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The coast is clear to protect your castle



LINDSAY MCKENZIE/ABC

David Trowen yesterday with wife Bethsya and kids Margaux, 8, and Leo, 11, at their Belongil Beach home, which was severely damaged in 2009, below

SEAKS SCHEDULES

Residents along one of Australia's most famous coastal stretches are now free to take action to protect their properties from erosion, following a Supreme Court order that could have far-reaching consequences for beachfront home-owners around the nation.

The decade-long dispute between a group of Byron Bay residents and the local council was finally resolved this month when the NSW Supreme Court ordered that the council not remove the ocean rock walls in the shore, and that it was responsible for maintaining and repairing them.

The residents can now even apply for the walls to be upgraded, pending council approval.

The fight in Byron Bay has typified the battles mostly raging along Australia's eastern seaboard, where local governments have cited climate change and environmental protection in restricting what some residents can do with their own land.

The court orders could pave the way for a slew of applications against other councils that engage in the strategy of "planned retreat" — whereby human efforts to stop coastal erosion are abandoned, often condemning existing buildings to demolition.

The dispute in Byron Bay was sparked when the council formulated a new planned retreat policy, and residents at the town's Belongil beach began complaining that structures built to protect the main beach and carpark in the centre of the town were causing loss sand to move north to their neighbourhood.

But it really came to a head in the wake of severe storms that caused part of Belongil beach to collapse into the ocean in 2009.

Landscape John Vaughan had been stopped from building his own rock wall to protect the rest of his property.

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result for more than a decade," Mr Vaughan said yesterday. "We tried to settle this more than a decade ago with the council, and we've said that the structure you've built (in the 1960s) has caused a realignment of the beach which has caused erosion problems at our properties."

Karen Coleman, who represented the group of Byron Bay residents in the legal action, said the resolution of their cases should give hope to others in similar situations.

"I do think the case is important in showing that residents have various avenues for legal recourse available to them," Ms Coleman said.

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Landowner John Vaughan had been stopped from building his own rock wall to protect the rest of his property. "We've been fighting for this result for more than a decade," Mr Vaughan said yesterday. "We tried to settle this more than a decade ago with the council, and we've said that the structure you've built (in the 1960s) has caused a realignment of the beach, which has caused erosion problems at our properties."

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When David Trewern moved his family from Melbourne to Byron Bay at the start of the year, he knew little of the ideological and legal battle of the beach that was raging between his neighbours and the council.

It was his dream to have his children grow up in a house where they could run directly onto the beach, enjoying the lifestyle that he had experienced as a child on the NSW south coast.

Mr Trewern, the 44-year-old founder of digital marketing agency DTDigital, quickly learned how Byron Bay Shire Council had wanted to remove the walls preventing coastal erosion — effectively demolishing his neighbours’ houses — and began to fear for his family’s future.

“I’m still waiting to see what the impact is on the whole area,” Mr Trewern said yesterday.

“I think it’s definitely a positive impact, because it makes it pretty hard for the council to pursue a ‘planned retreat’ if they can’t remove most of the walls.”

Mr Trewern has embraced the precedent set by the Supreme Court orders, hoping it will deliver a warning to all coastal councils who would consider allowing landowners to suffer in such “ideological” warfare.

“People like me who aren’t protected by the court orders, there’s nothing stopping us from taking the same legal action and getting the same court order as well,” he said. “Hopefully I never have to do that ... but there’s a good case study there.”

“I just hope the incoming council — we’ve got council elections coming up in September — they get over this ideological debate that’s been going on.”

The strategy of “planned retreat” has also been considered by the Taree and Port Macquarie-Hastings councils, on the NSW mid-north coast, in recent years.

Port Macquarie-Hastings abandoned its planned retreat at Lake Cathie, after a protracted campaign by residents who were outraged at the forced acquisition of a string of homes that would have been required for it to proceed.

The plan by the now-defunct Greater Taree City Council, which has become part of the MidCoast Council, to allow homeowners at Old Bar to decide how long they stay on their land and what protection measures they can take — with no liability to the council — has also since been abandoned.

A statement released by Byron Shire Council last week said that no admission or finding of liability was included in the settlement with the local residents.

Council legal services coordinator Ralph James said: “The agreement allows the landowners’ time to submit applications to undertake lawful protective works at their own cost. Whether the landowners decide to apply to undertake works is a matter for them.

“The resolution agreement does not provide the property owners with greater or different protection than currently exists. Nor does it suggest any liability on the part of the council for the financial losses claimed by the property owners.”

The court ordered the Byron Shire Council pay the plaintiffs \$2.75m for costs and damages, a sum that the council spokesman said would be borne by insurers.

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DAVID TREWERN
BYRON BAY RESIDENT

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