RISING SEAS, LAW AND THE POLITICAL ECONOMY OF ASSET OWNERSHIP

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Rising seas and increasingly violent storms caused by climate change are threatening coastal properties. Anthropogenic climate change promises to rapidly change the landscape of risk for landed properties in areas of vulnerability, a dynamic compounded by the phenomenon of financialised property. The financialisation of property has led some scholars to argue that assets, rather than employment, have become the key determinants of wealth (Schwartz and Seabrook 2008; Piketty 2014; Aalbers 2016; Ansell 2019; Adkins *et al.* 2021). Where highly valued property markets face climate threats, land law acts as an interface between the private interests of homeowners seeking to defend their properties and areas of public law that seek to manage dynamic coastlines.

This tension applies particularly to shorefront properties facing submersion and damage. Yet because shorefront owners' material stakes lie in defending their properties *as an asset,* by which the proprietors' financial leverage is tethered to the (perceived) value of their homes, public law's ability to regulate the coast is diluted by private property rights. Coastal cities such as Florida, New York and Amsterdam have become emblematic of how climate-related disasters clash with highly valued property markets. Although on a smaller scale, Australian coastal cities are equally subject to this dynamic.

The emphasis on assets, particularly high-end residential housing, as a means of capital appreciation has become increasingly evident in recent decades, leading some political economists, including writers in this journal (*e.g.* Adkins *et al.* 2020; Marsh and Stilwell 2023) to take an 'asset economy' perspective. Concurrently, the revaluation of assets within

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advanced capitalist economies has led others to characterise climate change not just as a problem of collective action but also one of existential politics, in which the rapid unfurling of asset revaluation will render some assets defunct or valueless while others gain, resulting in a fierce political struggle over the distribution of consequences (Colgan *et al.* 2020). Alongside the more visible frontline assets, such as stranded assets in the fossil fuel sector, real estate represents another bundle of assets whose future is at stake. According to some analysts, a climate-driven collapse in waterfront property markets could trigger a financial crisis greater than that of the subprime mortgage crisis of 2007-2009 or the bursting of the dot-com bubble in 2000 (Urbina 2016). In North America, between USD 66 billion and USD 160 billion in coastal property and infrastructure is expected to fall below sea level by 2050, as indicated by Freddie Mac (2016) which is the second largest housing finance creditor in the United States.

One area in Australia where these processes are already evident is Sydney's Northern Beaches, an urbanised series of suburbs adjacent to a string of beaches, bays and headlands, known colloquially as the 'insular peninsular'. Roughly at its centre is Collaroy-Narrabeen beach, a strip of coast that straddles two suburbs, Collaroy and Narrabeen, both of which fall within the jurisdiction of the Northern Beaches Council (hereafter 'the Council'). 61 highly exposed shorefront properties flanking a 1.1-kilometre stretch of the beach. Inappropriate land-use decisions in the fore-dunes, taken before the risks of climate change were properly recognised, permitted development to occur in this active coastal zone (Manly Hydraulics Laboratory 2016). The 61 properties comprise houses and apartments that have experienced rapid house price appreciation. Of the stand-alone houses, ten have historical sales data showing a current average price of $5.15 million, nearly five times higher than their last sales price recorded in the late 1980s and 1990s (*PropertyValuer.com.au*, adjusted to 2023 value). The 2023 median house price in the Collaroy area was $3.2 million, whereas the median NSW State price was $986,500 (*PropertyValuer,com.au* 2023). In other words, these are extraordinarily valuable pieces of real estate.

In June 2016, an east coast cyclone combined with a king tide wrought extensive property damage along the coast just as coastal management and planning law in NSW underwent fundamental reform. Responding to this crisis, the 61 properties along Collaroy-Narrabeen Beach won a legislated pathway to construct a 1.29 km seawall to protect their properties from

further damage. This represented a remarkable departure from the earlier stance of local and State governments on the growing climatic threat posed to real estate; before 2016, seawalls had figured only suggestively in Council proposals and had been quickly dismissed by the broader community. This was the first time the State government funnelled public money into an adaptation infrastructure where the beneficiaries were private property owners. A benefit-distribution analysis commissioned by the Council itself indicated that 94 per cent of the benefit of seawalls would accrue to the proprietors of shorefront properties (Marsden Jacob Associates 2016). While the total bill of $25 million was paid primarily by the shorefront owners, it was subsidised in two lots of $1.73 million by the NSW State government and the local Council, respectively (NBC, n.d.).

This article analyses the forces that resulted in the approval and construction of the artificial seawall at Collaroy-Narrabeen beach. Its first section considers the economic aspects, focusing on the asset economy (and the asset logics inherent within it) that permeate law's development and homeowners' behaviour. The second section canvasses the environmental aspects, looking at the emergent dynamics where highly valued real estate sits in geographies of increased hazard and risk. The third section turns to legal matters, exploring how private property law has diluted public law's attempt at managing property along an increasingly volatile coastline. The fourth section considers politics, examining how asset logics have imbued the State and local government's response to coastal hazards in the Collaroy-Narrabeen case. The penultimate section pulls the legal, economic, environmental and political threads together to explain why private risk was partially socialised in this instance. A brief concluding section reflects on lessons and prospects.

The economic dimension: the 'assetisation' of residential property

To fully grasp the magnitude of asset wealth under threat from climate change, it is necessary to consider the metamorphosis that assets have undergone across capitalist economies. Many scholars argue that a transition has occurred from employment dominance to asset dominance in private wealth creation. Landed property is the largest and most significant private asset in these capitalist societies (Schwartz and

Seabrook 2008). Since the 1980s, housing has transitioned from a security repository to a commodified, privatised, and eventually financialised asset (Nethercote 2019). As credit outpaced growth and became available to more individuals, the wealth portfolios of middle to upper-middle-class households expanded to include a range of market-traded assets (Chwieroth and Walter 2019). This encompasses credit cards, mortgages, and other market-traded assets for low to middle-income individuals and the expansion of derivatives and future markets for the very wealthy (Crouch 2009:390).

The central role that debt has come to occupy in this process has been called an unwritten macroeconomic policy of 'privatised Keynesianism' (Crouch 2009:390-3): instead of governments accruing debt to stimulate the economy, lines of credit have been extended to individuals instead. The urban landscape has become, in effect, a financial asset (Aalbers 2016) within which many homeowners now represent a stratum of rentiers (Ryan-Collins and Murray 2023).

Many government policies have stoked the demand for property, not as a vessel for security, but as an investment promising enduring value and favourable tax treatment (Ryan-Collins and Murray 2023). In Australia, property has been positioned as an investment at the expense of welfare provision (Cooper 2013), resulting in what has been dubbed a 'dual welfare state' (Spies-Butcher 2014), an aberration from the liberal welfare regime in the Worlds of Welfare Capitalism typology that was famously theorised by Esping-Anderson in 1990.

Houses in Australian capital cities have morphed into vehicles for tax planning and rent-seeking. The most contentious policies that fuel the demand for real estate as an investment are negative gearing and the 50% tax discount on income derived from capital gains. In the former, taxpayers can carry forward losses on their investment properties as deductions from their taxable income in the next financial year. (Notably, nowhere else in the tax legislation can a taxpayer carry forward losses from an unrelated field into their general assessable income). The capital gains tax discount halves the amount of tax payable on income received when the assets are sold, making it much lowlier taxed than income from labour or business activities. Combined, these taxation mechanisms make investing in properties a honeypot for those seeking to reduce their overall taxable income while sitting on appreciating asset wealth.

At the core of capitalist life in these conditions is what Adkins *et al.* (2019) call the Minskian household. A home is purchased on credit, the mortgagor anticipates capital gains, the household is leveraged (*i.e.* borrowed funds must be paid back), and capital gains are made when one's speculative investment becomes the object of others' desire. The anticipation of future gain is not an 'optional extra' (Adkins et al. 2021:21); rather, it is expected. It is central to financing the asset and, as collateral, is tethered to other investments' success.

The temporal dimension is critical here because the value of a speculative asset is determined by an unknowable future (Adkins *et al.* 2021; Adkins 2019). State and local governments have pursued tacit policies of 'value-capture', namely policies that 'contribute to asset bubbles,' with the perverse effects of 'rewarding speculation' and funnelling public money towards investors (Wolf-Powers 2022). The credit-driven housing booms mean that the ripple effects of any threats to real estate values extend to its associated mortgage debt, which, in turn, affects mortgage financing, impacting property prices and, thus, property tax revenue going to the State and local governments. The incentive for 'value capture' policies is clear: State and local governments have become dependent on the budgetary windfall provided by property taxes (*i.e.* stamp duties, land taxes and local government rates).

In recent decades, waterfront coastal residential areas have experienced these credit-driven surges in demand (and, therefore, value). This may seem ironic, given the physical instability of the coastline and its exposure to climate risk. Locationality influences the desirability of real estate, yet the physical limitations of land inherently constrain locationality. Landed property is unlike other forms of capital: it is (considered) permanent, it cannot (for the most part) be moved, with its value rising due to speculation rather than productiveness (Ryan-Collins and Murray 2023; Akerlof and Shiller 2009:149-57). The latter characteristic means that, even when the housing stock remains quite constant, massive amounts of wealth may be generated without comparable capital investments (Turner 2017). This dynamic is particularly evident in the case of the perceived desirability of waterfront property.[1]

[1] One study demonstrated that value has been shown to increase dramatically alongside greater proximity to the ocean; see Benson *et al.* (1998).

The environmental dimension: highly valued properties on emerging climate fault-lines

The surging demand for waterfront property, however, sits awkwardly alongside surging seas and rising ocean levels. More than a decade ago, one estimate suggested that between 157,000 and 247,000 Australian houses are at risk of inundation in a (conservative) scenario of a 1.1-metre rise in sea levels, the replacement cost of which is predicted to be between AUD 41 billion and 63 billion at 2008 values (Department of Climate Change and Energy Efficiency 2011). More recent predictions of seal-level rise have become increasingly dire; a recent study found that, even if global emissions were curbed to meet the 2-degree target set in the Paris Accord, the West Antarctic Ice Sheet – responsible for Antarctica's sea level rise – is likely to collapse (Naughton *et al.* 2023). The West Antarctic Ice Sheet alone has enough ice to raise global mean sea levels by 5.3 metres. Urbanised areas that straddle the coast face more than just inundation: the estimates regarding how many properties face inundation do not account for subsequent inland flooding as a byproduct of coastal storm surges (Ware 2016). The southeast coast of Australia therefore faces a two-pronged threat: rising sea levels that cause erosion and threaten submersion, and an increase in the frequency of east coast lows, wherein a trough of low pressure causes bursts of explosive gale-force winds, torrential rain and swollen rough waters.

In liberal market economies where climate risk meets private property, it is the insurance industry that has been positioned as the primary shock-absorber of loss (Tooze 2019). Reporting on un-insurability and under-insurability has been increasingly prominent nationally. Some reports have focused on so-called 'red zones' which are areas in which properties are uninsurable because premiums would outstrip mortgage repayments (ABC News 2020); while other reports have focused on insurance embargos in areas affected by natural disasters (Butler 2020). The situation in Collaroy-Narrabeen has received particular attention. Following the 2016 storm, the insurance industry made clear that it bore no responsibility, a spokesperson for the Insurance Council of Australia stating that 'most insurers don't cover actions of the sea. It's a very common exclusion' (ABC News 2016). 'Acts of the sea', he went on, are considered 'acts of God.' Of course, this inability or unwillingness of the insurance industry to respond to increasing damage wrought by intensified climate change is a dynamic not unique to Collaroy-Narrabeen. Evidently, the insurance sector's general

capacity to respond to climate catastrophes is dwindling. Instead, there is growing pressure for private risk to be socialised.

The legal dimension: property as a right to revenue

Real property, as it is practised in law, is not a thing (a plot of land or a physical house, for example) but the *right to* that thing. Conceptualised as a 'bundle of rights' – with physical possession being only one such right – to 'have' property is to have a range of rights enforceable against the world, save against someone with a better claim (Australian Law Reform Commission 2016). Property is, therefore, often considered relative: it is someone's only to the extent of another with a better claim. Property rights have been subject to such an array of legal tinkering that prominent scholars argue that definition evades it. With even the lower stratum of air above land capable of being taken as its own quadrant of real property, Gray has argued that property is, in a sense, nothing: 'I can sell you thin air and, like it or not, you have to agree that there has been a transfer of property' (Gray 1991:259). This abstract character of property rights has had two crucial implications for how law that relates to the land plays out in Australia.

The first implication is that it fosters an environment where landed property may become valuable capital. As a complex array of interests can hover over property – the most [in]famous being mortgage-backed securities or collateral debt obligations – the property can be the basis of finance capital (Cooper 2013) and an object of speculation. Property rights are implicitly a right to revenue (or, the expectation of future returns) (Horwitz 1979, Cooper 2013, Graham 2011). The state, in turn, mediates modern property rights: it guarantees the usage of property and the disposal of property (MacPherson 1975:111). Indeed, the right of alienability (*i.e.* the right to sell) and all its creatures – transferability, compensation, acquisition and exchange – is the essence of private property today (Graham 2011:9; Godden 2023). 'Just acquisition' clauses engender this view of property: compensation for property is framed in terms of lost rights to the 'commercial benefits' of property (Graham 2011:162). In NSW, s 3(1)(a) of *Land Acquisition (Just Terms Compensation) Act 1991* No 22 (NSW) states that, where there is land implicated in a proposal by an authority of the State to acquire that land, 'the amount of compensation *will be not less than the market value of the*

land (unaffected by the proposal) at the date of acquisition' [emphasis added]. If local government is the acquiring authority, properties have appreciated to levels far beyond the ability of a fiscally constrained Council to buy back. When Frohling *et al.* (2019) investigated the planned retreat policy of the Council of the Byron Shire, 700 kilometres north of Collaroy-Narrabeen, an interviewee said: 'The value of coastal land in NSW is exorbitant […] You have to consider compensation, but when you calculate it, it's frightening' (Frohling *et al.* 2019:6).

The second implication of abstract property rights is that the physical land is absent in legal education and judicial proceedings, a process that has been called 'dephyscalisation' (Graham 2011). Of course, it is difficult to reconcile what we see in the landscape with the idea that property is abstract; ornate fences, bland fences, walls and letterboxes all point to property being real and tangible. Yet what we see in the landscape is what Graham (2011) names a *lawscape*; it is the physical embodiment of *practicing* property law in a conceptual way, the consequence of which is a largely immutable and maladapted landscape. This is particularly evident in the case of Collaroy-Narrabeen, where a seven-metre wall of concrete and steel now defends properties. It is, in many respects, a manifestation of the dilution of public law, whose purpose should be to regulate land use for the public. While environmental law is about limitations, the law of private property is about individual liberty. Environmental law is 'quarantined,' poised only to enter the picture when the battles fought in property law – primarily questions of who has the priority claim to property – are settled (Graham 2011:161). The pulls are in irreconcilable directions, yet where private property interests have embedded themselves into State legislation, local government has little jurisdiction to regulate land use.

The regulatory framework for planning requires local governments to consider State planning instruments when deciding development applications (Pain 2021:298). Local governments, therefore, are limited in their ability to regulate land use. Yet local governments may find themselves in a position where they face litigation over past land-use decisions. Private proprietors may sue local governments, arguing that councils failed to consider the risk that climate change posed when granting development consents. Although NSW is the only state to have a statutory defence against such claims – s 733 of the *Local Government Act 1993* (NSW) effectively expunges liability for damage wrought in coastal zones so long as the council acted in 'good faith' – local governments are

not endowed with a litigation budget. Regardless of whether such actions would ultimately succeed or fail, local government is not in a position to weather an onslaught of legal storms (Corkill 2012; Corkill 2013).

The political dimension: how asset logics have permeated adaptation policy

The proprietors of houses in advanced capitalist economies are also receiving growing attention. In the political science literature, the so-called 'forgotten middle' – the propertied middle class who, until recently, were not accorded attention because they were neither the ultra-rich nor the very poor (Atkinson and Brandolini 2013:78) – is garnering much more attention because its shared material stakes in asset wealth apparently sways political decisions. Chwieroth and Walter's *The Wealth Effect* (2019) points to a new paradigm across advanced liberal market economies where there is a rising expectation amongst the middle class of asset protection by the government, manifest in the expectation that governments will bail out the banking sector during banking crises. This then translates to voter pressure on incumbents, a form of electoral punishment in which constituents will vote out politicians for failing to protect their asset wealth.

Crises – be they banking crises (Chwieroth and Walter 2019 explore), public health crises (Maalsen *et al.* 2021) or the climate crisis – give rise to what Maalsen et al. describe as an 'intensified commitment to the politics and policy of asset inflation' (2021:22). In local politics, political scientists have pointed out that homeowners mobilise (and are therefore over-represented) in local governments, pressing for policies that shore up their asset values, for example, zoning laws that favour homeowners' interests (see Fischel's 2001 'homevoter' hypothesis or, more recently, Yoder 2020). All these studies point to dynamics in which political outcomes are, in one way or another, moulded by the interests of proprietors who sit on housing stock subject to surging demand.

These dynamics are evident locally in the political arcs that surrounded the eventual approval and construction of the artificial seawall at Collaroy-Narrabeen Beach. The deadlock that the Council found itself in by 2016 was one borne from decades of pro-asset inflationary policies, combined with the institution of private property in law. The houses had become too valuable to buy back. The seawalls that eventuated were the product of

fierce campaigning by shorefront owners, and a consequent dramatic overhaul of coastal management regulation. The critical dimension is asset logics: shorefront owners will not let the sea take their houses, framing their push for seawalls as the *right* to protect their assets. Increasingly, Councils may face litigation for past land-use decisions that have allowed development to occur along vulnerable coastlines. In the case of Collaroy-Narrabeen, the socialisation of private risk was seen in [1] the legislated path that saw seawalls approved partially on Crown (i.e. public) land and [2] a formal avenue for those private works to be subsidised.

The emergence of this outcome can be understood in historical context. When, in 2002, the then-Warringah Council (later to become the Northern Beaches Council) unveiled its first proposal for a seawall, it sparked community alarm. Three thousand people, including locals, conservationists, and surfers, formed a human chain to compel the Council to rescind the proposal (Australian Associated Press General News 2016). The protest is symptomatic of the divisive nature of seawalls: their existence serves only to protect the private properties behind them and, in the process, the beach itself suffers. At that time, the seawall plan was abandoned. Subsequently, the Warringah Council (as it then was) attempted a buy-back scheme, a mechanism of planned retreat whereby the Council would act as the highest bidder for the shorefront properties sold on an open market. However, because the shorefront owners would have to voluntarily opt-in, the scheme failed. It was revoked in 2007 after only two houses were bought back (Gilmore 2007).

By 2014, the Council and its residents found themselves at an impasse. The policy of planned retreat had failed; it was fiscally impossible for the Council, and regardless, the buy-back scheme was voluntary, and shorefront owners were not willing to relinquish their houses. When the idea of a seawall resurfaced in its embryonic form as a Council proposal embedded in the Warringah Council Coastal Zone Management Plan (2014, hereafter CZMP 2014), the same schism between inland residents and shorefront residents arose. A report summarising the consultation process elucidates the polarisation, stating that 'the response to the policy and proposed CZMP amendments *varied considerably between property owners and the broader community*' (NBC 2016, emphasis added). In the roundtable discussions, the shorefront owners agreed that the Council should develop guidelines for seawalls but, importantly, they *agreed unanimously* that the property owners themselves front the costs. The

finalised CZMP read: 'property owners to be responsible for protection of their properties' (Warringah Council 2014).

Meanwhile, the NSW Government's Department of Environment and Climate Change issued a sea level rise policy statement that sought to exonerate the State government of responsibility and liability for damage to private property caused by climate influences. It said the government 'does not have nor does it accept future obligations to remedy the impacts of coastal hazards on private property' (DECCW 2009:5). The extent of support, the document reads, remains only in times of emergency and 'compensation will not be provided for any impact on property titles due to erosion or sea level rise' (DECCW 2009:6). It also states that development consents for private protection works will remain the domain of local government, however noting that private proprietors will 'not normally be permitted to construct works on Crown land' (*i.e.* land held by the State government for the benefit of the public).

The question being addressed in this article then is why do seawalls exist along Collaroy-Narrabeen partially on Crown land and paid in part by the public purse today? It seems evident that the pivotal point when the Council's attitude switched towards socialising private risk was the storm that occurred on June 6, 2016. On that night, an east coast low combined with a king tide created unprecedented damage to the short strip of coast. The ocean swallowed entire walls of houses and a private swimming pool collapsed into a pile of rubble and mud. Immediately following the storm, Peter Kelaher from PK Property Group voiced a dire warning, saying that the storm 'would affect all beachside properties [values] from today onwards', predicting that the area would become a 'ghost town' and saying that he would not be surprised if homes depreciated by sixty percent (Duke *et al.* 2016). Far from the anticipated depreciation, however, the properties on the cusp of a rising ocean have continued to rise in value. This is evident from inspection of data on recent apartment sales on *PropertyValue.com.au* for the properties listed to receive subsidies by NBC (2016). Some apartments have sold for over $3 million. A single 'reason' for the ongoing market buoyancy is difficult to isolate, of course, because many factors contribute to the continued demand. One factor could be buyers' self-deception: 'reality denial,' explains Bénabou and Tirole (2016:144), 'is the failure to update beliefs properly in response to bad news'. But, of course, the fact that the seawall was built has provided reassurance too.

Why, in response to the increasing threat that climate change poses to private property, was the route of property defence chosen? This article suggests that asset logics seep into the modern property right (*i.e.* a landowner's expectation of future value), calcified in the legislature (i.e. public law) through the political process. In other words, political incumbents will not allow private property to be subordinated to stricter planning laws that may see the properties of their constituents devalued.

To demonstrate this point, it is necessary to consider Collaroy-Narrabeen's political preferences. Federally, both suburbs sit within the division of Mackellar. Until the last Federal election, the seat had been an Australian Liberal Party (LP) stronghold since its inception in 1972. Nationwide, the LP is generally considered socially conservative and economically liberal. Prior to the 2022 Federal election, the suburbs of Collaroy and Narrabeen were in what was known as the 'blue ribbon' belt: safe conservative seats of the LP with little contestability or political polarisation. The same has been true of NSW State elections; Collaroy (which falls in the Wakehurst division) has been Liberal and independent conservative since 1973, and Narrabeen (which sits in the Pittwater division) has been Liberal since 1984. Yet the normative culture of homeownership that one would expect from economically Liberal voters – that one embraces the free market and reaps its benefits but accepts its costs – was seemingly abandoned during the critical storm event in June 2016.

Put simply, the demands of the shorefront property owners have shifted dramatically, reaching fever pitch following the 2016 storm and settling on a unanimous call for public subsidies for their private adaptation works. This is not necessarily surprising, as political psychologists and behavioural economists have long established that voters do not remain ideologically 'pure' in their preferences. Though we may expect affluent, conservative voters with large asset wealth to disavow government intervention, many studies in political science demonstrate that voters tend to express preferences that outwardly appear to contradict their political leanings. This 'motivated reasoning' is a form of cognitive dissonance wherein people unconsciously reason their way to preferences that benefit them (Epley and Gilovich 2016). It is evident in what Mettler (2018) has dubbed the 'government-citizen disconnect,' whereby citizens who seemingly resent big government also favour tax give-aways to the middle class. These seemingly illogical positions, Mettler finds, is symptomatic of a self-attribution fallacy: the idea that well-being results from one's deservingness rather than being bolstered through social provision.

When the then-Premier of NSW Mike Baird of the Liberal party visited Collaroy and Narrabeen beaches on the day following the storm, he openly contradicted his own State government's stance that protection of exposed coastal property was the responsibility of the homeowner and the Council (see DECCW 2009 October). With the damaged properties setting the backdrop for his televised interview, the Premier announced that the government would assist in fortifying the properties against the sea and, significantly, that it would be 'right to look at using public funds as part of that process' (ABC News 2016). During the same interview process, the then Emergency Services Minister David Elliott expressed the opposite view, which had been the previously prevailing position, saying: 'I don't know what the government can do to encourage people not to buy coastal homes.' He reiterated that it was the role of the insurance industry and the homebuyer to check exclusions on the insurance policies but, where both failed, 'it is not the role of the government' (ABC News 2016). Nevertheless, it was the Premier's promise of public money towards private adaptation works that came to fruition.

Following the storm, the demands of the shorefront owners intensified pressure on the government to respond by legislating pathways for the development of artificial walls and making public funding available. The Facebook page of a campaign group called *Coastal Protect Collaroy,* run by shorefront owners who felt the Council was not sufficiently responsive in getting their seawall and subsidies approved, sheds light on the types of demands they had at the time. A post on 26 July 2019 reminds readers of the 'millions spent building a seawall for Collaroy carpark' while 'residents are prevented from building their seawall.' The post goes on to detail the excessive use of Council money on, for example, 'bins that no one wanted and that are 33% smaller' while simultaneously 'holding residents to ransom' with 'hostile conditions that they must accept in return for protecting their homes (at their own expense).' What is perceived as 'hostile conditions' is the time-limited consents; that is, the development approvals for the seawalls were not granted in perpetuity; instead, they were to be reappraised after 57 years. Several consistent motifs appear across the group's posts, including public versus private liability ('home owners' rights were washed away into the sea,' 'unequal treatment for beachfront properties'), the right to protect private property ('[residents] have the right to protect their own private properties at their own expense and free of exploitation'; 'your greatest asset – your home – deserves to be protected;' 'governments start out telling you that you can't protect

private property […] next it will be communism'), the perception of intentional asset devaluation from planning elites ([Council wants to] 'impose the removal of the wall at a time to devalue the properties and buy them back for a song') and electoral punishment on incumbents ('time for those responsible to step down;' 'they [the Council] should pay with their jobs') (see *Coastal Protection Collaroy*).

In those same years, coastal management in NSW underwent significant reform. The *Coastal Management Act 2016* (NSW) (*CM Act*) replaced the *Coastal Protection Act 1979* (NSW) (*CP Act*), an Act which had operated in tandem with the *Environmental Planning and Assessment Act* 1979 (NSW) (*EPA Act*) to regulate planning and coastal management in NSW since 1980 (Pain 2021). In 2016, when the new *CM Act* was passed, the *State Environmental Planning Policy (Coastal Management)* 2018 (*Coastal Management SEPP*) amended the *EPA Act.* Councils now had to prepare coastal management plans if their location fell within a coastal management 'zone' under the *Coastal Management SEPP,* a process which would then grant the Council access to funding under the newly created Coastal and Estuary Grants Program. Four zones were created: coastal wetlands, coastal vulnerability areas, coastal use areas, and coastal environment areas. Notably, coastal vulnerability areas – areas exposed to coastal hazards such as beach erosion – have not yet been mapped and, therefore, not adopted (see s 6(3) of the *Coastal Management SEPP*). Nicola Pain speculates that when (or if) a coastal vulnerability area has been mapped and adopted the mapping will prove controversial because it would cause asset devaluation (Pain 2021). As it was, Collaroy-Narrabeen beach was mapped as a 'land use' zone.

The legislation required a fresh CZMP to be drafted. While in the new CZMP (2016) the old divisions remained (i.e. shorefront owners versus inland residents), the demands of shorefront owners had shifted. Now, they vied not only for development consents but also public money to subsidise the wall's construction cost. The submissions from [affected] landowners 'requested greater public funding for new works' (NBC 2016: Item 8.1). This is a remarkable shift from the position of the 2014 CZMP, where shorefront homeowners had agreed unanimously that they would bear the burden of the construction costs of any seawalls. The pendulum had swung to meet their demands and, following Collaroy-Narrabeen's successful seawall, other urbanised shorelines across NSW's coast followed suit to obtain similar subsidies under the new Coastal and Estuary Grants Program (NSW Department of Planning and Environment 2018).

How asset logics dampen planning law

The economic, environmental, legal and political perspectives can be brought together to address the question: Why was private adaption infrastructure pursued at the expense of (*prima facie* more logical) solutions, such as planned retreat? Or – to focus more directly on the *change* that occurred in the Collaroy-Narrabeen case – why were the houses not simply allowed to fall into the sea, as had happened several times in the twentieth century when property along the same stretch of coast sustained irreparable damage? An autobiographic account from the 1940s detailing the lives of the two authors who boarded in a rooming house on Narrabeen beach is illustrative of the latter aspect. The inhabitants of the house in which the authors lived were all 'very poor' in what was then a working-class suburb (Park and Niland 1956:157). When a coastal cyclone sent the waves crashing 'like a ton of bricks on the roof,' the inhabitants scattered like 'storm battered birds' (165). The residents of Narrabeen, described as castaways, salvaged what they could and moved elsewhere. Today, the proposition that affluent peoples' homes simply be left to wash away incites moral outrage and a semblance of existential panic amongst those who see their own experience reflected in the Collaroy-Narrabeen shorefront owners'.

The dimension added by the 'asset economy' literature is the most obvious answer to this puzzle, pointing to the significant historical shift that has taken place in the political culture corresponding to the role that assets have come to occupy in advanced capitalist economies. Housing now represents an entrepreneurial activity (Fligstein and Goldstein 2015; Spiers-Butcher 2014). The Minskian household to which it has given rise (Adkins *et al.* 2020) rests on the embedded assumption that households accept the risk of homeownership in return for having been allowed to, effectively, gamble with properties. Some confirmation of this market-based view of property risk may be taken from the fact that people in the two suburbs on which this article focuses, Collaroy and Narrabeen, have almost unwaveringly voted for conservatives at every level of government since their current electoral boundaries were drawn. Yet, as we have seen, when the market narrative failed (*i.e.* the insurance industry would not absorb the risk of making payouts to increasing numbers of private properties located on emerging climate fault lines), the demands of shorefront owners began to pivot towards a position that demanded public socialisation of the risk.

Asset logics are clearly at play here on two levels. First, voters exposed to property damage will not default to a mandate of self-responsibility. This is perhaps most visible among the shorefront owners of the *Coastal Protect Collaroy* campaign. There, the paradoxical call has been for both the right of the individual to protect their own private property *and* asset protection from local and State governments in the form of subsidies. Second, and most starkly, adaptation infrastructure and planning law have been used as a tool in defending asset wealth. Collaroy-Narrabeen's 1.29 km seawall is remarkable precisely because it was the first such thing to be subject to subsidies and development consents under the State's new Coastal and Estuary Grants program (NSW Department of Planning and Environment 2018).

Considering the political economy of asset logics also adds a dimension to scholarship on land law. Some of the core interests in property law are the right to *use and enjoy,* to *alienate* and *exclusively possess* property. The unstated interest emanating from the phenomenon of financialised property is the right to – and, indeed, the expectation of - enduring wealth promising future returns. Property has now been established as valuable capital. While legal scholarship may assert that property is an abstract 'nothing' (Gray 1991), it is the opposite for the Minskian household: property as an asset, has become everything. The implications for public law that seeks to regulate land use are clear. As illustrated in this case study of coastal management and planning regulation, environmental policy is constrained by private property law. Speculative real estate cannot be acquired by state authorities without compensation commensurate with the value of the property. Further, if shorefront owners sued public authorities for past land-use decisions that resulted in property damage, the damages awarded would be tethered to the value of the property. Finally, the groundswell of the middle (and upper) class whose wealth portfolios have been hugely inflated would undoubtedly lead to an up-tick in litigation where that wealth was under threat from asset price depreciation.

These ramifications of asset logics permeating land law in relation to climate change and understandings of public responsibility are already playing out in ways that the case of the Collaroy-Narrabeen seawall has exemplified. Despite what appears to be a deadlock, further change is inevitable. No quantity of artificial adaption can protect properties from coastal catastrophes indefinitely (Freudenberg *et al.* 2016; Pilkey *et al.* 2016; Craig 2019). While adaptation infrastructure has (in the short term) offered a perverse incentive to stay, a time will come when defending

exposed properties is untenable. One such forced change may relate to the law arising from the doctrine of accretion. Applying to the issue of sea level rise and submersion, the doctrine of accretion – a principle of common law inherited from Fourteenth Century Britain – says that the mean high water mark defines tidal boundaries, and where properties fall below the mean high-water mark due to 'gradual' and 'natural' changes in tidal water, the property is 'quietly' transferred to the Crown (Corkill 2012; Corkill 2013). Contrary to what is commonly believed, the indefeasibility of title does not promise that the boundaries of that land remain constant in perpetuity (Corkill 2012:52); it simply means that title cannot be defeated save by someone with a better claim. Land that comes to fall below the mean high-water mark is no longer the land of the (private) registered proprietor; it is considered the foreshore or bed of tidal waters, owned by the Crown on trust for the public. Where the doctrine has been tested in courts – for example in *Environment Protection Authority v Leaghur Holdings* – it was confirmed that the proprietor did not own land 'so taken by the sea' (Allen 1995).

Conclusion

This study has shown how economic, environmental, legal and political issues intermingle in what will surely become an increasingly common situation where private property values are impacted by environmental change, such as damages wrought by coastal cyclones and coastal erosion.

A clear principle to emerge from the analysis is that, particularly for over-developed coastlines, political will is required for land-use decisions to be revoked. Historically, the residential zoning that coastal communities around Sydney received was granted to construct fishing shacks. Now, with the owners of highly valuable properties in those locations seeking to defend their properties against damage associated with climate change, new challenges must be confronted. In the Collaroy-Narrabeen case on which this article has focussed, the seawall is subject to a sixty-year consent, meaning that the development consents will be reappraised after 57 more years. The problem remains, however, that shorefront property owners defending their personal asset wealth are likely to turn to the courts in a 'storm of litigation' (Corkill 2012:56-7; Corkill 2013). The planning instrument of 'vulnerability' zones under the *Coastal Management SEPP* has promise, but what transpires when, or if, coastal communities are

mapped as 'vulnerability' zones rather than 'land-use' zones remains to be seen. By then, the infeasibility of preserving private properties against myriad climate threats could force planning law to re-evaluate whether it serves the interests of private property rights or the broader public interest.

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