Section

Minister for Natural Resources, Mines and Energy
EXECUTIVE CORRESPONDENCE ACTION SHEET

MO REF MO/19/ 5573	☐ Consult Other:
DATE RECEIVED MO 20/9/19	

CTS 24775/19

RESPONSE/ACTION REQUIRED

☑ For reply under Minister's signature

☐ For reply under Chief of Staff's signature	☐ For referral by DLO network ☐ Minister/department .....
☐ For departmental response under: ☐ Deputy Director-General's signature ☐ Director-General's signature	☐ For Caucus Liaison Response ☐ For GOC to respond directly

CONTACT PROVIDED IN LETTER

☐ Departmental Rep (Default)	☑ Chief of Staff	☐ Policy Advisor

RESPONSE TIMING	**COPY** *(Internal action within Minister's Office)*	
☑ **Urgent (5 business days)**	☐ Minister	☐ Chief of Staff
☐ **Routine (15 business days)**	☐ SPA	☐ PA
☐ **Specified Date**	☑ APA	☐ Caucus Liaison
☐ **Complaint (20 business days)**	☐ Executive Assistant/ Office Manager	☐ Other
☐ **Briefing note - Noting/Decision**	☐ Director-General	
☐ **Briefing note - Meeting**		
☐ **Dot Point brief (DLO template)**		
☐ **Department to contact and resolve** ☐ **Dot points to actioning Advisor**		
☐ **No Response Required / FYI Only**		

MINISTER'S OFFICE COMMENTS:

Received
20 SEP 2019
DNRME

Section 78B(2)

Advisor / Chief of Staff: **Date:** 20/9/19.

DEPARTMENTAL ALLOCATION (Departmental Liaison Officer to complete)

☐ Director-General		**DLO COMMENTS:**
☐ POL	☐ LANDS	URGENT
☐ GEORESOURCES	☐ BCP	
☐ RSH	☐ ENERGY	
☑ NR South		

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URGENT

 Release

Belle Brookfield

From: MAYOR <mayor@goldcoast.qld.gov.au>
Sent: Thursday, 19 September 2019 4:52 PM
To: NRM
Subject: 190919 Correspondence from Mayor Tom Tate to the Hon Dr Anthony Lynham MP
Attachments: 190919 Letter Out - Hon Dr Anthony Lynham - Seawall.pdf

Dear Minister

I am sure you will appreciate that the issue I am writing to you about in the attached correspondence is extremely serious.

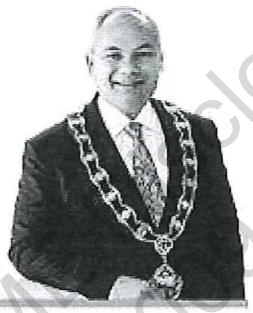
However, I am confident you and I can work together to resolve it satisfactorily.

I'm happy to discuss it with you at any time.

Kind regards

Mayor Tom Tate
City of Gold Coast

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Office of the Mayor

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19 September 2019
Our ref: MS#74478888

Hon Dr Anthony Lynham MP
Minister for Natural Resources, Mining and Energy
PO Box 15216
CITY EAST QLD 4002

Dear Minister

I write to seek your assistance in relation to issues addressing large-scale coastal protection works for our City.

As you will be aware, there is substantial development and infrastructure on the Gold Coast's coastal strip, and in comparison to other local government areas in the Queensland coastal zone, we have a high number of residential buildings, commercial buildings, light industrial buildings and roads in this space. Consequently we face some of the highest risks of potential coastal hazards, particularly erosion, among all local government areas in the state.

A failure to provide protection against erosion damage to coastal infrastructure would seriously damage Gold Coast's reputation as a city and tourist destination. It would also likely cause serious economic harm to local businesses and to the broader Queensland tourism economy.

The City takes its responsibilities in relation to coastal management very seriously and currently manages 52 kilometres of beaches from Coolangatta to South Stradbroke Island. The City has an integrated, multi-layered coastal management approach implemented through our Ocean Beaches Strategy, which aims to protect infrastructure from coastal hazards.

Completion of a continuous foreshore seawall is an important component to delivering needed protection and since the mid-1980s the City has adopted a policy of achieving just such a continuous seawall. The City has progressively constructed sections of the seawalls which protect public infrastructure.

The foreshore seawall is built along the alignment known as the A-Line, endorsed and approved by the Queensland Government, originally through the former Beach Protection Authority in 1976. The City has identified that 23 kilometres of seawall are required to protect infrastructure and, of this, 9 kilometres primarily provides protection to private development.

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The City's planning scheme requires private landowners to construct the section of seawall that provides protection to their private development. This approach has been in place since the late 1960s, with a formal policy adoption in 1988.

The 1994 Planning Scheme included a specific requirement that no development was to commence until there was a seawall which was to be located, constructed and maintained **at no cost to the City** (similar to the 1982 planning scheme). In addition, it incorporated Foreshore Seawall Line maps and was endorsed by the State following completion of State interest checks. This approach has continued in subsequent State approved planning schemes for the City.

The A-Line is based primarily on historical erosion events in the late 1960s and the best scientific advice since. It is not based on the existing cadastral boundaries. As a result the A-Line meanders between private property and public land directly in front which means some sections of the seawall that have been identified for private construction are located on, or partly on, public land eastward of the private land. There are 124 properties with private seawalls located, or to be located, on public land. Of these properties where the A-Line is located outside private property boundaries, 74 properties have historical approvals for construction and maintenance of said A-line walls issued by the Queensland Government.

Issue of concern

I am writing to seek your assistance in resolving an issue that has more recently arisen in relation to the right to locate and fund a private seawall entirely within public land.

This issue and the seemingly minor operational policy change by State Government officers of your department has the potential to cost ratepayers of this City tens of millions of dollars in construction and maintenance of private A-line seawalls now and into the future.

Historically (over the last 40 years), there has been no separate requirement outside the development approval process for a land tenure to be obtained in order to locate a seawall (tidal works structure) within public land. Of the 74 State-approved existing seawalls located on public land, more than 50 of these are located within a road (esplanade) and a number of these also extend into adjacent Reserves or USL.

A number of these historic approvals (but not all), now transition into a development approval for tidal works pursuant to the transitional arrangements of the Coastal Protection and Management Act 1995 (Qld), which provides a statutory right to occupy the State land upon which the tidal work is located, together with permission to access and maintain the structure. A number of these existing State approvals are for seawall works located above the High-Water Mark.

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More recently however, Department of Natural Resources, Mines and Energy officers have taken a different position than has been evidenced historically, in that **the Department will no longer provide owners with consent (where that is required) for construction of a private seawall within public land.** This has created significant difficulties and funding implications for the City.

In essence, the Department's view is that the construction of a seawall on the A-line is a public, not private responsibility, and in particular for location on State land. This new assertion is an effective cost-shift onto ratepayers of the City for works that were previously funded by the private land owners who directly benefited from the A-line seawall.

The City obviously takes issue with this analysis, considering the history of the creation of the A-Line, the extensive history of private seawall approvals on the A-Line, and the prior long-held State position, fully supported by the City, on this issue for over 40 years.

Further, the cost of constructing 1 metre of seawall according to existing designs is approximately $5,000. The properties on the Gold Cost protected by a private seawall are often intensively developed and of high value. The City's policy is that private seawalls for the protection of urban coastline should be built and maintained by private landowners whose lands receive the immediate protection against the effects of wave action, rather than by the City at the expense of all ratepayers on the Gold Coast generally. The City is obviously responsible for seawall construction in front of Council-owned or trustee State lands throughout the City.

Were it to undertake the building and maintenance of private seawalls to protect urban coastline, **the City would incur significant financial cost and risk**, which could not be reliably addressed through available ratings solutions as construction cost recovery is only a small part of the potential risks to the City in undertaking such works on behalf of private landowners. Nevertheless, the City remains of the view that it is in the interests of the City and the broader Queensland community that the coastline be protected against erosion events.

Local Law 17

The City introduced Local Law No 17 (Maintenance of Works in Waterway Areas) in 2013 in support of our Shoreline Management Strategy, and policy position that private landowners who receive, or would receive, the direct and comprehensive benefit of a seawall should be responsible for building and maintaining such a structure.

Under Local Law 17, owners of land and others who benefit from, or would benefit from waterway works, including revetment walls in canals and seawalls (not yet triggered for reasons discussed below), are required to maintain them in good condition or, if required by the City, to build them.

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It is estimated that 56% of private properties adjacent the City's beaches, have a certified seawall. The possibility of extending Local Law 17 to a seawall is under investigation by the City as a possible strategy to increase the rate of private seawall completion on the A-Line.

However, because in many cases owners of land that would be protected by a seawall would be required to build and maintain a seawall on the A-Line where it is located on public land, the City has decided not to trigger the application of Local Law 17 (by subordinate local law) to seawalls until the City can be assured by the State that the State will allow or support the landowner acquiring a right of tenure on public land to enable the landowner to build and maintain the seawall.

Departmental Correspondence

City officers have met with representatives of both your Department, and the Department of Environment and Science in relation to this issue, as well as engaging in detailed correspondence. However, to date, the issue has not been resolved.

I fear your Department may not have considered the full implications for coastal management by their proposed change of financial funding and future risk responsibilities for private seawalls becoming a public obligation. The massive impact on general rates, long-term debt, and City risk exposure cannot be under-estimated.

I urgently seek your direct review of your department's position on the matter. This is a formal request that your department's position returns to that of the past 40 years that has effectively funded the private seawall construction as part of the City's overall seawall defence construction program.

To this end, I attach a brief document created by our officers setting out the City's commentary and proposed solutions on this important issue for Gold Coast, and ultimately Queensland, as well as a copy of previous correspondence with your department. Attachment A details potential legislative amendments to hopefully resolve the issue and lead to a preferred response for implementation from your review.

I hope and trust this letter and the attachments are sufficiently comprehensive for your consideration of this request. City officers are ready to resolve this issue with your officers as well as representatives from the Department of Environment and Science and potentially Department of State Development, Manufacturing, Infrastructure and Planning.

Minister, it is simply not a viable option for general ratepayers to suddenly bear the burden neither the immediate A-line seawall construction costs in front of private properties nor the longer term financial risks from the City becoming responsible for the function, construction and operational effectiveness of these private seawalls into the future.

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Removing the fiscal responsibility and future de-risking of A-line seawall construction, maintenance and future functionality for private property owners would be seen in the community as a massive financial 'win' for oceanfront property owners at the direct expense of the remaining rate-paying public if your department's new position on this matter was to remain in force.

Absorbing this sudden transfer of fiscal responsibility for A-line seawalls from private owners of ocean-fronted properties to general ratepayers across the City will have a direct significant and negative impact on the rate bills our local residents receive. I will have no choice but to directly link such cost of living increases on their rates bills to this new position adopted by the State Government and specifically the Department of Natural Resources, Mines and Energy.

Such increases to general rates will potentially fly in the face of the City's seven year sustained mantra of keeping average residential rate rises at or around CPI. This is not something I am willing to accept or compromise on without a fight.

The City's technical contact for this issue is Donna Pistol, Senior Lawyer, on (07) 5581 6489.

Sincerely

Section 78B(2)

TOM TATE
MAYOR

Cc: Hon Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade
Hon Leeanne Enoch MP, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts
Hon Cameron Dick MP, Minister for State Development, Manufacturing, Infrastructure and Planning

Hon Karen Andrews MP, Minister for Industry, Science and Technology
Hon Stuart Robert MP, Minister for the National Disability Insurance Scheme, Minister for Government Services
Hon Scott Buchholz MP, Assistant Minister for Road Safety and Freight Transport
Mr Bert van Manen MP, Member for Forde
Ms Angie Bell MP, Member for Moncrieff

Ms Ros Bates MP, Member for Mudgeeraba
Mr Mark Boothman MP, Member for Theodore
Mr Michael Crandon MP, Member for Coomera
Mr David Crisafulli, MP, Member for Broadwater
Mr Michael Hart MP, Member for Burleigh
Ms Meaghan Scanlon MP, Member for Gaven
Mr Ray Stevens MP, Member for Burleigh
Ms Jann Stuckey MP, Member for Currumbin
Mr Ray Molhoek MP, Member for Southport
Mr Sam O'Connor MP, Member for Bonney
Mr John-Paul Langbroek MP, Member for Surfers Paradise

Mayor Mark Jamieson, President, LGAQ
Mr Greg Hallam, Chief Executive Officer, LGAQ

Cr Donna Gates, Deputy Mayor, Division 1
Cr William Owen-Jones, Division 2
Cr Cameron Caldwell, Chair of Economy, Planning and Environment Committee, Division 3

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Cr Kristyn Boulton, Deputy Chair of Water & Waste Committee, Division 4
Cr Peter Young, Division 5
Cr Dawn Crichlow, Division 6
Cr Gary Baildon, Division 7
Cr Robert La Castra, Division 8
Cr Glenn Tozer, Division 9
Cr Paul Taylor, Chair of Water & Waste Committee, Division 10
Cr Hermann Vorster, Division 11
Cr Pauline Young, Chair of Transport & Infrastructure Committee, Division 12
Cr Daphne McDonald, Division 13
Cr Gail O'Neill, Deputy Chair of Economy, Planning and Environment Committee, Division 14

Mr. Wayne Moran, Chief of Staff, Office of the Mayor, City of Gold Coast.

Encl: "Attachment A + letters - Seawalls - issues and solutions"

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Attachment A: Seawalls – issues and solutions

A detailed discussion of the issues appears in the attached letter dated 31 August 2017 from Clayton Utz solicitors to the Department, and the Department's response of 30 May 2018 (see Attachment B – Correspondence)

In summary, the key issues for Council are:

- Council's potential legal and financial risk relating to the design, construction, and regulation of a seawall;
- Maintaining an equitable and consistent approach to the responsibility of a private landowner to protect private property on the Gold Coast from coastal erosion by way of the construction and maintenance of a seawall; and
- ensuring that private landowners are able to secure land tenure in respect of public lands where landowners need to build and maintain a seawall to protect their own land. The practice between Council and the State Government of the adoption of an A-Line to provide integrity to a continuous seawall is now being questioned, thereby providing no certainty for the ongoing construction of that protection offered by a continuous seawall.

Suggested amendments to State legislation

Council requests that the State consider introducing legislation to reduce possible legal and financial risks to Council associated with decision-making (including under its Local Law 17 and City Plan) relating to seawalls.

Tenure on public land

Council has, in the attached letter to the Department of Natural Resources and Mines, suggested amending section 123 of the *Coastal Protection and Management Act 1995* so that the right to occupy and use State tidal land extends to a "designated area" within a broader class of coastal land (including land in a reserve for beach protection and / or coastal management under the *Land Act 1994*) where a person has a development permit to build operational works that is tidal works consisting of a seawall under the *Planning Act 2016.*

Such an amendment would remove the need for the person to obtain a specific grant of an interest in land under the *Land Act 1994* to build and maintain the seawall. Importantly, it would allow Council to trigger the operation of its Local Law 17 to seawalls so that Council can pass the legal and financial risk to private landowners for the seawall's construction and maintenance.

This would also protect the integrity of the State approved A-Line to allow for the eventual construction of a continuous seawall to protect oceanfront property on the Gold Coast.

In support of this contention, it is noted that in Council's view the area of the footprint of a seawall is not a suitable subject for the granting of land tenure such as a lease, as a seawall is often located above the High Water Mark in areas which will continue to be utilised and trafficked by the public, following the construction of the seawall (for example in an esplanade or Reserve). A seawall is a subterranean structure which does not require, and in Council's view should not be granted, exclusive possession of its footprint area. Further, the construction of a seawall does not in general permanently interfere with other use of the land.

Existing unapproved seawalls and no right to occupy and use

Council suggests that, where a seawall on public land benefits an adjoining landowner but, because the landowner has no right to occupy or use the public land because there is no evidence that the seawall was approved such that it would trigger a 'deemed' right to occupy and use under State legislation (including section 123 of the Coastal Protection and Management Act 1995 or section 86 of the Harbours Act 1955 (rep)), the landowner be taken to have a right to occupy and use the land for the purposes of maintaining the seawall. This will allow Council to trigger the operation of its Local Law 17 to such a seawall and, therefore, pass legal and financial risk to benefitted landowners for the seawall's construction and maintenance. In these circumstances, clarification will be needed as to who is a 'benefitted' landowner.

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Your Ref: 12220/17018/80178798

Queensland Government

Department of Natural Resources, Mines and Energy

30 May 2018

Section 78B(2) Partner
Clayton Utz
GPO Box 9806
BRISBANE QLD 4001

Dear Section 78B(

Thank you for your letter of 31 August 2017 on behalf of the Gold Coast City Council (Council) regarding the A-Line on the Gold Coast.

First, please accept my apologies for the delay in replying. The Department of Natural Resources, Mines and Energy (DNRME) has been considering the contents of your letter in consultation with the Department of Environment and Science.

From the information available to DNRME, and supported from the information in your letter, the A-Line was established as a last line of defence to protect property, infrastructure and development from beach erosion along the Gold Coast.

In that context, DNRME considers that the A-Line seawall to be:

1. public infrastructure (in particular for location on State land) i.e. the primary purpose of the A-Line seawall is to protect in general the Gold Coast local government area, including Council and other public land and infrastructure, from the effects of erosion; and

2. a Council responsibility and not a direct responsibility of individual property owners.

Coastal management is community purpose under Schedule 1 of the *Land Act 1994* (Land Act), and as the primary purpose of the A-Line seawall relates to coastal management, DNRME accepts that a Council seawall may be located on State land as community infrastructure (and not deemed as operational which would require market value land transactions).

DNRME will work as required with Council on any Council proposal to determine the areas of State land which could be dedicated as a reserve under the Land Act for a suitable community purpose with Council as trustee to accommodate Council's seawall (noting that addressing native title will be one of the considerations).

Postal :
DNRME Nambour
PO Box 573
Nambour QLD 4560

Telephone : (07) 5451 2212

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The department though appreciates Council's requirement to have an owner who also receives some benefit from the seawall to contribute to the construction and on-going maintenance of the seawall.

The department understands that Council:

- has the legislative authority in certain instances to require from a developer a contribution for public infrastructure e.g. for sewer or water, or to have a separate charge or levy on properties such as for maintenance of canals; and

- is able to consider or adopt a similar approach for the A-Line seawall.

I would also like to clarify that reserves and unallocated State land (as well as roads) landward of the tidal boundary are assets for which the department reports and accounts to Treasury, with land dealings under government policy to be transacted on a market value basis. The department is therefore unable to support a right to occupy and use to apply to State land landward of the tidal boundary.

It is also noted that mention is made in your letter of former section 86 sanctions under the repealed Harbours legislation and the right to use and occupy. Such a right as you are aware will depend on the terms of the section 86 sanction, and any such right to use and occupy applies only to the land below high water mark (seaward of the tidal boundary).

Should you wish to discuss this matter, please contact Mr Daniel Tuk, Senior Land Officer, Land Services, South Region of the department on (07) 5451 2212.

Yours sincerely

sch4p4(6) Personal information

Michael Birchley

Regional Manager, South Region

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