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Gabrielle Upton blown away on beach erosion

By **DEBORAH CORNWALL**, JOURNALIST

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A NSW judge has delivered an extraordinary rebuke to the state's Environment Minister, Gabrielle Upton, over her response to a dispute over two beaches she rezoned at "immediate and intolerable risk of erosion".

The judgment, handed down in the NSW Land and Environment Court yesterday, follows landmark legal action by a group of beachfront residents of the surfing hamlet of Blueys and Boomerang beaches on the state's mid-north coast.

The Blueys and Boomerang Residents Group is suing Ms Upton and the MidCoast Council over Ms Upton's decision in November to declare their beaches at immediate risk from dune erosion and sea surges. They say the declaration means dozens of beachfront properties are now deemed worthless.

Lawyers for the residents told the court Ms Upton's decision had been completely at odds with written and oral advice she had received from her own experts, the judgment said.

Even so, the minister had approved the zoning of the properties based on a flawed and an "inadequate" report prepared for the NSW MidCoast Council, it said.

Handing down his decision, yesterday, judge Terry Sheahan said: "In essence, and crucially, the applicant (the residents) argues that the evidence before the minister, and the advice given to her, was that these two beaches were 'stable' and 'in balance' so her finding was not supported by logical or rational grounds."

Ms Upton's lawyers argued the residents' decision to issue her with a "notice to admit facts" (NAF), demanding she explain how she arrived at her decision, was "oppressive" and an "abuse of process".

Justice Sheahan, however, said "despite the valiant attempts of counsel for the minister", Ms Upton's arguments had "no authority".

He said the use of a NAF had been "entirely appropriate" and ordered the minister respond to it. "I accept the submissions of the applicant (the residents) on each aspect of this dispute ... and reject those of the minister who has so far failed to identify for the court, as required by the Civil Procedure Act, the matters she genuinely disputes," he said.

The legal action by Blueys and Boomerang residents amounts to a direct challenge to the right of local councils and the minister to impose zoning restrictions without a legitimate basis.

This month Boomerang resident Bob Felton told *The Australian*: "We have had our beachfront houses declared virtually worthless at the stroke of a pen based on one deeply flawed report, which was simply wrong.

"Their own reports show our beaches and sand dunes have actually been growing in the past 50 years, not eroding.

"But the council, the Minister for Environment and her experts on the NSW Coastal Panel have all refused to admit a terrible mistake has been made. It's bizarre."

Pat Aiken, a spokesman for the NSW Coastal Alliance, said at least 60,000 homes in NSW may be affected by the state's "disastrous" coastal protection laws under which land near beaches and harbours could be deemed to be an environmental hazard area because of everything from rising sea levels and storm surges to coastal erosion.

The judge will review the minister's response next month, when a date will be set for a final hearing.

Ms Upton's spokesman said it would be inappropriate to comment as the matter was in court.

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