



Environment,
Climate Change
& Water

Draft Coastal Protection Service Charge Guidelines

Submissions invited

Comments are invited on this draft. Where concerns are raised, recommended changes to address these concerns would be valued.

Please send your submissions on this consultation draft by email to:

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Closing date for submissions

Submissions must be received by 5 pm, 11 November 2010.

Published by:

Department of Environment, Climate Change and Water NSW

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ISBN 978-1-74232-981-9

DECCW 2010/877

October 2010

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Note for consultation draft

This draft document has been prepared to support the *Coastal Protection and Other Legislation Amendment Bill 2010 (No.2)*, which is currently being considered by the NSW Parliament. This Bill amends the *Local Government Act 1993*; *Coastal Protection Act 1979*; *Conveyancing (Sale of Land) Regulation 2005*; and *Local Government (General) Regulation 2005*. The document refers to sections of the legislation that this Bill proposes to include and/or amend. The section numbers referred to in this draft are those in the Bill as introduced into Parliament.

This draft document has no statutory basis. Councils may not levy a coastal protection service charge until the legislation listed above is amended. Details of these Acts and Regulations can be found at www.legislation.nsw.gov.au.

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
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.

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 recover the councils' costs of providing coastal protection services to the land on which the charge is levied.

Eligible land: land to which council can levy a coastal protection service charge. To be eligible, the parcel of land must satisfy all of the following criteria:

- The landowners' land is benefiting from the coastal protection service.
- The landowner or a previous landowner contributed to the construction of the relevant coastal protection work.
- The coastal protection services were provided by, or on behalf of, council.
- The parcel of land is rateable.

Emergency coastal protection works has the same meaning as section 55P of the *Coastal Protection Act 1979*.

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

Public Authority has the same meaning as in the *Coastal Protection Act 1979*.

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 sharp 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.

1 Purpose of these guidelines

1.1 What is a coastal protection service charge?

The coastal protection service charge (CPSC) is a charge that councils can levy on the owners of rateable land where the current or previous owner has contributed to the cost of constructing long-term coastal protection works, such as seawalls.

The CPSC recovers councils' costs of providing coastal protection services to the land on which the charge is levied.

This CPSC will provide for maintaining the works, mitigating any impacts (such as replacement of eroded beach sand), minimising risks to public safety and maintaining reasonable public beach access.

1.2 Why do we need a coastal protection service charge?

New South Wales coastal communities and local councils are facing difficult coastal erosion issues, with the potential for losses of homes and infrastructure. Landowners can seek development consent to construct long-term works to protect property from coastal erosion. It is important to ensure these works 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 maintenance, repairs, minimising risks to public safety and maintaining public beach access (section 55M of the *Coastal Protection Act 1979*). Payment of the CPSC to council is one way of ensuring on-going funding is available to meet these requirements. Alternatively, the consent authority may impose relevant consent conditions.

1.3 Role of these guidelines

These guidelines are 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.

The 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.

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

- what activities can be funded with money raised through the charge (Sections 4.1 and 4.2)
- councils' role in levying the charge (Section 2)
- which landowners are liable to pay the charge (Section 3)
- how to calculate the charge (Section 4)

- reporting requirements (Section 5).

These guidelines also provide some advice for councils to consider when addressing concerns raised by landowners including late payments and appeals (Section 6).

1.4 Relationship to legislation and policies

In 2010, the NSW Government introduced a coastal erosion reform package. The package better equips State and local government with the tools needed to deal with the challenges of coastal erosion. The CPSC is a component of the reform package.

The ability to levy the CPSC is available through the *Local Government Act 1993*: sections 496B, 505(a)(vi), 553B, 606A, 606B, 606C and Dictionary). Other legislation and policies that support the CPSC include:

- *Coastal Protection Act 1979*, section 55M
- Conveyancing (Sale of Land) Regulation 2010, clause 3(1); and Schedule 3, Part 1, item 2(e); Schedule 3, Part 2, items 3(f) and 4(e)
- Local Government (General) Regulation 2005, clause 201(3)(d); 217(1)(e1); and 413B.

Note for consultation draft

Amendments to the *State Environmental Planning Policy (SEPP) (Infrastructure)* are proposed to allow landowners to apply for development consent to erect coastal protection works. The amended SEPP will note that a consent authority would only grant consent for a long-term coastal protection work if it is satisfied that adequate arrangements (such as the levying of the CPSC) are in place to ensure maintenance, repairs, minimising risks to public safety and maintaining public beach access. The SEPP will also set out other appropriate heads of consideration (such as clause 8 of *SEPP 71 – Coastal Protection*), which should be taken into account by the consent authority.

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 5 of these guidelines for further information about these reporting requirements.

Development consent process

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 satisfactory arrangements for restoration, maintenance, minimising risks to public safety and maintenance of reasonable public beach access are made. These arrangements could be either:

- an agreement by council to provide the required coastal protection services (with costs recovered by levying the CPSC), or

- relevant consent conditions imposed by the consent authority.

Refer to *Guidelines for assessing and managing the impacts of seawalls* (consultation draft released in August 2010) for a full discussion on what issues need to be included in the development application and the consent conditions.

1.5 Relationship to other guidelines

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

- 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 land (at the time of construction) made to the total construction costs
- development consent. As discussed above (Section 1.4) 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 can include paying the CPSC to the relevant council.

The council planning reporting requirements under the *Local Government Act 1993* (mentioned above in Section 1.4) 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 Who can levy the CPSC?

Council is the only entity that can levy the CPSC.
Council must levy the charge if it undertakes coastal protection services related to a coastal protection work that was constructed solely by landowners.
Council may levy the charge if it undertakes coastal protection services related to a coastal protection work that was constructed jointly by landowners and a public authority or a council (refer to Section 4.4 for guidance regarding cost-sharing arrangements).
<p>Council can only levy the charge if the coastal protection service:</p> <ul style="list-style-type: none">• is undertaken by or on behalf of council (<i>Local Government Act 1993</i>, section 553B(2)) 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.• benefits eligible land in the council's area (<i>Local Government Act 1993</i>, section 496B(1)) Council can only levy the charge on eligible parcels of land in its own council area. That is, if council undertakes services in its local government area, and those services benefit eligible land in its local government areas, then council can levy the charge on that land. The <i>Local Government Act 1993</i>, section 496B(8) states that an eligible parcel of land is defined as benefiting from a coastal protection service (and therefore the landowners may be required to pay a CPSC), even if the service is carried out on land that is outside the council's area. This refers to a situation where a coastal protection work is constructed seaward of the local government area (i.e. lies outside 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 <i>Local Government Act 1993</i>). Therefore, if a council undertakes services related to the coastal protection work located seaward of the low water mark, the council may recover its costs for providing those services through the CPSC.

Before agreeing to take responsibility for the coastal protection services, council should ensure it has made appropriate financial arrangements to pay for the ongoing maintenance, repair and impact management work. Council should consider the fact 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. Refer to Section 4.3 for further details regarding calculating the CPSC.

3 Land eligible to be charged

A landowner is liable for the CPSC if all of the following criteria are met:

- The landowners' land is **benefiting** from the coastal protection service.
- The landowner or a previous landowner **contributed to the construction** of the relevant coastal protection work.
- The coastal protection services were provided **by, or on behalf of, council**.
- The parcel of land is **rateable**.

3.1 Clarifying liability for the CPSC

- Land is deemed to be benefiting from a coastal protection service if the service relates to coastal protection works which the current or past landowner constructed (or contributed to the construction costs). Any coastal protection service (maintenance, repair, management of impacts, minimising risks to public safety and maintaining reasonable public beach access) relating to these coastal protection works are deemed to benefit their land. This even applies to services relating to management of impacts (such as beach nourishment). For example, beach nourishment may be required (some distance away) to manage erosion impacts resulting from a seawall, for which a landowner (or previous landowner) contributed to the construction. Although the eligible parcel of land does not directly benefit from the beach nourishment, it is deemed that it does benefit (and therefore the current landowner is liable for the CPSC) because the beach nourishment is required as a result of the presence of the seawall.
- A landowner is deemed to have contributed to the construction of the relevant coastal protection work if construction was undertaken on their behalf, or if construction was undertaken by a prior landowner.
- The CPSC can be levied during construction of the coastal protection work, but can only be used to fund coastal protection services (i.e. it cannot fund the construction works).
- The CPSC can be levied on an eligible parcel of land even if the coastal protection service relates to a coastal protection work that is not on the landowner's property.
- Only rateable land is eligible for the CPSC. However, rateable land that is held under a lease for private purposes granted under the *Aboriginal Housing Act 1998* or the *Housing Act 2001* is ineligible.
- If a benefiting current or previous landowner contributed to the construction of the works, they are eligible for the charge. There is no minimum contribution threshold.
- The CPSC can only be levied on eligible land benefiting from a service that relates to a coastal protection work that existed before section 553B of the *Local Government Act 1993* commenced, with the consent of the landowner. Once that landowner gives consent, that consent is taken to also apply to future landowners.
- A landowner is liable for the CPSC if they or a previous landowner contribute to the costs of upgrading or expanding an existing coastal protection work. However, in this case the

CPSC should only cover the proportion of the coastal protection services that relate to the upgraded or expanded components of the work (that is, the proportion of costs for providing coastal protection services had the existing coastal protection work not been modified cannot be funded through the CPSC).

4 Calculating the CPSC

The CPSC can be used to cover the reasonable costs to the council of providing coastal protection services.

4.1 Services that are eligible for CPSC funding

The CPSC can be used to maintain or repair long-term coastal protection works, manage the impacts of such works, minimise the risks to public safety and maintain reasonable public beach access, where the works have been funded at least partly by current or previous landowners.

The CPSC cannot be used to service emergency coastal protection works. The CPSC can only be used to service long-term coastal protection works. Emergency coastal protection works include the placement of material (such as sand bags) on a beach (or a sand dune adjacent to a beach) to mitigate the effects of wave erosion on land, during or just before storm activity or an extreme or irregular event (refer to section 55P of the *Coastal Protection Act 1979* for the full legal definition). All costs associated with these works are paid directly by the landowner who has placed the works.

The CPSC cannot be used to construct a coastal protection work.

4.1.1 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:

- **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.

Coastal protection works also include activities, such as beach nourishment. Beach nourishment provides coastal protection by building a wider beach.

4.1.2 What is maintenance and repair?

Maintenance and repair activities are those that are undertaken to ensure that the coastal protection work continues to provide its pre-determined 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 maintain and repair long-term coastal protection works. This includes preventative as well as corrective 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 (the requirement to undertake annual condition surveys will normally be a consent condition – refer to Section 5.3.2 for more details)
- remedial actions 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 and managing the impacts of seawalls* (consultation draft released in August 2010). Upgrades can only be funded by the CPSC if these sea level rise design criteria change.

In addition, the CPSC can be used to fund decommissioning of a coastal protection work, where decommissioning has been planned as part of the proposal. 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 consent 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.

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 construction costs associated with the coastal protection work.

Maintaining works to a reasonable engineering standard

The Local Government (General) Regulation 2005 clause 413B(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 Section 5.3.2 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 Section 5.3.1 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 to ensure the structure continues to meet its design criteria, as set out in the development application. *Guidelines for assessing and managing the impacts of seawalls* (consultation draft released in August 2010) provides more specific guidance on minimal acceptable design standards for permanent protection structures.

4.1.3 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. Refer to *Guidelines for assessing and managing the impacts of seawalls* (consultation draft released in August 2010) for criteria to consider when managing impacts. For example, 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.

The Local Government (General) Regulation 2005 clause 413B(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. Refer to *Guidelines for assessing and managing the impacts of seawalls* (consultation draft released in August 2010) for further advice on this issue.

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.

4.1.4 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.

4.1.5 The CPSC can be used to minimise risks to public safety

A coastal protection work should be designed and constructed to minimise risks 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.

4.1.6 The CPSC can be used to maintain public beach access

A coastal protection work must be designed and constructed to maintain public access to beaches. 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/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 (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 arrangements are in place to ensure *reasonable* public access to the beach is maintained if the coastal protection work is constructed. When considering the term 'reasonable' refer to the principles listed in section 4.2 below, 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.

4.2 Reasonable costs for providing services

Section 496B(3) 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, the following principles should be considered.

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, management of its impacts, minimisation of risks to public safety and maintenance of reasonable public access to the beach (as discussed in Section 4.1 above) 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 1 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.
- 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 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 Section 5.3.1 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 Section 5.3, Table 3 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 plan 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, impact management, minimising risks to public safety and maintaining public beach access 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 1: 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"> • Legal • Insurance • Engineering • Surveying • Accounting 	<ul style="list-style-type: none"> • Procurement • Materials transport • Waste disposal • Support studies 	<ul style="list-style-type: none"> • Project management • Reporting • Consultant fees ¹ • Financing ²
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- 1 Consultant fees – Council should be mindful that the tasks set for consultants are clear and concise, and only reference coastal protection services.
- 2 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.

4.3 Calculating the cost

4.3.1 Role of the asset management plan

A draft asset management plan will normally be submitted with a development application for a coastal protection work (refer to *Guidelines for assessing and managing the impacts of seawalls* – consultation draft released in August 2010). Development consent conditions will require that the asset management plan is finalised before construction is complete.

The asset management plan will need to cover the life span of the coastal protection work, and will include short, medium and long-term schedules of the activities required to maintain the coastal protection work, manage any off-site impacts, minimise risks to public safety and maintain public beach access.

Refer to Section 5.3.1 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.

4.3.2 Approach for setting the annual 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.

This section recommends approaches for calculating the CPSC to provide for both routine and emergency repair costs.

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 in Section 4.3.1). This cash flow plan will cover all planned and routine work associated with maintenance, repair, impact management, minimising risks to public safety and maintenance of reasonable public beach access, 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 or an annualised cost over the design life of the works. A five-year rolling average could be 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. Refer to the Appendix 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 should 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 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 consent for a one-off increase 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 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 consent 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. 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: **Insurance policy**

Council may decide to take out an insurance policy.

Advantages

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

Challenges

- Payments will be made on an annual basis to the insurance company, but there is potential that an insurance payout may never be required (if the structure does not suffer serious damage).
- The annual insurance premiums are likely to be significant.

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.

4.4 Cost-sharing arrangements

4.4.1 Sharing costs between council and landowners

If council is delivering coastal protection services in relation to a coastal protection work that was constructed jointly by council (or a public authority) and landowners, then it is council's decision whether to levy the CPSC or not.

When council levies the charge, the maximum proportion of service costs council can recover is the same as the proportion of the total construction costs that were paid by the landowners. That is, council cannot recover the full costs associated with delivering the coastal protection services, as council is liable for a proportion of the service costs, since it contributed to the construction costs. Council must 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 they will recover from the landowners.*

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

4.4.2 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. 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).

5 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.

5.1 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.

5.2 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 2.

Table 2: Incorporating CPSC reporting into councils' Integrated Planning and Reporting Framework

Long-term community strategic plan

This plan should identify the communities' aspirations for coastal erosion protection, where this is a relevant strategic objective.

Resourcing strategy

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).

Delivery program

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.

Annual operational plan

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.

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).

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.

Table 2: Incorporating CPSC reporting into councils' Integrated Planning and Reporting Framework

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* (Division of Local Government 2010), for specific guidance related to these plans and reports.

5.3 Specific reporting requirements

5.3.1 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 Section 4.2 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 2 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, impact management, minimisation of risks to public safety and maintenance of public beach access. 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. Refer to *Guidelines for assessing and managing the impacts of seawalls* (consultation draft released in August 2010) for issues to include in the asset management plan that are aimed at managing off-site impacts (e.g. type, source and availability of replacement sand for beach nourishment activities).

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 that is submitted as part of a development application should be finalised while the coastal protection work is being constructed. The asset management plan should be updated annually (to incorporate recommendations from the annual condition survey – see Section 5.3.2 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), or as otherwise recommended in the council's asset management strategy.

5.3.2 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. Refer to *Guidelines for assessing and managing the impacts of seawalls* (consultation draft released in August 2010) for further guidance regarding the annual condition survey.

5.3.3 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 3.

Table 3: Reporting on setting the CPSC

Type of report	Issues to be included in the report	Timing for delivering the report	Fee	Additional comments
Estimate of the CPSC for proposed works				
<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>Information to be submitted with the estimate request</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>	<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"> • a list of expected coastal protection services to be undertaken during each year, for each of the following five years • estimated costs associated with each of these services • an estimate of the costs to council that would be incurred providing the services • the total estimated annual cost and the CPSC for each of the following five years • the cost-sharing arrangements (i.e. proportion of the total cost to be paid by each landowner and council). 	<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 Section 4.2 of this guideline. In particular, council should apply the concepts of fairness, equity, sound judgement and moderation. Council can recover up to their full costs, but may chose 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>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"> • type of coastal protection work (e.g. seawall) • location of the work (marked on a map) • preliminary design, scale of the work and expected construction materials • expected on-site and off-site impacts • potential risks to public safety and how they will be managed • existing and proposed public access arrangements. 			<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 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>	
Reporting on the cost to council for servicing constructed works – report on request of ratepayer				
<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</p>	<p>The report is to include, as a minimum, the following information:</p> <p>Historical costs</p> <ul style="list-style-type: none"> • 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. • 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 differences, if available. 	<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"> • consultancy fees for the independent person preparing the report, and • direct costs to council associated with preparing the report e.g. managing the consultant, providing relevant information, site visits. <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,</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</p>

Type of report	Issues to be included in the report	Timing for delivering the report	Fee	Additional comments
<p>accountability presented in Sections 5.2 and 5.3 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>Predicted costs</p> <ul style="list-style-type: none"> • 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. • The costs that council has estimated for delivering these services. <p>Cost sharing</p> <ul style="list-style-type: none"> • The percentage share of the total CPSC for each landowner and council. <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>council should have regard to Section 4.2 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 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"> • the report request is made during the first year that a CPSC is levied on the relevant parcel of land, or • 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 councils' general income for a specified year may be varied. <p>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.</p> <p>Council may like to suggest to the person</p>	<p>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 not required to.</p> <p>Independent person to prepare the report</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
			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.	
Reporting on the cost to council for servicing constructed works – as directed by the Minister				
<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. Council must have regard to this report when determining the future annual CPSC. 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>

6 Addressing landowners concerns

The CPSC cannot be levied on landowners if they (or the previous owners of the parcel of land) did not contribute to the construction of the relevant coastal protection work. At the development consent stage, the consent authority must be satisfied that adequate arrangements will be in place for the necessary maintenance and restoration activities. The consent authority may impose relevant consent conditions. Alternatively, eligible landowners may pay the CPSC to council, to cover council's costs for providing the required coastal protection services.

Although the CPSC is a charge that will result in direct benefits to the landowner (by maintaining the coastal protection work, and therefore protecting the landowner's property from erosion), some landowners may raise concerns, which council should be prepared to address. This section provides guidance to help councils respond to potential concerns regarding the implementation of the CPSC.

6.1 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
- providing ready access to relevant records and reports (particularly those reports listed in Sections 5.2 and 5.3)
- 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*).

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, they should make the report available to all other persons liable to pay the CPSC in relation to the same services. Refer to Section 5.3 for more details regarding this report.

6.2 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 charge (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.

6.3 Appealing the CPSC

If a landowner believes the amount of the annual CPSC is unreasonable, Section 496B(4) of the *Local Government Act 1993* provides that they may appeal to the Land and Environment Court and that Court may determine the amount.

While the appeal is pending, the landowner must continue to pay the CPSC. If the landowner's appeal is successful (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.

7 References

DECCW (in preparation), *Guidelines for assessing and managing the impacts of seawalls*

DECCW (consultation draft released August 2010), *Guidelines for preparing coastal zone management plans*

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

DLG 2010, *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 2010, *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

8 Appendix

Calculating the routine component of the Coastal Protection Service Charge using a five-year rolling average

As explained in Section 4.3 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. **Table A1** 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 Section 4.4 of these guidelines.)

For the example presented in Table A1, the total CPSC for each year is calculated as follows:

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

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

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

.
. .

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

.
.

etc.

Table A1: 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		
Start	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
Finish	24	700	600	-20
	assumed	700		
	assumed	700		
Total*		36,400	36,380	

* Total for years 1 to 24

Graph A1: Hypothetical five-year rolling average of annual coastal protection service costs

