rise Planning and Policy Response Framework” presented to Council by Whitehead & Associates is a deeply flawed report, and therefore undermines any policy based upon it.

The implementation of such flawed policy will inevitably lead to heavy remedial costs to be borne by ratepayers.

## 4. EXECUTIVE SUMMARY

The escalating loss of trust between Eurobodalla Shire Council (ESC) and its ratepayers over critical issues has reached very disturbing levels.

ESC’s implementation in 2010 of the *‘Interim Sea Level Rise Policy (ISLRP)’* planning controls and developing planning strategies were based on the false assumption that “the rate of global sea-level change can be meaningfully applied to coastal management in specific *local* areas (in some of which, modern sea-level is actually falling)”. Yet, ESC insisted on applying “global sea-level” rates of change of up to 1 metre out to 2100.

These planning controls have resulted in severe and adverse outcomes on many property and resale values, including local economic potential, causing members of the community to seek to verify the validity of the benchmarks applied and, ESC’s motivation in using them.

Particularly when, the NSW Chief Scientist and Engineer had issued advice for councils to use local ‘Tide Gauge’ data to re-assess these benchmarks; and when, local NSW coastal tide gauges’ readings over 130 years have shown that NSW South Coast SLR to be about 0.63 - 0.94mm/yr or about 10cm/hundred years.

Importantly, the NSW State Coalition Government has clearly stated “**that for councils to meet their responsibilities with their respective communities in accordance with the**” *Guidelines for Preparing a Coastal Zone Management Plans* (‘the Guidelines’ - OEHL, July 2013) they are required to make decisions regarding management responses that reflect local circumstances and risks, with the involvement of the local community.

The intransigence of ESC to these changes, led to ESC and the contiguous Shoalhaven City Council with assistance from the Office of Environment, engaging Whitehead & Associates and Coastal Environment Pty Ltd to prepare the “South Coast Regional Sea Level Rise Planning and Policy Response Framework report ( W&A report). This was subjected to public review. From Eurobodalla Shire there were 79 submissions with 67 highly critical, and from Shoalhaven 16 submissions with 11 highly critical.

A most significant submission, was made as an *amicus brief report* “Commentary and Analysis on the Whitehead & Associates 2014 NSW Sea-Level Report by Carter R.M., de Lange W., Hansen J. M., Humlum O., Idso C., Kear B., Legates D., Morner N. A., Ollier C., Singer F., & Soon W. These are 11 experienced international scientists of the highest standing.

The scientific and coastal management conclusions of Carter et al. (2014) directly contradict those of the Whitehead & Associates, and strongly indicate that the latter is strongly flawed. Yet, this submission was ignored by ESC.

The driver of the ESC direction appears to be its planning bureaucracy. As recently as 10 February 2015, seven councillors were influenced to vote for a 2100 sea level rise benchmark of 98cm when endorsing the Tomaga river management plan.

ESC is playing “chicken” with three unproven and palpably false assumptions (refer 5.1. in ‘Preview’), in applying its planning controls and developing planning strategies, as it revises its ‘Coastal Zones Management Plans’. This is highly irresponsible and will inevitably lead to high remedial costs for the Shire and its ratepayers.

This is in complete contrast to the position taken by the elected members of Shoalhaven City Council.

The ratepayers and residents of Eurobodalla Shire should be apprised of these circumstances, which is the purpose of this paper.

## 5. PREVIEW

The escalating loss of trust between ESC and its ratepayers over critical issues is very disturbing. One of the major contributory factors has been ESC’s implementation in 2010 of the ‘*Interim Sea Level Rise Policy (ISLRP)*’ planning controls and developing planning strategies based on the false assumption that “the rate of global sea-level change can be meaningfully applied to coastal management in specific *local* areas (in some of which, modern sea-level is actually falling)”. The severe adverse outcomes on many property and resale values have resulted in members of the community seeking to verify the validity of the benchmarks applied and, ESC’s motivation in using them. This process is revealing serious abuses of public trust, misfeasance and possible malpractices as ESC has sought, not only to reject any change to its ISLRP planning controls and planning strategies, but to reinforce the application of ‘global sea-level projections’ benchmarks. Thus extending its area and range of control.

ESC resisted changes citing personal liability of councillors, legal and insurance concerns over SLR benchmarks.

The NSW State Coalition Government made changes in September 2012, advising councils to adopt regionally relevant SLR projections commensurate with competent scientific opinion.

The NSW Chief Scientist and Engineer issued advice for councils to use local 'Tide Gauge' data to re-assess the benchmarks. Based on local tide gauges readings over 130 years the NSW South Coast should be about 0.63 - 0.94mm/yr or about 10cm/hundred years. It is surely eminently sensible that coastal management rest upon accurate knowledge of local geological, meteorological and oceanographical conditions, including changes in local relative sea level with reviews at 7 - 10 years

5.1. ESC's determined opposition to change, resulted in the joint exercise with Shoalhaven City Council with assistance from the Office of Environment and Heritage (OEH) to jointly fund a review of coastal zone management on the south coast of NSW.

ESC greatly influenced the terms of reference named "*Technical Brief - South Coast Regional Sea Level Rise Planning and Policy Response Framework*" (W&A report). This Brief directed the consultants chosen -Whitehead & Associates and Coastal Environment Pty Ltd, "*to investigate the most credible and recent Global projections including:*

\* *IPCC 2007;*

\* *IPCC AR5 WG1 report (September 2013);*

\* *Studies by CSIRO researchers (Church, McInnes, Hunter and others);*

\* *NSW Chief Scientist and Engineer Report: Assessment of the Science Behind the NSW Government's Sea level Rise Planning Benchmarks;*

\* *Any recent papers of significance.*

The specificity of this direction means that the W&A report is beholden to IPCC Summaries for Policymakers Reports of 2007 and 2014. It is also subject to three unproven and false assumptions:

i) "that the rate of global sea-level change can be meaningfully applied to coastal management in specific *local* areas (in some of which, modern sea-level is actually falling)";

ii) "that the rate of global sea-level change can either be measured or projected by unvalidated, speculative computer models, with sufficient accuracy for policy recommendations to be based upon any projected rate of change"; and,

iii)"that the measured rate of global sea-level change is materially influenced by human carbon dioxide emissions, and that such a human influence would necessarily be a universal environmental negative".

**Note: The palpably significant** "Commentary and Analysis on the Whitehead & Associates 2014 NSW Sea-Level Report by Carter R.M., de Lange W., Hansen J. M., Humlum O., Idso C., Kear B., Legates D., Morner N. A., Ollier C., Singer F., & Soon W., **was ignored!**

5.2. The W&A report is a deeply flawed report, and therefore undermines any policy based upon it.

This is well summed up by [REDACTED] letter to ESC councillors, and published in the Bay Post newspaper on 06-02-15: "The Whitehead Associates Report to the Eurobodalla Council was totally out of its depth in this area of sea level rise and that report suggested to Eurobodalla Councillors that the Fort Denison tide Gauge record be adjusted upwards by over 300% to 33cms

per 100 years to agree with the satellite measurements. This corrupts good local data. It is bad advice that should be totally rejected.”

The satellite measurements referred to are from the “NASA satellite” launched in 1992, which NASA is trying to replace, because of “its unresolvable technical problems” and its satellite record completely unreliable.

W&A would, and should have known about this. It was described in detail in the *amicus brief* submission by Carter et al to ESC and to W&A. Yet, ESC and seven of ESC’s councillors ignored this advice, accepting and endorsing the W&A report completely.

ESC’s action appears to be one that will seek to extend its planning controls and planning development strategies within the scope of the NSW State Coalition Government’s guidelines and benchmarks. It appears determined that its planning controls and planning development strategies will remain subject to the three unproven and false assumptions on which, the W&A report is based.

This was confirmed by the ESC decision on 10-02-15 for a 2100 sea level rise projection of 98cm, which is the maximum shown in the IPCC projection charts ( titled ‘Representative Concentration Pathways’) as required in the “*Technical Brief*” for the W&A report.

This is in direct contrast to the councillors of Shoalhaven City Council who made their own collective majority decision ( one only being in opposition), to put aside the W&A report, even though it is claimed that ESC had persuaded the Shoalhaven City Council staff to counsel otherwise.

No other council is known to have determined a projection rise of such magnitude to 2100 for planning purposes.

Inevitably, it follows that the work involved in ESC rectifying the fall-out from these fallible and highly questionable practices, processes and planning procedures, will add a considerable remedial cost to be met by the community

## 6. BACKGROUND:

### 6.1. State Government policy guidance

In 2009 the NSW ALP Government issued its NSW Sea Level Policy Statement which included benchmark projections of sea level rise along the NSW coast for a rise of 40cms by 2050 and 90 cms by 2100. It was a ‘one size fits all’ based on ‘global average’ and the same fundamentally defective assumptions (refer to Item 5.1.):

Nevertheless, the benchmarks were applied by Eurobodalla Shire Council (ESC) in July 2010 in implementing planning controls and developing planning strategies which resulted in about 6,000 properties in the Shire as being ”potentially at risk from future sea level rise”. Many property and resale values have been severely affected in a negative way, resulting in the community seeking to verify the validity of the benchmarks and the probity and veracity of ESC’s motivation in using them.

The NSW State Coalition Government removed these benchmarks in September 2012, and advised councils to adopt regionally relevant sea level rise projections commensurate with competent scientific opinion. The NSW Chief Scientist and Engineer issued advice for councils to use local



'Tide Gauge' data to re-assess these benchmarks. Similar advice has been reinforced in many published scientific papers that provide a different and non-alarmist, assessment of sea level change.

ESC states that "the insurance industry informed coastal councils that there is a legal obligation for councils to plan for sea level rise based on the best competent science". ESC adds that "the Legal advice it received in March 2013 from Statewide Mutual in relation to this matter concluded that: "*The rejection of sea level rise benchmarks .... creates a level of uncertainty as to how local councils should proceed in drafting and implementing planning policies*"; and

*'until the pending guidance is provided by the OEH [NSW Office of Environment and Heritage], we recommend local councils continue applying the sea level rise benchmarks as set out in the (2009) NSW Sea Level Rise Policy Statement.'*

The difficulty with this recommendation is that the 2009 benchmarks were manifestly NOT based on the "best competent advice".

The guidance sought in this advice has clearly been presented by the state government.

The responsible NSW Minister for the Environment and Heritage Hon Rob Stokes MP has described the situation thus: "To impose a single standard on every beach is not a sensible policy, you want local flexibility...The concern is it would create huge uncertainty along the coast and potentially sterilize large areas of the coast from any development.... Mr Stokes said insurance companies should not be asking councils to comply with the 2009 sea level rise benchmarks because it was not government policy.

He said councils had a responsibility to take the views of their community into account: "Local planning is a fundamental, core responsibility of local councils. It is appropriate that local communities should be able to have involvement."

**Therefore it is now clear that for councils to meet their responsibilities with their respective communities in accordance with the "Guidelines for Preparing a Coastal Zone Management Plans (the Guidelines' - OEH, July 2013) they are required to make decisions regarding management responses that reflect local circumstances and risks.**

It is for councils to balance the risks their communities are facing (including the likelihood and consequence of sea level rise affecting specific areas), and to adopt the appropriate planning responses that they wish to implement. In making such decisions, councils will consider a range of local social, economic and environmental considerations, including appropriate time horizons for planning and development controls.

6.2. The "South Coast Regional Sea Level Rise Planning and Policy Response Framework" report by Whitehead & Associates and Coastal Environment Pty Ltd (W&A report)

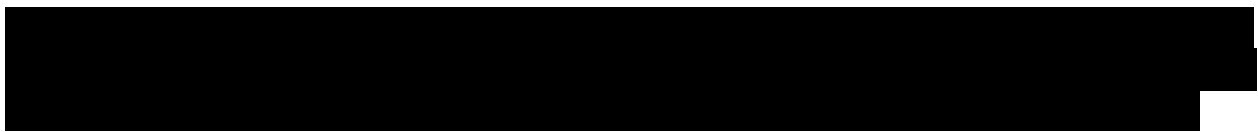
Following the withdrawal of the NSW Sea Level Rise Policy Statement 2010 by the NSW State Coalition Government, Eurobodalla Shire Council and Shoalhaven City Council with assistance from the Office of Environment and Heritage jointly engaged Whitehead & Associates and Coastal Environment Pty Ltd to prepare the "South Coast Regional Sea Level Rise Planning and Policy Response Framework" report.

Council's adopted Greenhouse Action Plans (GAP) 2006-2017 indicate the overt and single minded preference of ESC planners for IPCC inspired global warming/climate change material including that on Sea Level Rise. In its later GAP at page 6 is included a CSIRO graph Figure 5 "*Global Mean Sea Level (GMSL) - 1870 to 2007 updated from Church and White (GRL. 2006). It shows tide*

*gauge data & error, and satellite altimeter data from the mid 1990s. It indicates yearly average data and GMSL increasing by about 200 mm over the period rising steeply from the mid 1990s.*

**The focus is entirely on “Global Mean Sea Level”** which has no necessary application in the ESC region. There is no mention of the inadequacy of the faulty satellite.

The accompanying text reads *“Sea levels have been observed rising as shown in Figure 5. ESC is now planning to accommodate a projected sea level rise of 40cm by 2050 and 90cm by 2100 against the 1990 mean”*.



The Technical Brief issued on 01-11-2013 to the named consultants was exceedingly specific. In Section 4.2 *“Review domestic and international publications that consider the physics of the atmosphere and oceans and Representative Concentration Pathways (RCPs) for CO2 emissions”*, it states: *“This component of the study will review the most recent studies and scientific consensus on projected climate change and more specifically, the impact on global sea level. Scenarios for cumulative CO2 emissions to inform this task will be consistent with the Representative Concentration Pathways (RCPs) presented in the IPCC’s AR5. An estimate of global and regional sea level rise projections to the year 2100 will be presented following completion of the following tasks - these are also listed in 5. PREVIEW at 5.1. :*

*“to investigate the most credible and recent Global projections including:*

- \* IPCC 2007;*
- \* IPCC AR5 WG1 report (September 2013);*
- \* Studies by CSIRO researchers (Church, McInnes, Hunter and others);*
- \* NSW Chief Scientist and Engineer Report: Assessment of the Science Behind the NSW Government’s Sea level Rise Planning Benchmarks;*
- \* Any recent papers of significance.*

## **7. The amicus brief report “ Commentary and Analysis on the Whitehead & Associates (W&A) 2014 NSW Sea-Level Report By Carter R.M., de Lange W., Hansen J. M., Humlum O., Idso C., Kear B., Legates D., Morner N.A., Ollier C., Singer F., & Soon W.**

Two submissions made to Council (ESC) by Mr N. Hughes (dated 29 December 2014 and 5 February 2015) drew attention to the amicus brief by 11 experienced sea-level research scientists. The scientific and coastal management conclusions of Carter et al. directly contradict those of the Whitehead & Associates, and indicate that the latter report is strongly flawed.

Note: ESC has continued to ignore this reality.

Three especially important conclusions of the Carter et al. report are:

- (i) *“Given the widespread criticism of IPCC’s reports and analyses, great caution needs to be applied in basing public policy on IPCC recommendations in the fashion urged by the Whitehead Associates report”;*

- (ii) “Coastal councils that ignore or override such basic principles of good environmental management do so at the risk of their ratepayers’ property and financial costs”; and,
- (iii) “to the degree that the new planning regulations are based on experimental computer model projections (such as those reported by W&A, which are not validated predictions or forecasts), and cause financial damage to coastal property holders, legal culpability may apply”.

## 8. Enforceable Standards of Conduct of Council Officials

8.1. The evidence in the email addressed to ESC councillors, the general manager and three NSW State Government Ministers by Mr N. Hughes dated 29 December 2014, was available to Councillors earlier in the texts of the submissions they received on the matter. This may indicate a failure of Council to heed the central focus of available expert opinion and best competent science, which may constitute a serious prejudgement of the matter without giving adequate consideration to all the evidence.

Notwithstanding that the decision making powers reside in Council as a corporate body, the individual members of council are surely required to consider a matter on its merits, taking into consideration all of the information and expert advice that is available to them. This included all of the submissions including the *amicus brief of Carter et al*,

8.2. In ignoring the available expert opinion, ESC at the same time accepted the highly questionable W&A report without question. In its ‘Executive Summary’ the W&A report states “*We consider that the modelled projections from the IPCC’s AR5 report are “widely accepted by competent scientific opinion” as required by the CZMP guidelines (OEH, 2013c), and “The AR5 projections form a suitable basis for deriving projections of relevance to the study area”.*”

The very existence of the Carter et al. brief, and the international standing of its authors, demonstrates that these statements are untrue.

Also, to state that “*The AR5 projections form a suitable basis for deriving projections of relevance to the study area*” is equally untrue because they are falsely inflated.

## 9. State Government Requirements for Coastal Zone Management Plans vis-a-vis Sea level Rise

9.1. Under s55D of the CP Act, CZMPs must be developed in accordance with the *Guidelines for Preparing a Coastal Zone Management Plans* (‘the Guidelines’ - OEH, July 2013).

9.1.1.. Section 3.1 of the Guidelines state that a CZMP which addresses coastal risks should include (among other things) ‘a description of projected climate change impacts on risks arising from coastal hazards (s55C (f) of the CP Act), based on council’s adopted sea level rise projections or range of projections. **Councils should consider adopting projections that are widely accepted by competent scientific opinion.**’

9.1.2. Section 3.2.4 of the Guidelines require councils to **map** specified coastal hazards (erosion, recession, inundation) to 2050 and 2100. This is to ensure councils and councillors have the required information to make decisions about what, if any, management responses are needed.

• However there are no Ministerial or State Government directions or requirements concerning:

- the **actual projections** of sea level rise that should be used for the mapping (i.e. **how much** sea level rise is projected to occur by 2050 and 2100
- what **types of management responses** (e.g. planning controls) should be put in place for the mapped hazards
- the **planning horizon(s)** (i.e. timeframe) over which any hazard management responses should be put in place.

**Comment: Council's resolution on 25 November 2014 adopted a grossly flawed policy based on false evidence. It contravened these requirements because it cannot be widely accepted by competent scientific opinion.**

**"Coastal management must instead rest upon accurate knowledge of local geological, meteorological and oceanographical conditions, including, amongst other things, changes in local relative sea level with reviews at 7-10 years".(Carter et al.)**

**"For the central and southern New South Wales (NSW) coast of Australia, this requires basing management policies on the range of long-term rates of sea-level rise of 0.63 - 0.94 mm/yr that have been measured at the nearby Sydney (Fort Denison) tidal gauge".(Carter et al.)**

**In preparing the needed flood hazard maps that cover the range of likely sea level rises of 5, 10 and 20 cm by 2100, care should be taken to include also the flood map for comparison.(Carter et al.)**

9.2. Decisions regarding management responses and planning horizons are for councils to make. There is no Ministerial or State Government role, nor are there any specific requirements or directions that apply.

9.2.1. Decisions about management responses should reflect local circumstances and risks. It is up to councils to balance the risks they understand their communities are facing (including the likelihood and consequence of sea level rise affecting specific areas) with the appropriate planning responses they wish to implement. In making this decision, councils will consider a range of local social, economic and environmental considerations, including appropriate time horizons for planning and development controls.

9.2.2. The Guidelines require that CZMPs outline a council's intended responses to hazards, and provide an overview of the potential actions that councils should consider. However, as explained above, councils are solely responsible for determining their intended response.

**Comment: Will Council make decisions on false evidence?**

**Coastal management must instead rest upon accurate knowledge of local geological, meteorological and oceanographical conditions, including, amongst other things, changes in local relative sea level.**

**For the central and southern New South Wales (NSW) coast of Australia, this requires basing management policies on the range of long-term rates of sea-level rise of 0.63 - 0.94 mm/yr that have been measured at the nearby Sydney (Fort Denison) tidal gauge. The implied 6.3 - 9.4 cm of rise in the next hundred years is similar to the rise which occurred during the preceding hundred years. This did not require, nor receive, any policy formulation over and above the application of historic 20th century coastal planning regulations. (Carter et al.)**

9.3. The new planning circular requires s149(2) planning certificates to indicate whether land is affected by a policy or development control (e.g. a council's SLR policy), due to exposure of the land to coastal hazards. The circular explains how this exposure must be noted on the certificate, and that a clear distinction must be made between current and future hazards.

9.3.1. The planning circular does not set requirements or standards for the policy that has been adopted by council. As long as a council's s149 planning certificate notations reflect their adopted policies, that council is compliant with requirements.

9.4. If councils have acted in good faith as noted in s733(4) of the LG Act, they are afforded a statutory exemption from liability in relation to coastal hazards and other matters. One way to demonstrate acting in good faith is to ensure that actions are substantially in accordance with the principles contained in the relevant manual (i.e., the Guidelines referred to in s 55D of the Coastal Protection Act).

9.4.1. No specific advice is provided on what constitutes good faith for the purposes of s733. However, this concept has been tested through the courts. Councils are advised to seek independent legal advice for this purpose.

**Comment: Did Council act in good faith in making its decision on 25 November 2014?**

**CONCLUSION**

1. The “South Coast Regional Sea Level Rise Planning and Policy Response Framework” presented to Council by Whitehead & Associates is a deeply flawed report, and therefore undermines any policy based upon it.
2. The implementation of an undermined policy based on deeply flawed evidence will inevitably result in cost which will be borne by ratepayers and residents.
3. The evidence presented here affords ESC (the Councillors) the opportunity to rebuild some trust with the community.

#### References:

1. “Commentary and Analysis on the Whitehead & Associates 2014 NSW Sea-Level Report by Carter R.M., de Lange W., Hansen J. M., Humlum O., Idso C., Kear B., Legates D., Morner N. A., Ollier C., Singer F., & Soon W., dated 24 September 2014
2. Article published in the Bay Post as a ‘letter to editor’ on 6 February 2015 by Dr Howard Grady.
3. Email from Mr I.P. Hitchcock to author dated 22 February 2015 copying a letter sent to the Mayor and Councillors of the Eurobodalla Shire titled “Eurobodalla Interim Sea Level Rise Adaptation Policy now renamed “Interim Coastal Hazard Adaptation Code ( Agenda Item 15/007 - Council meeting 24-2-14)
4. Email from Mr V. Sethi retired engineer to author dated 19 February 2015 pointing out his concerns over the Technical Brief directing the use of IPCC projections.
5. Several other emails written to the author by experienced retired professionals, many known to the author, expressing the senders’ grave concerns over one or more of the issues raised this paper.
6. ESC Greenhouse Action Plan 2012 - 2017.
7. “What is wrong with the IPCC? - Proposals for a Radical Reform”. Professor Ross McKittrick Professor of Economics at the University of Guelph in Ontario, Canada, Ross McKittrick was an Expert Reviewer for Working Group 1 of the IPCC’s Fourth Assessment Report:

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