



Environment,  
Climate Change  
& Water



## Coastal Protection Service Charge Guidelines

*Cover photographs (clockwise from main photograph):*

Coastal erosion at Lake Cathie on 21 April 2006 (Port Macquarie-Hastings Council);

Seven Mile Beach with seawall, Lennox Head (M. Sharpin/DECCW);

Jimmy's Beach in 2007 (P. Watson/DECCW);

North Entrance (P. Watson/DECCW)

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59–61 Goulburn Street  
PO Box A290  
Sydney South 1232

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## Abbreviations

CPSC	Coastal Protection Service Charge
DECCW	Department of Environment, Climate Change and Water NSW
DLG	Division of Local Government, NSW Department of Premier and Cabinet
IPART	Independent Pricing and Regulatory Tribunal
NSW	New South Wales

# Definitions

The following is a list of definitions for terms used in these guidelines.

**Asset management plan:** a plan prepared for the management of coastal protection works over the life cycle of the works, to provide a specific level of service in a cost effective manner.

**Coastal engineer:** a person with the qualifications and experience necessary to meet the requirements for registration by the National Engineering Registration Board as a professional engineer in the civil engineering general area of practice or the equivalent registration under the Queensland *Professional Engineers Act 2002*.

**Coastal protection service and coastal protection works** have the same meaning as in the *Local Government Act 1993*:

**Coastal protection service** means a service: (a) to maintain and repair coastal protection works, or (b) to manage the impacts of such works (such as changed or increased beach erosion elsewhere), but does not include a service that relates to emergency coastal protection works.

**Coastal protection works** means activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters, and includes seawalls, revetments, groynes and beach nourishment. This guideline applies to coastal protection works that were voluntarily constructed wholly or partially by land owners, or existing works for which current or past land owners voluntarily agreed to contribute to the service charge.

**Coastal hazard** has the same meaning as in the *Coastal Protection Act 1979*, being:

- (a) beach erosion
- (b) shoreline recession
- (c) coastal lake or watercourse entrance instability
- (d) coastal inundation
- (e) coastal cliff or slope instability
- (f) tidal inundation
- (g) erosion caused by tidal waters, including the interaction of those waters with catchment floodwaters.

**Coastal protection service charge:** a charge that councils can levy on the owners of eligible land to cover the councils' reasonable costs of providing coastal protection services relating to eligible coastal protection works.

**Eligible coastal protection works:** coastal protection works where a current or previous owner either voluntarily contributed to their construction or upgrade, or, for existing works, agreed to pay a coastal protection service charge (see Section 2.1 for further information).

**Eligible land:** land to which council can levy a coastal protection service charge (see Section 2.1 for further information).

**Emergency coastal protection works** has the same meaning as in the *Coastal Protection Act 1979*.

**Long-term coastal protection works:** coastal protection works that are not emergency coastal protection works.

**Person:** has the same meaning as in the *Interpretation Act 1987* (i.e. includes an individual, a corporation and a body corporate or politic).

**Public authority** has the same meaning as in the *Coastal Protection Act 1979* and includes a council.

**Rolling average:** a series of successive averages of a defined number of variables. As each new variable is included in calculating the average, the last variable of the series is deleted.

**Wave refraction:** the process by which a wave approaching the shore changes direction due to slowing of those parts of the wave that enter shallow water first, causing a decrease in the angle at which the wave approaches until the wave is almost parallel to the coast.

In the event of any inconsistency between these guidelines and the *Local Government Act 1993*, *Coastal Protection Act 1979*, Conveyancing (Sale of Land) Regulation 2005 or Local Government (General) Regulation 2005, the Act or the Regulation takes precedence.

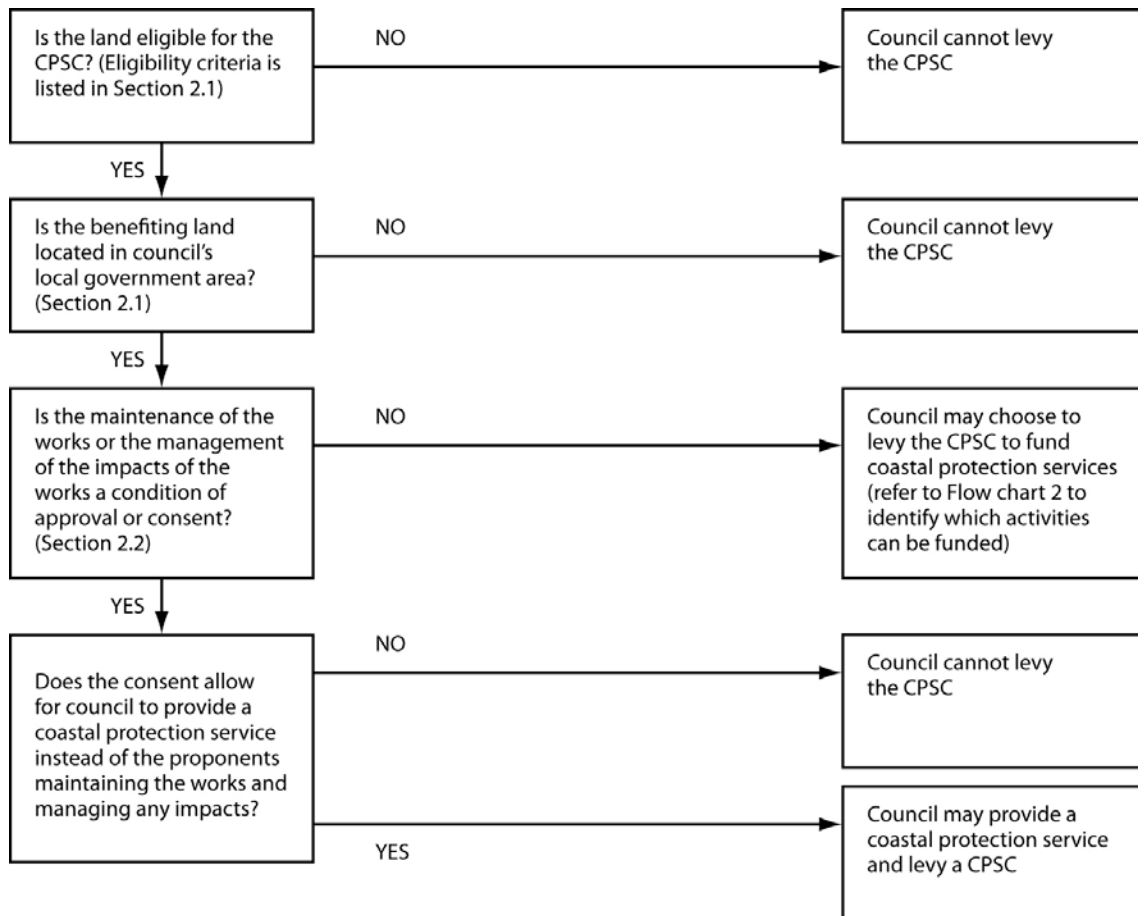
# How to find what you are looking for

These guidelines describe in detail the requirements associated with levying the Coastal Protection Service Charge (CPSC) on landowners who have voluntarily constructed a coastal protection work. The following flow charts and frequently asked questions are intended to help you navigate this document and find the information that is most relevant for your query.

## Frequently asked questions

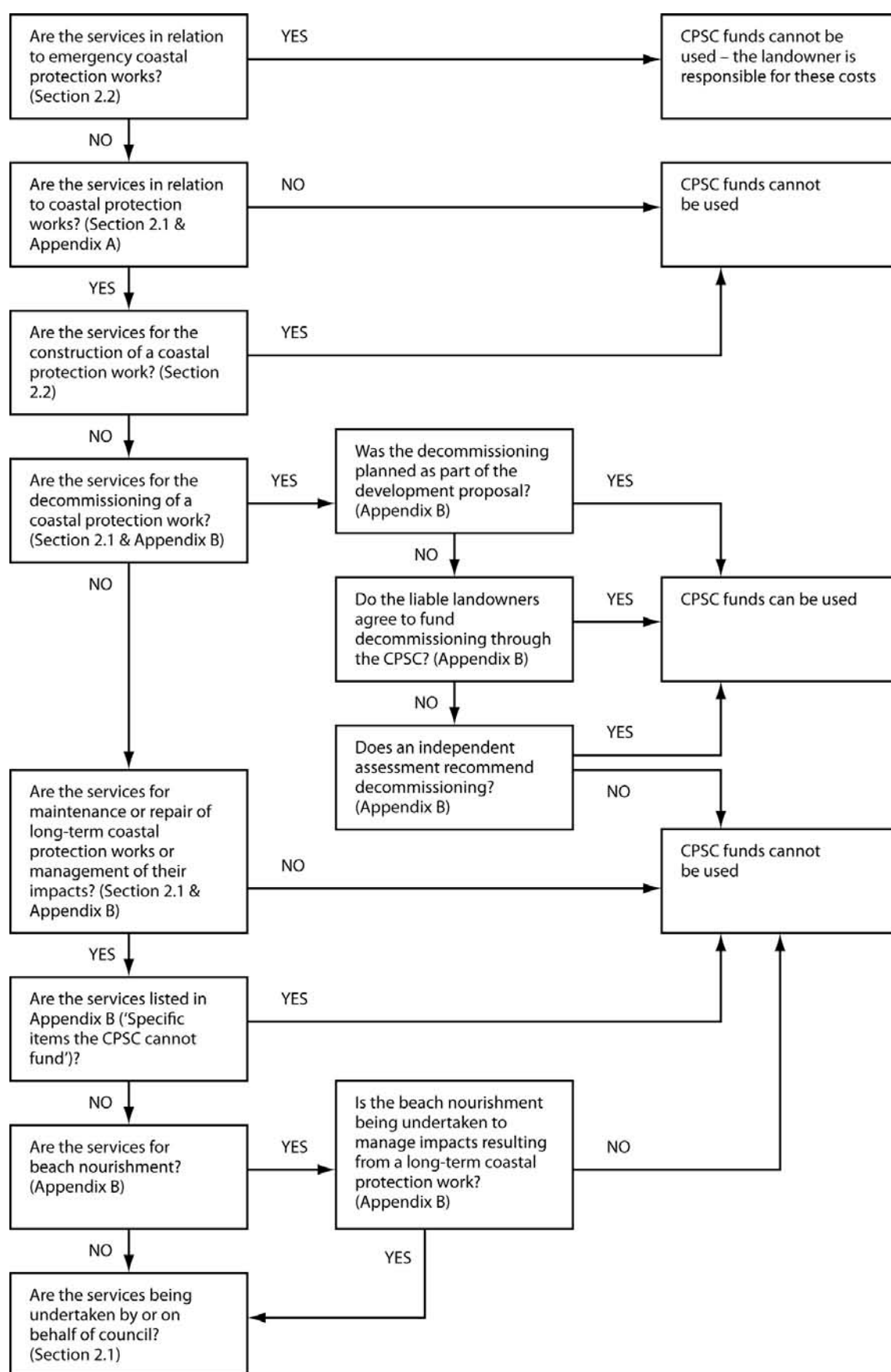
- **What is a coastal protection work?** See 'Definitions' and Appendix A.
- **What is a coastal protection service?** See 'Definitions', Section 2.1 and Appendix B.
- **What activities can be funded with money raised through the CPSC?**  
See Sections 2.1, Appendix B, and Flow chart 2.
- **Are there specific activities that are ineligible for CPSC funding?** See Appendix B.
- **Who is liable to pay the CPSC?** See Section 2.1.
- **What land is deemed to benefit from a coastal protection service?** See Section 2.1.
- **What is council's role in levying the CPSC?** See Section 2.1.
- **How is the CPSC calculated?** See Section 3 and Appendix D.
- **What are the reporting requirements associated with the CPSC?**  
See Section 4 and Appendix G.
- **Where do I find guidance for coastal protection work development applications and assessments?** Refer to *Guidelines for assessing the impacts of seawalls* (DECCW in preparation).

**Flow chart 1: Can council levy the CPSC on a landowner?**





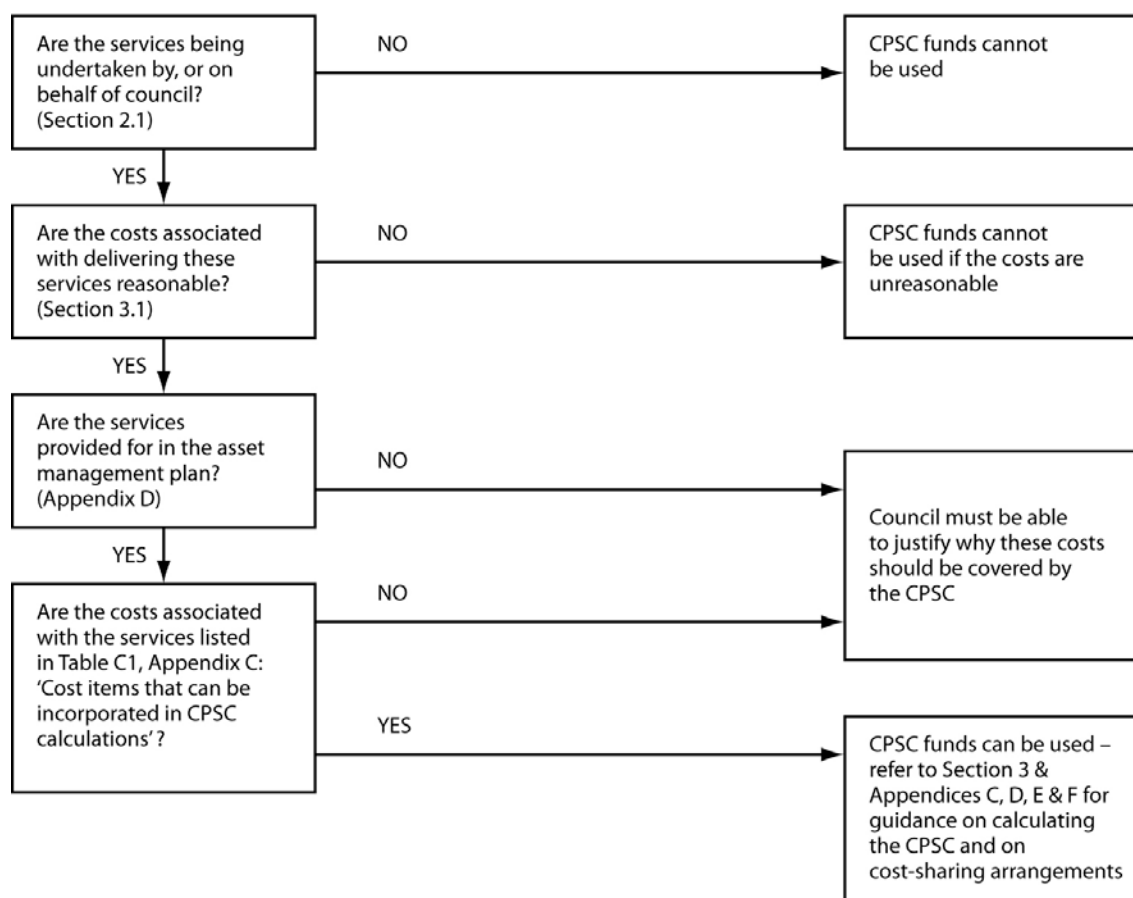
**Flow chart 2: What activities can be funded by the CPSC?**



*continued next page ...*

## Flow chart 2 (continued)

*continued from previous page ...*



# 1 Introduction

## 1.1 What is the CPSC?

The coastal protection service charge (CPSC) is a charge that councils can levy on a parcel of rateable land where either the current or previous owner has voluntarily:

- constructed or contributed to the cost of constructing long-term coastal protection works, such as seawalls, that benefit the land, or
- agreed to pay the charge relating to works that existed prior to the commencement of the *Local Government Act 1993* amendments that introduced this charge.

The CPSC covers councils' reasonable costs of providing coastal protection services to the land on which the charge is levied. The CPSC will provide for maintaining and repairing the works and mitigating any impacts (such as replacement of eroded beach sand).

Section 496B(1) of the *Local Government Act 1993* provides for the making and levying of the annual coastal protection service charge, as follows:

*A council may, in accordance with this Act and the regulations, make and levy an annual charge for the provision by the council of coastal protection services for a parcel of rateable land that benefits from the services, being services that relate to coastal protection works constructed:*

- (a) *by or on behalf of the owner or occupier (or a previous owner or occupier) of the parcel of land, or*
- (b) *jointly by or on behalf of:*
  - (i) *the owner or occupier (or a previous owner or occupier) of the parcel of land, and*
  - (ii) *a public authority or a council.*

## 1.2 Why do we need a CPSC?

If a landowner chooses to construct long-term works to reduce the coastal erosion impacts on their property, they can do so with development consent issued under the *Environmental Planning and Assessment Act 1979*. It is important to ensure these works voluntarily constructed by landowners are properly maintained and impacts mitigated for the life of the works, to protect against transferring erosion problems.

Development consent for coastal protection works cannot be granted unless the consent authority is satisfied that adequate arrangements will be in place for restoration of a beach (and adjacent land) if the works cause erosion, and for maintenance of the works (section 55M of the *Coastal Protection Act 1979*). The consent authority may impose relevant consent conditions which would not apply if the relevant local council provided coastal protection services, funded by a CPSC.

### 1.3 How the CPSC relates to other legislation and policies

The ability to levy the CPSC is available through the *Local Government Act 1993*, particularly sections 496B, 553B, 606A, 606B and 606C. Other legislation and policies that relate to the CPSC include:

- *Coastal Protection Act 1979*, section 55M
- Conveyancing (Sale of Land) Regulation 2010, Schedule 3, and
- Local Government (General) Regulation 2005, clause 201(3)(e); 217(1)(e1); and 413C.

Chapter 13 of the *Local Government Act 1993* provides mechanisms by which a council is made accountable for its actions. Of particular relevance to the CPSC is the need for a long-term community strategic plan accompanied by a resourcing strategy, a four-year delivery program, an annual operational plan and an annual report. The CPSC should be reported and discussed in the relevant sections of these plans and reports. Refer to Section 4 of these guidelines for further information about these reporting requirements. The funds raised as result of the charge are considered to be externally restricted funds. Such funds can only be used for the purpose for which they were raised.

An alternative to a CPSC for funding coastal protection activities is for a council to levy a '**special rate**' (provided for in section 495 of the *Local Government Act 1993*) on those rate payers benefiting from the work. Section 495 of the *Local Government Act 1993* provides that a council may make a 'special rate' for or towards meeting the cost of any works, services, facilities or activities provided or undertaken, or proposed to be provided or undertaken, by the council within the whole or any part of the council's area, other than domestic waste management services. A special rate could be differential, where a higher rate applies to land directly benefiting from works funded by the special rate and a lower or no rate applied to land that does not benefit from the works.

Council may also apply to the Independent Pricing and Regulatory Tribunal (IPART), acting on behalf of the Minister for Local Government, under section 508(2) or section 508A of the *Local Government Act 1993* for a special rate variation to increase its notional income to meet the cost of coastal protection activities.

#### Development consent process

Landowners can apply for development consent if they want to construct works to protect their property from coastal erosion.

The *Coastal Protection Act 1979* (section 55M) provides that development consent cannot be granted under the *Environmental Planning and Assessment Act 1979* for coastal protection works unless the consent authority is satisfied that the works will maintain reasonable public access to (or the use of) the beach or headland, and the works are not likely to pose a threat to public safety. Also, consent can only be granted if satisfactory arrangements for restoration and maintenance are made.

An appropriate consent condition would be that the proponents maintain the works and manage any off-site impacts unless the relevant local council provides a coastal protection service. However, council is not required to provide this service. If council does agree to provide the service, they can recover their costs through the CPSC.

Before agreeing to provide coastal protection services, council should consider whether appropriate financial arrangements will be in place to pay for the ongoing maintenance,

repair and impact management work. Council should consider that due to the exposed nature of coastal protection works, there is potential for storm damage from time to time. The resulting unscheduled repair work could result in significant one-off costs which need to be funded until they can be recouped through the CPSC.

## 1.4 Purpose of these guidelines

These guidelines were adopted and issued by the Minister for Climate Change and the Environment under section 496B of the *Local Government Act 1993*. Councils are required to have regard to these guidelines when making and levying a CPSC.

These guidelines are written to assist councils that administer and manage a CPSC. The guidelines will also be of interest to other organisations and individuals (including landowners that receive a coastal protection service, public authorities, consultants and development consent authorities) involved in the maintenance of long-term coastal protection works and the management of their impacts.

In particular, these guidelines inform landowners about councils' costs associated with delivering coastal protection services and the basis on which councils levy the CPSC. This information will help landowners decide whether they want to construct a coastal protection work to protect their property from coastal erosion, which may result in the landowner paying the CPSC.

These guidelines also provide landowners with advice on how they can request a review of the CPSC being levied by council (see Section 5.2 and Appendix G) and how to appeal the CPSC if they believe the amount of the CPSC is unreasonable (see Section 5.3).

These guidelines describe in detail the requirements associated with levying the charge, including:

- what activities can be funded with money raised through the charge (Appendix B)
- councils' role in levying the charge (Section 2.1)
- which landowners are liable to pay the charge (Section 2.1)
- how to calculate the charge (Section 3), and
- reporting requirements (Section 4).

These guidelines also provide some advice for councils to consider when addressing concerns raised by landowners including late payments and appeals (Section 5).

## 1.5 Relationship to other guidelines

A range of guidelines (including this one) were developed as part of the 2010 coastal erosion reform package. *Guidelines for assessing the impacts of seawalls* (DECCW in preparation) and *Guidelines for preparing draft coastal zone management plans* (DECCW 2010) provide some context and additional information regarding long-term erosion protection works. Of particular relevance is the following guidance provided in *Guidelines for assessing the impacts of seawalls* (DECCW in preparation):

- **setting cost-sharing arrangements for construction of the coastal protection works**
  - this is relevant because each parcel of land is liable for a proportion of council's total

coastal protection service costs, usually in line with the proportional contribution that the owner of the benefiting land (at the time of construction) made to the total construction costs

- **development consent** – as discussed above (Section 1.3) it is important that development consent issued for construction of a coastal protection work ensures satisfactory arrangements for restoration and maintenance are made (including adequate planning and funding for restoration and maintenance works). This may involve the council providing a coastal protection service.

Council planning and reporting requirements under the *Local Government Act 1993* are supported by Division of Local Government (DLG) guidelines including:

- *Planning a sustainable future – Guidelines – Planning and Reporting Guidelines for local government in NSW*
- *Planning a sustainable future – Manual – Planning and Reporting Guidelines for local government in NSW*
- *Local Government Code of Accounting Practice and Financial Reporting (Guidelines)*
- *Council Rating and Revenue Raising Manual.*

## 2 Levying a CPSC

### 2.1 When can a council levy a CPSC?

#### **A CPSC can be used to fund coastal protection services**

A coastal protection service means a service to:

- maintain and repair coastal protection works, or
- manage the impacts of coastal protection works.

Refer to Appendix A for a description of coastal protection works.

A CPSC can fund coastal protection services relating to the following eligible coastal protection works:

- works voluntarily constructed by a benefiting landowner (or landowners)
- works constructed jointly by a public authority (e.g. council) with voluntary contributions from benefiting landowners
- works that existed before section 496B of the *Local Government Act 1993* commenced, where the landowner or a previous landowner voluntarily agreed to pay the CPSC
- works that existed before section 496B of the *Local Government Act 1993* commenced, where the landowner has voluntarily agreed to upgrade the works. A pro-rata CPSC then applies, based on the incremental additional costs of maintaining the works and managing their off-site impacts.

Refer to Appendix B for advice about maintenance, repair and impact management activities that can be funded using the CPSC. In particular, Appendix B:

- explains that maintenance and repair activities include activities required to maintain public access and public safety
- explains that maintenance and repair activities must maintain the structural integrity of the works to a reasonable engineering standard
- identifies the situations in which beach nourishment can be funded through a CPSC
- identifies the situations in which decommissioning of a coastal protection work can be funded through a CPSC, and
- identifies specific activities that the CPSC cannot fund.

#### **Land that is deemed to benefit from a coastal protection service**

Land benefits from a coastal protection service if the service relates to eligible coastal protection works that physically benefit the land (i.e. reduces risks to the land from coastal hazards). The land can benefit even if the eligible works are located on neighbouring land.

The coastal protection service to the benefiting land includes managing the impacts of the works such as changed or increased beach erosion elsewhere as a result of which beach nourishment may be required some distance away from the works.

Benefiting land would normally be identified during the development phase of the works. For example, benefiting land would usually be land currently or previously owned by a person who either agreed to lodge a development application for works constructed on their land or entered into a formal agreement with a public authority to contribute to the cost of the works.

### **Defining eligible land**

- The land must be rateable, not held under a lease for private purposes granted under the *Aboriginal Housing Act 1998* or the *Housing Act 2001*, and located within the council area.
- The land must physically benefit from eligible coastal protection works.
- The land must benefit from a coastal protection service provided by the council, even if the service is carried out on land that is outside the council's area.

A council may provide a coastal protection service where some or all of the associated activities are carried out seaward of the local government area. The coastal boundary of the local government area is often defined by the low water mark (see section 205 of the *Local Government Act 1993*). Therefore, if a council undertakes services related to eligible coastal protection work located seaward of this boundary (e.g. beach nourishment), the council may recover its costs for providing those services through the CPSC.

### **Council can levy a CPSC if the service is undertaken by or on behalf of council**

Council may arrange for some or all of the coastal protection service activities to be undertaken by other entities on its behalf, such as consultants, landowners, public authorities, another council or contract staff. For example, council may engage a coastal engineering consultancy to design and supervise repair work, or a contractor may be engaged to carry out repair work.

Council must ensure an agreement is in place (for example, a contract) that clearly identifies what services are being undertaken on behalf of council, and the associated costs. Council must then pay the entity undertaking the work with monies funded through the CPSC.

## **2.2 When can a council not levy a CPSC?**

Local councils cannot levy a CPSC:

- to maintain emergency coastal protection works placed by or on behalf of landowners, under the provisions of Part 4C of the *Coastal Protection Act 1979*. All costs associated with these works are the responsibility of the landowner
- to construct coastal protection works. Councils could fund construction from ordinary rate income, a special rate (see section 1.3) or from external grant funding
- to maintain works constructed by or on behalf of a public authority, with no landowner financial contribution. These costs could be recovered through ordinary or special rate revenue
- on land that may physically benefit from coastal protection works funded by landowners, but where the owner of the land (current or past) did not contribute to the cost of constructing the works. This may apply, for example, to a parcel of land behind beachfront



land where the owner of the beachfront land contributed to the construction of coastal protection works

- on land where the maintenance of the works and the management of any off-site impacts is the responsibility of the landowner under a development consent condition, or
- in relation to the items listed under the heading 'Specific items the CPSC cannot fund' in Appendix B.

## 3 Calculating the CPSC

### 3.1 Reasonable costs for providing services

Section 496B(2) of the *Local Government Act 1993* requires that the coastal protection service charge must be calculated so as not to exceed the reasonable cost to the council of providing the coastal protection services.

The responsibility is on the council levying the charge to determine the reasonable cost to council of providing the coastal protection services. Failure to do so may leave a council exposed to legal challenge.

When determining the 'reasonableness' of the costs, consider the principles outlined in Appendix C. Appendix C also includes a table of standard cost items that could generally be incorporated into CPSC calculations (this table is not exhaustive).

### 3.2 Approaches for calculating the CPSC

The CPSC is not subject to rate pegging limits under Part 2 of Chapter 15 of the *Local Government Act 1993*.

There are two types of costs associated with delivering coastal protection services: routine costs, and emergency repair costs. Routine costs are those associated with planned activities identified in the asset management plan. Emergency repair costs are those associated with fixing storm damage.

Given the exposed nature of coastal protection works it is reasonable to expect storm damage will occur during the life of the structure. However, we cannot predict when this damage may occur, how often or the magnitude of the damage. Council must ensure it has a mechanism in place to fund the unpredictable and potentially significant costs associated with emergency repairs.

Although the CPSC is allowed to vary from year to year, significant inter-annual variations should be avoided. This will help landowners manage their own budgets, rather than being faced with charges that vary significantly on an annual basis.

Refer to Appendix D for recommended approaches for calculating the CPSC to provide for both routine and emergency repair costs. Appendix D also discusses the role of the asset management plan when calculating the coastal protection service costs. Appendix E provides a worked hypothetical example for calculating routine costs.

Refer to Appendix F for guidance on cost-sharing arrangements.

## 4 CPSC reporting requirements

As the collection and application of the CPSC involves the use of public funds, accountability is a fundamental requirement. Council must achieve both public accountability and financial accountability. Reporting will be a key means of achieving this accountability.

Appendix G provides advice on best practice local government reporting in general, and on the following specific reporting requirements associated with the CPSC:

- asset management plan
- annual condition survey
- reporting on setting the CPSC (the *Local Government Act 1993* provides for three different types of reports that council may be requested to prepare in relation to setting the CPSC).

## 5 Addressing landowners' concerns

Although the CPSC is a charge that will result in direct benefits to the landowner (by maintaining the coastal protection work that the landowner constructed, and therefore protecting the landowner's property from erosion), some landowners may raise concerns.

This section provides guidance to help councils respond to concerns regarding the implementation of the CPSC, and to help landowners understand the options available for reviewing the CPSC set by council.

### 5.1 Transparency and communication

Councils should establish and maintain good communication practices with landowners who are subject to the CPSC. This could include:

- maintaining a register with contact details of all landowners who are subject to the charge, to facilitate efficient communication
- involving eligible landowners in decision-making processes where appropriate (for example when preparing and updating the asset management plan)
- providing ready access to relevant records and reports (particularly those reports listed in Section 4 and Appendix G)
- updating eligible landowners on activities schedules, as appropriate, so that landowners can understand how their funds are being spent
- providing clear explanations as to how the CPSC is calculated, and
- providing as much notice as possible regarding changes to the CPSC from year to year.

As a minimum, council should not levy the CPSC until it has given public notice of its draft annual operational plan for the year for which the charge is to be made (in accordance with section 532 of the *Local Government Act 1993*).

### 5.2 Review of the CPSC

The *Local Government Act 1993*, Section 606B, provides landowners with the option of requesting council to arrange for an independent person to prepare a report reviewing the cost of the CPSC. As stated in 606B(3), if council arranges for such a report to be prepared, it should make the report available to all other persons liable to pay the CPSC in relation to the same services. Refer to Appendix G for more details regarding this report.

Section 606C of the *Local Government Act 1993* allows for the Minister administering the *Coastal Protection Act 1979* to direct council to prepare an independent review of the charge. Council must have regard to this independent report when levying the CPSC.

### **5.3 Appealing the CPSC**

If a landowner believes the amount of the annual CPSC is unreasonable, they can request council to provide them with a report on the cost to council of providing the coastal protection services. Refer to Table G2 (Appendix G) for instructions on how to request this report and the issues that would generally be covered in the report.

If the landowner remains of the opinion that the amount of the annual CPSC is unreasonable, they may appeal to the Land and Environment Court and that Court may determine the appropriate amount for the CPSC (section 496B(3) of the *Local Government Act 1993*).

While the appeal is pending, the landowner must continue to pay the CPSC. If the landowner's appeal is successful (in whole or in part), the council must refund any amount paid that exceeds the amount that the Land and Environment Court deems to be the reasonable CPSC.

If, as part of an appeal, the Land and Environment Court determines the reasonable cost to council for providing the coastal protection services, that cost is binding for all other parcels of land that benefit from the same coastal protection services.

### **5.4 Resolving non-payment of the CPSC**

Maintaining transparency and good communication practices with landowners should help build relationships whereby the landowners understand the purpose of the CPSC and appreciate the benefits they receive as a result of the change (i.e. ongoing protection from coastal erosion).

However, there may be situations where a landowner fails to pay the CPSC. In this situation council should follow its standard procedures for recovery of unpaid charges. It should be noted that the CPSC would be a charge on the land, as prescribed under section 550 of the *Local Government Act 1993*, and as such be subject to the same legal proceedings for the recovery of unpaid rates and charges as provided under sections 712 and 713 of the Act.

## 6 References

DECCW (in preparation). *Guidelines for assessing the impacts of seawalls*. Department of Environment, Climate Change and Water NSW.

DECCW (2010). *Guidelines for preparing draft coastal zone management plans*. Department of Environment, Climate Change and Water NSW.

DLG (2007). *Council Rating and Revenue Raising Manual*, Division of Local Government, NSW Department of Premier and Cabinet.

DLG (2009). *Integrated Planning & Reporting Framework, Frequently Asked Questions and their answers*, Division of Local Government, NSW Department of Premier and Cabinet.

DLG (2010a). *Local Government Code of Accounting Practice and Financial Reporting (Guidelines)*, Division of Local Government, NSW Department of Premier and Cabinet.

DLG (2010b). *Planning a sustainable future – Guidelines – Planning and Reporting Guidelines for local government in NSW*, Division of Local Government, NSW Department of Premier and Cabinet.

DLG (2010c). *Planning a sustainable future – Manual – Planning and Reporting Guidelines for local government in NSW*, Division of Local Government, NSW Department of Premier and Cabinet.

IPWEA (2009). *Australian Infrastructure Financial Management Guidelines*, Institute of Public Works Engineering Australia.

## Appendix A: What are coastal protection works?

Coastal protection works are activities or works that reduce the impact of coastal hazards on land adjacent to tidal waters. 'Coastal hazards' refers to beach erosion, shoreline recession, coastal lake or watercourse instability, coastal inundation, and coastal cliff or slope instability. Refer to the Dictionary section in the *Local Government Act 1993* for a full legal definition of coastal protection works and to the *Coastal Protection Act 1979* for a definition of coastal hazards.

Generally, long-term coastal protection works are structures constructed from rock, concrete, steel or wood to provide protection from coastal wave action during storms. Examples of coastal protection works include (this is not an exhaustive list):

- **seawalls and revetments:** walls built along the shoreline to minimise wave erosion
- **groynes:** structures built perpendicular from the shoreline protruding into coastal waters
- **offshore breakwaters:** structures built approximately parallel to the beach but at some distance offshore; they reduce the intensity of wave action in inshore waters, thereby reducing coastal erosion
- **artificial headlands:** similar in purpose to a large groyne, but they extend into deep water with the purpose of restricting longshore sediment transport
- **configuration dredging:** dredging to a pattern such that wave refraction limits the effects of wave action on a stretch of coastline
- **training walls:** rock or concrete walls built to constrain a river or creek discharging across a sandy coastline; properly designed and constructed training walls can stabilise a coastal entrance, improve navigation and help mitigate estuarine flooding.
- **beach nourishment:** providing coastal protection by building a wider beach

## Appendix B: What are coastal protection service activities?

### The CPSC can be used for maintenance and repair activities

The CPSC can be used to maintain and repair long-term coastal protection works.

Maintenance and repair activities are those that are undertaken to ensure that the coastal protection work continues to provide its design service capacity and quality. Maintenance and repair activities slow the overall deterioration of the coastal protection work by restoring the condition of its shorter life components and allowing its overall full service life to be achieved.

The CPSC can be used to fund preventative as well as corrective maintenance activities.

Typical maintenance and repair activities may include:

- scheduled and ad hoc site inspections and monitoring activities to check the condition of the structure; this includes funding for the annual condition survey to be undertaken by a coastal engineer (refer to Appendix G for more details)
- remedial actions (including any engineering design requirements) to address non-performance issues identified in the annual condition survey
- emergency repairs to make the area safe for the public and to prevent water pollution (e.g. remove unstable sections, use filter fabric to provide erosion protection)
- repair of damage suffered during a storm event
- routine maintenance to repair minor defects
- actions to address concrete cancer
- monitoring and review of the asset management plan
- upgrades that are required to accommodate changes to sea level rise predictions. Coastal protection works should be designed in accordance with the sea level rise criteria presented in *Guidelines for assessing the impacts of seawalls* (DECCW in preparation). Upgrades can only be funded by the CPSC if these sea level rise design criteria change.

### Maintaining public access

A coastal protection work must be designed and constructed so as not to unreasonably limit public access to beaches and headlands. These design and construction costs cannot be funded through the CPSC. For example, the CPSC cannot be used to fund the design and construction of alternate or additional pathways, access tracks, access roads or signage that is required as a result of the construction of coastal protection work. The CPSC cannot be used to decommission access arrangements that will cease to be used once the coastal protection work is in place.

The CPSC can be used to fund maintenance and repair of new access arrangements that are not replacing existing arrangements. However, if new access arrangements replace existing arrangements, then the cost of maintaining the new arrangements should be covered through the existing funding process. The CPSC can be used to fund any difference in costs.



Other examples of activities that can be funded through the CPSC include removal of debris from the coastal protection work (e.g. resulting from storm damage) that is blocking public access, relocation of access tracks, if required, due to changed topography, or construction of temporary access arrangements (e.g. if access is restricted during major repairs to a coastal protection work).

The *Coastal Protection Act 1979*, section 55M requires consent authorities to be satisfied that the works will not *unreasonably* limit access to the beach or headland. When considering the term 'reasonable' refer to the principles listed in Appendix G, and also consider that the CPSC should only be used to maintain the existing level of access, not to fund arrangements that improve access compared to the existing situation.

### **Maintaining public safety**

A coastal protection work should be designed and constructed to avoid posing a threat to public safety. These design and construction costs cannot be funded through the CPSC.

However, the charge can be used to ensure that public safety is maintained once the work has been constructed. This means the CPSC can be used to fund activities that are required to ensure that the coastal protection work, and any of its resulting impacts, do not place the general public in danger or at risk of injury.

For example, the CPSC could be used to remove debris resulting from damage to a coastal protection work, to fill scour depressions generated from beach erosion caused by a coastal protection work, or to replace warning signs that are stolen or damaged, if not undertaking these activities would place the community at risk.

### **Maintaining works to a reasonable engineering standard**

The Local Government (General) Regulation 2005 clause 413C(1) requires that maintenance and repair activities must maintain the structural integrity of the works to a reasonable engineering standard.

Implementing the following principles will help ensure a reasonable engineering standard is maintained (note this is not an exhaustive list):

- Take precautions that are proper in relation to the circumstances and undertake maintenance and repair works without serious delay.
- Where an annual condition survey indicates remedial action is required to address non-performance, undertake timely remedial action (refer to Appendix G for more information about the annual condition survey).
- Keep clear records of all activities and site inspections, detailing information such as dates, activities undertaken, who carried out the work (and their qualifications/experience), and the reasons for the activity.
- Develop, implement and update a costed asset management plan for each coastal protection work. This should include a schedule of inspections, preventative maintenance, programmed repairs, and provision for repairs as required (refer to Appendix G for more information about the asset management plan).
- Ensure all works are carried out by suitably qualified and/or experienced personnel.
- Where appropriate, for large or complex maintenance or repair activities, organise for a review by a suitably qualified coastal engineer, and adopt the relevant recommendations.

- Ensure maintenance and repair works are carried out in accordance with conventional engineering standards to adequately protect assets from erosion, wave forces and oceanic inundation.
- Ensure maintenance and repair works are carried out so that the structure continues to meet its design criteria, as set out in the development application.

## **The CPSC can be used to manage impacts**

The CPSC can be used to manage the impacts of coastal protection works. These impacts could include: end scour, loss of beach amenity in front of the structure, increased downdrift erosion, beach erosion and long-term recession. For example, a coastal protection work such as a sea wall may increase beach erosion further along the beach. In this case, the CPSC can be used to fund beach nourishment to manage the erosion.

The asset management plan will identify the activities required to manage the impacts of the coastal protection work. These activities can be funded through the CPSC. Reviewing the asset management plan can be funded through the CPSC.

The requirement for coastal protection services to be undertaken to a reasonable engineering standard also applies to activities aimed at managing impacts. For example, regarding beach nourishment, the proposed source sand to ameliorate adverse off-site impacts must be reasonably consistent in texture, colour, composition and grain size to the parent beach sand.

## **Ensuring no significant change in the long-term position of the coastline**

The Local Government (General) Regulation 2005 clause 413C(2) states that if council is undertaking a service to manage the impacts of a coastal protection work, it must ensure the coastal protection work (e.g. the seawall) does not result in any significant change in the long-term position of the coastline.

The 'significance' of any change to the coastline position will vary from location to location, depending on the ability of the coastal system to withstand such change, and depending on social aspects, such as the extent of beach usage, tourism and public access. The degree of long-term change to the position of the coastline the system can tolerate should be identified in the development application. The asset management plan should identify the management response to ensure the position of the coastline does not change beyond this trigger for significance, and will identify the type of monitoring required to verify the position of the coastline is not changing significantly. The CPSC can be used to fund the management responses identified in the asset management plan.

The off-site impacts should be checked on an annual basis through the annual condition survey. The CPSC can be used to fund the annual condition survey, and any actions required to rectify impacts.

Council should ensure it has sufficient baseline information (e.g. satellite imagery, survey, photos) to assess whether the long-term position of the coastline is changing as a result of the coastal protection work. The natural variation in the position of the coastline should be taken into account as part of this assessment.

Nearby landowners may be concerned about the potential off-site impacts of long-term coastal protection works. Council should therefore consider making available to the public

information that demonstrates the coastal protection work is not resulting in long-term changes to the position of the coastline.

### **Using the CPSC for beach nourishment**

As mentioned above, beach nourishment can be funded through the CPSC, if it is undertaken to manage the impact (i.e. erosion) resulting from a long-term coastal protection work.

Beach nourishment in association with physical or structural works can be a coastal protection work in its own right and not just associated with mitigating impacts from another coastal protection work. Funds for beach nourishment associated with or supported by physical or structural works would need to be secured independently, as for the construction costs of any other coastal protection work. However, where beach nourishment has been applied as a coastal protection work, it is likely that further beach nourishment will be required in the future. These subsequent episodes of beach nourishment can be classified as 'maintenance' and funded through the CPSC.

### **Using the CPSC for decommissioning a coastal protection work**

The CPSC can be used to fund decommissioning of a coastal protection work, where decommissioning has been planned as part of the development proposal. Decommissioning includes actions related to the work (e.g. removal) as well as actions to rehabilitate the area. The CPSC cannot be used to fund construction of replacement or alternative coastal protection works. To enable funds to be available for decommissioning, careful financial planning will be necessary to collect the funds incrementally over time.

There may be situations where decommissioning was not planned as part of the proposal, but circumstances indicate decommissioning will be required (e.g. changed land-use patterns, poor performance or structural integrity of the work). In these situations the CPSC should only be used to fund decommissioning with agreement from all landowners who contribute to the service charge. If agreement cannot be reached, council should consider commissioning an independent assessment by a suitably qualified coastal engineer (the assessment can be funded through the CPSC) to determine whether the works should be retained or decommissioned, based on structural integrity or public safety concerns. If this independent assessment recommends decommissioning, then the CPSC can be used to fund the decommissioning activities.

### **Specific items the CPSC cannot fund**

The CPSC **cannot** be used to:

- modify or upgrade the work for the purpose of increasing the design standard. If design upgrades are required (for example, if decisions are made to provide higher levels of coastal protection) then a new approval under the *Environmental Planning and Assessment Act 1979* would be required with new construction cost agreements
- fund staged approaches to construction. The development application to construct the coastal protection work should identify whether a staged approach to construction is proposed. Appropriate funding arrangements should be specified in the development application and subsequent consent conditions for a staged proposal

- maintain, repair or manage impacts from works that have been constructed for purposes other than to provide coastal protection, even where the works have a secondary benefit of providing coastal protection
- maintain, repair or manage impacts from works that were constructed before section 553B of the *Local Government Act 1993* commenced, without the consent of the landowners subject to the charge
- recoup any or all of the upfront design, environmental assessment, development approval, or construction costs associated with the coastal protection work
- fund the design or construction of replacement or alternative coastal protection works following decommissioning of an existing work. This would require then a new approval under the *Environmental Planning and Assessment Act 1979* with new construction cost agreements.

# Appendix C: Reasonable costs for providing coastal protection services

## General principles for determining ‘reasonableness’ of costs

- Apply the concepts of fairness, equity, sound judgement and moderation.
- Only activities that are directly related to the maintenance or repair of a coastal protection work and management of its impacts (as discussed in Appendix B) can be funded using the CPSC. Where council provides a greater level of coastal protection service than is required to manage the impacts of a coastal protection work, the CPSC is limited to funding the delivery of the agreed level of service as set out in the development consent. For example, a council may undertake beach nourishment to manage erosion impacts arising from a coastal protection work, and at the same time upgrade recreational facilities on the same stretch of beach. In this example, the CPSC cannot be used to fund the recreational facilities upgrade.
- Costs associated with items such as those listed in Table C1 below can be incorporated into the calculation of the CPSC.
- The CPSC can be used to cover the proportion of salaries for permanent council staff that are directly involved in delivering the coastal protection service, or in project management. Council should keep clear records to show the proportion of staff time spent on coastal protection services. Council must ensure any staff time funded through the CPSC is based on an efficient use of staff time, skills and experience.
- Report on cost estimates in a transparent manner that enables a member of the public to readily identify the costs of providing the services.
- The CPSC can be used to cover contingencies that cannot be scheduled in a work program (e.g. to address storm damage).
- Consider arranging an independent review of costs, undertaken by a suitably qualified professional, if circumstances warrant this clarification. This may apply to high-cost work items, may be undertaken on a more routine basis to review costs for all the coastal protection services being undertaken (perhaps as part of a scheduled review of the asset management plan) or may be appropriate if there is community concern about delivery of the services.
- The CPSC should be made in accordance with Part 4 of Chapter 15 of the *Local Government Act 1993*, with particular consideration given to section 539 of the Act.
- The CPSC can be used to cover costs associated with work items identified in the asset management plan (see below and refer to Appendix G for more details on what to include in the asset management plan) and any remedial actions identified as necessary in the annual condition survey.
- The CPSC can be used to fund the preparation of an independent report on the cost to council for servicing a coastal protection work, if the report was required through a direction from the Minister administering Part 4A of the *Coastal Protection Act 1979* (refer to Appendix G, Table G2 for more details about this reporting requirement).

## Principles for delivering a cost effective asset management plan

It is reasonable for the CPSC to cover costs associated with delivering a best practice asset management plan. The asset management plan should be developed in line with the *Australian Infrastructure Financial Management Guidelines* (IPWEA 2009) and should ensure the proposed management of the asset is cost effective, in line with the following principles:

- The asset management plan should define a standard of service for the coastal protection work. The standard of service should state, in objective and measurable terms, how the asset will perform, including a suitable minimum condition grade that takes account of the impact of asset failure. The asset management plan should then set out the activities, resources and timelines required to deliver the standard of service in the most cost effective way.
- Council should tailor service delivery so there is a minimum overall cost. That means there should be sufficient investment in maintenance, repair, and impact management to balance the costs associated with the risk of failure. For example, if inadequate maintenance is undertaken there could be: property damage costs if a seawall fails; increased future maintenance costs associated with asset deterioration; litigation costs associated with the asset failure; and costs associated with community disruption. However, a maintenance strategy that is excessive would be unreasonably expensive. The balance between preventative and corrective maintenance will vary between each coastal protection work.
- Coastal protection works can have a range of attributes that need to be maintained, repaired or have impacts needing to be managed. Some attributes are vital to performance of the work (e.g. structural integrity), while other attributes may be less important (e.g. visual attributes). The asset management plan should differentiate between the different attributes and define the level of maintenance required for each attribute, in line with the individual risk and consequence of failure. This ensures that overall the coastal protection work will be cost effectively maintained to deliver its standard of service.

### Table C1: Cost items that can be incorporated into CPSC calculations

(This list is not exhaustive. There may be other cost items that are relevant on a case-by-case basis.)

<ul style="list-style-type: none"> <li>• Legal costs</li> <li>• Insurance</li> <li>• Engineering fees (excluding design)</li> <li>• Surveying</li> <li>• Accounting</li> </ul>	<ul style="list-style-type: none"> <li>• Procurement of materials</li> <li>• Materials transport</li> <li>• Waste disposal</li> <li>• Support studies</li> </ul>	<ul style="list-style-type: none"> <li>• Project management</li> <li>• Reporting</li> <li>• Consultant fees <sup>1</sup></li> <li>• Financing <sup>2</sup></li> </ul>
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<sup>1</sup> Consultant fees – Council should be mindful that the tasks set for consultants are clear and concise, and only reference coastal protection services.

<sup>2</sup> Financing – If external borrowing is required to enable the timely provision of a coastal protection service, the resulting interest payments and loan fees can be covered by the CPSC. Financing costs should be clearly itemised in the annual report. The CPSC cannot be used to cover financing costs associated with loans established for construction of the coastal protection work.

## **Appendix D: Calculating the CPSC**

The CPSC is not subject to rate pegging limits.

There are two types of costs associated with delivering coastal protection services: routine costs, and emergency repair costs. Routine costs are those associated with planned activities identified in the asset management plan. Emergency repair costs are those associated with fixing storm damage.

Given the exposed nature of coastal protection works it is reasonable to expect storm damage will occur during the life of the structure. However, we cannot predict when this damage may occur, how often or the magnitude of the damage. Council must ensure it has a mechanism in place to fund the unpredictable and potentially significant costs associated with emergency repairs.

Although the CPSC is allowed to vary from year to year, significant inter-annual variations should be avoided. This will help landowners manage their own budgets, rather than being faced with charges that vary significantly on an annual basis.

The following sections recommend approaches for calculating the CPSC to provide for both routine and emergency repair costs.

### **Role of the asset management plan**

The asset management plan should cover the life span of the coastal protection work, and include short, medium and long-term schedules of the activities required to maintain the coastal protection work and manage any off-site impacts.

Refer to Appendix G for further advice regarding issues to include in the asset management plan, and time frames for reviews.

Using the asset management plan, Council should prepare a cash flow plan for delivery of the coastal protection services. It will be important to account for inflation in this plan. The net present value of the costs associated with delivering the asset management plan will form the basis of the CPSC calculations.

### **Routine costs**

The total annual costs associated with delivering the routine component of the coastal protection services associated with a coastal protection work can be taken from the cash flow plan (described above). This cash flow plan will cover all planned and routine work associated with maintenance, repair and impact management, as set out in the asset management plan.

The annual CPSC should be calculated in a manner that avoids significant variations from year to year, for example as a five-year rolling average of the annual costs (e.g. the average of the annual costs over a five-year period, spanning two years prior and two years subsequent to the current year) or an annualised cost over the design life of the works. Refer to Appendix E for a description and worked example on how to do this calculation.

The CPSC should be recalculated each year to take account of any changes to the asset management plan and to incorporate minor unplanned expenditure. If the unplanned

expenditure is minor, this should be dealt with within a reasonable contingency allowance that is normally put in place for asset management. However, if the unplanned expenditure is significant and it would be unreasonable to require landowners to meet the costs within the time frame required to fund the unplanned service (e.g. emergency repair resulting from significant storm damage), then these additional funds could be provided for through approaches described below regarding emergency repair costs.

To give landowners a level of certainty and to help them manage their own budgets, council may consider making a commitment that any variation in costs from year to year will not exceed a given amount or percentage of the CPSC. A standard approach cannot be recommended in this guideline, as this issue will be specific to individual situations (e.g. the expected ongoing costs, number of contributing landowners, expected variations between years). However, it is recommended that if council does limit variations, it should be set at a level that will not be triggered frequently.

Council may consider the percentage specified in an order made under section 506 of the *Local Government Act 1993* when setting such a limit. This order specifies the percentage by which councils' general income for a specified year may be varied. Although section 505 of the *Local Government Act 1993* excludes the CPSC from general income, and is therefore not limited by the order, the order could provide a useful reference as to what might be a reasonable percentage annual change to the CPSC. The intent is to avoid extreme variations in the CPSC. In circumstances where council does not increase the CPSC fully, council should fund the required services through mechanisms outlined below under 'Emergency repair costs'.

Whichever process is used to determine the CPSC, it is likely that some years will have a surplus of funds, and some years have a deficit. During the years of surplus, the additional funds can be invested. Any interest earned from the surplus funds is to be distinguished from other accounts and to be incorporated into the coastal protection services cash flow plan. The interest earned is to be credited to the externally restricted fund and is not to be placed within general revenue funds.

When there is a deficit, council can take out a loan to meet the shortfall. The fees and interest payments for such a loan can be funded through the CPSC. Alternatively, council could seek agreement to a one-off increased payment from the landowners who are liable for the CPSC to meet all, or part, of the deficit. This increased payment should only be made with the consent of the landowners. Landowners may prefer to make this payment, as it will reduce the long-term costs, by removing the need to make interest payments on a loan.

Beyond the surpluses generated through the approach taken to determine the annual CPSC, accumulation of funds should only occur where this is clearly required to fund future services that are identified and scheduled in the asset management plan.

## **Emergency repair costs**

Council should be prepared to generate funds for unplanned repair and impact management services. Since these repairs could potentially be significantly more expensive than the costs associated with routine maintenance, it may not be reasonable to expect landowners to be able to meet the additional costs within the time frame required to undertake the repair activity. There are a range of potential funding options available that council may consider for emergency repairs in these situations, as outlined below.



When deciding which funding approach to adopt, council should consider the advantages and challenges associated with each option. Council should also consider consulting with the relevant landowners when deciding which approach, or combination of approaches, to adopt.

#### Funding option for emergency repairs: **External reserve**

The annual service charge could include an allowance (in addition to the funds required for the routine services) to fund emergency repair activities. This allowance would be set aside in an external reserve fund and kept separate from the routine component of the CPSC. The status and performance of the fund must be clearly reported and accounted for.

The funds should be invested, with the interest rolled over in the investment.

Council must set a limit on how much money can be accumulated in this fund and the time frame over which to accumulate the funds. Given the unknown nature of the expenses (and potential that the funds may never be required) it may be excessive to accumulate the full replacement costs of the coastal protection work. Therefore, council should not accumulate more than 25% of the estimated replacement cost without the agreement of all liable landowners.

When determining the limit and the time frame for accumulating the funds, council should consider:

- the likelihood of a storm occurring that exceeds the design standard of the structure
- likely replacement or repair costs
- the design life of the structure
- the scale of potential impacts that may need to be ameliorated
- landowners' willingness to pay in advance (or do they prefer other options such as loans?)
- the number of landowners contributing to the CPSC (this affects the per capita CPSC)
- whether the fund will be the only source for financing emergency repairs, or whether other options will be used in conjunction with the fund.

#### **Advantages**

- Funds would be available to repair the structure (or manage impacts) as required.

#### **Challenges**

- Given the unknown nature of the expenses, council will need to make assumptions about how much money should be available to repair storm damage. Council will need to provide clear justification for its decisions and ensure the funds are managed in accordance with relevant accounting principles.
- There is potential that the funds in the external reserve may not be required (if the structure does not suffer serious damage).
- A serious storm event may occur before the required level of funds has been accumulated. In this case, council would need to consider one of the other options to fund the difference.

### Funding option for emergency repairs: **Loans**

Council may decide to fund the emergency repair works either through a bank loan, or an internal loan (subject to Ministerial approval). Interest and capital repayments should be factored into the future annual CPSC.

#### **Advantages**

- Landowners are only liable for the additional charge if unplanned expenditure is actually required.

#### **Challenges**

- Interest repayments on the loan are an additional cost, which would not be incurred for the other options.

### Funding option for emergency repairs: **Special one-time payment**

Council may decide to levy a 'special' additional charge to cover the cost (or part of the cost) of the emergency repair works. This approach should only be used in exceptional circumstances when all other options are not considered feasible.

#### **Advantages**

- Landowners are only liable for the additional charge if unplanned expenditure is actually required.

#### **Challenges**

- Individual landowners may not be in a position to finance large sums without warning.

## Appendix E: Calculating the routine component of the CPSC using a five-year rolling average

As explained in Appendix D of these guidelines, it is recommended that the CPSC be calculated as a five-year rolling average of the annual coastal protection service costs. This appendix provides a worked example to demonstrate this approach.

It is recommended that council uses its asset management plan to prepare a cash flow plan for delivery of the coastal protection services. The table below provides a hypothetical cash flow for the routine costs associated with the coastal protection services related to a hypothetical coastal protection work.

To avoid significant variations from year to year, the CPSC should be calculated as a five-year rolling average. That is, the annual charge is calculated to be the average of the annual costs over a five-year period, spanning two years prior and two years subsequent to the current year. (Note: This provides the total CPSC for the current year. This total then needs to be divided among the relevant landowners – as described in Appendix F of these guidelines.)

For the example presented in Table E1 below, the total CPSC for each year is calculated as follows:

$$\begin{aligned}\text{CPSC (year 1)} &= (1000 + 1000 + 1000 + 1500 + 5000)/5 \\ &= 1900\end{aligned}$$

$$\begin{aligned}\text{CPSC (year 2)} &= (1000 + 1000 + 1500 + 5000 + 1000)/5 \\ &= 1900\end{aligned}$$

$$\begin{aligned}\text{CPSC (year 3)} &= (1000 + 1500 + 5000 + 1000 + 800)/5 \\ &= 1860\end{aligned}$$

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$$\begin{aligned}\text{CPSC (year 15)} &= (1400 + 6000 + 5000 + 1000 + 1500)/5 \\ &= 2980\end{aligned}$$

.

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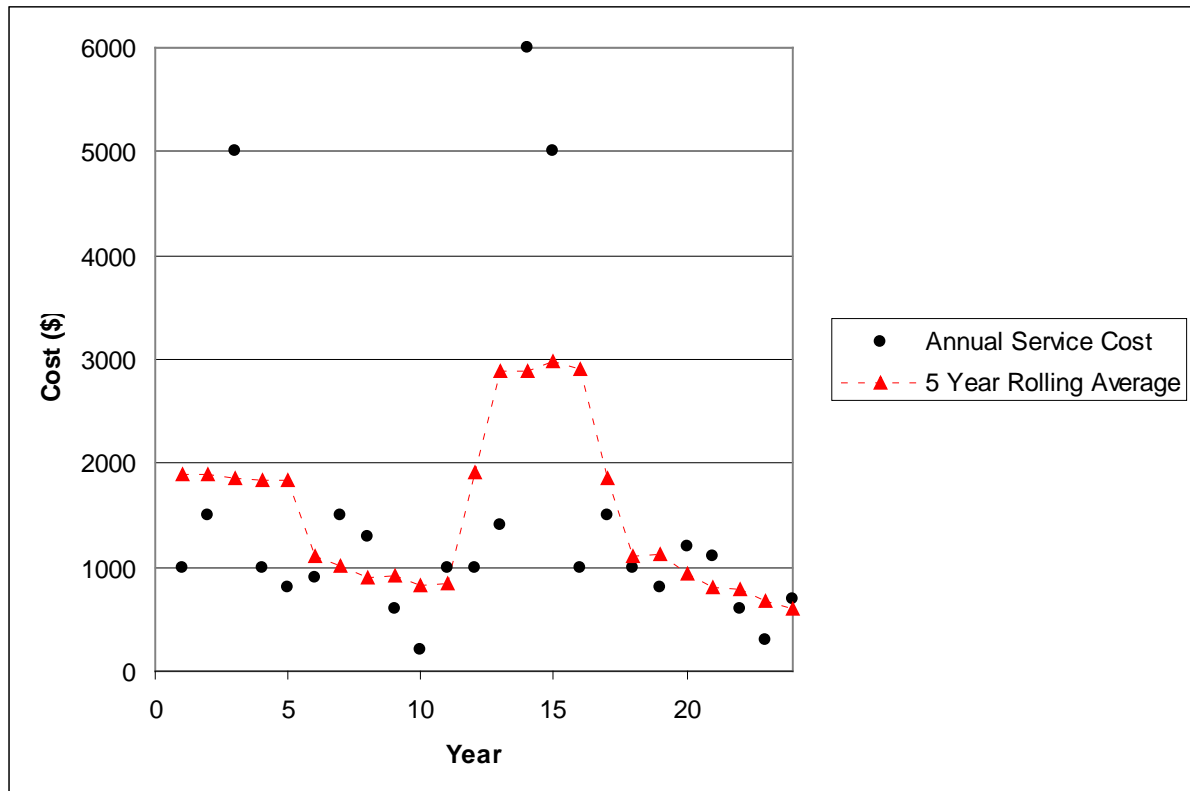
etc.

**Table E1: Hypothetical cash flow for services related to a hypothetical coastal protection work**

Year		Annual cost (cash flow)	5-year rolling average (i.e. annual CPSC)	Surplus/Deficit
	assumed	1000		
	assumed	1000		
<b>Start</b>	1	1000	1900	900
	2	1500	1900	1300
	3	5000	1860	-1840
	4	1000	1840	-1000
	5	800	1840	40
	6	900	1100	240
	7	1500	1020	-240
	8	1300	900	-640
	9	600	920	-320
	10	200	820	300
	11	1000	840	140
	12	1000	1920	1060
	13	1400	2880	2540
	14	6000	2880	-580
	15	5000	2980	-2600
	16	1000	2900	-700
	17	1500	1860	-340
	18	1000	1100	-240
	19	800	1120	80
	20	1200	940	-180
	21	1100	800	-480
	22	600	780	-300
	23	300	680	80
<b>Finish</b>	24	700	600	-20
	assumed	700		
	assumed	700		
<b>Total*</b>		36,400	36,380	

Total for years 1 to 24

**Graph: Hypothetical five-year rolling average of annual coastal protection service costs**



# Appendix F: Cost-sharing arrangements

## Sharing costs between council and landowners

If council is delivering coastal protection services it is council's decision whether to levy the CPSC or not.

When council levies the charge, the maximum proportion of service costs that council can generally recover is the same as the proportion of the total construction costs that were paid by the landowners. *Guidelines for assessing the impacts of seawalls* (DECCW in preparation) provides guidance on who would contribute to the construction costs and how these costs can be distributed between landowners. If council contributed to the construction costs, council would not normally recover the full costs associated with delivering the coastal protection services. This is because council is liable for a proportion of the service costs, since it contributed to the construction costs. Council should pay its share of the coastal protection service costs from its normal operating budget.

The following example explains this process:

**Scenario:** Council paid 25% of the construction cost for a seawall, and landowners paid 75%. Council is responsible for paying at least 25% of the coastal protection services costs related to this seawall. Council can decide how much of the remaining 75% of the coastal protection services costs it will recover from the landowners.

A different cost-sharing arrangement can be agreed at the development consent stage (for example, perhaps council would fund most of the construction costs, but the benefiting landowners may agree to fund most of the ongoing maintenance and repair costs through a CPSC). The agreed cost-sharing arrangements can be varied at any time, but only with consent from all liable parties.

It is recommended that council recovers the full allowable amount from the landowners, unless specific circumstances indicate this is not appropriate. If council was to pay more than its agreed share, rate payers could end up subsidising the protection of the benefiting landowners' properties.

If council chooses to fully fund the construction of a coastal protection work, it cannot levy the CPSC. However, it has the option of levying a 'special rate' (provided for in section 495 of the *Local Government Act 1993*) on those rate payers benefiting from the work. Section 495 of the *Local Government Act 1993* provides that a council may make a 'special rate' for or towards meeting the cost of any works, services, facilities or activities provided or undertaken, or proposed to be provided or undertaken, by the council within the whole or any part of the council's area, other than domestic waste management services. Council may also apply to the Independent Pricing and Regulatory Tribunal (IPART) under section 508(2) or section 508A of the *Local Government Act 1993* for a special rate variation to increase its notional income to meet the increased cost of the works.

## Sharing costs among landowners

In general, the coastal protection service costs which are not being funded by council should be divided among eligible landowners on a pro-rata basis. In most cases this will be based on the proportion that each landowner (or previous landowner) contributed towards the construction costs for the works. *Guidelines for assessing the impacts of seawalls* (DECCW in preparation) provides guidance on who would contribute to the construction costs and how these costs can be distributed between landowners. A different cost-sharing arrangement can be agreed at the development consent stage. The agreed cost-sharing arrangements can be varied at any time, but only with consent from all liable parties.

Council should make the current cost-sharing arrangements readily available for public access (e.g. accessible from council's website, or reported in its annual operational plan).

# **Appendix G: CPSC reporting requirements**

## **Public accountability**

Public accountability may be achieved through:

- transparent decision-making processes
- transparent record keeping
- provision of plain English documents
- maintenance of appropriate and responsible financial records and databases, and
- stakeholder involvement.

Council could consider establishing and maintaining a publicly accessible register of all coastal protection works in the local government area for which payment of the CPSC is a consent condition. This register could record the following:

- each development consent for which the CPSC is imposed
- location of work
- type of work
- cost-sharing arrangements, and
- total value of the CPSC on an annual basis for the next five years.

## **Financial accountability**

Financial accountability will be achieved through appropriate and responsible reporting.

Reporting on the CPSC should be considered and integrated into councils' planning and reporting framework, as outlined in Table G1.



**Table G1: Incorporating CPSC reporting into council's Integrated Planning and Reporting Framework**

<p><b>Long-term community strategic plan</b></p> <p>This plan should identify the community's aspirations for coastal erosion protection, with due regard to the community's desires for continued access and safe enjoyment of their beaches, where this is a relevant strategic objective.</p>
<p><b>Resourcing strategy</b></p> <p>This strategy consists of long-term financial planning (the CPSC should be included as a funding stream), asset management planning (management of coastal protection works must be included in asset management planning) and workforce management planning (council must identify the human resourcing requirements for delivering the coastal protection services).</p>
<p><b>Delivery program</b></p> <p>Council's delivery program is a statement of commitment to the community from a newly elected council. This four-yearly program identifies all activities undertaken by council during each term of office. Activities to deliver the coastal protection services must therefore be identified in the delivery program.</p>
<p><b>Annual operational plan</b></p> <p>This is a subset of council's delivery program, outlining the individual projects and activities for that year, and providing the annual operating budget. It must include a detailed statement of revenue policy including estimated income and expenditure. The annual coastal protection services activities, the total associated costs, and the resulting CPSCs must be included in the operational plan. These activities and budgets should reflect those in the asset management plan.</p> <p>The operational plan must also include a map or list (or both) of the parcels of rateable land that will be subject to the CPSC (as required by clause 201(3)(e) in the Local Government (General) Regulation 2005).</p> <p>To improve transparency and help foster positive community relationships, it is recommended that council also includes a summary of the current cost-sharing agreement for the distribution of the total CPSC between council and individual landowners.</p>

## **Annual report**

This report must include a statement detailing the coastal protection services provided by the council during that year (as required by clause 217 in the Local Government (General) Regulation 2005). This could include a summary of the main expenditure items relating to the provision of the services.

The purpose of the annual report is to outline council's achievements against those scheduled in its delivery program and annual operational plan, and must include audited financial statements.

To improve transparency and help foster positive community relationships, it is recommended that council also includes a statement in the annual report of the reasons for any difference between the projected (reported in the annual operational plan) and actual coastal protection services that were made available during the year (reported in the annual report). Council should avoid carrying over significant portions of the CPSC from one year to the next, unless this is required to meet the long-term asset management plan for the coastal protection work.

Refer to *Planning a sustainable future – Guidelines – Planning and Reporting Guidelines for local government in NSW* (DLG 2010b) for specific guidance related to these plans and reports.

## **Specific reporting requirements**

### **Asset management plan**

Asset management can be defined as the systematic and coordinated activities and practices through which an organisation optimally manages its physical assets, and their associated performance, risks and expenditures over their life cycle, to meet an agreed standard of service.

The standard of service for an asset should state, in objective and measurable terms, how an asset will perform, including a suitable minimum condition grade in line with the impact of asset failure. The role of asset management is to deliver the agreed standard of service in the most cost effective way (refer to Appendix C for more details regarding cost effective asset management planning).

Every coastal protection work must have an asset management plan. The asset management plan must be developed in accordance with council's asset management policy (prepared under its resourcing strategy, mentioned in Table G1 above).

The asset management plan is to be a long-term plan for the life of the coastal protection work that outlines actions, resources (cost estimates for each activity, human resources, physical resources) and time frames required to ensure the coastal protection work continues to meet its design criteria in the most cost effective way.

The asset management plan must include all planned activities for short, medium and long-term maintenance, repair, monitoring, and impact management. The asset management plan should identify management responses to ensure there is no significant change in the position of the coastline, and the type of monitoring required to verify the position of the coastline is not changing significantly.

The cost estimates associated with delivering the asset management plan are the basis for calculating the CPSC, and should inform council's long-term financial planning, and the annual operational plan.

The draft asset management plan (or other relevant documentation) that is submitted as part of a development application should be finalised once the coastal protection work is constructed. The asset management plan should be updated annually (to incorporate recommendations from the annual condition survey – see below for details) and after every major storm event if damage or off-site impacts are incurred. A more thorough review of the asset management plan should be undertaken every four years (as part of the process to develop the council's delivery plan), as otherwise recommended in the council's asset management strategy, or in accordance with any relevant consent conditions.

Council should consider consulting with the landowners who will be levied the CPSC when preparing and updating the asset management plan. This will help ensure council has a comprehensive understanding of the ongoing repair, maintenance and impact management issues, and will help landowners understand how their contributions are being spent.

### **Annual condition survey**

Council should arrange for a coastal engineer to prepare an annual condition survey. This survey is to check the structural integrity of the coastal protection work, assess if there are any off-site adverse impacts (e.g. beach erosion), identify any risks to public safety and check that reasonable public access to the beach is being maintained. The survey will also recommend remedial actions to correct non-performance.

### **Reporting on setting the CPSC**

The *Local Government Act 1993* provides for three different types of reports that council may be requested to prepare in relation to setting the CPSC, as outlined in Table G2.

**Table G2: Reporting on setting the CPSC**

Type of report	Issues to be included in the report	Timing for delivering the report	Fee	Additional comments
<b>Estimate of the CPSC for proposed works</b>				
<p>A person who would be liable to pay a CPSC in relation to a <i>proposed</i> coastal protection work can request council to provide an estimate of the person's liability for the annual CPSC (Section 606A of the <i>Local Government Act 1993</i>). For example, if a landowner is considering making a development application to construct a seawall, they would want to know how much the council would charge them for the coastal protection services before they decide to go ahead with the application. In this case, they can ask council to provide them with an estimate of the CPSC.</p> <p><b>Information to be submitted with the estimate request</b></p> <p>The estimate request must be accompanied by a statement containing necessary information about the proposed coastal protection work to enable council to make the estimate. Council could consider preparing a standard form that the landowners can complete when making an estimate request, to ensure all required information is submitted, to avoid delays. The type of information that council may need in order to make their estimate could include:</p> <ul style="list-style-type: none"> <li>• type of coastal protection work (e.g. seawall)</li> <li>• location of the work (marked on a map)</li> </ul>	<p>The CPSC estimate statement, to be prepared by council, should describe how the CPSC has been estimated. In particular, the following points should be addressed in the estimate statement:</p> <ul style="list-style-type: none"> <li>• a list of expected coastal protection services to be undertaken during each year, for each of the following five years</li> <li>• estimated costs associated with each of these services</li> <li>• an estimate of the costs to council that would be incurred providing the services</li> <li>• the total estimated annual cost and the CPSC for each of the following five years</li> <li>• the cost-sharing arrangements (i.e. proportion of the total cost to be paid by each landowner and council).</li> </ul>	<p>Section 606A(4) of the <i>Local Government Act 1993</i> requires that council provides this estimate within 30 days of receiving the request. The 30-day limit is measured from the time at which the required information and the fee are submitted. If insufficient information is submitted, council must advise the applicant as soon as possible. The remaining period (of the total 30 days) remains intact until the applicant provides the required information. Once the information is received by council, the estimate statement needs to be prepared in the remaining time frame. The 30 days is measured as calendar days (not working days).</p>	<p>The estimate request must be accompanied by a fee to cover council's reasonable costs of providing the estimate. The fee will likely vary between applications, depending on issues such as: the scale of the proposed work, council's experience managing those types of works, the need to engage consultant services, availability of existing information, and the types of expected impacts. Council may therefore decide to set the fee following review of the submitted information.</p> <p>When considering the term 'reasonable' in relation to setting the application fee, council should have regard to Appendix C of this guideline. In particular, council should apply the concepts of fairness, equity, sound judgement and moderation. Council can recover up to its full costs, but may choose to recover only a portion of the costs taking account of the landowner's circumstances and the likelihood of other landowners requesting the same or similar information. Council should also refer to section 610D of the <i>Local Government Act 1993</i> ('How does a council determine the amount of a fee for a service?') when setting the fee.</p> <p>Council may like to suggest to the person submitting the request that they liaise with other landowners who would be eligible for the CPSC, and</p>	<p>Section 606A(5) of the <i>Local Government Act 1993</i> sets out that council is not bound or limited to the estimated CPSC. Landowners should be made aware that the CPSC estimated through this process is an estimate only, and can vary to cover council's reasonable costs associated with delivery of the actual coastal protection service. Particular reference should be made to the challenges associated with budgeting for the unknown costs associated with emergency repair and impact management work resulting from storm damage. However, council should make every effort to estimate the CPSC as accurately as possible, to minimise any variations from the estimated CPSC and to provide clear approaches for funding emergency repair activities.</p>

Type of report	Issues to be included in the report	Timing for delivering the report	Fee	Additional comments
<ul style="list-style-type: none"> <li>preliminary design, scale of the work and expected construction materials</li> <li>expected on-site and off-site impacts</li> <li>potential risks to public safety and how they will be managed</li> <li>existing and proposed public access arrangements.</li> </ul>			submit a single request from the group. Council could agree to facilitate the communication between landowners if assistance is required. The fee could then be split between the landowners, helping to reduce the financial burden on any one landowner.	
<b>Reporting on the cost to council for servicing constructed works – report on request of ratepayer</b>				
<p>This reporting relates to coastal protection works that are in operation. This reporting does not relate to proposed works.</p> <p>Section 606B of the <i>Local Government Act 1993</i> provides that a person who is liable to pay a CPSC (related to a constructed coastal protection work i.e. the coastal protection services are underway) may request council to provide them with a report on the cost to council of providing the coastal protection services.</p> <p>Generally, a person would ask for this report if they were not confident that council was undertaking the coastal protection services cost effectively, or were querying in some other way how the revenue raised through the CPSC was being spent. To minimise the frequency of such requests, council should follow the guidance regarding public and financial accountability presented above (i.e. clear and transparent reporting, good communication), so that members of the public can see what the CPSC is funding and how it is calculated.</p>	<p>The report is to include, as a minimum, the following information:</p> <p><b>Historical costs</b></p> <ul style="list-style-type: none"> <li>A list of the coastal protection services undertaken during at least the past three years (or since the work was constructed, if the report relates to a new coastal protection work), or to cover the time period that the landowner is questioning.</li> <li>A comparison between the actual funds spent on the identified services with the cost estimates that were used to calculate the CPSC. This should include a discussion of any variations between the estimated spend and actual spend, with reasons for these difference, if available.</li> </ul> <p><b>Predicted costs</b></p> <ul style="list-style-type: none"> <li>A list of the coastal protection services scheduled (for example in the asset management plan) to be undertaken during at least the next three years, or longer time scale if appropriate, or requested.</li> <li>The costs that council has</li> </ul>	<p>There is no legislated time frame for delivery of the report. However, it is recommended that council makes every effort to provide the report within 90 days of receiving the request.</p>	<p>The report request must be accompanied by a fee to cover council's reasonable costs of providing the report. When setting the fee, council may include costs for both:</p> <ul style="list-style-type: none"> <li>consultancy fees for the independent person preparing the report, and</li> <li>direct costs to council associated with preparing the report e.g. managing the consultant, providing relevant information, site visits.</li> </ul> <p>The fee will likely vary between applications, depending on the consultancy fees for the independent person, the scale and type of coastal protection work and its impacts, and availability of existing information.</p> <p>When considering the term 'reasonable' in relation to setting the application fee, council should have regard to Appendix C of this guideline. In particular, council should apply the concepts of fairness, equity, sound judgement and moderation. Council can recover up to its full costs, but may chose to recover only a portion of the costs taking account of the</p>	<p>If other people are liable to pay the CPSC that is the subject of the report, council must notify those people that the report has been prepared and make the report available to them. These people are not liable for the fee.</p> <p>If a person requests a report in relation to coastal protection services, for which a report has been prepared within the previous three years (this could include a report prepared under direction by the Minister through section 606C of the <i>Local Government Act 1993</i> – see below for details), council is not obliged to arrange for a new report to be prepared, but should make the previous report available. Council may agree to arrange for a new report to be prepared, but they are</p>

Type of report	Issues to be included in the report	Timing for delivering the report	Fee	Additional comments
	<p>estimated for delivering these services.</p> <p><b>Cost sharing</b></p> <ul style="list-style-type: none"> <li>The percentage share of the total CPSC for each landowner and council.</li> </ul> <p>The purpose of the report is to clearly present the costs to council for providing the coastal protection services. The intent is not to make assessments as to the reasonableness of the costs or services being delivered by council. It is the responsibility of the concerned landowner to draw their own conclusions regarding reasonableness or adequacy of the services and costs, or to seek expert advice, if required.</p>		<p>landowner's circumstances. Council should also refer to section 610D of the <i>Local Government Act 1993</i> ('How does a council determine the amount of a fee for a service?') when setting the fee.</p> <p>There are two situations where council cannot require that a fee accompany the report request:</p> <ul style="list-style-type: none"> <li>the report request is made during the first year that a CPSC is levied on the relevant parcel of land, or</li> <li>the report request is made during the year following an increase in the CPSC, where the CPSC increased by more than the percentage specified in an order made under section 506 of the <i>Local Government Act 1993</i>. This order specifies the percentage by which council's general income for a specified year may be varied. Although the CPSC is exempt from this limit, the percentage specified in the order provides a useful guide as to when it would be reasonable for a ratepayer to query the charges they are paying to council.</li> </ul> <p>Council may like to suggest to the person submitting the request that they liaise with other benefiting landowners, and submit a single request from the group. Council could agree to facilitate the communication between landowners if assistance is required. The fee could then be split between the landowners, helping to reduce the financial burden on any one landowner.</p>	<p>not required to.</p> <p><b>Independent person to prepare the report</b></p> <p>The report must be prepared by an independent person. That is, the person must not be an employee of council, must be in no way obliged to or controlled by council, and must have no personal or professional interest in the coastal protection work, the related services or the impacts.</p> <p>The person preparing the report must be suitability qualified and/or experienced in asset management, financial management and auditing.</p>

Type of report	Issues to be included in the report	Timing for delivering the report	Fee	Additional comments
<b>Reporting on the cost to council for servicing constructed works – as directed by the Minister</b>				
<p>This reporting relates to coastal protection works that are in operation. This reporting does not relate to proposed works.</p> <p>Section 606C of the <i>Local Government Act 1993</i> provides that the Minister administering Part 4A of the <i>Coastal Protection Act 1979</i> may direct a council to provide the Minister with a report on the cost to council of providing the coastal protection services.</p>	<p>This report should include the information outlined above ('report on request of ratepayer'), as a minimum.</p>	<p>The report must be provided to the Minister within 90 days of the direction (or if a longer time frame is required, this can be negotiated with the Minister). If a council fails to provide the required report within the time frame, the Minister may commission an independent person to prepare the report (in this case, council must co-operate with the independent person), and recover the cost of preparing the report from council.</p>	<p>The costs associated with preparing this report can be included in the CPSC levied on landowners.</p>	<p>The report must be prepared by an independent person.</p> <p>Council must have regard to this report when determining the future annual CPSC.</p> <p>Council is only required to provide this report to the Minister. Council is not required to provide this report to landowners. However, council may choose to provide the report to landowners who are liable to pay the CPSC. These landowners are not liable for a fee.</p>

