

29 February 2016

The Hon. Robert Stokes, MLA Pittwater,  
Minister for Planning,  
5 Martin Place, Sydney NSW 2000

**Re: NSW Government Coastal reforms – Stage Two**

Dear Minister,

I refer to the announcement of the NSW Government's Coastal reforms package - Stage Two in November 2015, including the release of a public exposure draft of *Coastal Management Bill 2015*. Please find attached copy of the Australian Coastal Society's submission on these reforms.

The Australian Coastal Society (the ACS) is a nationwide non-government organisation dedicated to promoting effective coastal management policy and practices along Australia's extensive and unique coastline. We are dedicated to healthy coastal ecosystems, vibrant coastal communities and the sustainable use of coastal resources.

The ACS had a group of NSW members very experienced in coastal management compile our attached submission. The group worked tirelessly on this submission, which I now commend to you.

We note that there are elements of the reform package (such as the text of the SEPP and further parts of the Manual) that have yet to be finalised and publicly released. We would anticipate further opportunities to comment on these elements, and would seek a meeting with relevant agency staff to discuss these matters.

I would nonetheless like an opportunity for a small delegation of ACS members to meet with you personally to discuss our submission on the Bill and the NSW Government's likely responses, at your earliest opportunity.

Thank you for accepting the submission. We wish you well in the next stage of this process.

Yours sincerely



Professor Geoffrey Wescott,  
Chair, Australian Coastal Society  
Attachment: ACS Submission on Coastal reforms – Stage Two, February 2016.



## **Submission on**

# **NSW Department of Planning + Environment on Coastal reforms – Stage two.**

## **Comments on proposals for**

- **a new *Coastal Management Bill***
- **an updated ‘Coastal Management Manual’**
- **a new *CM State Environmental Planning Policy***
- **a Direction under s 117 *EP & A Act 1979*.**

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**Prepared by members of Australian Coastal Society (NSW Branch)**

**Endorsed by ACS Executive**

**February 2016**

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## Executive Summary

Whilst not exhaustive, we would like to highlight some key points here that we make in further detail within the submission:

- The membership, role and functions of the *Coastal Management Council*, as we would prefer it be re-named, needs to be re-thought, to better reflect the need to successfully engage and co-ordinate the range of stakeholders outside government, in ongoing coastal management;
- The ACS considers it vital that a coastal conservation area be created, using criteria wider than coastal wetlands and littoral rainforest, to include all coastal native vegetation of conservation significance.
- The uncertainty regarding the effect of the movement of the ambulatory boundary of MHWMM o property boundaries originally defined by survey should be placed beyond doubt by the codification of the common law in relevant legislative provisions;
- The relationship between Coastal Zone Management Plans and proposed new Coastal Management Programs has not been explained. The ACS supports saving and building on these key Plans, but is concerned that CZMPs and CMPs have competing roles which need clarification.
- The proposed *Coastal Management State Environmental Planning Policy (CM SEPP)* is a positive initiative. However its effectiveness will depend on still unknown provisions, and, critically, maps made to give it effect; and on the clarity of guidance or direction it gives to local councils. It is important that the SEPP's provisions and the relevant maps, are robust and are not subject to 'a death by a thousand cuts'. Proposals for a minimum 'life' for these maps and their periodic strategic review are considered a more appropriate approach.

**Furthermore we would like to highlight some positive aspects of the reform package:**

### **Positives**

The Minister has fulfilled his promise to draft new legislation.

#### The draft **Coastal Management Bill 2015**

- includes a statement of the Objects of the Act [s 3, p 4];
- proposes management objectives for four new coastal management areas [ss 6-8, 7-9];
- sets out the Minister's role in coastal management on behalf of the State [ss 14, 17, p 10,12];
- orders the production and use of an updated *Coastal Management Manual*; [s 21, p 13];
- re-constitutes an independent Coastal Council [s 24-26, p 15];
- makes clear that development consent for the construction of coastal protection works may be refused if public safety or public access are adversely affected [s 27, p 17];
- continues provisions which prevent applications by owners of adjoining property to extend land title seawards, from being granted if it adversely affects public access [s 28, p 17]
- empowers the Minister to take action to sanction non-compliant council [s 30, p 18];
- requires a review of the Act in five years hence [s 33, p 18];
- 'saves' existing Coastal Zone Management Plans, and plans currently in prep [Sch 3, s 4, p 26];
- allows the imposition of conditions on the construction of coastal protection works [Sch 4.1, p 28];
- provides for Orders and enforcement mechanisms for coastal related offences [Sch 4.1, 28-29];
- refers any DA for coastal protection works to a Joint Regional Planning Panel [Sch 4.1, p 29];

- 
- facilitates the councils levying of annual charges for “coastal protection services” [Sch 4.4, p 30-31];
  - continues councils’ exemption from legal liability where they ‘act in good faith’ [Sch 4.4, p 31].

**And some areas that require changes and further consideration:**

***Several major matters require amendment***

- The Objects need reworking: to recognise the public right of pedestrian access to the foreshore [s 3];
- The new ‘areas’ proposed and their objectives should be amended to become: coastal *conservation* area, coastal vulnerability area, coastal *waterbodies and environs* area, and coastal *development* area [s 5];
- Criteria for coastal *conservation* area should be enlarged to include some coastal lakes’ catchments and other high conservation value coastal native vegetation [s 6];
- Processes to ensure councils and public authorities co-operate and co-ordinate need work [ss 15, 16];
- The name of the new body should be amended to become the *Coastal Management Council* [s 24];
- Its role, membership, functions and Constitution warrant review [ss 24, 25, p 15; Sch 2, p 22-25];
- The role of identifying, and power to acquire, land for coastal management purposes should be included.

The document ***Introduction to the NSW Coastal Management Manual***

- signals that the State government understands that partnerships with local councils are required [p 2].
- acknowledges climate change needs to be included in future coastal planning and management [p 7];
- builds on and updates the form and content of valuable resource material from earlier publications.

The booklet ***Coastal Management SEPP – Explanation of Intended Effect***

- consolidates existing provisions from other planning instruments into one *CM SEPP* [p 9];
- retains development controls over *SEPP #14* coastal wetlands and *SEPP #26* littoral rainforests [p 7];
- extends the 10 m buffer around *SEPP # 14* coastal wetlands [p 14];
- states future consent for private ‘emergency’ coastal protection works will not be possible [p 23];
- reasserts the need for council-led strategic, integrated approach to coastal management [p 23].
- foreshadows making the *CM SEPP* legally binding via a s 117 Ministerial Direction to councils [p 7];

Citations shown as [ s , p ] refer to section and page no.s in the relevant document.

**Acknowledgements**

Many people have contributed to the preparation of this submission. Thanks are due to Frances Bray, PSM, Tom FitzGerald, Dr Peter Helman, David Anning,

Principal author and contributing editor: John R Corkill OAM



**Introduction**

The Australian Coastal Society (the ACS) is a national non-government organisation dedicated to promoting effective coastal management policy and practices along Australia's extensive coastline.

The Society, a company limited by guarantee, was formed in 2008 at the National Coast to Coast Conference in Darwin, and was granted charitable organisation status in 2011.

The members of the society have a wide range of professional backgrounds, and in a variety of different roles, are engaged in a diverse range of coastal management tasks and activities.

This submission has been prepared by members of the ACS in New South Wales and has been endorsed by the ACS Executive.

**Our Mission**

The ACS is dedicated to healthy coastal ecosystems, vibrant coastal communities and sustainable use of coastal resources.

**ACS Objectives**

- Promote knowledge and understanding of the environmental, social and economic value of the Australian coast.
- Provide a forum for the exchange of ideas and knowledge among people involved in the management, planning and development of the Australian coast.
- Contribute to international, national, state and local debates on coastal issues so as to foster rational, open decision-making in order to achieve sustainable use of coastal resources and responsible stewardship of coastal assets.
- Improve public, government and industry understanding of the value of the Australian coast for individual and social well being, the need to maintain and improve coastal ecosystems, and to ensure the use of ecologically sustainable development practices.
- Promote the protection and conservation of sites of environmental and cultural significance on the coast and in coastal waters.
- Facilitate increased knowledge and skills of people working and studying in coastal natural resource management, planning, development and other relevant industries along the Australian coast.
- Serve as link between various Australian organisations and individuals with interests in the Australian coast.
- Support national, state and local coastal conferences.
- Do all things necessary for and incidental to the advancement of those objects.

Further information about the Australian Coastal Society (ACS) can be obtained from our website. See <http://australiancoastalsociety.org/>

**About this Submission**

To aid readability, proposed amendments to the Coastal Management Bill 2015 are not included in the body of the submission, but are refer to unique paragraph numbers in the Appendix. Eg **A24.5** The Appendix to the submission sets out a list of all amendments to the Bill, recommended by the Australian Coastal Society.

## **I. Comments on the public consultation draft Coastal Management Bill**

The Australian Coastal Society welcomes the production and release of the public exposure draft of a 'Coastal Management Bill 2015'.

The ACS also welcomes the period of consultation on the Bill, with local councils, and people and groups in the community generally.

The ACS notes with approval that the Bill continues some key provisions of, but proposes a number of important changes to, the legal framework created by the old *Coastal Protection Act 1979* (NSW) [the *CPA 1979*] which, when the new Act commences, will be repealed.

The ACS is of the view that the draft Bill, while commendable in many ways, still has scope for improvement through the inclusion of appropriate amendments. Our comments highlighting the need for amendments are included in the following sections of this submission, and refer to the list of amendments recommended by the ACS in Appendix of this submission.

### **Part 1 Preliminary**

Part 1 of the Bill deals with the preliminary matters of name [s 1], commencement [s 2] and includes Objects of the Act [see s 3, p 4].

#### **s 1 Name of Act**

The date of the Act will need to be updated. See paragraph A1 of the Appendix.

#### **s 2 Commencement**

The ACS suggests that certain provisions of the Act should commence on assent, which other parts might be delayed and commence on a date to be proclaimed.

See the amendment proposed in paragraph A2 of the Appendix.

#### **s 3 Objects of this Act**

The inclusion of a statement of Objects is worthwhile because it provides essential guidance on the government's purpose and wider related intentions to those implementing, and interpreting, the legislation – mostly local councils, state agencies and the courts.

ACS strongly supports inclusion of the principles of ecologically sustainable development in the overarching objective, as defined in section 6 (2) of the Protection of the Environment Administration Act 1991 as the means whereby environmental, social and economic objectives are to be weighed up and applied in decisions.

The ACS is of the view that there are too many draft Objects and several require some tweaking to improve the clarity or focus of the object.

Oddly the powers to identify, and acquire coastal land for coastal *management* purposes, via either voluntary sale or forced resumption where and when it is agreed that it is in the public interest to do so, are not included in the Objects or elsewhere in the draft Bill. This power to acquire land for coastal protection purposes existed as an Object of the *CPA Act 1979* as section (e), viz:

- (e) to provide for the acquisition of land in the coastal region to promote the protection, enhancement, maintenance and restoration of the environment of the coastal region;



The task of identifying and recommending suitable lands was part of the former Coastal Council's role, yet no corresponding provisions relating to coastal *management* have been included in the draft Bill. Perhaps their omission was an oversight but such an object, a relevant power and the designation of this role of identifying suitable lands for acquisition by the State government should be included in a revised version of the Bill.

Significant parcels of land have been purchased under the coastal lands protection scheme over many years before their dedication for specific purposes and assignment to the relevant management authority. Though powers of land acquisition exist under other legislation, they do not provide for land acquisition for coastal management purposes. It seems logical that the Government should have the capacity to do this in the future, where and when appropriate. To facilitate and authorise this, the Bill should state the range of public purposes inherent in coastal management, eg to manage risk from coastal hazards, guarantee public safety, provide public access, protect important coastal habitats, conserve coastal natural resources vital to local economies.

The ACS is concerned that Object d) in s 3 of the *CPA 1979* "to promote public pedestrian access to the coastal region and recognise the public's right to access," has been weakened by proposed new Object (b) "to support the social and cultural values of the coast and maintain public access, amenity and use".

suggested rewording of this crucial Object is provided in paragraph A3.1 of the Appendix.

Acknowledgement of Aboriginal peoples' diverse interests in the coast in the provision of Object 3 (c) is commendable, but there is a palpable danger of a charge of hypocrisy on the Government's behalf in making this acknowledgement while several hundred land claims over vacant Crown lands, by local Aboriginal land councils under the *Aboriginal Land Rights Act 1984 (NSW)* - many of which lie within the coastal zone – have remained stalled and unresolved, some for twenty years! In this instance, some adroit administrative action to expedite resolution of these claims, is definitely called for, rather than an amendment to the Bill.

Two draft objects (j) and (k) may be better deployed as functions of the new coastal management council.

A number of amendments to section 3 are proposed to address these concerns. See paragraph **A3**. of the Appendix 1 of this submission.

#### **s 4 Definitions**

The Definitions provided in s 4 are generally appropriate, however several might benefit from minor amendment. The definition of 'beach' proposed is not supported by the ACS because it is not consistent with the plain and ordinary meaning of the term, because its footprint is defined too widely and includes as 'beach', parts of the coast which are not properly described as 'beach'. The rationale for a revised definition for 'beach' is provided in Appendix 4 of this Submission.

Amendments to definitions in section 4 are proposed in paragraphs **A4** of the Appendix.

## **Part 2 Coastal zone and management objectives for coastal management areas**

The ACS supports the idea of four 'coastal management areas' being designated for specific management purposes within the state's coastal zone.

#### **s 5 Coastal zone**

The names and proposed management objectives of the four new coastal management areas proposed in draft s 5 of the Bill need some further refinement before they can be effective.

The names of several of these proposed new ‘coastal management areas’ are considered confusing and hence inappropriate.

In the view of the ACS there are many ways these management areas could be configured and renamed. In this submission and in the Amendments proposed in Appendix 1, two models for the future categorisation of coastal land have been considered.

One, Model A, proposes three of the four coastal management areas should be renamed as shown below.

<i>Draft name of area</i>	<i>proposed new name</i>
‘coastal wetlands and littoral rainforest area’,	coastal <i>conservation</i> area,
‘coastal vulnerability area’	-
‘coastal environment area’,	coastal <i>waterbodies and environs</i> area
‘coastal use area’	coastal <i>development</i> area,

Amendments to section 5 are proposed to address these concerns. See paragraphs **A5** of the Appendix.

**A second, Model AA, proposes regrouping and renaming the four coastal management areas as shown below.**

<i>Draft name of area</i>	<i>proposed new name</i>
‘coastal wetlands and littoral rainforest area’,	coastal <i>conservation</i> area,
‘coastal environment area’	(incorporating coastal wetlands, littoral rainforest and coastal environment area)
	<i>Aboriginal Culture</i> area.
‘coastal vulnerability area’	-
‘coastal use area’	coastal <i>development</i> area,

Detailed amendments to section 5 to reflect Model AA are given in paragraphs **AA5** of the Appendix.

detailed rationale for this model is provided in **Appendix 5**.

## **6 coastal conservation area**

The ACS is of the view that the first of these proposed new coastal management areas has been too narrowly defined as including (only) SEPP 14 - coastal wetlands and SEPP 26 – littoral rainforests. While the continuation, and extension, of development controls over these important coastal vegetation types are supported by the ACS, they are not the only coastal vegetation types of significance which require protection within the proposed new ‘coastal management area’.

Following an extensive review of Environmental Zones (E-Zones) in the councils of the far north coast, consultants Parsons Brinkerhoff recommended that the criteria for defining areas as zone E2 - Environmental conservation should be extended to include other vegetation types of conservation significance.

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The Department of Planning and Environment and Planning Minister Mr Stokes in their response to the E-Zone Review report on 20 October 2015, further modified the list of criteria which qualified areas of land and vegetation for inclusion in the highest private land conservation zoning available under the standard instrument for LEPs: the E 2 Environmental Conservation zone. (See <http://www.planning.nsw.gov.au/Policy-and-Legislation/Environment-and-Heritage/Environmental-Zones> )

In addition to coastal wetlands and littoral rainforests (under the relevant SEPPs), the following criteria were adopted by the Minister and the Department for these five FNC councils' LEPs:

- Endangered Ecological Communities (EECs) listed under either the state or federal Act,
- Key Threatened Species habitat,
- over-cleared vegetation communities and
- land identified as culturally significant by Aboriginal communities.

as explicitly defined in Table 1. E2 Zone criteria, p 13, Northern Councils EZone Review Final Recommendations Report (NSW Department of Planning and Environment, 2015. (Available at <http://www.planning.nsw.gov.au/Policy-and-Legislation/Environment-and-Heritage/Environmental-Zones> )

Further, The ACS believes that other important coastal native vegetation types of conservation significance also warrant ongoing conservation and protection from development, including mangroves, salt marshes and coastal seagrasses – species under particular threat from coastal development. In many places these important coastal vegetation communities have been identified and their extent has been documented on high resolution maps. These maps ought to be included in the material drawn on by the Department when preparing maps for the proposed coastal *conservation* area, for use in the proposed *Coastal Management SEPP*.

The ACS believes that adopting a wider set of criteria for defining, mapping and protecting native vegetation of conservation significance and sites of cultural significance, in the coastal zone is warranted. After such an extensive process of review, hitherto focussed on five far north coast councils, there is an opportunity to harness these results of this extensive review, with a view to adopting these expanded criteria for defining the zone created under this section, 6 (a) and rename it accordingly as 'coastal *conservation* area'.

Amendments to section 6 are proposed to achieve this sensible extension of criteria of significance. Several amendments to the management objectives for this area are proposed. See paragraph **A6** of the Appendix.

#### **Alternative Model AA.**

Alternative Model AA seeks to integrate management of the physical and hydrological coastal environment with coastal biodiversity and ecosystem integrity, as expressed both in the objects of the Draft Bill and the scope and objectives of Areas (a) and (c).

An integrated approach is considered critical, given the extent to which sensitive coastal environments have become degraded as a consequence of ecologically unsustainable development in the catchments of both the open coast and estuaries, coastal lakes and lagoons, wetlands and littoral rainforests. Most ecosystems unique to the coast are listed as Endangered Ecological Communities, with coastal flora and fauna species listed as Threatened. The Coastal Lakes Inquiry 2002 identified only 16 of over 90 coastal lakes as in natural or near natural condition. These 16 coastal lakes identified for "Comprehensive Protection," are increasingly recognised as highly vulnerable to degradation from development and use pressures in their catchments.

It is proposed that the emphasis on the coastal environment, reflected in the objects of the Draft Bill, be realised in an holistic "catchment to coastal waters" approach to conservation, protection and management, rather than the proposed separation of Area A, "Coastal Wetlands and Littoral Rainforest

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areas” from the “Coastal environment area.” Coastal physical environments and ecosystems do not exist in isolation of their catchments and should be considered holistically, in parallel with recognition of coastal compartments.

The proposed “Coastal Conservation Area” would bring together all high conservation value coastal environments in recognition of the inter-relationship between these physical, hydrological and biological coastal systems, rather than separating Littoral Rain Forests and Coastal Wetlands from other related coastal environments.

One “Coastal Conservation Area” would better integrate with Environment and Water Zones as defined in the LEP Standard Instrument, Council principal Local Environment Plans and existing Council Coastal Zone Management Plans. It would reduce confusion regarding coastal ecosystems that encompass categories such as coastal lakes, estuaries, wetlands and littoral rainforests, which, where they occur together, should be conserved, protected and managed under one set of objectives and with planning and development provisions, specific to each category.

A separate Aboriginal Culture Area is proposed to ensure that planning and management of the NSW coast recognizes Aboriginal peoples’ spiritual, social, customary and economic use of the coastal zone consistent with Aboriginal people’s Native Title Rights and rights under the NSW Aboriginal Land Rights Act.

Specific consultation arrangements should be made to ensure that Aboriginal people are engaged in and consulted about all issues relating to the coast and their rights prior to finalisation of the draft Bill.

Alternative amendments to give effect to Model AA relating to the scope of the Areas and proposed development controls proposed in the SEPP Statement of Intended Effect are provided in paragraph **AA6** of Appendix

*\*See the Rational for these management objectives in **Appendix 5**.*

#### **s 7 coastal vulnerability area,**

The ACS supports the inclusion of this zone and does not seek to amend its name.

The management objectives of this coastal management area shown in s 7 (2) need amendment to further clarity and make appropriate, the relevant objectives.

The CS does not support the inclusion in the objectives in the ‘coastal vulnerability area’ the draft par d) “to encourage land use that would...” etc, when in these areas, objectives that stated “to discourage new development” and limit re-development’ and or ‘to encourage transition of vulnerable legacy development to safer areas’ seem more appropriate given the hazards are real.

Objective d) could then be better deployed in coastal *development* areas.

Amendments to section 7 and amendments to the management objectives for this area recommended by ACS are shown in paragraphs **A7** of the Appendix

#### **s 8 coastal *waterbodies and environs* area,**

Though the environment of the coastal region is extensive and diverse, only a limited sub-set of coastal environments are included within the ‘coastal environment zone’ proposed under s 8.

The consequence of this narrow definition is that there will be extensive areas of well known coastal environments which are not designated ‘coastal environment areas’.

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The ACS supports the inclusion of a coastal management unit focussed on the coastal waterbodies, being tidal waters, waters of ICOLLs and their immediate shore environs, as presently defined by s 8 (1). However the ACS believes that to avoid the potential for confusion the area created under s 8 should be renamed ‘coastal *waterbodies* and environ area’.

The management objectives of this coastal management area shown in s 8 (2) need amendment to further clarity and make appropriate, the relevant objectives:

Amendments to section 8 to achieve this are shown in paragraphs **A8** of the Appendix.

#### **s 9 coastal *development* area,**

Use of the word ‘use’ to designate another of the four proposed new coastal management areas is also potentially misleading because public ‘use’ of the coastal zone extends over and throughout all four proposed coastal management areas.

It appear that the ‘use’ implied in establishing this management unit is actually ‘development’ as defined by the *EP &A Act 1979*, especially development for residential or commercial buildings and or associated infrastructure.

The ACS supports the inclusion of such an area within the scheme of the Bill but seeks the amendment of its name, to become ‘coastal *development* area’.

The management objectives of this ‘coastal *development* area’ shown in s 9 (2) need amendment to further clarity and make appropriate, the relevant objectives:

Amendments to section 9 to achieve this are shown in paragraphs **A9** of the Appendix.

#### **s 10 Matters relating to identification of coastal management areas**

The appropriate location of boundaries identifying lands which fall within each of the proposed four new ‘coastal management areas is considered by the ACS to be vital to the success of the legislation’s effective implementation.

The ACS understands that the defined locations of these four new areas will be specified in the high resolution digital maps gazetted as part of the proposed *Coastal Management SEPP* and these ‘new’ areas will form core parts of the new legal framework for future coastal management. Future use of or development in these designated areas will, as ACS understands it, be governed by the relevant statutory management objectives and development controls, including a table of prohibited and permissible uses, in the text of the yet to be released *CM SEPP*.

Getting the lines on these maps correct in the SEPP instrument is very important if there is to be public confidence in and wide political support for the *CM SEPP*. Hence it is highly desirable that the criteria used in the mapping be transparently stated and applied rigorously; and that the resulting maps be of such a high standard, and having been developed in consultation with public authorities and landholders, and the subject of a process of public exhibition and comment at the draft stage, that the *need* for amendments to the maps identifying the boundaries of ‘coastal management areas’ should be reduced to the very minimum absolutely necessary.

Only in that context does the proposed sub-section 10 (1) warrant inclusion. It would be ludicrous to create a legal framework which permitted willy-nilly amendments to the maps of ‘coastal conservation area’ boundaries by any council, any time after the gazettal of the relevant maps.

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Thus the ACS recommends that the maps of the *CM SEPP* not be subject to any amendment by local councils, until a minimum period of three years have elapsed since the maps gazetted.

While the ACS can accept as plausible, the proposition in draft s 10 (1) that local councils should, in theory, be able to amend the key maps of the *CM SEPP*, this is on the basis that this would be for extraordinary circumstances requiring this special contingency, not a routine occurrence to steadily subvert the strategic state-wide mapping project. Such an amending LEP must be required to explain precisely what has changed since the maps of the *CM SEPP* were made, and provide a clear rationale for why the map(s) should be amended. This capability to amend a SEPP must not permit a draft LEP to subvert the gazetted *CM SEPP* or allow changes to be made by some surreptitious provision in an omnibus LEP Amendment.

Moreover, it is the view of the ACS that if a provision such as the current draft s 10(1) were retained in the Bill it is important that another provision states clearly that notwithstanding any recommendation by the Minister under current draft s 10(2), until any amending LEP is formally gazetted and enters into legal effect, the provisions of the *CM SEPP* prevail.

Several important amendments to section 10 are suggested as being necessary to prevent the *CM SEPP* and its maps ‘dying the death of a thousand cuts’.

The first recommended change would require the inclusion of a transparent statement of the criteria which define, and which drive the identification of the four ‘new’ coastal management areas in the Bill or in the SEPP. If it thought best to include the actual criteria in the SEPP, then the Bill should include a provision which requires ‘a SEPP’ to publicly state these criteria and to apply them rigorously, so that it is not possible to suspend or ‘re-jig’ them to achieve ‘preferred’ results for some locations.

Another recommended amendment would mandate consultation by the Department with local councils on the draft *CM SEPP* maps for the coastal management areas in that local government area when they are being first drafted, and ‘statutorily’ encourage landholders, and councils, to comment during the process of public exhibition, before the maps are finalised, so the SEPP can then be made and its ‘final’ maps published, based on the best information available.

Such amendments would ensure that there is no capacity for a council or landholder to claim “the maps are wrong” or relevant information wasn’t considered, when the SEPP comes into effect.

A provision should be included which stipulates that the maps of coastal management areas in “a” or “the *CM*” SEPP have a minimum ‘in effect’ period of (say) three years when they would stand as made, before the Bill’s proposed provisions - which would allow councils to propose, and the Minister to consider, any such amendments of a SEPP by a LEP - can come into effect.

Since it likely that the *CM SEPP* maps will identify different coastal management areas on a single parcel of land, in some instances at least, a provision which states the hierarchy of management objectives such as in the proposed draft 10 (3) is essential to address apparently conflicting management priorities.

However the proposed order of priority is not considered appropriate. It is unclear why coastal vulnerability objectives have been given greater precedence over the proposed Coastal Environment Area. Coastal environmental values should be identified as the first priority in their own right, and then considered as information critical in addressing coastal hazards and risk management strategies. Estuaries, coastal lakes and lagoons and their riparian ecosystems together with wetlands and littoral rainforests are the environments likely to be most threatened by coastal inundation and flooding and future sea level rise. According a higher priority to these environments than to coastal vulnerability

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areas, would ensure that any development and uses are consistent with the principles of Ecologically Sustainable Development.

The inclusion of such provision is supported by the ACS.

The ACS recommends that the names of the four coastal management areas in this section be amended to be consistent with the new names for these areas proposed in comments on ss 5 – above.

Amendments to section 10 to achieve these desirable outcomes are shown in paragraphs **A10** of the Appendix.

### **Part 3 Coastal management programs and manual.**

#### **s 11 Part applies to local councils with land within coastal zone**

This preliminary section 10, states that Part 3, Coastal Management Programs applies to local councils and any other public authority. This seems obvious. What is omitted is a reference to the Minister administering the Act. While it might be said the minister is included within the definition of ‘any public authority’ this non-specificity ignores the fact that the Minister has a significant statutory role to play under specific provisions of this Part – see s 14 (2) and 17 (2).

The current draft does not, but a revised section 11 must refer to the Minister, and state that Part 3 CMPs, in which the minister plays a role, applies to the Minister administering the Act.

A amendment to section 11 is recommended in paragraph **A11** of the Appendix.

### **Part 3(2) requires coastal management programs - CMPs**

#### **s 12 Purpose of coastal management programs**

While the ACS supports the notion of ‘coastal management programs’ as a key ‘new’ element of the coastal management framework, the ACS does not believe that they should be seen as the principal vehicle for setting “the long term strategy for coordinated management of land in the coastal zone...” Consequently the ACS does not support draft section 12 of the Bill as presently worded.

In the view of the ACS this role of determining the overall plan in the long-term “for the co-ordinated management of land within the coastal zone” and agreeing on priority areas and actions - and identifying multiple relevant short and medium term strategies (note plural) needed to make progress towards, and ultimately achieve the plan over the long-term - is still best undertaken through the preparation of coastal zone management plans (CZMPs), with their vital supporting sub-processes of technical advice and peer review, stakeholder participation and public exhibition for review and comment. This overall plan and its various strategies should continue to be set out in the Coastal Zone Management Plan.

Giving effect to the Plan, and achieving its effective implementation, is where many earlier CZMPs were weakest. Major uncertainties regarding councils’ liability, and local, state government and private funding for coastal management activities over the last decade have meant that in some instances ‘programs’ for implementation could not be finalised, and or implemented with existing funding, with the result that a number of worthy, well-developed ‘plans’ failed to be ‘realised’.

Amendments to section 12 are shown in paragraphs **A12** of the Appendix

- 1 amend and restate purpose of CMPs as to implement CZMP

**s 13 Requirement for coastal management programs**

In this historical context, the proposal in Part 3 draft s 13 to require councils to develop formal ‘coastal management programs’ is useful, because it emphasises the need for a schedule of tangible steps, including a financial plan, to ensure implementation of the CZMP. In this way, the Bill legislates current ‘best practice’. Including provisions which permit the recovery of funding from private landowners for coastal management ‘works’, if required, discussed below, give further assistance.

In ACS’s view it is vital that before this Division 2 of Part 3 of the Bill relating to CMPs, provisions relating to CZMPs be included, similar to s 55B in the *CPA 1979*, which continue the statutory requirement for councils to prepare and exhibit ‘coastal CZMPs prepared in accordance with ministerial directions and the guidance and directions included in the proposed *Manual*’.

Revised updated sections 55A – 55L of the *CPA Act 1979* are proposed as new sections 15 – 26 of 2016 Bill. [See provisions set out in Appendix 2 of this Submission].

The ACS believes it is very important that CZMPs prepared by local councils remain the primary vehicle for developing the long-term plan “for the co-ordinated management of land within the coastal zone” and for agreeing on priority areas and actions and identifying appropriate implementation strategies.

A final step in completing a CZMP should be to finalise its action document: the ‘coastal management program’ which should have the narrow role of ensuring the faithful and timely implementation of the CZMP. Hence it must be clear that, in the view of the ACS, the development and content of these ‘coastal management programs’ cannot and should not replace, or subvert, or override coastal zone management plans. The CMPs purpose and its limited task should be to devise a program to implement the CZMP.

Amendments to several sections in Part 3 are therefore necessary.

The ACS proposes that the draft sections 12 – 20 on CMPs be relocated later in the Bill to become new sections 27 – 35. See the recommended changes in paragraph **A13** of the Appendix 1.

**s 14 Preparation of coastal management programs**

Further, there is a danger that if a CMP may be prepared for only “part” of the area covered by the relevant CZMP the investment in implementation may be distorted by a part-area only CMP by cherry-picking funding and actions for ‘desirable’ areas and neglecting other areas.

Amendments proposed to section 14 are shown in paragraphs **A14** of the Appendix.

**s 15 Matters to be dealt with in coastal management programs**

There is a risk, in the view of the ACS, that, with the emphasis on scheduling the implementation of actions which entail high levels of long-term expenditure, and documenting their funding arrangements, [see s 15 (1)(d)] these ‘coastal management programs’ will be, or could become, too narrowly focussed on solely economic considerations or goals and overlook the vital actions and spending by council and the state government necessary to achieve environmental and social objectives, thus fulfilling the broader goals of CZMPs.

One amendment to draft s 15 Matters to be dealt with in CMPs – proposes that CMPs should recognise and include ‘timely’ actions by other non-government parties to the coastal management mission to



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achieve the economic, social and environmental objectives of a CZMP. These other parties include - but are not limited to - members of the public, coast- and dune groups, other community groups, local progress associations, service groups, regional, state or national level NGOs, professional, business or industry bodies, educational entities or research institutions, Chambers of Commerce, or other private sector networks.

For example: if there were local community support, an annual community based fundraising event, aimed at generating awareness and additional funding for coastal management could, or perhaps should, be included in most local councils' CMPs.

number of amendments to draft s 15 (1) are recommended in paragraph **A15** of the Appendix. No amendment is proposed to draft s 15 (2) and its inclusion is supported.

### ***Section 15 (3) & (4) coastal erosion emergency action subplan***

The ACS has doubts about the narrowness of this provision. Draft section 15 (3), which provides a definition of *coastal erosion emergency action subplan* appears out of place in this section, s 15 which deals with the content of CMPs. The usefulness of the draft provisions in s 15 (4) which provide no guidance on how these subplans relate to the CMP, but instead prohibit certain matters inclusion, is seriously questioned.

It is unclear why the subsection (3) is required at all given the definition of this term in s 4, *Definitions* could have included this 60! word definition instead of referring to a subsection.

Given the broadness of draft section 15 (2), which authorises the proposed *Coastal Management Manual* created by draft s 21, to designate or 'permit' the inclusion of other matters to be addressed by councils when preparing CZMPs and CMPs, and the scope of the draft section 21 (3), it would appear far more appropriate to include any statements of the limitation on the contents of CZMPs and or CMPs in the relevant sections of this *Manual*.

In the view of the ACS any such 'emergency subplan' ought to form part of the 'overall plan' being the Coastal Zone Management Plan, and hence logically the subplan's implementation should be part of the CZMP implementation 'program'. It is essential that either the scheme of the legislation – if this provision is persisted with – or otherwise the contents of the *Manual* must make it clear that an 'emergency subplan' and its emergency 'actions' must not be permitted to override, suspend, modify, contravene or subvert an adopted CZMP.

In the view of the ACS such a subplan does not require a separate designation as a matter for inclusion in a CMP as in draft s 15 (1) (e) because if actions are necessary under the subplan, made within the CZMP then these actions will of course logically, form part of the program for the CZMP's implementation - the 'coastal management program'.

The inclusion in this section to a reference to 'works for the protection of property' is inconsistent with the ACS's understanding of the core idea for Stage Two 'reforms': to discontinue ad hoc 'emergency works' and return to a long-term strategic planning approach to coastal management. No 'emergency' works to protect property should be possible by private landowners. Any coastal protection works to be done by council can and should only be able to be deemed 'necessary' by the CZMP process, and should be subject of a development consent, so the utility of this provision is seriously questioned.

There is however, more fundamental problem with these subsections and their references to *coastal erosion emergency action subplan*.

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Given seven ‘coastal hazards’ have been defined by ss 4(1)(a) – (g) of the Bill, and all seven of these hazards have the potential to create ‘threats to life and property’ under storm conditions or during “an extreme or irregular event”, it is unclear why the ‘emergency subplan’ referred to in section 15 (3) relates to only one hazard: coastal erosion. It seems logical that in areas of coastal vulnerability, ‘emergency action’ plans ought to identify and document the actions and or decisions likely to be, or become, necessary under storm conditions, from all coastal hazards known to be present in that area of ‘vulnerability’.

If such a provision is to be included in a later version of the Bill, the ACS would recommend that the provision refer instead to *coastal hazard emergency action subplans*.

Further, reference to “an extreme or irregular event” as the basis for this planning and action seems unnecessarily narrow. Coastal hazards such as beach erosion can and will become active well before storm conditions peak, and at storm intensities well below ‘extreme’. As well as ‘irregular events’, regular storm events with ARI of 1 in 1, 1:10 or 1:20 can, and under certain prevailing meteorological conditions almost certainly will, activate coastal hazards. Hence it appears that these sections are not founded on a realistic appreciation of coastal hazards.

The draft sub-sections 15(3) and (4) require a major rethink, or deletion.

Amendments to these subsections are shown in paragraphs **A15.3** and **A15.4** of Appendix 1.

### **s 16 Consultation**

Though section 16 is headed ‘Consultation’ it is immediately preceded by a provision, draft s 15 (4), relevant to consultation, which prohibiting councils from taking certain actions unless a public authority agrees, before any process of consultation has been described. This is clunky drafting.

Section 16 (1) and (2) are supported by the ACS since they require consultation by councils with the community, adjacent councils and relevant public authorities in the preparation of a CMP, and authorise the *Manual* to designate requirements for such consultation.

Regrettably the importance and value of community and stakeholder consultation and the application of a consistent state-wide standard are however effectively subverted and negated by the provision of draft s 16 (3) which implies that consultation is not essential or legally required. The effect of s 16 (3) is that councils may ignore this requirement for consultation, not follow the steps and fail to meet the standards required by the *Manual* if they choose, without any effect on the credibility or validity of the CMP.

Incredibly this subsection (3) makes the ‘best practice’ approach of draft s 16 (1) optional, and because ss 16 (1) and (2) become mere window dressings which look good but don’t actually apply, ACS is concerned that it is inevitable that councils will prepare and adopt CMPs without appropriation consultation.

Further, it would appear that, due to the inclusion of this subsection (3), the minister could still certify a CMP under draft s 17 (2), as having “been prepared in accordance with the requirements of this Part and the coastal management manual” without the program actually undertaking relevant consultations under draft s 16 (1) or complying with the requirements for consultation contained in the manual, pursuant to draft s 16 (2)!

These draft consultation provisions, if enacted as is, represent a substantially retrograde change for the worse which will weaken the framework of coastal zone management in New South Wales. Appropriate public participation and democratic decision-making processes will ensure proposed coastal management activities have a greater chance of succeeding in the long-term.

While there is a clear attempt at ensuring co-operation and co-ordination between local councils and state government agencies in the proposed CMPs - a positive initiative - the Bill's draft provision, s 15 (4), contains a clumsy statutory prohibition on including any action by a public authority unless they agree. While presumably the *Manual* might set out relevant processes for such consultation to follow, it may be appropriate to include in the legislation, rather than the *Manual* provisions which can come into effect as a circuit breaker if, or rather when, a council needs timely action by a 'public authority' to implement its plan, but the authority won't agree.

This issue is further considered in comments on draft s 2 below.

Amendments to cure the defects in draft s 16 are shown in paragraph **A16** of Appendix 1.

### **s 17 Certification adoption and gazettal of CMPs**

It is the view of the ACS that this crucial section of the Bill is seriously underworked. As noted above, any CMP considered under this section must have been developed through the coastal zone management planning process and its sole purpose should be to implement the CZMP.

The provisions of this section are too limited in the view of the ACS. Once a draft CMP has been provided to the Minister under s 17 (1), the minister is given only two options: to certify or refuse to certify. A third, and seemingly obvious additional option ought to be included: the minister must be able to decline to certify a draft CMP at that time, but indicate certification may be possible once certain conditions are met. These conditions ought to specify the mandatory compliance with any legal requirements not satisfied, and or the council's consideration and or incorporation of specific amendments recommended by the Minister.

Though this third course of action is considered desirable by the ACS, to minimise the need for the Minister to either refuse or decline to certify a CMP, the provision of draft s 17 (1) should be strengthened to specify that a local council may submit a draft CMP for certification under this section **only** if the council warrants that it has "been prepared in accordance with the requirements of this Part and the coastal management manual".

Part of the role of the Minister in certifying the CMP should be to check compliance with all relevant legal requirement and proper application of the procedures contained in the Manual, not simply take council's word for it.

To allow councils to submit CMPs for certification which do not meet this basic threshold is to invite local councils to submit substandard CMPs and creates a political situation in which there will inevitably be undue pressure on the minister to approve them!

Where the minister decides that certification under s 17 (2) should be refused, it is important that the reasons for this refusal are set out. An amendment which obliges the Minister to give reasons for refusing to certify a draft CMP ought to be included in order to encourage sufficiently transparent decision making processes.

Amendments proposed to section 17 are shown in paragraph **A17** of Appendix 1.

**s 18 Review, amendment and replacement of CMPs**

In the view of the ACS the inclusion of this section is appropriate. While the draft provisions appear uncontroversial there is still scope to improve this section.

The ACS recommends that the section be amended to make clear that a final, certified and adopted CMP may be amended or replaced by only by a CMP which has been similarly certified and adopted under this Part. Without this important qualifier the notions that a draft CMP may amend or replace a certified, adopted CMP or that a certified CMP is effectively suspended when preparation of a new draft CMP is commenced, remain possible interpretations of this section.

It is unclear why the phrase “at any time” has been included in subsections (2) and (3) since clearly the amendment or replacement of a certified CMP cannot occur “at any time”, but rather only when a new instrument has been prepared, certified and adopted.

It would be appropriate, in ACS’s view, to include a further subsection which makes plain that a certified CMP may not wholly repealed unless and until a new CMP has been prepared, certified and adopted under this Part.

Amendments to improve draft section 18 are included in paragraph **A18** of Appendix 1.

**s 19 Availability of CMPs**

The ACS supports the inclusion of this section but proposes one amendment. Council should be obliged to hard copy publish the CMP in a Council newsletter or other regular council publication.

See amendments proposed in paragraph **A19** of the Appendix.

**s 20 Minister to prepare CMPs in certain circumstances**

The inclusion of this section in the Bill is supported by the ACS. In our view such action should not be a commonplace occurrence, it is an important contingent function, which ought to be available to the Minister.

While the Minister’s seeking of advice from the *Coastal Management Council* “in the preparation and adoption” of a CMP is supported, this advice should also be sought in the first instance, when the Minister is considering whether to exercise the power and functions authorised by this section.

Further, the draft subsections 20(6) and (7) which apparently apply in circumstances where the Minister has decided to intervene under this section, have greater application than in these limited circumstances, and might be applied at other times. These subsections might be better relocated to s 13.

Amendments to draft section 20 are included in paragraph **A20** of Appendix 1.

**Part 3(3) mandates the new NSW Coastal Management Manual****s 21 Coastal Management Manual**

The provisions of this section are generally supported by the ACS. The ‘new’ manual is in many ways the most significant, but also the least controversial part of the Government’s Stage Two coastal reforms. This section, mandating the publication of the Manual, is a clear indication that the State government accepts that it has an enduring role in coastal management.

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While the section 21 (1) obliges the Minister to “publish” a coastal management manual, subsection (5) requires its publication only in the government Gazette and subsection (6) refers only to the Manual being available on the websites of the Department and the Office of Environment and Heritage and at these agencies’ offices “during ordinary office hours”.

In the view of the ACS these actions while appropriate, do not constitute ‘publication’ as most people would understand the term. It is important that once finalised, the Manual be published, in the conventional sense or having multiple hard copies printed and available for sale. Though the Bill flags the possibility of amendments or updates being made to the Manual at a later date, - and the need for these amendments to be made available publicly – this possibility of the need for revision confronts every book publisher, and should not prevent the printing of hard copies of the Manual as the first edition.

A wholly web-based Coastal Management Manual is not considered appropriate and is not supported. The web-mounting of the material while desirable, should be an adjunct to the hard copy publication, not the sole format of the Manual.

The discipline of actually publishing the Manual ‘in print’ once a final version has been produced, should provide an incentive to get the Manual content right from the start, and a bulwark against making numerous minor inconsequential changes. As a first edition, hard copies of Manual should include a note that amendments may have been made since printing and provide a URL or other pointer to the relevant websites where subsequent amendments to the Manual can be found.

Several amendments to clarify and improve draft section 21 are recommended by the ACS in paragraph **A21** of Appendix 1.

#### **s 22 Implementation of CMPs by local councils**

The general intentions of draft section 22 have qualified support from the ACS.

While the term ‘implement’ appears in the section heading, it does not appear in the text of this section. This is strange and inconsistent drafting. The three word phrase “give effect to” is considered a poor alternative to one clear word ‘implement’.

The use of the indicative, rather hopeful ‘future’ tense of the verb as in the phrase “is to” give effect... is considered inappropriate. While there is a future intention in the Bill, the wording of the Act must be clear and declarative and should employ the well-known and unambiguous word “shall” which clearly connotes non-discretionary obligation.

The use of the phrase “have regard to” in draft s 22 (1) of the Bill, in reference to the actions councils should take when implementing their CMP and considering the objects of the Act is considered inadequate. The phrase is a weak and poorly defined action which on the face of it can only mean “look at”. A phrase which obliges councils to take action to “implement” its CMP consistently [or not inconsistently] with the objects of the Act, would provide some actual direction to councils, where the current wording clearly does not.

Alternatively a requirement for the CMP to align with the Objects of the Act could apply from the beginning of the process of preparing a draft CMP. Though draft s 14 (3) (a) obliges councils (properly, through use of the word ‘must’) to “consider and promote the objects of this Act” when preparing a CMP, the first is a weak action and the second, though potentially useful, is poorly defined. As presently drafted, they are generalised ‘low-bar’ requirements, and they only apply to “preparing” a CMP, not to the CMP itself. The ACS notes that draft s 15 – ‘Matters to be dealt with in CMP’ does not include any

reference to the Objects of the Act, or a requirement to demonstrate how the CMP aligns with the Objects of the Act.

It is the view of the ACS that these defects need remedying.

Perhaps the Manual should proscribe how, when implementing its CMP, a council could demonstrate that its CMP's actions align with the Objects of the Act under draft s 22 (1). This could be demonstrated by:

- minutes of the council meeting at which the CMP was 'considered' by council, showing that for every action in the CMP, the relevant Object(s) of the Act had been identified;
- and / or minutes showing that each of the Objects of the Act were considered in turn, discussed by councillors and a form of words adopted by council which explained how each Object related to the relevant part(s) of the CMP;
- the adoption by councils of reference documents such as Tables which provide evidence of this alignment of the CMP with the Objects of the Act;
- reference to the relevant sections of a validly produced Coastal Zone Management Plan, which discusses the application and operation of (all) the Objects of the Act in the CZMP.

Though the text of subsection (2) indicates that councils are not limited in how they give effect to their CMP, the particular ways of doing so cited in draft s 22 (2) (a) and (b) do not include some key highly relevant actions of councils.

The provision of draft s 22 (2) (a) states the processes of "preparation, development and review of" the plans strategies etc but do not include the vital process of "formally making, or adopting" the plan, strategy etc. Without this inclusion the legislation would guide the preliminary processes of preparation and development, and the late stage process of review, but remain silent on the key processes of finalising, making and adopting the plans strategies etc.

The subsection's reference to "plans strategies, programs and reports to which Part 2 of Chapter 13 of the *Local Government Act 1993* applies" is obtuse drafting. Requiring referral to yet another document to obtain any actual meaning for this sentence is far from desirable. The provision should properly record the relevant document titles used in that Part of the *LGA 1993* i.e Community strategic plan (s 402), Resourcing strategy (s 403), Delivery program (s 404) and its Operational plan (s 405).

It is unclear from the wording of this draft s 22 (2) whether this provision is also intended to apply to other reports mandated under Integrated Planning and Reporting Guidelines (as per s 406), viz: community engagement strategy, annual report and or state of the environment report.

If so, then these documents names should appear in the text of the section.

The ACS is of the view that in draft s 22 (2) that the two vehicles specified by which councils must "give effect to" their CMP, under the *Environmental Planning and Assessment Act 1979*, via planning proposals and DCPs, are too limited and omit one obvious one: preparation of draft environmental planning instruments, such as local environment plans, made under the *E & A Act 1979*.

Amendments to improve draft section 22 are included in paragraph **A22** of Appendix 1..

### **s 23 Other public authorities to have regard to CMP and Manual**

This section is underworked in the view of ACS. The clunky provisions in this section indicate that there has been no real development in encouraging, and achieving, better co-ordination and co-operation between the two levels of 'public authorities', state agencies and local councils, to achieve, over the long-term the ecologically sustainable management of the state's coastal zone.

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The comments above regarding the appropriate verb apply here as well, in the plural. In the initial clause of the sentence “Public authorities (other than local councils) are to” ... the last two words should be replaced by “shall”.

The phrase in draft s 23 (1) whereby public authorities “have regard to” CMPs is not supported since this ‘low-bar’ requirement for other public authorities to ‘look at’ CMPs is clearly insufficient.

The employment of a phrase which provides an actual indication of the action(s) required of the state agencies is considered desirable. eg These public authorities should be required to “liaise, negotiate with and assist local councils” in the development and implementation of CZMPs and CMPs to the extent of the authorities’ relevant functions and available funding.

The use of the same phrase in draft s 23 (2) is also inappropriate. As presently drafted, draft subsection (2) does not mandate public authorities’ compliance with a council’s CMP or the Manual. It repeats the mistake of reciting only certain processes “the preparation, development and review of” – plans etc, during which the Objects of the Act are to be regarded, omitting the crucial process of “finalising, making and adopting” such plans. Though perhaps this is the intention of the section, the drafting is unnecessarily convoluted.

If there is a case for not binding public authorities (other than local councils) to comply with a local council’s CMP, when preparing relevant plans of management under this section, it has not been made out. Further, there appears no reason why such authorities should not be bound to comply and act in accordance, or consistently with, the *Coastal Management Manual*. Hence, the ACS is of the view that draft section 23 should include another subsection which makes the Manual’s application to all state government public authorities unequivocally mandatory.

Amendments to draft s 23 are included in paragraph **A23** of Appendix 1 of this Submission.

#### **Part 4 NSW Coastal Council**

The inclusion of a new independent Coastal Council in Part 4 of the Bill, as promised by the Minister 12 months ago, is welcomed by the ACS. However, the ACS has a range of concerns about most of the draft sections in this Part of the Bill and proposes some major amendments.

##### **s 24 Establishment of NSW Coastal Council**

The name proposed for the new body in draft s 2 (1) is confusing and hence inappropriate.

Clearly any reference in speech or writing to the ‘NSW Coastal Council’ constituted under this Act runs the real risk of being confused with a reference to the ‘Coastal Council’ constituted under the *Coastal Protection Act 1979*. This confusion may not matter so much if the role and functions of the two bodies were the same: however the new body is intended to be different to the old one. Note too that the term ‘coastal council’ is employed in the *E & A Regulation 2000* to refer to a local council located in the coastal zone. It seems obvious that it is necessary to adopt a new name for this new body that prevents this confusion arising, and which clearly signals how it is different from its predecessor.

The ACS strongly supports the idea of a new independent advisory body but recommends it be renamed the *Coastal Management Council* to emphasise its focus and the Bill’s, o management.

This suggested revised name is used hereafter in the ACS submission to distinguish it from and prevent confusion with the former body constituted under the old Act.

The number of members of the proposed *Coastal Management Council* is considered insufficient. A total membership of as few as 3 and at the most 7, is considered to be far too small to effectively

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pursue the role, functions and tasks with which it is charged, or represent the diverse interests in the coastal zone, or to accommodate the relevant stakeholders across the geographic extent of the NSW.

Serious consideration ought to be given to a substantial enlargement of the membership, based on a functional assessment of what its role, functions and tasks require, rather than adopting a very small number of members based on a political or ideological view that “small government is good” and hence “smaller government is better”. The ACS is of the view that a Coastal *Management* Council with as few as three members would likely be ineffective, and unable to fulfil the broad charter of coordinating the coastal management activities of the diverse interests in the coastal management community.

Two enlarged models are proposed:

- i. Not less than 7 members, not more than 11 - including the Chair.
- ii. Not less than 9 members, with no maximum number defined by the Act.

Relatedly, the ACS does not support the proposed ‘expert’ model for the Coastal *Management* Council as presented constituted under draft section 24 (3). Though the seven broad fields of expertise nominated in draft s 24 (3) are all relevant, they are not the only disciplines applicable, relevant or needed to achieve effective coastal management.

This expert model is more like the ‘old’ model of the Coastal Panel, which had a binary role of concurrence authority and technical advisory body, but it doesn’t suit the role and functions the Bill proposes for the new Coastal *Management* Council. It is apparent that in this form, the Bill is seeking to reproduce, inappropriately in the view of the ACS, a body akin to the current Marine Estate Expert Knowledge Panel.

This limited ‘expert’ approach completely mistakes the on-going coastal management project as essentially a ‘technical’ matter which simply requires the ‘right’ policy settings at the start, when in reality coastal management is an iterative process, with significant and complex social and economic dimensions, which requires the engagement, encouragement, co-operation and co-ordination of a suite of both government and non-government stakeholders.

The new Coastal *Management* Council is not to be a consent authority – that role goes to the Joint Regional Planning Panels - so a body stacked with experts is neither necessary nor appropriate. Governments can and often do ‘buy in’ technical expertise from the private sector on contract for specific or short-term projects, so legislating to create a standing Council of experts seems unnecessary and inflexible.

A better option may be a ‘stakeholder model’, since there is clearly a basis in several intergovernmental frameworks already long agreed for empowering stakeholders in coastal management - like beachgoers, surfers, boaties, divers, wildlife naturalists, local residents, commercial and recreational fishers, coastal tourism businesses, insurers, councils and state agencies – by appointing them to an independent advisory body. See for example Principle 10 of the United Nations’ *Declaration on Environment and Development* (1992), *Agenda 21* and Australia’s own *National Strategy for Ecologically Sustainable Development* (1992).

It is apposite to note that the ‘stakeholder model’ is successfully employed in the United Kingdom to deliver Shoreline Management Plans.

A stakeholder model that empowers coastal *management* council members would be more likely to attract support from stakeholders’ members if that body were seen as responsive and effective. It is also highly probable a new body on which a diverse suite of stakeholders were represented would be more successful in creating some ‘co-ownership’ of the ongoing coastal management mission across



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diverse sectors of coastal society in the State of New South Wales, and its dependent economy, than would a panel of ‘experts’.

In ACS’s view this level of engagement is what is needed if the ecologically sustainable coastal management outcomes are to be realised, time and again, and if the residents of New South Wales are to successfully adapt to, and attempt to manage the impacts of, global climate change.

Such a ‘stakeholder model’ would also ensure that the members of the Coastal *Management* Council come from, and will report back to, key sections of the coastal management community in NSW, via formal associations or informal networks, or both, fostering communication and engendering co-operation at various levels. The experience of ACS members on the former Coastal Council from 1999-2003, informs ACS’s view that a closer-to-the-community model will do better at building a shared coastal management culture, noticing new coastal management issues and emerging trends, and identifying potential, innovative, community-led responses, and would do so more quickly, than the ‘expert model’ might.

Having regard to the minister’s reference to climate change as a ‘wicked problem’ it should be noted that the literature on ‘wicked problems’, explains that committees of stakeholders, rather than panels of experts, have the best chance of addressing and responding to these massively complex, dynamic, difficult to define or resolve, problems. (For a useful discussion of this see Conklin 2005, Australian Public Service Commission 2007, Levin et al 2010).

Such committees are better at preventing policy response aimed at assisting one affected stakeholder, from innocently overlooking or unintentionally adversely affecting another. Apparently, by sharing their different perspectives and developing some rapport over time, they are likely to gain a better sense of the ‘bigger-picture’ and may be more willing to negotiate, and potentially innovate, so that, over perhaps many iterations, they can create workable short to medium term strategies which – though not ‘solutions’ as such - start to deal with specific aspects of the profound challenges presented by global climate change. And if technical expertise in some particular fields is crucial to these stakeholders’ discussions, and their proposals for policies, programs and action, the relevant experts could still be hired. Such a dynamic model clearly has, at least on paper, some very powerful connections and enduring usefulness, which form compelling arguments in support of stakeholder involvement in key policy and decision-making.

The ACS prefers to identify and incorporate the best elements from both approaches in framing the membership of the proposed Coastal *Management* Council. Hence a ‘hybrid model’ which embraces both approaches and increases both diversity and ‘vigour’ is considered preferable.

When the Minister calls for expressions of interest in being appointed to the new Coastal *Management* Council, he or she should stipulate that all applicants must have prior experience in some coastal management activity, a technical or professional qualification in a field relevant to coastal management (including but not limited to the seven identified) and a demonstrable association or network within the state’s diverse coastal management community.

A series of amendments to ss 24 (1) – (7) are recommended by the ACS to give effect to this proposal for a hybrid model for framing the membership of the new Coastal *Management* Council.

See the paragraphs **A24.1 – A24.7** of Appendix 1.

### **s 25 Functions of NSW Coastal Council**

While the ACS supports, very generally, the functions of the Coastal *Management* Council, it believes that the scope of section 25 as presently drafted is too limited.

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Leaving aside for a moment the question of functions, the Bill does not state or otherwise define the role of the proposed Coastal *Management* Council. This is a significant oversight which needs remedying because the functions that the new Council requires, depends on the role(s) it is designated under the Act to play in the state's ongoing coastal management project.

The ACS recommends that draft section 25 be amended to become - **Role and Functions of NSW Coastal *Management* Council.**

As presently conceived the implied 'role' of the new body is quite limited and is primarily that of a ministerial advisory body. This is an unnecessarily narrow role in the view of the ACS.

Set out as a new s 25 (1) should be a statement of the Coastal *Management* Council's role. The ACS's suggested statement of this role is provided in paragraph **A25** of Appendix 1.

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Once a statement of the Council's role has been given in subsection (1) the provisions relating to the Functions of the Coastal *Management* Council should be set out in a subsequent subsection. The current draft s 25 (1) relating to Functions of the Coastal *Management* Council is not however, considered satisfactory and some substantial amendments need to be made to properly ascribe relevant, appropriate functions for the proposed Coastal *Management* Council.

Missing from the functions presently outlined in draft s 25 (1) is mention of the function performed by the previous Coastal Council in identifying and recommending to the Minister the acquisition by the State of any land found to be necessary for the achievement of the Objects of the *Coastal Protection Act 1979*. Such function should be incorporated into the relevant subsection.

Amendments to draft s 25 (1) Functions, proposed as a new subsection 25 (2) are provided in paragraphs **A25.1** of the Appendix 1.

Amendments to improve draft s 25 (2), proposed as a new subsection 25 (3) are provided in paragraphs **A25.2** of the Appendix 1.

### **s 26 – Performance audit of implementation of CMPs**

The monitoring and reporting function proposed by this section is too limited in the view of ACS. Regrettably, draft s 26 (1) appears to create a 'part-time' role for the Coastal *Management* Council, only at the ministers request, of conducting 'a performance audit' of the implementation of council's CMP.

This ad hoc and solo-council focus stands in contrast with the broader on-going monitoring and independent annual reporting role, across all local councils in the coastal zone, on progress in implementing CZMPs discharged by the former Coastal Council in 1999 – 2003.

It is important that if the narrow focus of draft section 26 is continued, it be preceded by a general statement of the Council's overall role in monitoring and reporting on CMP implementation, as recommended above.

The purpose of the audit as presently described in draft s 26 (2) is considered too narrow and should be broadened somewhat to identify opportunities for assistance, co-operation and or investment in the implementation of the CMP by other public authorities, non government organisations and or the private sector. The introductory clause of 26(2) should be stated unequivocally as: The purpose of the performance audit shall be:

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The provision of draft s 26 (3) relating to the giving of Notice by the Coastal *Management* Council to a local council requiring the production of relevant information or records required for a performance audit is supported by the ACS. However, it appears that a matter relevant to such a Notice and or audit has been overlooked. It is thought appropriate that s 26 (3) include a capacity for the Coastal *Management* Council to require in its Notice for a council to also provide it with access to such areas or locations as may be required for the conduct of the performance audit.

Without this power to seek, obtain and use access to certain sites, any performance audit by the Coastal *Management* Council would be limited to a superficial desk-top review, and would lack the capacity to check on the ground that what a local councils says it has done, has been done.

The provision of draft s 26 (4) is supported by the ACS but the subsection would be improved by the addition of a maximum period of say 2 days, within which a local council must comply with the Notice.

Though the ACS supports draft s 26 (5) requiring the Coastal *Management* Council to provide a report to the Minister, at the conclusion of the a performance audit, the ACS is concerned that there is no further mention of how such a report is then considered or acted upon. It also seems strange that the provisions of draft s 26 (5) do not oblige either the Coastal *Management* Council, or the Minister, to provide a copy of the report made under this section to the local council whose CMP implementation was the subject of the performance audit. A failure to do so would clearly constitute a failure to provide natural justice to that local council.

To prevent such a report being lost forever, it is considered appropriate that a provision be added to this section which requires the Coastal *Management* Council to provide in its annual report to the NSW Parliament a summary of the report of any performance audit undertaken that year.

To increase transparency it may also be appropriate to be insert another provision in this section of the Bill to require the tabling by the Minister in the NSW Parliament of a report by the Coastal *Management* Council on a performance audit of a local council's implementation of their CMP, within a designated period: say within 28 days of the Minister receiving it.

Further, it may be appropriate for this section to include a requirement that the Minister administering the Coastal Management Act, provide to the NSW Parliament, within 3 months of the Minister's receipt of such a report, a response by the Government indicating the action(s) it will take in response to the report, to assist in the successful implementation of a certified CMP.

Amendments to improve draft section 26 are included in paragraphs **A26** of the Appendix.

## **Part 5 Miscellaneous**

### **s 27 – Granting of development consent relating to coastal protection works.**

The thrust of draft section 27 is supported by the ACS. However the provisions of this section, as presently drafted, are considered inadequate.

The current draft section would permit the granting of development consent for 'coastal protection works' anywhere within the coastal zone, provided two conditions are satisfied: no threat to public access or public safety. This very broad approach is not supported by the ACS because in some 'coastal management areas' to be defined under the Bill such works would not be appropriate and would be likely to create conflict with or impair the achievement of the areas' management objectives. For example the ACS considers that 'coastal protection works' in areas proposed to be designated 'coastal *conservation* areas' would be quite inappropriate and should be unambiguously prohibited.

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The reality is however that such ‘coastal protection works’ - defined in s 4 as a) ‘beach nourishment activities or works; and b) activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters, including (but not limited to) seawalls, revetments and groynes – would need to be located immediately above, at or below the mean high water mark if they were to be in any way effective. Hence it is highly likely that any such works would be located within and or immediately adjacent to, the tidal waters of the state, in the coastal management area proposed as ‘coastal water bodies and environs area’.

Development consent for such coastal protection works would only be appropriate in this coastal management area where the works were immediately adjacent to, ie seaward of a ‘coastal vulnerability area’ or a ‘coastal *development* area’. Consent for such works in a ‘coastal water bodies and environs area’ adjacent to a ‘coastal conservation area’ would be considered by the ACS to be highly inappropriate.

While the two considerations of draft section 27 -- (a) limits on public access to a beach or headland and (b) likely threat to public safety -- are supported by the ACS, a third matter for the consent authority to consider should be inserted in this section: the authority’s satisfaction that the works will not adversely affect the persistence, or amenity of, any nearby beach.

Amendment to draft s 27 are included in paragraphs **A27** of the Appendix.

#### **s 28 – Modification of doctrine of erosion and accretion**

The provisions of this section are generally supported by the ACS since they reproduce and continue the important amendments made by s 55N to the *Coastal Protection Act 1979* in 2002 following the Emergency Beach Management Review. These amendments ensure that landowners are not able to succeed in claiming ownership of lands adjoining their existing private properties, under the doctrine of accretion, without regard for long term geomorphological trends or longstanding public rights of pedestrian access to the coast.

Note though that the name of the doctrine is not properly given as ‘the doctrine of erosion and accretion’. This name, though it used in the previous Act, does not appear in either the published legal literature or the common law. It is very widely known as the ‘doctrine of accretion’ and the scope of the doctrine embraces four modes of operation, via two physical processes: movement of sediment and change in level of bounding water body.

While the addition of sediment creates an accretion which adds new land; the removal of sediment constitutes erosion which subtracts from existing land. However these additions and subtractions of areas of land are also affected by changes in the level of the bounding water body. A gradual advance of the bounding water line, due to rising sea levels, [known in law as ‘diluvion’] subtracts land, while a gradual fall in the level of bounding waters [‘dereliction’] uncovers new land. All these changes in area of land, and the ownership of these affected lands, are governed by the doctrine of accretion, not the doctrine of erosion and accretion. It is particularly inapt for the Bill to persist with an incorrect name of this doctrine which irrelevantly emphasises erosion, but ignores the significant changes being wrought o the coast of New South Wales by rising sea levels, aka diluvion.

The ACS recommends that the name of this section be amended to align with modern legal terminology used in the leading case by the most senior English court. (See the Privy Council in *Southern Centre of Theosophy Inc v South Australia* (1982) AC 706; [1982] 1 All ER 283 at 287.)

Amendments to section 28, and further provisions proposed to follow section 28 declaring the applicable law re the ambulatory boundary of MHWMM are shown in paragraph **A28** of the Appendix.

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**s 29 – Protection of exercise of certain functions from invalidity and inconsistency**

The ACS does not support this provision. It appears to be aimed at ensuring the legality, or validity, of any and all actions by or of a council even if or though they are not in compliance with a CMP, the Objects or other provisions of the Act.

On the face of it draft s 29 (1) purports to make valid any actions of a council even if “inconsistent with achieving the outcomes” of a CMP. Further, draft s 29 (2) purports to validate any actions by a public authority, notwithstanding that the action was taken or the function exercised “without regard to a CMP, the coastal management manual or the objects of the Act”.

These extra-ordinary provision are not supported by the ACS since they appears quite contrary to the requirement of s 733 of the *Local Government Act 1993* that councils “act in good faith” at all times. Paragraph **A29** of Appendix 1 recommends the deletion of this section.

**s 30 – Minister to report failure to comply with directions to Local Government Minister**

The ACS supports the action proposed in draft section 30 (1) whereby the Minister administering the Act is empowered to sanction a wayward local council, by reporting non-compliance to the Minister for Local Government, and or publishing an adverse report on a departmental website.

Similarly, the ACS supports the inclusion of draft s 30 (2) whereby the Minister for Local Government is able to consider taking further action under the *Local Government Act 1993*.

No amendment to this section are proposed.

**s 31 – Regulations**

The ACS supports the provisions of draft s 31 and does not propose amendments to this section.

**s 32 – Delegations**

The ACS supports the provisions of draft s 32 and does not propose amendments to this section.

**s 33 – Review of the Act**

The ACS supports the periodic review of the Act as proposed in draft s 33, but proposes several amendments to improve and make more transparent, the process of the proposed review.

The ACS suggests that the Minister is not the most appropriate person to carry out an arm’s length review of the Act. Such a review might better be conducted by a person independent of government, experienced in coastal management, appointed by the Minister. Further, the ACS believes such a review ought not to be limited to only the ongoing suitability of the Act’s “policy objectives” and related terms, and should review the appropriateness of any and all of the Act’s provisions.

new sub-section could be inserted to enable the review to consider another key matter: the maps, viz:

- (3) The review is to include, via a process of public consultation, the appropriateness of the boundaries defining any coastal management areas, and or the coastal zone generally, as shown in the maps prepared for these purposes under the *Coastal Management SEPP 2016*;

The existing (3) would be renumbered as (4) and final sub-section could be added as

- (5) The Minister will respond to the report of the outcome of the review in the relevant House of Parliament within 6 months of its tabling.

Amendments proposed to section 33 are shown in paragraphs **A33** of the Appendix 1.

#### **s 34 – Act to bind the Crown**

The ACS supports the provisions of draft s 34 but notes however, the apparent inconsistency of this provision which binds the Crown to comply with the Act, with other provisions which allow public authorities to dispense with, discount or permit non-compliance with, key provisions of this Act.

As noted above, this inconsistency is not desirable and ought to be eradicated, so that when the Act binds the Crown all public authorities have a public duty, and are specifically directed, to comply with the Act.

An amendment to section 34 is shown in paragraphs **A34** of the Appendix 1.

#### **s 35 – Repeal**

The ACS supports in principle the repeal of the *Coastal Protection Act 1979* and the *Coastal Protection Regulation 2011* as provided in draft s 35, but suggests an amendment. This section ought to make plain that the repeal of these statutes occurs “on the commencement of this (new) Act.” AND OR

However the ACS urges the Government to consider deferring the wholesale repeal of the sections of the *CPA Act* and *Regulation* that relate to making and amendment of CZMPs until the savings clause for CZMPs, in Schedule 3 Part 2 section 4, ceases to have effect on 31 December 2021. This date would appear to coincide with the likely date for the Review of the Act under draft s 34. In five (5) years’ time.

Of course by incorporating those relevant parts of the *CPA Act 1979* into core provisions of the new legislation, the proposed *Coastal Management Act 2016* the repeal of the old legislation becomes much simpler.

Amendments to section 35 are proposed in paragraphs **A35** of the Appendix 1.

### **Schedules to the Bill**

The four schedules to the Bill contain some important details, particularly Schedules 2, 3 and 4.

#### **Schedule 1**

Schedule 1 lists the LGAs and sediment compartments. This list enables a quick identification of those other local councils which a local council should consult when preparing a coastal management program.

No amendments are proposed to this Schedule, however the ACS queries whether this material might be better placed in the Manual rather than the legislation. The amendment in paragraph **AS1** of Appendix 1 recommends its possible deletion from the Bill.

#### **Schedule 2**

This Schedule sets out the constitution of Coastal Council, proposed by the ACS to be renamed the *Coastal Management Council*.

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Significant changes to this Schedule are proposed consistent with the proposed new name, newly defined role and augmented functions.

Amendments to Schedule 2 are provided in paragraph **AS2** of the Appendix 1.

### **Schedule 3**

Schedule 3 makes Savings, transition and other provisions. These provisions are for the most part straightforward. However, several matters warrant comment on the ACS preferred position.

The abolition of the Coastal Panel, pursuant to Schedule 3, Part section is supported.

#### **Sch 3, Pt 2 s 4 – Saving of coastal zone management plans**

Principal among the saving provisions are those relating to Coastal Zone Management Plans (CZMPs). The future role of these CZMPs is very much at the centre of these Stage Two Reforms. Under the provisions of Schedule 3 Part 2 section 4, these CZM Plans are 'saved' and unless a CMP is adopted before then, these CZMPs will continue to operate, and apply in law up until 31 December 2021 ie in roughly five years.

While the ACS supports the continuation of CZMPs, it does not support these savings and transitional arrangements for CZMPs. The ACS prefers that the legislative provisions for CZMPs are enacted in the 2016 Bill, and has proposed in Appendix 2 provisions which update sections 55 A – 55L of the *CP Act 197* into new sections 15 – 2 for new 201 version of the Bill.

Amendments proposed to Schedule 3 section 4 are shown in paragraph **AS3.4** of Appendix 1.

#### **Sch 3, Pt 2 s 5 – General saving**

Under Schedule 3, Part 2 section 5 - General saving, it appears - though the language of the provision is tortured and indirect and the drafting obtuse - that the process (and presumably the Guidelines) for preparing and ultimately finalising CZMPs are saved. Under this provision the status of draft and final CZMPs remain unchanged and the processes of completion, certification, gazettal and commencement of CZMPs continue, as under the *CPA 1979*, until the end of 2021 -- unless a certified CMP is adopted before then.

This approach means that in many council areas effectively both Acts will apply during the next five years. Instead of Councils preparing CZMPs and once they are complete, planning their implementation - a serial process - under the legislative scheme with two Acts operational, councils will now need to develop and pursue parallel paths: completing their CZMP while preparing a CMP.

These problems -- two Acts in operation concurrently and parallel preparation of key documents -- could however be overcome by reconnecting the two strategic documents to recognise that clarifying and articulating the crucial overall long-term plan for a local council area is the role of the CZMP; and the role of the CMP is the effective timely implementation of the CZMP.

The present draft of the Bill appears to confuse this important relationship, and there is no effective connection between the two strategic documents. Rather the Bill attempts to make the 'program for management' a parallel and competing vehicle and process for developing this crucial overall long term plan. This reconnection between the two strategic documents could be achieved by the relevant

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provisions of the *CPA Act 1979*, Part 4A, sections 55A – s 55L, being substantially incorporated into the next draft of the Bill for a Coastal Management Act 2016, before the provisions relating to CMPs.

This integration of relevant sections would mean that the provisions of Schedule 3, Part 2 sections 4 – Saving of CZMPs and s – General saving, would be unnecessary, and could be deleted.

See paragraph **AS3.5** of Appendix 1.

### **Sch 3, Pt 2 s 6 – Certification of pending coastal zone management plans**

The substance of the provision of Schedule 3 part 2 section 6 – Certification of pending coastal zone management plans, appears to restate in subsection (1) in the specific case, what was stated in general terms in section 5 – General saving: that the finalisation of draft CZMPs would continue uninterrupted under the provisions of the *CPA Act 1979*. The ACS supports this continuation of the CZM planning process, but believes that the draft provisions of s 6 (1) and (2) are an ineffective way to achieve this continuation. If it is intended that CZMP planning continue as before, this intention should be made explicit.

The provisions of Schedule 3 Part 2 section 6 (3) which state that a certified CZMP made under the *CPA Act 1979* “is taken to be” a CMP under the new Act is not supported by the ACS.

Though closely related in their subject matter, clearly these two strategic documents have different audiences, content, and purposes. This draft provision takes the mistaken view that the CZMP and the CMP are the same, have the same purpose and address the same audience.

The effect of subsection (3) is that for councils complying with the *CPA 1979* with completed CZMPs or plans nearing completion, no new CMP will be required. Because of this deeming provision, the new legislation will not apply to these councils, until and unless the CZMP / CMP undergoes review and the process of amending or replacing it begins, or the Minister triggers the process with a direction under s 1 (1).

Most councils preparing CZMPs will, once their strategic planning is complete, move to prepare a program of implementation based on what has been widely agreed across the local council area, are the priority actions and areas. It would be reasonable to assume that once complete these CZMPs will need to be ‘converted’ into the form suitable for a CMP. Presumably this will not require a huge additional commitment of time and resources, but the resulting CMP will necessarily look quite different to the CZMP.

It might be observed here that the development and final adoption of the CZMP led by local councils, properly involves the community and especially other local stakeholders in coastal management, in processes of public consultation in order to develop, refine, narrow, then finally choose the range of future options, to define a strategic long term plan of how to manage the coast in that local government area. This is a community based decision on future direction of management, relevant local policies and priorities, facilitated by council staff and ultimately formally adopted by the elected councillors.

The program of implementation is not such a document. Its development is properly the work of the senior officers of council whose paid role it is to implement the decisions taken by the council on behalf of the community. These officers do not need to rethink direction, content or priorities of the Plan, they need to apply their professional management skills and expertise to develop the best program achievable to implement that Plan, and then begin implementation.

So logically, an agreed ‘plan’ is needed before a program to implement it can be developed.



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Because the provisions of s 6 (3) of the Bill do not demonstrate a clear understanding of the distinct ie different natures of the CZMP and proposed CMP, and an appreciation of their serial relationship, they are not supported by the ACS.

The provision Schedule 3, Part 2, s 6 (4) providing an end date for the automatic deeming of certified CZMPs as CMPs is not supported by the ACS, because we do not support such ‘deeming. It is not clear why this five year time limit is required when draft s 33 requires the review of the Act and of its provisions’ suitability in five years’ time.

It is the view of the ACS that the Bill’s legislative scheme for coastal management planning and implementation needs a serious rethink, to reinstate the central role of CZMPs, clarify the proper role of the CMP as implementation only, and place the State policy and process framework documented in the proposed *Coastal Management Manual* at the centre. Hence, as noted above, ACS is of the view that Part 3 of the Bill should be renamed ‘Coastal management manual, *plans* and programs’, and the relevant sections of that Part should be reorganised into that order.

In that Part, provisions relating to CZM Plans ought to be included which facilitate the integration of the policy framework in the proposed State environmental planning policy, into CZMPs.

Provisions to remedy these weaknesses are included in paragraph **AS3.6** of Appendix 1.

### **Sch 3, Pt 2 s 7 – Temporary coastal protection works**

The inclusion of the provisions of Schedule 3 Part 2 draft section 7 – Temporary coastal protection works, continuing the operation of Part 4C (ss 55O – 55Z) is not supported by the ACS.

These provisions continue the prior arrangements whereby ad hoc coastal protection works can be constructed by private landowners, without approval, exempt from any and all otherwise relevant legislation, and where public land may be used for this private purpose – subject to a certificate and Notice being given – without any prior process of environmental impact assessment or public consultation and notwithstanding any prior plan of management !

These are extraordinary and entirely unsatisfactory arrangements in the view of the ACS and are contrary to the widely expressed need to manage the coast using best practice and within an agreed council-led open, transparent strategic planning process.

It seems quite inappropriate to include a reference in draft s 7 (a) to works being on ‘private land’ when there is a serious basis to believe that such works may not be on private land if they are below mean high water mark (MHWM).

The Government ‘committee’ process of clarifying the effect in law of the landward movement of the ambulatory boundary of MHWM on coastal land titles originally defined by survey has, if it has even begun, produced no results. Consequently no progress has been made which would determine whether the sites of the temporary coastal protection works are above or below MHWM and thus public or private land

Note that the common law rules, proposed codification, regarding the effect in law of the gradual landward movement of the boundary formed by the MHWM, make it plain that all land below MHWM is Crown land unless the Certificate of title shows that land below MHWM was included in the title at the time it was first registered under the *RP Act 1900*. Under these existing legal rules, coastal protection works at or below MHWM which the landowner may have ‘believed’ to be located on their privately owned land, may in fact be located on public land owned by the Crown, as the State of New South Wales.

Working through and settling the relevant facts of law in relation to these prior ‘emergency’ or ‘temporary’ coastal protection works would greatly simplify the coastal management process for many local councils and would perhaps obviate the need for provisions such as draft s 7.

It is the view of the ACS that the appropriate legislative provisions relating to ‘temporary coastal protection works’ should do three things:

- repeal sections 55O and 55T of the *CPA Act 1979* to extinguish the legislative basis for any future ‘temporary’ works on either private or public land;
- provide a new statutory non-extendable time limit to the lawful continuation of existing ‘temporary’ works of one year from the commencement of the new Act, based on s 55VA; and
- re-make the relevant provisions regarding the mandatory removal of all ‘temporary coastal protection works’ once the statutory time limit has expired, based on s 55VC.

Until the location of existing temporary coastal protection works can be authoritatively determined -- using existing common law legal principles -- to be in fact private land, no confidence can be placed in legislative provisions which preserve or perpetuate a potentially erroneous assumption that land below MHWL is private land.

Significant amendments to draft s 7 recommended by the ACS are included at paragraph **AS3.7** of Appendix 1.

### **Sch 3, Pt 2 s 8 – Savings of certain directions**

The substance of this provision, Schedule 3 Part 2 section 8 – Saving of certain directions is not supported by the ACS.

As presently drafted the effect of this ‘saving’ is not to save the direction to prepare a CZMP. Its effect is to convert a direction to prepare a CZMP under s 55B of the *CPA Act 1979* into new direction to prepare a CMP under draft s 13 (1) of the Bill. Thus the original direction is not ‘saved’.

The knock on effect of this provision is that a council which has received a direction under s 55B, whose draft CZMP is not yet ready for submission for certification – and hence covered by s 13 (1) – is effectively directed to stop work on the CZMP and instead must start to prepare a CMP.

Alternatively the council could elect to comply with both directions and attempt to prepare a CMP in compliance with a converted direction under this section of the Bill, while it is finalising its CZMP under the earlier direction. Though theoretically possible, realistically such a parallel process is unlikely given most councils’ limited time, money and staff resources, so such a council’s decision is more likely to be to discontinue work on the CZMP, and redeploy resources to draft a CMP.

As explained above this draft provision is the product of a mistaken understanding of the different nature and role of the CZMP and the CMP. Further, this more likely outcome undermines the utility of continuing the CZM planning process and the general saving of draft CZMPs.

This provision creating an automatic conversion of an earlier Notice into something else would not be required if the Minister simply issued a new and fresh direction under draft s 13 (1) to local coastal councils (which require it) directing them prepare a CMP. Then there would be no confusion over what the direction under s 55B of the old Act means, and how a direction under s 13 (1) of new Act affects the continued preparation, and ultimately the certification, of CZMPs.

It is the view of the ACS that this provision can be simply rendered unnecessary by appropriate administrative action, in the giving of a new Notice by the Minister under draft s 13 (1). Hence the amendment recommended for this section in paragraph **AS3.8** of Appendix 1 is for its deletion.

**Schedule 4**

In Schedule 4 – Amendment of Acts and instruments several important consequential amendments to other Acts and instruments are made.

***Schedule 4.1 Amendments to Environmental Planning and Assessment Act 1979***

Foremost among these are a series of amendments to the *Environmental Planning and Assessment Act 1979* (NSW) which seek to do three things:

- \* allow the imposition of conditions on the construction of coastal protection works, to require their maintenance, and or removal and restoration of the beach and adjacent land;
- \* provide for additional Orders and enforcement mechanisms for coastal related offences under the *EP&A Act* and
- \* allow the referral of a development application for coastal protection works to a Joint Regional Planning Panel properly constituted for that purpose.

The ACS supports these provisions but has concerns about other matters in Schedule 4.1.

The ACS does not support clause [1] of Schedule 4.1 which deletes from a consent authorities consideration, when evaluating a development application under s 79C (1) (a), an important and highly relevant item being “(v) any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*)”.

In the view of the ACS considering the provisions of an existing CZMP should continue to be a valid matter for councils to have regard to when evaluating a development proposal and deciding whether to grant development consent, and attach appropriate conditions, to determine a development application. In our view clause [1] of Schedule 4.1 should be deleted.

The deletion of the requirement under s 89J for a Ministerial concurrence under Part 3 of the *Coastal Protection Act 1979* for State significant development in or affecting the coastal zone, proposed by clause [3] of Schedule 4.1 is also not supported by the ACS.

Similarly, the ACS does not support clause [4] of Schedule 4.1 which deletes from consideration of a proposal for state significant infrastructure, the requirement under s 115ZG for a concurrence under Part 3 of the *CPA Act 1979*. In the view of the ACS such a consideration is still both desirable and necessary to ensure that state infrastructure development does not ignore and or damage important areas of the NSW coast, or adversely affect its coastal processes.

Moreover, it might be apposite here to ask why and to what extent is State Government investment in state significant infrastructure being planned for the coastal zone? In the view of the ACS it ought to be the NSW Government’s policy to minimise or avoid the construction of new state significant infrastructure at risk of coastal hazards and climate change impacts generally.

If there is no concurrence role involving the relevant Minister, how will a consent authority be able to ensure that this is done?

Clauses [5] – [16] of Schedule 4.1 are not objected to by the ACS.

Amendments to Schedule 4.1 are proposed by the ACS in paragraph **AS4.1** of Appendix 1.

***Schedule 4.2 Amendments to Environmental Planning and Assessment Regulation 2000***

The ACS supports the amendments proposed by Schedule 4.2 of the Bill to the *Environmental Planning and Assessment Regulation 2000*.

The ACS notes that the use of the term ‘coastal council’ in clause [1] of Schedule 4.2 in this way and its definition under s 3 of the *Regulation*, has the potential to be confused with the new body proposed to be constituted under s 24 of the Bill.

The existence of and use of this term in this context provides, in the view of the ACS, further support for its recommendation made in its comments on draft s 24 above, that the proposed new body be renamed the *Coastal Management Council*, to prevent confusion.

Note though that the date of the new Act will need to be given as 2016 not 2015.

No amendment to Schedule 4.2 is proposed by the ACS.

**Schedule 4.3 Amendments to Land and Environment Court Act 1979**

The ACS queries the amendments made by Schedule 4.3 to s 20 Class 4 - which deletes the name of the *Coastal Protection Act 1979*, and inserts the name of the proposed new Act. (Note that the date of the new Act will be 2016 not 2015, as given).

In ACS's view it may be premature to delete the reference to the *CPA Act 1979* in this section of the *Land and Environment Court Act 1979* at this time, given that several of the provisions of the new Act have the effect of preserving and continuing relevant sections of the old Act.

It is possible that this concern might be addressed by discontinuing the deletion of the *CPA Act 1979*, and instead only insert the name of the new Act, before its appearance in the list of 'environmental laws' given in s 20 (3) (a).

A amendment to Schedule 4.3 is proposed by the ACS in paragraph **AS4.3** of Appendix 1.

**Schedule 4.4 Amendments to Local Government Act 1993**

The ACS supports most of the series of largely minor amendments proposed to the *Local Government Act 1993* (NSW) [see Sch 4.4, p31]. These amendments are to facilitate the "making and levying of annual charges for coastal protection services" and related purposes, see clause [2] and [3]; and to continue and update section 733 of the *LG Act 1993*, to provide local councils with statutory exemption from legal liability on coastal management matters, where they act in good faith, see clauses [5] – [12].

Generally speaking, both this cost recovery and continued exemption for local councils who 'act in good faith', are desirable and their inclusion is appropriate in the view of the ACS.

Three amendments to Schedule 4.4 are proposed by the ACS.

i) The name of the new Act in clause [5] and wherever it appears, must be given as 2016.

ii) The ACS does not support the provision of clause [6] of Schedule 4.4 which deletes the current s 733 (3) (b), which provides councils with an exemption from liability for "the preparation or making of a coastal zone management plan, or the giving of an order, under the [Coastal Protection Act 1979](#)".

It is our view that this exemption from liability should remain in place. This is logical because CZMPs are saved by the Bill and councils will need to continue to prepare, make and implement existing or nearly completed CZMPs into the foreseeable future.

To achieve this continued exemption clause [6] should be amended to delete the words 'Omit the paragraph. Insert instead:'" and replace this with 'After current s 733 (3) (b) insert as (b1)'.

iii) The ACS does support the provision of clause [6] of Schedule 4.4 which inserts a new provision providing exemption to councils for "the preparation and adoption of a coastal management program under the Coastal Management Act".

It is our view that this new exemption from liability relating to a CMP can be inserted without the deletion of the current s 733 (3) (b). Further, this draft provision could be improved by inserting the words "and implementation" after the word 'adoption', so that it reads "the preparation, adoption *and implementation* of a coastal management program under the Coastal Management Act". As noted above this new provision proposed by clause [6] of Schedule 4.4 should be renumbered as s 733 (3) (b1).

Amendments to Schedule 4.4 are recommended in paragraph **AS4.4** of Appendix 1.

**Schedule 4.5 Amendments to Rural Fires Act 1997**

The ACS supports the provisions of Schedule 4.5 which amend the *Rural Fires Act 1997*.

No amendments to Schedule 4.5 are proposed by the ACS.

End of comments on the draft provisions of the CM Bill 2015.

In the following section comments are provided on important public policy matters directly related to coastal management in New South Wales, which are missing from the draft Bill for legislation intended to guide coastal management in the state for the foreseeable future.

**Provisions missing from the Bill****Resolution of ambiguity regarding effect in law of landward movement of MHWM**

In ACS's view the Bill misses an opportunity to include provisions which address the present ambiguity and continuing uncertainty regarding the effect of the landward movement of the boundary formed by the mean high water mark (MHWM), under the doctrine of accretion, on property boundaries of coastal land titles originally defined by survey.

Though the NSW Government promised it would clarify the legal effect of the ambulatory boundary in preparing of this Bill, the absence of any reference to this phenomenon indicates that it has not done so. Indeed it appears that a written pre-election commitment by the Baird Government to resolve this uncertainty in the Stage Two coastal reforms has not been honoured.

In the view of the ACS this omission should be remedied by the insertion of a new section 'Codification of common law rules' which unambiguously declares the existing common law and thus resolves all ambiguity on this matter.

Amendments to s 28, in the form of additional provisions which provide this long awaited clarification of the effect in law of the landward movement of the ambulatory MHWM and related matters are included in paragraph A28 of the Appendix.

**Concomitant provisions for local councils**

Further, relevant provisions might have been included in the Bill which outlined the process for local councils to identify via the CZMP process, land titles of coastal properties affected, or likely to be affected, by the landward movement of the ambulatory MHWM boundary, and to provide formal notice of this affect to the Land Titles Office once Council adopts the CZMP. Alternatively, this giving of council Notice to the LTO could occur when council officers next issue a Planning Certificate under s 149 of the *EP&A Act 1979* which advises an owner or a potential purchaser of the impact of coastal hazard on the property title.

**Amendments to the *Real Property Act 1900* (NSW)**

Other provisions might also have been included in the Bill's Schedule 4 to amend the *Real Property Act 1900* (NSW) and the Practice of the Land Titles Office to set out the procedures to be adopted by the Registrar General of Land Titles once notified by a local council, to authorise annotation of the folios of the relevant land titles, to require a fresh survey at the time of next dealing, and where appropriate amend the land title description, and any affected boundary of the property, to correct any error created 'post facto' by the landward movement of the ambulatory MHWM, and ultimately to extinguish the land title of any property when it is wholly lost to the sea.

**Assisted relocation a.k.a. planned retreat**

Also missing are any provisions for policy initiatives to assist councils which have adopted ‘planned retreat’ strategies in line with NSW Government advice, but now possess little or no capacity to further assist residents affected by the onset of destructive coastal hazards.

A voluntary Crown land exchange scheme which could do this, was suggested for the next round of ‘reforms’, via a statutory scheme that would connect existing, but currently disconnected, state government powers, facilities and programs. (See Corkill 2013, ‘Getting real about shoreline recession’). However the potential ‘game-changer’ for residents and councils caught in ‘coastal squeeze’ that the idea for this scheme represents, remains unrealised and un-activated.

Regrettably such provisions were not included. Thus the Bill in its current form is a lost opportunity to craft a scheme that could to help residents whose homes are likely to be lost to the sea...

## II. Comments on the draft *Coastal Management Manual*

In addition to comments on provisions in the Bill relating to the Manual's framework and authorisation, made above, some further brief remarks regarding the contents and proposed use of the Manual are considered appropriate.

These comments on the draft *Coastal Management Manual* are necessarily preliminary only since only a very brief review of the draft material available online has been possible to date.

The 'new' manual mandated in Part 3 (3) of the Bill is in many ways the most significant part of the Government's Stage Two coastal reforms. Part of that significance is the Government's acknowledgement that global climate change is real, happening now, affects the coast of NSW in particular ways, and must be factored into future plans. This is welcomed by ACS.

More significant is the Manual's clear indication that the State government accepts that it has an enduring role in coastal management. The Manual provides an ideal framework for the Minister to spell out the best practice in coastal management to guide local councils in the preparation of key coastal management documents: their CZMPs and CMPs.

The ACS understands that the Manual, when finalised, will provide a core set of "mandatory requirements and essential elements" as Part A, a restatement of the revised process for preparing a CMP, as Part B, and a Toolkit as Part C which will assist councils by allowing them to select appropriate measures for use in their CMPs. This new version of the Manual will build on and update the form and content of valuable resource material from the original 1990 edition. The ACS supports in principle this proposed structure for the Coastal Management Manual 2016.

It is understood that once finalised, the Manual is to be co-published, with (most of) it in print and an updated, supplementary version, which gives access to key digital maps, etc available online. The ACS supports this approach because there's more chance the Manual will be in reach, up-to-date and ready to be easily used.

However while the elements of Manual currently released - Parts A and B - describe the contents and processes necessary for the preparation of CMPs, it does not provide any guidance on the relationship of the CMP to the CZMP, nor does it describe how, if it is appropriate, to adapt the work undertaken and the progress made in developing Coastal Zone Management Plan for use in CMP.

Much of the Content of Part A reproduces the content of Part 3 of the Bill. In the view of the ACS this development of the Manual's guidance on the preparation of CMPs is probably premature given the legislation has not even been introduced into Parliament. It is possible that substantial further changes in a 2016 Bill will require reworking of the ambit of the Manual. In particular, the ACS is of the view that the re-issue of the Manual provides an excellent opportunity to refresh and revise the requirements for preparation of CZMPs, to more seamlessly integrate the coastal planning of CZMPs with the heightened focus on adopting a program of implementation.

In the view of the ACS the final revised version of the Coastal Management Manual should include updated *Guidelines* for the preparation of CZMPs.

The material provided in Part B Stage 4 is obviously incomplete, so informed comment on it is not possible at this time. Further, ACS members have undertaken only a limited review of material available online as part of proposed Part and offer no substantive comments at this time.



The ACS is willing to further review a more advanced version of the draft Manual once the legislation has been enacted and the relationship between CZMPs and CMPs has been clarified.

### III. Comments on the *EIE* for the proposed Coastal Management SEPP

In some senses the proposed *Coastal Management SEPP (CM SEPP)* is the most powerful element of the coastal management package, because it does not depend on the passage or content of the Bill. It is also the least 'known' element because, though there is a glossy booklet has been produced, no draft *CM SEPP* was released, consultation has not commenced and the SEPP's crucial maps are yet to be drawn.

The booklet *Coastal Management State Environmental Planning Policy – Explanation of Intended Effect* – hereafter the *EIE* - outlined the scope and effect of the proposed new SEPP and provided some detail on what it will replace, what it will include and what it will aim to do.

#### General comments on the substance of the *EIE*

The ACS congratulates the Minister and the Government for its stated willingness to continue the protection of SEPP 14 coastal wetlands and SEPP 26 littoral rainforests.

Further, The ACS is delighted to support the proposal to extend the 100m buffer, currently applicable to littoral rainforests, around areas designated as coastal wetlands.

Criteria for mapping localities as part of the proposed 'coastal wetlands and littoral rainforest area' have not been released but there is a strong case for them to be enlarged to include other types of high conservation value coastal native vegetation. This would be in line with the recommendations adopted by Minister Stokes recently to direct five far north coast councils to include in their LEPs' Environmental Zone 2 (known as E2 – Environmental Conservation) areas which are verified as containing SEPP 14 wetlands and SEPP 26 littoral rainforests, plus Endangered Ecological Communities listed under state or federal Acts, Key Threatened species' habitat, over-cleared vegetation communities and lands identified as culturally significant by Aboriginal communities.

Further, other coastal native vegetation of conservation significance such as mangroves, salt marshes and seagrasses, should be recognised and considered for protection within the proposed coastal *conservation* area.

A slightly wider scope for the criteria for mapping this area could also give effect to the Healthy Rivers Commission Report from 2002 which identified 15 coastal lakes and lagoons, and their catchments as requiring 'comprehensive protection' (see list in *EIE* p 31). Rather than being a dangling Schedule 1 to the proposed SEPP, it may be more appropriate for the catchments of the listed coastal lakes and lagoons, to be added as a further criterion for this coastal *conservation* area, and the beds and waters of the lakes and lagoons to be included within the ambit of the suggested coastal *waterbodies and environs* area.

Doing so would justify the new name 'coastal *conservation* area' and enable a better integration of the *CM SEPP* with a local council's CZMP, CMP and its local planning instrument, typically an LEP. This would align with a key goal of these Stage Two coastal reforms: to simplify, flatten and integrate coastal and LEP strategic planning without fundamentally weakening either, or both, and producing duplicate plans.

This re-working of a wetlands / rainforest area into a more broadly defined 'coastal conservation area' using a supplemented Zone E2 criteria, and the results of the 2002 HRC Report is considered vital.

The ACS notes that the *EIE* advises that *SEPP # 71 - Coastal Protection (2002)* will be absorbed into the proposed new *CM SEPP* and observes that the fate of its various provisions are outlined in the *EIE* booklet [see p 28-9]. We note too that relevant parts of the *Infrastructure SEPP (2005)* will also be

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transferred to the new SEPP, an entirely appropriate move - because it will close a 'back door' for ad hoc 'interim' coastal protection works outside of the strategic CZMP process.

The ACS supports these intentions to transfer relevant provisions from these instruments into new *CM SEPP* but must reserve its judgment on the suitability of the content of the proposed *CM SEPP* until an actual draft of the SEPP is released for public review.

The ACS appreciates that the *EIE* for the *CM SEPP* makes it clear that there will be no future pathway for consent for 'emergency' or 'temporary' coastal protection works by private landholders, with or without consent [see p 22 -24]. Further, we note that proposals for new 'permanent' coastal protection works by private landowners remain possible, whether included in a CMP or not, and that these works will require council or JRPP consent [see p 23].

Further the ACS supports the clear intention in the *EIE* that those legacy works - 'emergency' or 'temporary' coastal protection works constructed without approval under the prior legislative framework - will be removed within 2 years of their construction, voluntarily or compulsorily [see p 24]. These 'reforms' as indicated by the *EIE* are the most valuable features for the proposed SEPP because they reinstate the need for a strategic, integrated approach to coastal zone management and the construction of coastal protection works.

However, the indication of this encouraging reform in the *EIE* is not reflected in the draft Bill whose provisions, regrettably, propose to continue in force the existing provisions relating to 'temporary coastal protection works' (see Schedule 3, draft section 7). This inconsistency must be resolved.

According to the *EIE* the proposed coastal management SEPP will 'carry forward' the goals of the 1997 Coastal Policy [see p 29]. This is desirable in the view of the ACS because they remain largely valid still, are known and understood by the coastal management community and their revival provides continuity with previous policy statements. How these 12 goals will be reflected in the text of the new instrument is unknown at this stage, because while they are listed, how they will function in the proposed SEPP is not explained.

As is well known, "the devil is in the detail" so until a draft of the *CM SEPP* is released for public comment it is difficult to know if these positive indications of its content will ultimately be fulfilled.

### **13 Questions in the *EIE***

Usefully, the *EIE* booklet poses 13 questions seeking considered responses on key matters yet to be finalised [see p 11-24]. In the next section the ACS provides its responses.

#### **Question 1: Should councils be able to propose changes to the maps for all or some of the coastal management areas?**

Yes but only after the expiry of a minimum no-change period of 3 years from the publication date of the SEPP, and subject to appropriate oversight by the NSW Coastal Management Council so as not to lose the integrity of the intent of the areas.

Only finally adopted LEPs should be able to amend these maps, and only if the amending instrument sets out a reason for changing the existing map(s) and a justification for the proposed amendment.

#### **Q 2: Should the development controls be included in the proposed Coastal Management SEPP or as a mandatory clause in council LEPs?**

Development controls for 'coastal management areas' should be included in the proposed *CM SEPP* not as mandatory clause in council LEPs.

How mandatory clauses could be inserted into councils' existing adopted LEPs is not known, but this approach would obviously constitute or require an amendment to the LEP and trigger the formal processes for amending a LEP. In the view of the ACS it is more likely that the path of including 'mandatory' clauses in council LEPs would require the co-operation of local councils. This approach could fall foul of councils opposed to the proposed development controls *per se*, or hostile to the imposition of mandatory controls by the Department. This latter scenario could lead to the inclusion of development controls in LEPs only at the discretion of local councils: an option that would not ensure their consistent and timely application in all coastal council areas.

**Q3: Do the proposed development controls for mapped coastal wetlands and littoral rainforests remain appropriate for that land?**

No. The current and proposed development controls for these areas permit a wide range of development in coastal wetland and littoral rainforests, if an Environmental Impact Assessment has been prepared for the development proposal.

The continuation of even the prospect of consent for development in these areas should be extinguished, and a clear statement made that no new developments of the type listed on page 14 of the *EIE* will be permitted within these areas. Works which are not development, such as weed control and native vegetation restoration should, of course, remain permissible activities.

**Q4: Do you support the inclusion of a new 100m perimeter area around the mapped wetlands, including the application of additional development controls?**

Yes. The extension of a new 100 m buffer around mapped coastal wetlands is supported by the ACS. Hydrological connectivity at the perimeter of wetlands has long been recognised as being crucial to their long-term survival. In our view, no new development should be permitted within this buffer area. Weed control and native vegetation restoration works should remain permissible activities in these buffer areas.

**Q 5: Are the proposed development controls for the mapped coastal vulnerability areas appropriate for that land?**

Yes. The development controls currently proposed for such an area, on page 17 of the *EIE*, are considered appropriate and are supported by the ACS

**Q6: Are the proposed development controls for coastal environment areas appropriate for that land?**

The proposal for a 'coastal environment area' is not supported by the ACS. Rather the ACS recommends that these areas be renamed 'coastal water bodies and environs area'.

The development controls currently proposed for this area, on page 18 of the *EIE*, are considered generally appropriate, but the test of council 'considering the extent to which the development' has the potential for adverse impacts on these coastal values is not supported by the ACS.

A consent authority's consideration of the "extent to which the development" does or doesn't do certain things is a weak low-bar test and an ineffective development control.

As these development controls are presently expressed, a council could 'consider' the extent to which the proposed development achieves these protections, conclude that the development does poorly against these criteria and still be able to grant development consent.

In our view the development controls ought to be expressed in unambiguous terms and apply in such a way that a consent authority must not grant development consent to development on land within this area, if the consent authority concludes that the proposed development

- 
- is likely to cause adverse impacts etc
  - is likely to impact on geological and geomorphological coastal processes, etc.
  - does not adequately protect and preserve native coastal vegetation;
  - does not preserve undeveloped headlands etc
  - does not appropriately protect Aboriginal cultural heritage and places;
  - does not incorporate water sensitive design etc.

In our view a re-write of the development controls for this area, along these lines, is required.

**Q7: Is the inclusion of the catchments of the 15 sensitive lakes (listed in Schedule 1) within the coastal environment area appropriate?**

The protection of fifteen HRC identified sensitive coastal lakes and their catchments is appropriate and is supported by the ACS.

However, the inclusion of these areas in the proposed ‘coastal environment area’ is not considered appropriate and is not supported by the ACS.

These catchments should be afforded the highest level of protection possible and included in the areas proposed to be mapped as a coastal *conservation* area.

**Q 8: Which is the best option for mapping the coastal use area? Is the proposed approach to mapping the coastal use area for the Sydney metropolitan area appropriate?**

The use of distances such as 1km or 500m are completely arbitrary and based on substantial evidence whatsoever. ACS would like the Department of Planning and Environment to produce evidence to show that such distances are either appropriate or inappropriate and result in good outcomes. Crucially the planning controls in this part of the coastal zone must strike the correct balance between being restrictive and being permissive i.e. the level of the development control must be commensurate with the development proposed and the coastal management objectives.

In the view of the ACS the best option for defining the ‘coastal zone’ is option 3 because it provides greatest continuity which the previous definition of the ‘coastal zone’.

The proposed approach to mapping the proposed coastal *development* area in the Sydney metropolitan areas is considered appropriate. However the terms ‘land affected by or affecting coastal processes’ are not defined and could conceivably include the extent to which wind-blown sand travels, or salt spray. The ACS supports generally smaller coastal *development* area in urban areas than say for peri-urban or rural areas.

**Q 9: Should councils be able to propose variations to the Coastal Use Area maps over time to take into account local characteristics and circumstances?**

Yes, subject to some important provisos. Councils should be able to propose variations to ‘coastal *development* areas’ over time. However these variations should not be permitted by the Department to encompass reductions in proposed coastal *conservation* areas. All proposals for variations ought to be supported by reasons why the status quo is no longer appropriate, why the proposed variation is necessary and a statement demonstrating consideration has been given to the likely implications flowing from the variation sought.

**Q 10: Are the proposed development controls for the mapped coastal use areas appropriate for that land?**

The proposal for a ‘coastal use area’ is not supported by the ACS since all areas of the coastal zone are subject to public uses. This name is considered to be indistinct and inappropriate and the ACS recommends that these areas be renamed ‘coastal *development* area’.

The development controls currently proposed for this area, on page 19 of the *EIE*, are considered generally appropriate, but the test of council ‘considering the extent to which the development’ does or doesn’t do certain things is not supported by the ACS.

As noted above, a consent authority’s consideration of the “extent to which the development” does or doesn’t do certain things is a weak low-bar test and an ineffective development control.

The ACS would prefer that the development controls for coastal *development* areas be expressed in more definite terms viz:

A consent authority must not grant development consent to development on land within this area, if the consent authority concludes that the proposed development

- does not maintain or enhance public access etc
- exceeds the scale and size of existing buildings etc
- does not incorporate measures to maintain or improve amenity of the foreshore etc
- does not protect visual amenity and scenic qualities of the coast
- does not appropriately protect Aboriginal cultural heritage and places.

In ACS’s view a re-write of the development controls for this area, along these lines, is required.

**Q 11: Should the current exempt development and complying development provisions be retained for coastal management areas?**

Yes. However the Department must ensure that exempt and complying provisions for these areas have been adequately assessed to ensure the objects and provisions of the *Coastal Management Act 2016* are furthered.

**Q 12: Should consideration be given to applying other controls for these areas? For example. What types of exempt and complying development might be appropriate in coastal wetlands and littoral rainforests or in the catchments of sensitive coastal lakes and lagoons?**

No. See our comments in answer to Q3 above. No new development of any kind which disturbs these areas of coastal native vegetation or the catchments of sensitive coastal lakes should be permitted at all. Coastal *conservation* areas should be subject to minimal disturbance, and leaving assessments of complying development in these areas up to certifiers is less than optimal and counter-intuitive.

**Q 13: Should any provisions be retained to allow the use of emergency coastal protection works in emergency situations? What limitations should be put on such works being undertaken by private individual or public authorities?**

No. No provisions should be retained for emergency coastal protection works in emergency situations. ‘Emergency works’ are, in ACS’s view, a discredited concept, which are incompatible with strategic integrated approach to coastal zone planning to address foreseeable risks. Emergency situations should not mandate any new *ad hoc* unapproved ‘emergency works’ because in reality ‘emergency situations’ are only created by those who ignore the strong likelihood or foreseeable potential for storms to activate and or exacerbate coastal hazards, and deliberately failure to plan for this inevitability..

All planning and approvals for all coastal protection works should be carried out under the relevant provisions of the *Environmental Planning and Assessment Act 1979*.

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Every limitation possible, including an explicit ‘ban’, should be put on all so-called ‘emergency works’ whether they are being undertaken by private individuals or public authorities.

#### **IV. Comments on the proposal for a Ministerial Direction under s 117**

The ACS is of the view that the issue of formal Ministerial Direction to local councils under s 117 of the *EP &A Act* is entirely appropriate because it will provide a simple and direct means of the Minister directing local councils to consider the *CM SEPP*.

What the Minister will direct Councils to do is not known because a draft s 117 Direction has not been released. It must do more however than direct councils “to have regard to” the SEPP when they are preparing their strategic plans, because it ought to be more than simply ‘advisory’. Appropriate wording which requires councils to do more than ‘look at it’ or ‘take it into account’ is warranted.

The Direction ought to adopt language which directs councils in familiar terms and stipulates that Councils must act ways that are ‘in compliance with’ or ‘consistent with’, or even ‘not-inconsistent with’ the SEPP, so it is clear its provisions apply mandatorily, in transparent ways.

#### **Conclusion**

Overall, the draft Bill and other elements of the coastal reforms Stage Two released in 2015 have serious merit.

A number of possible amendments which would improve the Bill have been foreshadowed and it is further hoped that the incorporation of many of them into a revised Bill, to address reasonable concerns, will expedite its passage through the Parliament with wide cross-party support.

A key focus of these Amendments must be to clarify the roles and relationship of CZMPs and the proposed new CMPs. In our view the Bill suffers from a lack of clarity on these central matters. major re-think on these matters and the re-drafting of many Parts of the Bill are recommended.

The commitment to re-constitute a Coastal Council, perhaps as a Coastal *Management* Council is much appreciated because it will increase the focus on coastal management and assist local councils, and other stakeholders in the journey towards ecologically sustainable management of the NSW coast.

However, the clarification of appropriate statements of the new Council’s role, membership and functions for inclusion in the Bill remain the single largest area of concern to the ACS and requires serious re-consideration by government.

There are many positive indications, in the *EIE* especially, which the ACS hopes will be realised as drafts of the SEPP and ministerial direction are produced, circulated, refined and finally made and issued.

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# Australian Coastal Society

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## **Appendix 1**

**to the Submission**

**to NSW Department of Planning & Environment**

**on coastal reforms Stage Two.**

## **List of Recommended Amendments to public exposure draft of proposed *Coastal Management Bill 2015***

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**February 2016**

**Prepared by Australian Coastal Society (NSW Branch)**

**Endorsed by ACS Executive)**

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**Summary**

The amendment proposed in this Appendix range from suggestions for minor changes or correction through to substantial reworking and re-ordering of the provisions of the draft Bill 2016. In addition new provisions are suggested to address perceived needs for relevant legislative provisions.

The major amendments proposed are:

- To improve the statements of Objects of the Act, including to recognise the public right of pedestrian access to and along the foreshore; [see s 3]
- To change the names of three of the four new ‘areas’ to create a coastal *conservation* area, coastal vulnerability area, coastal *waterbodies and environs* area, and coastal *development* area [s 5]; and improve the management objectives for these new areas;
- To enlarge the criteria for a coastal *conservation* area to include all high conservation value coastal native vegetation (terrestrial and marine), key Threatened Species habitat, the catchments of the 15 sensitive coastal lakes’ identified by HRC as warranting full protection; and land identified as culturally significant by Aboriginal communities; [See s 6];
- To improve consultation in the preparation of maps identifying coastal management areas for inclusion in a Coastal Management State environmental planning Policy (SEPP) and to create a minimum three year life for the maps before they may be amended; [see s 10]
- To create a functional link between the proposed new Coastal Management Act and any coastal management SEPP made under the *Environmental Planning and Assessment Act 1979*; [see new section 13]
- To state the purpose of Coastal Zone Management Plans (CZMPs) [see proposed s 14] and continue the operation of provisions governing their preparation, certification and gazettal by proposing revised ss 55A – 55 L as new sections 15 – 26; [See Appendix 2]
- To clarify the relationship between, and distinct nature of, existing CZMPs and the proposed new coastal management programs (CMPs); [see new s 27]
- To reorganise the 2015 Bill’s contents to place the State elements of the legislation, the Coastal Management Manual, and proposed Coastal Management State environmental planning policy, at the core of a new Bill in 2016; [see ordered Part 3 in Appendix 3]
- To improve the level of engagement and cooperation between public authorities in implementing a coastal management program, by obliging them to “liaise, negotiate with and assist”; and providing a mechanism for resolution if negotiations become deadlocked [ s 23];
- To rename the proposed new body as the Coastal *Management* Council [s 24] ( or Coastal *Management Advisory* Council; restate its membership criteria; state its proposed Role, augment its functions and powers and provide for an adequate Secretariat;
- To strengthen and broaden the monitoring and reporting function of the Coastal Management Council; and to clarify the process of preparing and providing a report on its audit [see s 26]
- To declare the law applicable regarding the effect of the ambulatory boundary of mean high water mark, if and when it crosses a real property boundary originally defined by survey, resolving any ambiguity and removing all uncertainty as to its effect; [see proposed s 42]
- To improve and make more independent, the proposed process of Review of the Act five years after its commencement; [ see 33]
- To retain consideration of coastal zone management plans and coastal management programs by a consent authority when approving state significant development or infrastructure under the *EP & A Act 1979*;;
- To improve the savings and transitional arrangements for pending CZMPs; [see Sch 3 s 6]
- To prevent the construction of new ‘temporary coastal protection works’ and to require the obtaining of a relevant development consent for permanent coastal protection works, or the removal of the temporary’ or ‘emergency’ works; [see new s 43, and Sched 3 s 7]
- To maintain the exemption from legal liability for a local council in making and implementing its coastal zone management plan in good faith; [see sch 4.4].

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## Recommended Amendments to the Bill

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Note: This list follows the order of the Coastal Management Bill 2015 [NSW] (public consultation draft). After the number of the section in the Bill, the purpose of the amendment proposed by the ACS is stated in **bold** type, followed by one or more amendments for that purpose under unique paragraph numbers eg **A24.1**. These purposes and the recommended amendments (should!) correlate to comments in the body of the submission which use these unique numbers.

[These stated purposes e **to clarify and improve the Act's Objects** are still subject to revision. If the wording of the proposed amendments which then follow, are not satisfactory in this draft version, please suggest alternative phrases which might better achieve the (agreed) purpose.]

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### **Part 1 Preliminary**

#### **Section 1**

**A1** Amend '2015' to become '2016'.

Apply amended date throughout, where applicable.

#### **Section 2**

##### **A2**

**to provide for the commencement of the Act in stages.**

(1) This Part and Parts X and Y shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), other Parts of this Act shall commence on such day as may be appointed by proclamation published in the Gazette.

#### **Section 3**

Section 3 (a): stet.

##### **A3.1**

**to clarify and improve the Act's Objects**

Section (b)

Delete draft subsection 3 (b) and insert instead

(b) to recognise the public's right of access to and along the foreshore, coastal waters and associated publicly owned lands, and to promote the provision and maintenance of appropriate public pedestrian access across the coastal zone;

##### **A3.2**

Section (c)

After 'acknowledge' insert ", respect and accommodate"

After 'coastal zone' insert "in the making of decisions o coastal zone management and planning"

##### **A3.3**

Delete draft subsection 3 (d) and insert instead

(d) to recognise the complex relationships between ecological, social, cultural and economic values, and uses of the coast and reflect this complexity in coastal management planning, actions and activity which acknowledge, respect and foster the persistence of this complexity;

##### **A3.4**

## Section (e)

Delete 'appropriate' insert instead "appropriately designed and located "  
Before 'and use planning' insert "transparent"

**A3.5**

## Section (f)

After 'to' insert "avoid, and where possible,

**A3.6**

## Section (g)

Delete 'manage coastal use and development accordingly,' insert instead "reflect this recognition in the management of coastal lands and resources generally, in future strategic planning and specifically in considerations of consent for development applications on affected land titles;

**A3.7**

## Section (h)

After 'management' insert ", implementation"

**A3.8**

## Section (i)

After 'encourage' insert "realistic assessments of the feasibility of retaining coastal assets and, where warranted, to"

**A3.9**

## Section 3

Insert new object

- (j) to provide for the acquisition of land in the coastal region to promote the protection, enhancement, maintenance and restoration of the environment of the coastal region;

**A3.10****T reduce the number of objects**

Delete draft Objects 3 (j), (k) and (l)

**T relocate useful provisions to a more appropriate location in the Bill**

Move draft objects (j) and (k) to become functions of the new coastal council.

**Section 4****A4.****T improve the definitions employed in the Bill****A4.1**

In current definition of beach after 'beach' insert "system" to provide a definition of 'beach system'.viz:

**beach system** coastal lands generally composed of sand, pebbles or shell, which lie between a seaward limit of 40 metres depth in the state's coastal waters; and a landward limit which extends beyond the beach, to the foot of the lee slope of any hind-dune, and includes any and all sand dunes in any adjoining dune system".

**A4.2**

Before 'beach system' insert new definition of 'beach'

**beach** any coastal lands composed of sand, pebbles or shell, formed into a continuous plane by action of tides or waves, which lie between low water mark and the furthest landward reach of wave action under storm conditions as indicated by the top of the most landward erosion escarpment in any adjoining dune system".

**A4.3**

Amend 'coastal erosion emergency action subplan'

Delete 'erosion' insert instead hazard"

Delete 'section 15 (3)' insert instead "section 28".

**A4.4.1****T clarify the definitions of coastal hazards**

Amend definition of 'coastal hazard'

(d) coastal inundation

After 'coastal inundation,' insert ": the flooding of low elevation land in the coastal zone, after heavy rainfall as result of local catchment run off and stormwater discharge being slowed, or prevented due to temporary increases in the height of the receiving waters from catchment floodwaters or tidal inundation."

**A4.4.2**

Amend definition of 'coastal hazard'

(f) tidal inundation

After 'tidal inundation,' insert ": the flooding of land in the coastal zone, by tidal waters elevated above mean high water mark (MHW) by normal spring tides, tidal anomalies and or by storm surge caused by barometric and or metrological conditions."

**A4.4.3**

Amend definitions of hazard (g) 'erosion of foreshores'

After 'erosion of' insert "estuary" and after 'foreshores' insert "and adjoining riparian land"

**A4.5**

Insert definition of 'coastal zone management plan'

**Coastal zone management plan** means a plan prepared by a local council, and certified by the Minister, under this or the former Act, to manage a section of the New South Wales coastal zone (See proposed sections 14 --- 26)

[suggested provisions ss 14 – 2 are given in Appendix of this Submission.]

**A4.6**

Amend definition of 'estuary'

Delete 'any' insert instead "that"

After 'lagoon' insert ", arm of the sea"

Delete 'affected by coastal tides' insert instead "influenced by tidal movements"

**A4.7****T amend the name**

Amend definition of 'NSW Coastal Council'

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after 'Council' where it appears twice, insert "Management".

OR

after 'Council' where it appears twice, insert "Management Advisory".

#### **A4.8**

##### **T define principles of ESD**

Insert before 'public authority'

***principles of ecologically sustainable development*** means the principles described in section 6 (2) of the *Protection of the Environment Administration Act 1991*

### ***Part 2 – Coastal zone and management objectives for coastal management areas***

Model 'A'

#### ***Section 5***

##### **A5.1**

##### **T re-name three of the four proposed 'coastal management areas' and**

(a) delete the proposed name 'coastal wetlands and littoral rainforest area', and insert instead 'coastal conservation area';

(c) delete the proposed name 'coastal environment area', and insert instead 'coastal waterbodies and environs area';

(d) delete the proposed name 'coastal use area', and insert instead 'coastal development area';

Model 'AA'

#### ***Section 5***

##### **AA5.1**

##### **T re-group and re-name the four proposed 'coastal management areas'**

(a) delete the proposed name 'coastal wetlands and littoral rainforest area', and insert instead 'coastal conservation area';

(c) delete the proposed name 'coastal environment area', and insert instead 'Aboriginal spiritual, social customary and economic use area';  
Re-number as (b)

(b) retain the name coastal vulnerability area;  
But re-number as (c)

(d) retain the proposed name 'coastal development area';

#### ***Section 6***

##### **T better define a coastal 'conservation' area**

##### **A6.1.1**

Delete the proposed name 'coastal wetlands and littoral rainforest area', and insert instead 'coastal conservation area' wherever occurring;

Model A

### **A6.1.2**

Delete 6 (1) insert instead

- (1) The ***coastal conservation area*** means the lands identified and mapped by the State environmental planning policy which satisfy one or more of the following criteria of coastal conservation significance;
- (a) displays the hydrological and floristic characteristics of coastal wetlands;
  - (b) displays the floristics of littoral rainforest;
  - (c) contains an Endangered Ecological Community listed under either the NSW or federal Act;
  - (d) habitat of Key Threatened Species;
  - (e) over-cleared vegetation communities;
  - (f) mangroves, saltmarshes and seagrass beds;
  - (g) catchments of the fifteen sensitive coastal lakes identified by Healthy Rivers Commission as warranting full protection.
  - (h) places identified as culturally significant by Aboriginal communities.

### **A6.2**

#### **T improve the statements of the management objectives**

Section (2)

Delete 'coastal wetlands and littoral rainforest area' and insert instead 'coastal conservation area'

Delete 'are as follows' insert instead "shall be";

#### **A6.2.1**

Section (2) (a)

Delete 'coastal wetlands and littoral rainforest area' and insert instead "coastal native vegetation communities of conservation significance, and lands of Aboriginal cultural heritage significance"

#### **A6.2.2**

Section (2) (b)

After 'to insert "encourage and "

Delete 'degraded coastal wetlands and littoral rainforests' and insert instead "disturbed coastal native vegetation communities of conservation significance, and or lands of Aboriginal cultural heritage significance"

#### **A6.2.3**

Section (2) (c)

Delete 'improve' insert instead "support and enhance "

Delete 'coastal wetlands and littoral rainforest area' and insert instead "coastal native vegetation communities of conservation significance"

**A6.2.4**

Section (2) (d)

Delete subsection (d) insert instead

- (d) to recognise and protect the social, cultural and economic values of coastal native vegetation communities of conservation significance, and lands of Aboriginal cultural heritage significance”

**A6.2.5**

Section (2) (e)

Delete subsection (e) insert instead

- (e) to implement the objectives of State policies and programs for managing, protecting and restoring coastal native vegetation communities of conservation significance and lands of Aboriginal cultural heritage significance.”

**A6.2.6**

After section 6 (2) (e)

Insert additional subsection (f)

- (f) to encourage greater public awareness and appreciation of coastal native vegetation communities of conservation significance, and areas of Aboriginal cultural heritage significance, and their appropriate management, and to provide appropriate facilities for environmental education;

Model AA

**AA6.1.2**

Delete 6 (1) insert instead

- (1) The Coastal Conservation Area means land identifies by a State Environmental Planning Policy to be for the purposes of this Act, land and coastal waters of the State containing Littoral Rainforests, Coastal Wetlands, coastal estuaries, coastal lakes and lagoons and land adjoining these features including beaches, dune systems, headlands, rock platforms, foreshores, riparian areas and catchments.”

**AA6.2****T improve the statements of the management objectives**

Section (2)

Delete subsection (2) insert instead

2. The management objectives for the Coastal Conservation Area are as follows:

- (a) to protect and enhance in their natural state, including their biological diversity and ecological integrity, the coastal environmental values and natural processes of coastal waters, Littoral Rainforests and Coastal Wetlands, coastal estuaries, coastal lakes and lagoons and land adjoining these features including beaches, dune systems, headlands, rock platforms, foreshores, riparian areas and catchments.
- (b) to reduce threats to and improve the resilience of coastal waters, beaches, Littoral Rainforests, Coastal Wetlands, coastal estuaries, coastal lakes and lagoons, to the impacts of climate change, including sea level rise and storminess, allowing opportunities for migration.
- (c) to promote the rehabilitation and restoration of degraded Littoral Rainforests, Coastal wetlands.

- (d) to maintain and improve natural water quality and ecosystem health of Littoral Rainforests, Coastal Wetlands, coastal estuaries, coastal lakes and lagoons.
- (e) to progress the listing under the Ramsar Convention of coastal water bodies assessed as meeting criteria for listing as Wetlands of International Importance.
- (f) to maintain and improve the biological diversity and ecological integrity of coastal aquatic and terrestrial vegetation communities, flora and fauna, in particular Endangered Ecological Communities, vegetation protected under the Fisheries Act, Threatened Species and species listed under international treaties including Migratory shorebirds.
- (g) to support the social and cultural values of coastal waters, Littoral Rainforests, Wetlands, Estuaries, Coastal Lakes and Lagoons, recognising the native title rights of Aboriginal people.
- (h) to maintain ecologically sustainable public access, amenity and use of beaches, foreshores, headlands, rock platforms and coastal water bodies.



**Section 7****A7.1**

Delete (1) insert instead

- (1) The ***coastal vulnerability area*** means the lands identified and mapped by the State environmental planning policy for the purposes of this Act as being land”
- (a) already subject to or impacted by coastal hazards;
  - (b) likely to be subject to, or become impacted by coastal hazards in the short to medium term, being the next 5 – 20 years;

**T improve the statements of the management objectives****A7.2**

Section (2)

Delete ‘are as follows’ insert instead “shall be”;

**A7.2.1**

Section (2) (a)

Delete ‘ensure’ insert instead “give priority to “

Delete ‘prevent’ insert instead “to avoid or minimise “

- (a) To give priority to public safety and to avoid or minimise risks to human life;

**A7.2.2.1**

Section (2) (b)

Delete ‘mitigate’ insert instead “recognise, reduce and otherwise manage “

After ‘risk to’ insert “coastal settlements”

After ‘and climate change’ insert “under extreme conditions”

OR

**A7.2.2.2**

Section (2) (b)

Delete subsection 7 (2) (b) insert instead

- (b) to mitigate current and future risk from coastal hazards by taking into account the effects of coastal processes and climate change including sea level rise and increased storminess;

**A7.2.3**

Section (2) (c)

After ‘presence of’ insert “beach systems and protect the amenity of “ delete ‘and foreshores’.

**A7.2.4**

Section (2) (d)

Before ‘maintain’ insert “provide for and “

After ‘foreshores’ insert “, where it is safe to do so;

**A7.2.5**

Section (2) (e)

Delete current (e) insert instead

- (e) to discourage new development potentially at risk from coastal hazards;

- (e1) to permit the modification of existing development or the redevelopment of land, if that reduces the exposure of the development to risks from coastal hazards;

---

(e2) to provide for the condition-limited or time-limited development consent and or the revocation of development consent for development at risk from coastal hazards;

**A7.2.6.1**

Section (2) (f)

Delete 'adopt coastal management strategies that'  
After 'exposure' insert "of coastal communities"

**A7.2.6.2**

Section (2) (f) (ii)

After 'other action' insert "or triggering the commencement of a sequence of actions "  
After 'those coastal hazards' insert "including activating measures to implement 'planned retreat';

**A7.2.7.1**

Section (2) (g)(i)

After 'biodiversity' insert ", ecosystem services"

**A7.2.7.2**

Section (2) (g)(ii)

After 'significant' insert "further"

**A7.2.7.3**

Section (2) (g)(iii)

After 'avoid' insert "the loss of 'beach systems, and or the "  
After 'amenity and' insert "or the public's enjoyment of its "

**A7.2.8**

Section (2) (h)

After 'coastal hazard emergency' insert "as described in the relevant coastal hazard emergency subplan."

**A7.2.9**

Section (2) (i)

Delete current paragraph (i) insert instead

- (i) To encourage the gradual relocation of development exposed to coastal hazards, away from areas vulnerable to coastal hazards.

**Section 8****A8.**

Delete the proposed name 'coastal environment area', and  
insert instead 'coastal waterbodies and environs area' wherever occurring;

**A8.1**

Section (1)

Delete subsection (1) insert instead

- (1) The ***coastal water bodies and environs area*** means lands identified and mapped by the State environmental planning policy for the purposes of this Act as being

- (a) submerged land, as the bed and coastal waters of the State;
- (b) the bed and tidal waters of estuaries, tidal lakes and lagoons;
- (c) the bed and waters of non-tidal coastal lakes; and
- (d) adjoining land including beaches, headlands, rock platforms.

**A8.2.1**

**T improve the statements of the management objectives**

Section (2)

Delete 'coastal environment area', and insert instead 'coastal waterbodies and environs area'

Delete 'are as follows' insert instead "shall be";

**A8.2.1**

Section (2) (a)

Delete 'enhance' where first appearing

Before 'coastal waters' insert "beaches"

Delete 'enhance' where second occurring, insert instead "to ensure the persistence of their"

**A8.2.2**

Section (2) (b)

Before 'coastal waters' insert "beaches"

**A8.2.3**

Section (2) (c)

Before 'estuary health' insert "promote measures which safeguard"

**A8.2.4**

Section (2) (d)

Delete 'support' insert instead "recognise and conserve"

Before 'coastal waters' insert "beaches"

**A8.2.5**

Section (2) (e)

After 'presence of' insert "beach systems and protect the amenity of" delete 'and foreshores'.

**A8.2.6**

Section (2) (f)

Before 'maintain' insert "provide for and "

Before 'amenity' insert "and protect public"

After 'foreshores' insert ", where it is safe to do so;"

**A8.2.7**

After 8 (2) (f) insert new paragraph (g)

(g) to allow for the landward migration of coastal water bodies in response to climate change;

**Section 9**

**A9.**

Delete 'coastal use area', and insert instead 'coastal development area' wherever occurring;

**A9.1**

Section (1)

Delete 'adjacent to coastal waters, estuaries, coastal lakes and lagoons'

**A9.2**

**T clarify statements of management objectives for coastal development areas**

## Section (2)

Delete 'coastal use area' insert instead "coastal development area"

Delete 'are as follows' insert instead "shall be"

**A9.2.1**

## Section (2) (a)

Delete 'and enhance'

Delete 'ensuring' insert instead "requiring"

**A9.2.2**

## Section (2) (a) (ii)

Before 'cultural' insert "existing"

**A9.2.3**

## Section (2) (a) (iii)

After 'urban design' insert "principles"

Delete 'is supported and' insert instead "are"

**A9.2.4**

## Section (2) (a) (iv)

Before 'adequate' insert "public pedestrian access is provided across the 'coastal development area' to the foreshore, and "

**A9.2.6**

After section 9 (2) (a) (iv) insert as new paragraph (b),

- (c) To encourage new development, and the relocation of existing development in vulnerable areas, on to sites which are free from risks from coastal hazards;

**Section 10****A10.1.1**

## Section 1 (1)

Delete 'For the avoidance of doubt, a local environmental plan',

Insert instead 'A local environment plan, once made by the relevant Minister and gazetted'

**A10.1.2**

## Section 1 (1)

after 'may' insert ""after the expiry of the three-year period provided by 10 (6)"

**A10.1.3**

## Section 1 (1)

**T improve the quality and confidence in relevant maps****T minimise the need for multiple amendments to maps**

Insert before current draft 10 (1) the following

- (1) The Department shall liaise and consult with local councils regarding lands in that local council area which satisfy the relevant areas' criteria as defined by this Part, before preparing draft maps identifying coastal management areas;
- (2) The Department shall be authorised to direct councils to provide information held by the Council relevant to the preparation of maps identifying coastal management areas,

- (3) Once draft maps identifying coastal management areas, have been prepared by the Department, copies of the maps covering each local council area shall be provided, in hard copy and digitally, to the relevant local council;
- (4) Local councils shall provide comments on or suggest amendments to the draft maps identifying coastal management areas, within 60 days of receiving the draft maps;
- (5) Revised draft maps identifying coastal management areas, which take into account comments from local councils under (4) above, shall be publicly displayed and subject to public review and comment, when public consultation on a draft coastal management State environmental planning policy is undertaken;
- (6) Maps identifying 'coastal management areas' under a coastal management State environmental planning policy, prepared in accordance with requirements for council and public consultation above, and made under the *Environmental Planning and Assessment Act 1979* may not be amended for a period of three years after their gazettal.

**A10.1.4**

Section 1 (1)

renumber current draft section 1 (1) as 1 (7)

**A10.2.1****T clarify how maps might be amended**

Section 1 (2)

Delete current draft sub-section (2), Insert instead as (8)

- (8) A draft environmental planning instrument prepared under the *Environmental Planning and Assessment Act 1979*, which contains a provision with the intended or ancillary effect of changing the identification of a site, or wider area, as a 'coastal management area', and or of amending the relevant map of a State environmental planning policy identifying the location of a coastal management area defined under this Act, shall not be approved for public exhibition without the recommendation of the Minister administering this Act.

**A10.2.2**

Section 10

After proposed new as section 10 (8), insert as new subsection (9)

- (9) When seeking the Minister's recommendation under (8) above a local council shall be required to provide to the minister statements explaining:
  - (a) why the existing map(s) identifying coastal management areas need amendment,
  - (b) why the proposed amendment to such a map is now considered appropriate, and in accordance with the Objects of this Act;
  - (c) how consideration has been given to the likely implications flowing from such an amendment.

**A10.3.1**

Section 1 (3)

Renumber as new subsection 10 (10)



**A10.3.2**

Section 1 (3)

- (a) delete 'coastal wetland and littoral rainforests areas' insert instead "coastal conservation area"
- (c) delete 'coastal environment area' insert instead "coastal water bodies and environs area"
- (d) delete 'coastal use area' insert instead "coastal development area"

**AA10.3.2**

Section 1 (3)

Delete subsection (3) (a), (b) and (c) insert instead

- (a) "Coastal Conservation Area." b) "Aboriginal Area" - first priority.
- c) "Coastal Vulnerability Area." - second priority.
- d) "Coastal Development Area." - third priority.

- (a) delete 'coastal wetland and littoral rainforests areas' insert instead "coastal conservation area"
- (c) delete 'coastal environment area' insert instead "coastal water bodies and environs area"
- (d) delete 'coastal use area' insert instead "coastal development area"

**Part 3 – Coastal management programs and manual**

**A11.1**

Amend heading of Part 3

Delete existing heading insert instead

**Part 3 Coastal management manual, plans and programs**

Consequently reorganise and order of sections in the Part 3.

**Part 3 Division 1 – Application of Part**

**Section 11**

**A11.1**

Section 11

Insert as new paragraph (c)

- (d) The Minister administering this Act when exercising functions under this Part.

**A11.2**

Delete the heading

**Part 3 Division 2 - coastal management programs - CMPs**

insert instead

**Part 3 Division 2 Coastal Management Manual**

**Section 12**

**A12**

Renumber as new section 27

**A12.1**



Delete “set” insert instead “implement”

Delete “strategy” insert instead “plan, defined by the adopted Coastal Zone Management Plan,”

### **A12.2**

Insert current provisions of draft section 2 Coastal Management Manual as the new section 12.  
(See amendments to draft s 21 below)

## **Section 13**

### **A13.1**

Renumber as section 28 under revised Part Division 5 Coastal management programs.

### **A13.2**

Insert instead new heading

#### **Part 3 Division 3 Coastal Management Planning Policy**

### **A13.3**

Insert as new section 13,

#### **13 Coastal Management Planning Policy**

The Minister administering this Act may recommend to the Minister administering the *Environmental Planning and Assessment Act 1979* the provision of advice by that Minister to the Governor, requesting the making of a State environmental planning policy under section 37 of that Act for the management of the ‘coastal zone’ as defined by this Act.

(1) A recommendation and advice under this section may refer to the need to:

- (a) provide an overall statement of the State’s policy framework for the ecologically sustainable management of the State’s coastal zone;
- (b) develop, adopt and distribute accurate robust digital maps of coastal management areas defined under this Act;
- (c) define appropriate development controls for coastal management areas defined under this Act; and
- (d) regulate, direct and otherwise assist the community, stakeholders and public authorities in coastal management.

(2) Where the Ministers agree that the promulgation of a State environmental planning policy is appropriate, the Minister administering this Act may seek advice from the Coastal Management Council and may make recommendations to that Minister on the form and content of the State environmental planning policy.

(3) The Minister administering this Act may, following consideration of any advice from the NSW Coastal Management Council, make a recommendation under this section to that Minister to provide advice to the Governor requesting amendment of a State environmental planning policy made under section 37 of that Act.

### **A13.4**

Delete current draft section 14, renumber and relocate as section 29.

**A13.5**

Insert instead new heading

**Part 3 Division 4 Coastal Zone Management Plans**

Insert new section 14 Purpose of Coastal Zone Management Plans

- 14 The purpose of Coastal Zone Management Plan prepared and adopted under the provisions of this Act, shall be to define the overall long-term plan and priorities for the management of the coastal zone in that local council area, in accordance with the Objects of this Act.

**A13.6**

Insert provisions governing preparation of Coastal Zone Management Plans, the twelve sections 55A – 55L of *CPA Act 1979*.

- 55A. Minister to have regard to objects of Act
- 55B Requirement for coastal zone management plans
- 55C Matters to be dealt with in coastal zone management plans
- 55D Guidelines for preparation of draft coastal zone management plans
- 55E Public consultation
- 55F Submissions
- 55G Certification by Minister
- 55H Gazettal and commencement of coastal zone management plans
- 55I Amendment and repeal of coastal zone management plans
- 55J Availability of coastal zone management plans
- 55K Breach of coastal zone management plan: offence
- 55L Breach of coastal zone management plan: restraint

Adopt, amend, adapt and renumber these provisions ss 55A – 55L as new sections 1 – 26

See details of proposed new sections in **Appendix 2**

- s 15 Minister to have regard to objects of Act
- s 16 Requirement for coastal zone management plans
- s 17 Matters to be dealt with in coastal zone management plans
- s 18 Guidelines for preparation of draft coastal zone management plans
- s 19 Public consultation
- s 20 Submissions
- s 21 Certification by Minister
- s 22 Gazettal and commencement of coastal zone management plans
- s 23 Amendment and repeal of coastal zone management plans
- s 24 Availability of coastal zone management plans
- s 25 Breach of coastal zone management plan: offence
- s 26 Breach of coastal zone management plan: restraint

**A13.7**

Insert after proposed new section 26, the new heading

**Part 3 Division 5 Coastal management programs**

**A13.8**

Insert current draft sections 1 – 20, re CMPs, and renumber as new draft sections 27 – 35.

Note amendments to these current draft sections 12 – 13, above and s 14 – 20 below

**Section 14****A14.1**

Renumber as new section 29.

**A14.2.1**

Section 1 (2)

Delete “prevails to the extent of any inconsistency between it and” and insert instead “must not be inconsistent with”

**A14.3.1**

Section 14 (3) (a)

After ‘promote’ insert “the achievement of “

**A14.3.2**

Section 1 (3) (b)

Delete “give effect to” and insert instead “implement”

**A14.3.3**

Section 1 (3) (c)

Delete “consider” and insert instead “comply, and otherwise act consistently, with”

**Section 15**

**A15**

Renumber as new section 30.

**A15.1**

**T avoid reproducing the work of a Coastal Zone Management Plan**

Section 1 (1)

Delete paragraphs (a) and (b)  
Reorder following paragraphs

**A15.1.1**

**T clarify the matters to be dealt with in Coastal Management Programs**

Section 1 (1) (c)

After ‘those actions’ insert “identified in the adopted Coastal Zone Management Plan as required to address coastal management issues”

Renumber as 28 (1) (a)

**A15.1.2**

Section 1 (1) (c)

After ‘Act 1979’ delete “and” insert comma

After the last word “and” insert “any actions to be implemented solely or principally by members of the public; non-government organisations or the private sector entities, and”

**A15.1.3**

Section 1 (1) (d) renumber as section 2 (1) (b)

**A15.1.4**

**T prepare emergency action subplans for all coastal hazards**

Section 1 (1) (e)

Delete “beach erosion is occurring” insert instead “coastal hazards are, or are likely to become, active” and delete “coastal erosion emergency action subplan” and insert instead “coastal hazard emergency action subplan”.

Renumber as section 2 (1) (c)

### **A15.3**

Section 1 (3)

Delete current draft sub-section (3)

Insert instead

(3) A ***coastal hazard emergency action subplan*** is a plan that outlines the roles and responsibilities of all public authorities (including the local council) and other relevant community stakeholders, in response to potential emergency situations which may be created by the effect of identified coastal hazards, immediately preceding or during a period of storm activity or an extreme or irregular event.

(a) The contents of coastal hazard emergency action subplans may be prescribed by the *Coastal Management Manual* made under this Part (section 12).

### **A15.4**

OR delete whole of subsections 15 (3) and 15 (4)

## **Section 16**

### **A16**

Renumber as new section 31.

#### **A16.1.1**

Section 1 (1) (a)

Delete current paragraph (a) insert instead

(a) a broad cross-section of the local community, including relevant non-government stakeholders and private sector entities active in local coastal management;

#### **A16.1.2**

Section 1 (1) (c) (ii)

Delete “emergency actions” insert instead “actions”

Delete “coastal erosion emergency action subplan” insert instead “coastal hazard emergency action subplan”

### **A16.2**

Section 1 (2)

Delete “is to” insert instead “shall”

### **A16.3**

Delete section 16 (3) and 16 (4).

## **Section 17**

### **A17**

Renumber as new section 32.

**A17.1**

Insert after subsection 1 (1), as a new subsection 3 (2)

- (2) when a local council submits a draft coastal management program to the Minister for certification under this section, it must provide to the Minister a statement warranting its preparation and content are in compliance with the relevant provisions of the Coastal Management Manual; and or a statement identifying and explaining any inconsistency of the draft Coastal Management Program with the requirements of the Manual.

Renumber existing subsection (2) as new subsection 3 (3)

**A17.2**

Section 1 (2)

After “may certify”, insert, “decline to certify at that time,”

**A17.3**

Section 1 (3)

Delete “may, after” insert instead “shall, within 28 days”

After “program and” insert “take timely action to”

**A17.4**

Insert after subsection 1 (2), a new subsection 3 (4)

- (4) where the Minister declines to certify at that time, or refuses to certify a draft coastal management program, under subsection (3) above, the Minister shall provide in writing to the local council reasons for declining at that time, or refusing to certify a draft coastal management program; and a statement of actions required to be undertaken by the local council, before the draft coastal management program will be further considered by the Minister for certification under this section.

**A17.5**

Renumber existing subsection 17 (3) as new subsection 30 (5)

Renumber existing subsection 17 (4) as new subsection 30 (6)

**Section 18**

**A18**

Renumber as new section 33.

**A18.1**

Section 1 (1)

Delete “is to ensure that” insert instead “shall review”

Delete “is reviewed”

**A18.2**

Section 1 (2)

Delete “at any time”

After the last words ‘management program’ insert which has been certified and adopted under this Part.”

**A18.3**

Section 1 (3)

Delete “at any time”

After the last words ‘management program’ insert “which has been certified and adopted under this Part.”

**A18.5**

Insert after section 18 (4), as a new subsection 31 (5)

- (5) A coastal management program certified under this Part may not be wholly repealed by local council under subsection (4) above, unless a replacement coastal management program has been certified and adopted under this Part.

**Section 19**

**A19** Renumber as new section 34.

**A19.1**

Section 1 (1)

After 'program' insert 'certified under this Part'

**A19.2**

Section 1 (2)

After 'program' insert 'certified under this Part'

**A19.3**

Insert after section 19 (2), as a new subsection 32 (3)

- (3) A copy of the coastal management program certified under this Part must be published in a hard copy newsletter or other hard copy periodical published by or for the local council, within months of its certification.

**Section 20**

**A20** Renumber as new section 35.

**A20.1**

Section 2 (1)

Insert as new paragraph (b)

- (b) has failed to take the actions indicated by the Minister under s 30(4) as necessary to achieve the certification of their coastal management program, or

An renumber current paragraph 20 (1) (b) as section 33 (1) (c).

**A20.2**

Section 2 (2)

Delete current subsection (2) insert instead

- (2) Subject to the Regulations, the provisions of this Part apply to the Minister in the preparation and adoption of coastal management program.

**A20.3**

Section 2 (3)

Delete 'is taken to have' insert instead 'shall have effect as if it had'

**A20.4**

Section 2 (4)

Delete 'is to' insert instead "shall"

After 'Council' insert "before deciding to act, and subsequently"

**A20.5**

Section 2 (5)

Re number as section 33 (2)

Delete 'is to' insert instead "shall comply with a notice given under this section, and "

**A20.6**

Section 2 (6)

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Delete 'is to' insert instead "shall"

**A20.7**

Section 2 (7)

Delete subsection (7) and insert instead

- (7) The costs incurred in carrying out the functions under this section, may be recovered by the Minister from a local council on whose behalf the Minister has prepared a coastal management program' under this section, as a debt in any court of competent jurisdiction.

**A20.8**

Section 2 (8)

Delete subsection and insert instead

- (8) Nothing in this section prevents the Minister administering this Act from reporting to the Minister administering the *Local Government Act 1993*, in accordance with section 30 of this Act, any failure by a local council to comply with a direction under sections 13 (1) or 14 (2) of this Act.

**A20.9**

Section 2 (9)

Delete subsection (9)

**A20.10**

Reorder the subsections of proposed new section 35 Minister to prepare CMPs in certain circumstances - as follows:

Subsection (1) → remain (1) see comments in A20.1 above

Subsection (2) → insert current s 20 (4) see comments in A20.4 above

Subsection (3) → insert current s 20 (6) see comments in A20.6 above

Subsection (4) → insert current s 20 (5) and (7) see comments in A20.5 and A20.7 above

Subsection (5) → insert current s 20 (2) see comments in A20.2 above

Subsection (6) → insert current s 20 (3) see comments in A20.3 above

Subsection (7) → insert current s 20 (8) see comments in A20.8 above

Subsection (8) → insert current s 20 (9) see comments in A20.9 above

Delete heading

**Part 3 Division 3 - Coastal Management Manual****Section 21**

**A21** Renumber as section 12.

Re-order all subsequent section numbers.

**A21.1**

Section 2 (1)

Delete "is to" insert instead "shall"

**A21.2**

Section 2 (2)



Delete “is to” insert instead “shall”

**A21.3.1**

Section 2 (3)

Delete “is to” insert instead “shall”

**A21.3.2**

Section 2 (3) (b)

After “hazard mapping,” insert “reliable indicators of”

After ‘ecological health’ and before ‘cost benefit analysis’, insert “appropriate methods of “

After ‘cost benefit analysis’, and before ‘implementation, insert “a suite of State Government approved options for coastal management program “

**A21.3.3**

Section 2 (3) (d)

After ‘consultation’ insert “with a broad cross section of the community, with local stakeholders and other public authorities “

**A21.3.4**

Section 2 (3) (e)

Delete ‘coastal erosion’ insert instead “coastal hazard”

**A21.3.5**

Section 2 (3) (g)

Delete ‘guidance regarding’ insert instead “recommended best practice for”

**A21.4**

Section 2 (4)

After ‘from time to time’ insert “, following consideration of advice from the Coastal Management Council, “

**A21.5**

Section 2 (5)

Delete current subsection, insert instead

- (5) The Minister shall ensure that the Coastal Management Manual (and any amendment of the manual) is published in the Gazette, and as a web-mounted electronic version; and in an easily updatable hard copy format, which can be purchased.

**A21.6**

Section 2 (6)

Delete current subsection, insert instead

- (6) An up-to-date copy of the Manual, as amended, must be available for public inspection without charge:
  - (a) as an electronic version, on the websites of the Department and of the Office of Environment and Heritage,
  - (b) as a hard copy, at the office of the Department and of the Office of Environment and Heritage, during ordinary office hours.

**A21.7**

After Section 21  
Re-number heading  
Insert before proposed new section 36

**Part 3 Division 6 – Obligations of local councils and other public authorities**

**Section 22**

**A22**

Re-number as new section 36.

**A22.1.1**

Section 2 (1)

Delete “is to give effect to” insert instead “shall implement” where ‘is to’ appears twice in the Delete “is to have regard to” insert instead “shall act in accordance with”,

**A22.2.1**

Section 2 (2)

Delete “is to” insert instead “shall”

**A22.2.2**

Section 2 (2) (a)

Delete “the plans, strategies, programs and reports to which ”

insert instead “the Community strategic plan (s 402), Resourcing strategy (s 403), Delivery program (s 404), Operational plan (s 405), community engagement strategy, annual report and or state of the environment report prepared under the relevant sections of ”

Delete ‘applies’

**A22.2.3**

Section 2 (2) (b)

After ‘planning proposals’, insert “, draft local environment plans, or amendments to LEPs, “

**Section 23**

**A23**

Re-number as new section 37

**A23.1**

Section 2 (1)

Delete “are to have regard to” insert instead “shall be obliged to liaise, negotiate with and assist councils in implementing a certified ”

**A23.2**

Delete current section 23 (2) insert instead

(2) In particular, in the preparation, development, adoption and review of, and in the contents of, any plans of management required to be produced under other Acts, those public authorities shall act in accordance with the objects of this Act, the procedures and directions contained in the Manual and not inconsistently with the content of any certified coastal management program relevant to the area the subject of that plan;

**A23.3**

Insert three additional subsections

- (3) If, or when, a local council consults another public authority under s of this Act and the public authority “liaises, negotiate with” the councils pursuant to s X, but agreement cannot be reached on how what actions the public authority will take, and or what funding it will allocate to assist a local council to implement its certified coastal management program, either the council or the public authority may refer the matter to the Minister administering this Act.
- (4) If, or when, another public authority consults a local council in the preparation, development, adoption and review of a plan of management required to be produced under other Acts, and “liaises, negotiate with” the council, but agreement cannot be reached on what actions the local council will take, and or what funding it will allocate to assist the public authority to implement a plan of management produced under another Acts, consistently with a certified coastal management program, either the council or the public authority may refer the matter to the Minister administering this Act.
- (5) Where a local council or other public authority refers the lack of agreement under subsection (3) or (4) above, the Minister shall consult the relevant minister responsible for the public authority, to determine the actions that the public authority shall take to assist the council to implement its certified coastal management program; and or the actions that the local council shall take to assist another public authority to implement a plan of management consistently with relevant certified coastal management programs.

## **Part 4 - NSW Coastal Council**

### **Section 24**

#### **A24**

Renumber as section 38

#### **A24.1.1**

**Re name the new independent body to become NSW Coastal Management Council**

Section 2 91)

After ‘Coastal’ insert ‘Management’ to  
rename it as ‘NSW Coastal Management Council’ OR

#### **A24.1.2**

After ‘Coastal’ insert ‘Management Advisory’ to  
rename it as ‘NSW Coastal Management Advisory Council’

#### **A24.2.1**

Section 2 (2)  
Delete ‘is to’ insert instead “shall”

#### **A24.2.2**

**T provide a slightly larger membership for the Coastal Management Council**

Delete ‘at least 3 and not more than 7’  
Insert instead “at least 7 and not more than 11 “  
OR  
Insert instead ”not less than 9”

#### **A24.3**

**T provide a superior membership structure for the Coastal Management Council**

## Section 2 (3)

After 'Council must have' insert 'relevant experience, a demonstrable association with a stakeholder group involved in coastal management in New South Wales, and'

Delete the phrase 'in one or more of ' and insert after 'expertise' the phrase 'in a discipline relevant to coastal management'.

Delete the fields cited as (a) – (g)

**A24.4**

Amend section 24 (4)

After the words 'expertise in one or more' delete the phrase 'fields set out in subsection (3)'.

Insert instead 'the following fields': the list in section 2 (3)(a) – (g).

**A24.5**

Section 2 (5)

Delete subsection (5) insert instead

- (5) in appointing a member, the Minister shall consider the need for gender balance, fair geographic representation and the importance of having a range of stakeholders with expertise and experience in coastal zone management among members of the Council.

**A24.6**

Section 2 (6)

Delete subsection (6) insert instead

- (6) The Minister, after consulting Local Government NSW, shall appoint an additional person with expertise in a relevant discipline under section 24 (4) and experience in chairing boards or committees of management, as the Chair of the Council.

**Section 25**

**A25** Renumber as section 39

**A25.1.**

Section 2 Heading

Before Functions' insert "Role and

**A25.1.1**

Section 2 (1)

Delete 'Council has' insert instead "Management Council shall have"

**A25.1.2**

Delete current 25 (1) insert instead:

- (1) The role of the NSW Management Council shall be to
- a) improve the coordination of the coastal management policies and activities of all stakeholders involved in managing the state's coastal zone, relating to the coastal zone and to facilitate the proper integration of their management activities;
  - b) provide active leadership to the state's coastal management community in implementing CZMPs, CMPs and any State environmental planning policy on coastal management;

- c) support and encourage public participation and stakeholder engagement in coastal management and planning, and increase public and stakeholder awareness, and understanding of coastal processes and management actions;
- d) oversee, monitor and report annually to Parliament on progress in, and effectiveness of local councils' and other public authorities' implementation of CZMPs and CMPs, and any measures thought appropriate to improve this rate of progress or level of effectiveness;
- e) develop, in association with coastal management stakeholders, advice to the Minister on the appropriate refinement of the coastal management policy framework; governance structure and funding arrangements for future management of the state's coastal zone;
- f) to provide advice to the Minister on the appropriate administration of the Act, and or the appropriate exercise of Minister's powers under the Act.

**A25.1.3****T clarify, improve and extend the Functions of the Coastal Management Council**

Insert after current draft section 2 (1) (b) new clause:

- (c) to provide advice to a public authority or another stakeholder in the management of the state's coastal zone, on the application and or intended effect of this Act and or associated coastal management planning instruments, where such advice is requested in writing by a public authority or stakeholder;

**A25.1.4**

Insert after that, three additional functions

- (d) to co-ordinate the policies and activities of government, public authorities and non-government stakeholders, relating to the management of the coastal region and facilitate the proper integration of their management activities;
- (e) to provide to public authorities references to and or information, suggestions or options for, current best practice in addressing coastal management 'issues';
- (f) to encourage and support public participation in coastal management and planning and to promote greater public awareness, education and understanding of coastal processes and coastal management actions;

Renumber s 25 (1) (c) as s 24 (1) (g)

**A25.1.5**

Section 2 (1)

Renumber subsection (1) as (2)

**A25.2.1**

Section 2 (2) (a)

Delete is to have regard to' insert instead "shall act in accordance with "

**A25.2.2**

After section 25 (2) (b) insert two new clauses:

- (c) may form advisory committees or convene working groups, as appropriate;

---

(d) may draw on the resources of the Department of Planning and Environment to establish, and where appropriate, supplement a standing secretariat of executive and administrative support staff.

**A25.2.3**

Section 2 (2)

Re-number subsection (2) as (3)

**Section 26****A26**

Re-number as section 40.

**A26.1.1**

Section 2 (1)

insert "Management" before 'Council'; OR

insert "Management Advisory" before 'Council';

**A26.1.2**

Delete 'is to' insert instead "shall"

**A26.1.3**

Section 26 (1)

**T clarify the role of the Coastal Management Council in conducting performance audits**

Delete current subsection (1) insert instead

(1) As part of its monitoring and reporting role, the NSW Coastal Management Council shall provide in its annual report to NSW Parliament an overview of local councils' progress in implementing CMPs in that year, using relevant indicators and or key milestones.

**A26.1.4**

Section 2 (1)

Re-number current subsection (1) as (2)

**A26.2.1**

Section 2 (2)

Delete 'is to' insert instead "shall be"

**A26.2.2**

After subsection 26 (2) (b) insert a new subsection

(c) identify any opportunities available for assistance and or co-operation, by other stakeholders, whether public authorities, non-government organisations and or the private sector, which may aid the local council to implement its certified and adopted coastal management program.

**A26.3.**

Section 2 (3)

---

After the words ‘information or records (or both)’ insert “and access to such areas controlled by council  
“

**A26.4**

Section 2 (4)

Delete ‘is to’ insert instead “shall”

After ‘this section’ insert “within 28 days and shall co-operate generally with the Coastal Management Council in its audit.”

**A26.5**

Section 2 (5)

Delete current subsection (5) insert instead

- (5) At the conclusion of a performance audit under this section, the NSW Coastal Management Council shall provide a report to the Minister and the relevant local council.
- (6) The Minister shall table in the NSW Parliament a report by the NSW Coastal Management Council on its performance audit of a local council’s implementation of its coastal management program, within 28 days of receiving the report;
- (7) The Coastal Management Council shall include a summary of its report on any performance audit of local council in its annual report to NSW Parliament.

**A26.6**

Section 2 (6)

Delete current subsection (6) insert instead

- (6) In preparing its report the NSW Coastal Management Council shall consider whether the local council
  - (a) has acted in accordance with the Objects of the Act, the procedures of the Manual, the directions of the Minister and or
  - (b) has encountered difficulties largely beyond its control;
  - (c) has faithfully implementing a certified or adopted coastal management program;
  - (d) has taken (any) appropriate steps to implement the coastal management program,
  - (e) has not complied with its coastal management program to minor extent
  - (f) has not complied and or is not complying with its coastal management program to a significant extent

**A26.7.1**

Renumber current subsection (7) as subsection (8)

**A26.7.2**

Delete current subsection (7) insert instead new section (7)

- (7) In its report to the Minister the NSW Coastal Management Council may make recommendations to the Minister on:
  - (a) appropriate remedial actions required of the local council;

- (b) relevant actions by other public authorities, local stakeholders and or other bodies which would assist the local council to implement its coastal management program; and or
- (c) whether the Minister should refer the matter to the Minister administering the *Local Government Act 1993* for further consideration.

**A26.7.3**

Delete heading

**Part 5 Miscellaneous**

Renumber heading as Part 6 Miscellaneous, relocate to before Section 43.

**Section 27**

**A27**

Renumber as Section 43

**A27.1**

Section 27

Delete current unnumbered section, insert instead

- (1) Development consent must not be granted under the *Environmental Planning and Assessment Act 1979* to development for the purposes of coastal protection works in a coastal *conservation* area identified by the relevant *SEPP*.

**A27.2**

Section 27

Insert as a new subsection (2)

- (2) Development consent must not be granted under the *Environmental Planning and Assessment Act 1979* to development for the purposes of coastal protection works in any other coastal management area identified by the relevant *SEPP*, unless the consent authority is satisfied that the works will not, over the life of the works:

**A27.3**

Section 27 (a)

Renumber as subsection 2 (2) (a)

**A27.4**

Section 2 (b)

Renumber as subsection 27 (2) (b)

**A27.5**

Section 27

After (b) insert new paragraph (c)

- (c) 'adversely affect the long term persistence or amenity of any nearby beach'.

**Section 28**

**A28**

Renumber as Section 41



**A28.1**

Before Section 28

Insert new heading

**Part 5 Application of current law re water boundaries**

**A28.2**

**T align the Bill with modern legal terminology**

In the heading delete the words 'erosion and'

**A28.3**

**to unambiguously declare the current law**

After Section 28

Insert as new section 42

**42 Codification of common law rules on effect of ambulatory boundary of MHW**

To remove all ambiguity the common law rules pertaining to boundaries of real property registered under the *Real Property Act 1900* (NSW), and the effect in law on such real property boundaries of the landward movement of the boundary formed by the line of mean high water mark (MHW), are declared as follows:

- (1) When the ambulatory boundary formed by the line of the mean high water mark (MHW) crosses a land title boundary originally defined by survey, by gradual movement in accordance with established legal principles, that section of the original boundary below MHW is lost to the sea, and the boundary of that part of the land title becomes the ambulatory boundary of MHW.
- (2) Where a segment of a registered land title, forming part of a private property, falls below the line of mean high water, under sub-section (1) above, that part which lies below MHW ceases to be land which is 'real property' and is deemed lost to the sea.
- (3) When a segment of land formerly above the MHW is lost to the sea under sub-section (2) above, its ownership reverts to the Crown as the State of New South Wales.
- (4) No compensation is payable by the State of New South Wales for the loss of any land to sea.

**A28.3**

Before proposed relocated draft section 27 as new section 43 Granting of development consent for coastal protection works. Insert new heading

**Part 6 Miscellaneous**

**A28.4**

Insert relocated draft s 27 as new section 43

43 Granting of development consent for coastal protection works.

**Section 29****A29**

Section 29 - delete the section

**A29.1**

Section 2 (1) - amend the subsection?

OR ?

**A29.2**

Section 2 (2) - amend the subsection?

**Section 30**

**A30** Renumber as section 44.

**A30.1.1**

Section 3 (1)

Before current (a) insert instead

- (a) afford a local council an opportunity to show why it is not failing to effectively implement its coastal management program; and why further action under this section is not required

**A30.1.2**

Section 3 (1)

Renumber current 30 (1) (a) as paragraph (b)

Renumber current paragraph (b) as paragraph (c)

add new subsection (d)

- (d) cause an Notice to be published in a newspaper circulating in the local council area, which advises readers of the council's failure to comply and refers them to the report available on the website of the Department;

**A30.2**

Section 3 (2)

Insert after 'any such report' insert 'or any report on the local council prepared by the NSW Coastal Management Council under section 26 [or new section 40].

**Section 31**

**A31**

Renumber as section 45.

**Section 32**

**A32**

Renumber as section 46.

**Section 33**

**A33**

Renumber as section 47.

**A33.1**

Section 3 (1)

**T improve the process of the Act's review**

After 'The Minister is to' insert ""appoint an independent party to "

**A33.2.1**

Section 3 (2)

After 'The review' insert "of this Act"

Delete 'is to' insert instead "shall"

**A33.2.2**

Section 3 (2)

Re-number as subsection (3)

**A33.2.3**

Section 3 (2)

Delete current subsection (2) insert instead as (2)

- (2) The review is to include, via a process of public consultation, the appropriateness of the boundaries defining any coastal management areas, and or the coastal zone generally, as shown in the maps prepared for these purposes under the *Coastal Management SEPP 2016*;

**A33.3.1**

Section 3 (3)

Delete 'is to' insert instead "shall"

**A33.3.2**

Section 3 (3)

After 'be tabled' insert "by the Minister administering this Act,

**A33.3.3**

Section 3 (3)

Delete 'within 12 months' insert instead "within 6 months"

**A33.3.4**

Section 3 (3)

Re-number current subsection (3) as new subsection (4)

**A33.5**

After new subsection 33 (4) insert a new subsection (5)

- (5) The Minister will respond to the report of the outcome of the review in the relevant House of Parliament within 6 months of its tabling.

**Section 34**

**A34**

Re-number as section 48.

Retain current draft provisions

**Section 35**

**A35** Re-number as section 49.

**A35.1**

Section 35

Delete current provision insert instead

The *Coastal Protection Act 1979* and the *Coastal Protection Regulation 2011*, or parts thereof, shall be repealed on dates to be proclaimed.

**Schedule 1****AS1.1**

Delete **Schedule 1** – local government areas and sediment compartments.  
(This list should appear in the relevant section of the Manual)

**Schedule 2****AS2.1**

Insert in the heading, after 'NSW Coastal' insert "Management"

**AS2.2**

Section 2

Delete 'not exceeding 3 years' insert instead "not exceeding 4 years"

**AS2.3**

Other recommended changes?

**AS2.4**

Other recommended changes?

**AS2.17**

After current Schedule 2 section 16, insert new Part

**Part 4 Secretariat**

- 17 To assist the NSW Coastal Management Council, the Minister shall direct the Secretary of the Department to create a standing Secretariat for the Council within the Department, comprised of, at a minimum: one executive officer and one administrative support officer;
- 18 The Executive Officer shall be responsible for the implementation of Council decisions and shall report to and be directed generally by the Chair of the Council;
- 19 The Secretary may second existing staff from within the Department or seek new staff to fill the positions of the Secretariat;
- 20 With the Minister's approval, the Secretary may appoint additional project staff to the Secretariat, to assist the Council in the conduct of a performance audit of a local council's implementation of its coastal management program, under section 26 [ → 38].

**Schedule 3****AS3.1**

Section 4 - delete the section

**AS3.2**

Section 5 - delete the section

**AS3.6.1**

Section 6

Delete current subsection (1), (2), (3) and (4) insert instead

- 6** (1) If at the commencement of this Act, a draft coastal zone management plan being prepared under the former Act, is not yet ready for submission to the Minister for certification, the local council shall continue the preparation of the coastal zone management plan, under the provisions of this Act, in accordance with the directions of the Manual, under it is ready for submission to the Minister for certification by the Minister under section 19
- (2) If at the commencement of this Act, a draft coastal zone management plan prepared under the former Act, has been submitted to the Minister for certification, the Minister shall deal with the draft coastal zone management plan under section 19 of this Act;
- (3) A coastal zone management plan certified and made in accordance with subsection (2) may be certified as a coastal management program prepared and adopted under this Act, if the local council's program for implementation is in an appropriate form.

### **AS3.7**

Section 7 - delete the section

Insert instead

- (1) Sections 55O and s 55T Part 4C (Temporary coastal protection works) of the former Act are directly repealed, to extinguish the possibility of any new works being planned or constructed following the commencement of this Act;
- (2) Temporary coastal protection works constructed by private landowners under the provisions of the former Act shall be the subject of a development application to a local council within 12 months of the commencement of this Part of this Act, or
- (3) At the expiry of that 12 month period, such works shall be deemed to be no longer lawful as 'temporary coastal protection works' and a public authority may direct the landowner responsible for their construction to remove such works;
- (4) At the expiry of that 12 month period, a landowner who has constructed temporary coastal protection works shall be liable for their removal within 24 months of the commencement of this Part.
- (5) Where a landowner responsible for construction of 'temporary coastal protection works' has been given a direction to remove the works but has failed to do so within 24 months of the commencement of this Act, a public authority shall remove the works, and shall be capable of recovering the costs of their removal from that landowner, including if necessary in a court of competent jurisdiction.

### **AS3.8.1**

Section 8

Delete 'a coastal management program under section 13 (1)' and insert instead "a coastal zone management plan under section 14 of this Act."

### **AS3.8.2**

Section 7

Delete subsection (2).

**Schedule 4**

**Schedule 4.1**

amendments proposed to the *Environmental Planning and Assessment Act 1979*

**AS4.1.1**

Section [1]

Delete proposed omission

Retain provision 79C (1)(a)(v) contents of a coastal zone management plan’;

**AS4.1.2**

Delete ‘2015’ insert instead “2016”.

**AS4.1.3**

Section [3]

Delete proposed omission

Retain provision 89J (1) (a) ministerial concurrence for state significant development

**AS4.1.4**

Section [4]

Delete proposed omission

Retain provision 115ZG (1)(a) ministerial concurrence for state significant infrastructure

**Schedule 4.2**

amendments proposed to the *EP&A Regulation 2000*,

**AS4.2**

No amendments are proposed.

**Schedule 4.3**

amendments proposed to the *Land and Environment Court Act 1979*

**AS4.3.1**

Delete proposed omission of “*Coastal Protection Act 1979*” from section 20 (3) (a).

Retain name of that Act in s 30 (3) (a)

Insert before “*Coastal Protection Act 1979*” in list in section 20 (3) (a), ‘*Coastal Management Act 2016*”.

**Schedule 4.4**

amendments proposed to the *Local Government Act 1993*

**AS4.4.6.1**

Section [6]

Delete the proposed omission and insertion

**AS4.4.6.2**

Section [6] re s 73 (3)(b)

After 'the preparation' delete 'or making' insert instead " , making or implementation"

**AS4.4.6.3**

Section [6] re s 733 (3)(b)

Renumber proposed paragraph (b) as paragraph (b1)

Insert after (b)

(b1) the preparation, adoption and implementation of a coastal management program under the *Coastal Management Act 2016*, and"

**Schedule 4. 5**

amendments proposed to the *Rural Fires Act 1997*

**AS4.5**

No amendments are proposed.

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**Additional provisions****Dynamic coastlines and property boundaries**

See suggested section 4 **Codification of common law rules regarding ambulatory boundary**  
In paragraph **A28.2** above.

Relevant provisions are in preparation to define a process for local councils to identify via the CZMP process, land titles of coastal properties affected, or likely to be affected, by the ambulatory MHWM boundary, and to provide formal notice to the Land Titles Office when Council adopts the CMP; and / or when council officers next issue a Planning Certificate under s 149 of the *EP&A Act 1979*.

Other provisions in prep include cognate amendments the *Real Property Act 1900* (NSW) to set out the procedures to be adopted ...

If the Land Titles Office is notified, by a local council that it has identified, via its CZMP process, land titles of real property in the coastal zone which are affected, or likely to be affected, by the landward movement of the ambulatory boundary of MHWM ... The Registrar General of Land Titles shall:

- a) annotate the folios of relevant land titles, to record Council's advice that the original boundaries of the property may be, or are now, affected by the landward movement of the ambulatory boundary of the MHWM;
- b) require a fresh survey at every next dealing, to determine the position of the original boundary and the position at that time of next dealing, of the line of MHWM; and
- c) require that survey to ascertain if, and if so to what extent, the line of MHWM has crossed the original boundary originally defined by survey;
- d) amend, where appropriate, the description of the real property to include any ambulatory boundary acquired since registration; and
- e) amend any map attached to the Certificate of Title to reflect any affected boundary of the property, to correct any error created 'ex post facto', by the ambulatory landward movement of the MHWM;
- f) repeat the requirement for fresh survey and further amendment of the relevant boundary or boundaries at each time of next dealing; and
- g) when the real property is wholly lost to the sea, extinguish the land title.

**Assisted relocation a.k.a. planned retreat**

Amendments will be proposed to create a voluntary land exchange scheme to assist local councils which have adopted 'planned retreat' strategies in line with NSW Government advice, but no capacity to further assist residents affected by the onset of destructive coastal hazards.

A new statutory scheme is proposed to connect existing state government powers, facilities and programs, under different Acts and coordinate the actions of relevant Ministers.

ENDS.



**Re-incorporation of revised provisions re Coastal Zone Management Plans**

One major recommendation to the Minister in the Australian Coastal Society’s Submission on the Coastal reforms Stage Two and on the draft Coastal Management Bill 2015, is to maintain the legislative effect of provisions which relate to Coastal Zone Management Plans.

ACS recommends the next version of the Bill 2016 incorporate the twelve sections of the *Coastal Protection Act 197* (ss 55A – 55L) which provide for the preparation, consultation, making, certification, gazettal, commencement, amendment and repeal, availability and enforcement of coastal zone management plans.

Paragraph **A13.5** recommends the use of a new heading

**Part 3 Division 4 Coastal Zone Management Plans**

An a new first section **14 Purpose of coastal zone management plans.**

- 14** The purpose of a Coastal Zone Management Plan prepared and adopted under the provisions of this Act, shall be to define the overall long-term plan and priorities for the management of the coastal zone in that local council area, in accordance with the Objects of this Act.

Paragraph **A13.6** recommends the insertion of the twelve former provisions governing preparation of Coastal Zone Management Plans, sections 55A – 55L of *CPA Act 1979*.

These sections are translated into proposed sections 1 – 2 of the new version of the Coastal Management Bill 2016 in the following table.

**Table of provisions’ translation**

<b>CPA Act 1979 -- &gt;</b>	<b>CM Bill 2016</b>
55A. Minister to have regard to objects of Act	s 15 Minister to have regard to objects of Act
55B Requirement for coastal zone management plans	s 16 Requirement for coastal zone management plans
55C Matters to be dealt with in coastal zone management plans	s 17 Matters to be dealt with in coastal zone management plans
55D Guidelines for preparation of draft coastal zone management plans	s 18 Guidelines for preparation of draft coastal zone management plans
55E Public consultation	s 19 Public consultation
55F Submissions	s 20 Submissions
55G Certification by Minister	s 21 Certification by Minister
55H Gazettal and commencement of coastal zone management plans	s 22 Gazettal and commencement of coastal zone management plans
55I Amendment and repeal of coastal zone management plans	s 23 Amendment and repeal of coastal zone management plans
55J Availability of coastal zone management plans	s 24 Availability of coastal zone management plans
55K Breach of coastal zone management plan: offence	s 25 Breach of coastal zone management plan: offence
55L Breach of coastal zone management plan: restraint	s 26 Breach of coastal zone management plan: restraint

*Australian Coastal Society (ACS) Submission Stage Two Coastal reforms – **Appendix 2***  
***Revised CZMP provisions from CPA Act 1979 -- > CM Bill 2016***

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The text recommended for these new sections, ss 1 – 26, based on the former provisions but updated and amended where appropriate, are shown on the following pages.

**Section 15**

Amended s 55A

**Minister to act consistently with objects of Act**

15 In exercising his or her functions under this Part, the Minister shall do so consistently with the objects of this Act.

**Section 16**

Unamended s 55B

**16 Requirement for coastal zone management plans**

- (1) A council whose area, or part of whose area, is included within the coastal zone may, and must, if directed to do so by the Minister, make a coastal zone management plan in accordance with this Part.
- (2) Two or more councils whose areas adjoin may decide to join in the making of a coastal zone management plan in accordance with this Part.
- (3) If, under subsection (2), two or more councils decide to join in the making of a coastal zone management plan, a reference in this Part:
  - (a) to a council includes a reference to those councils, and
  - (b) to an area includes a reference to the areas of those councils.
- (4) A coastal zone management plan may be made in relation to the whole, or any part, of the area included within the coastal zone.
- (5) A council must, if directed to do so by the Minister, review the council's existing coastal zone management plan and make a new plan in accordance with this Part to replace the existing plan.
- (6) A council required under this section to review its existing coastal zone management plan and make a new plan to replace that existing plan must do so:
  - (a) within 12 months after being directed to do so by the Minister, or
  - (b) within such longer period as may be agreed to by the Minister.
- (7) If a council fails to comply with this section, the Minister may:
  - (a) review the council's existing plan and make a new plan to replace that existing plan, and
  - (b) recover from the council the costs of doing those things, and
  - (c) publish the new plan in the Gazette.Such a new plan is taken to have been made by the council in accordance with this Part.
- (8) For the avoidance of doubt, the Minister may give a direction under subsection (1) or (5) in relation to part of an area included within the coastal zone.

(9) In this section,

**"coastal zone"** includes land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries.

**Section 17**

Amended 55C

**17 Matters to be dealt with in coastal zone management plans**

- (1) A coastal zone management plan must make provision for:
- (a) protecting and preserving beach environments and beach amenity, and
  - (b) ensuring continuing and undiminished public access to beaches, headlands and waterways, particularly where public access is threatened or affected by accretion, and
  - (c) where the plan relates to a part of the coastline, the management of risks arising from coastal hazards, and
  - (d) where the plan relates to an estuary, the management of estuary health and any risks to the estuary arising from coastal hazards, and
  - (e) the impacts from climate change on risks arising from coastal hazards and on estuary health, as appropriate, and
  - (f) the construction of coastal engineering works for the protection of real property affected or likely to be affected by coastal hazards, where this is consistent with paragraphs (a) – (e) above, and
  - (g) where the plan proposes the construction of coastal protection works that are to be funded by the council or a private landowner or both, the proposed arrangements for the adequate maintenance of the works and for managing associated impacts of such works (such as changed or increased beach erosion elsewhere or restriction of public access to beaches or headlands).
- (2) A coastal zone management plan must note, and refer to, but need not include any relevant matters dealt with in any plan made under the *State Emergency and Rescue Management Act 1989* in relation to the response to emergencies,
- (3) A coastal zone management plan must include as a schedule, a table which records
- (a) actions or activities proposed by any public authority to be carried out by it on or relating to any land or other assets owned or managed by a public authority, which that public authority has agreed would assist council to implement its CMP.
  - (b) actions or activities which other non-government stakeholder(s) in local coastal management have agreed to take, whether or not to be carried out on or relating to any land or other assets owned or managed by a public authority to which that public authority has agreed, which would assist council to implement its CMP.
- (4) A coastal zone management plan must not include any action or activity by or relating to any land or other assets owned or managed by a public authority, unless the public authority has agreed to the inclusion of those proposed actions or activities in the plan.

- (5) Despite subsection (1), the Minister may give a direction under section 55B that a council make a coastal zone management plan that makes provision for only one or more of the matters referred to in that subsection as specified in the direction.

**Section 18**

Unamended s 55D

**18 Guidelines for preparation of draft coastal zone management plans**

- (1) A council is to prepare a draft coastal zone management plan in accordance with the Minister's guidelines.
- (2) Without limiting the power of the Minister to determine the guidelines, the Minister may adopt as guidelines a manual referred to in section 73 (5) (b) of the *Local Government Act 1993*.
- (3) The Minister is to ensure that notification of any guidelines is published in the Gazette.
- (4) A copy of the Minister's guidelines must be available for public inspection on the Internet website of the Office.

**Section 19**

Unamended s 55E

**19 Public consultation**

After preparing a draft coastal zone management plan, the council is:

- (a) to give public notice in a newspaper circulating in the locality of the place at which, the dates on which (comprising a period of not less than 21 days), and the times during which, the draft coastal zone management plan may be inspected by the public, and
- (b) to publicly exhibit the draft plan at the place, on the dates and during the times set out in the notice.

**Section 20**

Unamended s 55F

**20 Submissions**

- (1) During the period of public exhibition of a draft coastal zone management plan, any person may make a submission in writing to the council with respect to its provisions.
- (2) The council must consider all submissions so made.
- (3) The council may amend the draft coastal zone management plan as a result of the submissions.

**Section 21**

Amended 55G

**21 Certification by Minister**

- (1) After considering any submissions, the council is to submit the draft coastal zone management plan to the Minister for certification under this section.
- (2) Before submitting the draft coastal zone management plan to the Minister under subsection (1), the council must consult with other public authorities in the manner specified in the Minister's guidelines.
- (3) Before certifying the draft coastal zone management plan submitted to the Minister under subsection (1), the Minister may refer the plan to the NSW Coastal Management Council for advice.
- (4) The Minister may:
  - (a) certify, or refuse to certify, that a draft coastal zone management plan submitted to the Minister has been prepared in accordance with the requirements of this Act, or
  - (b) if the Minister has referred the plan to the NSW Coastal Management Council for advice under subsection (3) and the NSW Coastal Management Council has recommended changes to the plan-return the plan to the local council and direct that council to amend and resubmit the plan with the recommended changes.
- (5) A local council required to amend and resubmit a plan with recommended changes must do so:
  - (a) within 90 days after being directed to do so by the Minister, or
  - (b) within such longer period as may be agreed to by the Minister.
- (6) If a council fails to amend and resubmit a plan as required by this section, the Minister may:
  - (a) make the plan with the recommended changes instead of the council, and
  - (b) recover the cost of making the plan from the council, and
  - (c) certify that the draft coastal zone management plan has been prepared in accordance with the requirements of this Act and publish it in the Gazette.

Such plan is taken to have been made by the council in accordance with this Part.



**Section 22**

Unamended s 55H

**22 Gazettal and commencement of coastal zone management plans**

- (1) If the Minister certifies that a draft coastal zone management plan has been prepared in accordance with the requirements of this Act, the council is to make the plan and publish it in the Gazette.
- (2) A coastal zone management plan takes effect on the date on which it is published in the Gazette or, if a later date is specified in the plan for its commencement, on the later date so specified.

**Section 23**

Unamended s 55I

**23 Amendment and repeal of coastal zone management plans**

- (1) A coastal zone management plan may be amended (in whole or in part) or repealed by a coastal zone management plan.
- (2) A coastal zone management plan can be repealed only by a coastal zone management plan that replaces it.

**Section 24**

Unamended s 55J

**24 Availability of coastal zone management plans**

- (1) A copy of a coastal zone management plan must be available for inspection by the public without charge at the office of the council during ordinary office hours.
- (2) A copy of a coastal zone management plan must be available for public inspection on the Internet website of the council within 7 days of its publication in the Gazette.

**Section 25**

Amended 55K

**25 Breach of coastal zone management plan: offence**

- (1) A person must not carry out work for the purpose, or that has the effect, of preventing or remediating beach erosion, or for protecting property affected or likely to be affected by beach erosion, unless the work is:
- (a) in accordance with the relevant coastal zone management plan, or
  - (b) development for which consent has been granted or exempt development under the *Environmental Planning and Assessment Act 1979* or an approved State significant infrastructure within the meaning of Part 5.1 of that Act,
- (2) However, if a person commits the offence under subsection (1) by placing material on a beach, or sand dune adjacent to a beach, and the material is comprised of
- (a) sand, or fabric bags filled with sand, the maximum penalty for the offence is 2,000 penalty units (in the case of a corporation) or 1,000 penalty units (in any other case).
  - (b) rocks, concrete, construction waste, debris or other material prescribed by the regulations the maximum penalty for the offence is 2,250 penalty units (in the case of a corporation) or 1,125 penalty units (in any other case).

**Section 26**

Amended 55L

**26 Breach of coastal zone management plan: restraint**

- (1) The Minister, a council or any person who resides in the relevant local council area may bring proceedings in the Land and Environment Court for an order to remedy or restrain breach of a coastal zone management plan.
- (2) If the Land and Environment Court is satisfied that breach of coastal zone management plan has been committed or that breach of coastal zone management plan will, unless restrained by an order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.
- (3) The functions of the Land and Environment Court under this section are in addition to and not in derogation of any other functions of the Court.
- (4) In this section,  
  
" **breach of coastal zone management plan**" means:
  - (a) a contravention of or failure to comply with a coastal zone management plan, and
  - (b) a threatened or apprehended contravention of or a threatened or apprehended failure to comply with a coastal zone management plan.
  - (c) the construction of 'new' unapproved 'temporary coastal protection works' after the commencement of this Act, and or the failure to remove temporary coastal protection works once the two year period of temporary use has expired.
- (5) This section does not apply to breach of coastal zone management plan that is an act or omission that is:
  - (a) development for which consent has been granted, exempt development or development that does not need consent under the *Environmental Planning and Assessment Act 1979* or an approved State significant infrastructure within the meaning of Part 5.1 of that Act,
- (6) Despite subsection (1), a council may not bring proceedings under this section to remedy or restrain breach of coastal zone management plan by the State or a NSW Government agency.

## **Proposed re-organisation of Coastal Management Bill 2016**

### **Part 1 Preliminary**

**Section 1** Name of Act

**Section 2** Commencement

**Section 3** Objects of this Act

**Section 4** Definitions

### **Part 2 – Coastal zone and management objectives for coastal management areas**

**Section** - re-name three of the four proposed ‘coastal management areas’ and

**Section** – ‘coastal conservation area’

**Section 7-** ‘coastal vulnerability area’

**Section** - coastal water bodies and environs’

**Section** – ‘coastal development area’

**Section 10** -- Matters relating to identification of coastal management areas

### **Part 3 Coastal management manual, plans and programs**

#### **Part 3 Division 1 – Application of Part**

**Section 11** - Part applies to local councils in coastal zone - stet

#### **Part 3 Division 2 -- Coastal Management Manual**

**Section 12** Insert draft section 21 re Manual

#### **Part 3 Division 3 -- Coastal Management Planning Policy**

**Section 13** Insert new section to refer to SEPP for coastal management made under *EP & A Act 1979*

#### **Part 3 Division 4 – coastal zone management plans**

[See Appendix for provisions re CZMPs -- s 55A - 55L of *CP Act 1979* updated as ss 13 – 26]

**Section 14** Purpose of Coastal Zone Management Plan

**Section 15** Minister to act consistently with objects of Act

**Section 16** Requirement for [coastal zone management plans](#)

**Section 17** Matters to be dealt with in [coastal zone management plans](#)

**Section 18** Guidelines for preparation of draft [coastal zone management plans](#)

**Section 19** Public consultation

**Section 20** Submissions

**Section 21** Certification by Minister

**Section 22** Gazettal and commencement of [coastal zone management plans](#)

**Section 23** Amendment and repeal of [coastal zone management plans](#)

**Section 24** Availability of [coastal zone management plans](#)

**Section 25** Breach of [coastal zone management plan](#) offence

**Section 26** Breach of [coastal zone management plan](#) restraint

#### **Part 3 Division 5 -- coastal management programs - CMPs**

[Insert current provision re CMPs -- s 12 -20 as ss 27 – 35]

**Section 27** Insert draft section 12 re purpose of CMPs

**Section 28** Insert draft section 13 re requirement for CMPs

**Section 29** Insert draft section 14 re preparation of CMP

**Section 30** Insert draft section 15 re Matters to be dealt with in CMP

**Section 31** Insert draft section 16 re Consultation

**Section 32** Insert draft section 17 re Certification, adoption and gazettal of CMP

**Section 33** Insert draft section 18 re Review, amendment and replacement of CMPs

**Section 34** Insert draft section 19 re Availability of CMPs

**Section 35** Insert draft section 20 re Minister to prepare CMPs in certain circumstances

**Part 3 Division 6 -- Obligations of local councils and other public authorities**

**Section 36** Insert draft section 22 re Implementation of CMP by local councils

**Section 37** Insert draft section 23 re Other public authorities shall liaise, negotiate with and assist

**Part 4 NSW Coastal Management Council**

**Section 38** Insert draft section 24 re Establishment of Council

**Section 39** Insert draft section 25 re Role and Functions of NSW Coastal Management Council

**Section 40** Insert draft section 26 re Performance audit of implementation of CMP

**Part 5 Application of current law re water boundaries**

**Section 41** Insert draft section 28 re Modification of doctrine of accretion

**Section 42** Insert new section re Codification of common law rules

**Part 6 Miscellaneous**

**Section 43** Insert draft section 27 re Granting of development consent to coastal protection works

**Section 44** Insert draft section 30 re Establishment of Council

**Section 45** Insert draft section 31 re Regulations

**Section 46** Insert draft section 32 re Delegation

**Section 47** Insert draft section 33 re Review of Act

**Section 47** Insert draft section 34 re Act to bind Crown

**Section 49** Insert draft section 35 re Repeal

**Schedule 1** insert draft Schedule 2 Constitution and Procedure of NSW Coastal Management Council

**Schedule 2** insert draft Schedule 3 Savings, transitional and other provisions

**Schedule 3** insert draft Schedule 4 Amendments of Acts and instruments

## Rationale for a revised definition of ‘beach’

### Introduction

This Appendix provides the rationale for the revised definition of beach proposed in the Australian Coastal Society’s Submission on Coastal reforms Stage 2.

The definitions proposed in the Coastal Management Bill 2015 for ‘beach’

**beach** means coastal lands that is generally composed of sand or similar sediment and that is limited to a range defined as submerged land to 40m depth seaward of the mean high water mark on the open ocean coast and 10m depth seaward of the mean high water mark in estuaries, and extends to the landward extent of beach fluctuation zone.

and for ‘beach fluctuation zone’

**beach fluctuation zone** means the range of locations a beach profile occupies from its fully accreted to its fully eroded condition.

provided in section 4 (1) **Definitions** are not supported for reasons discussed below.

### Discussion

The idea that there should be two definitions: one for estuary and another for open ocean coasts is not considered helpful. Referring to another term – beach fluctuation zone - to provide a key part of the definition of beach is not ideal. Further the definition refers to beaches being composed of ‘sand or similar sediment’, a rather imprecise phrase, when a simpler description might be ‘sand, pebbles and or shell’.

However the main concern of the ACS is that the geographic footprint of ‘beach’ is too wide. The definition provided properly describes a ‘beach system’, and other components within that larger system typically include the adjoining sand dunes and the bed of nearshore coastal waters ie submerged lands to depth of 40 m seaward of MHW. These are geographically distinct units with definable, though fluctuating, limits.

See Figure 2.1 Typical features of dynamic beach system, from CALM 2001, *Coastal Dune Management – Manual of Coastal Dune Management and Rehabilitation Techniques* (Coastal Unit, DLWC, 2001) shown below.

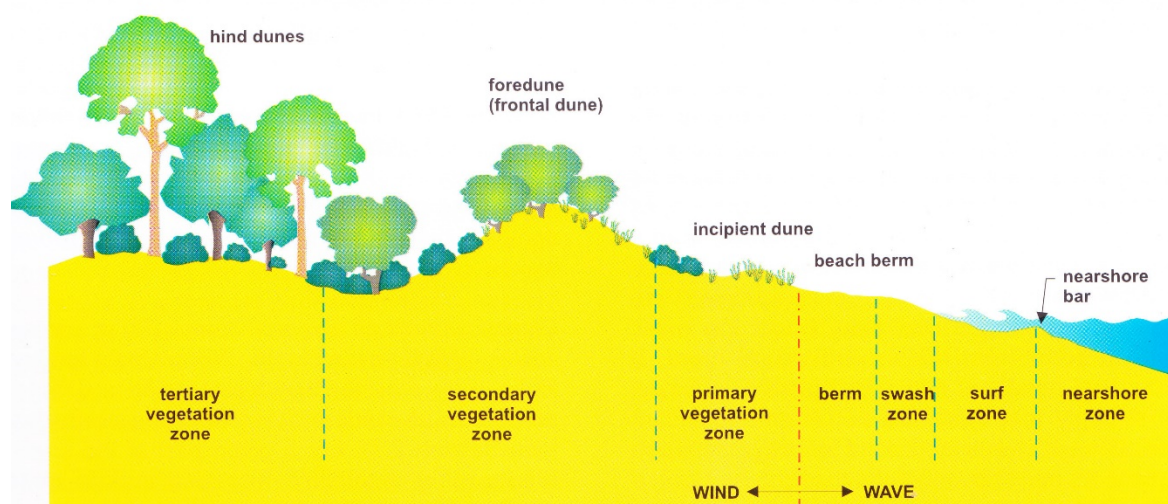


Figure 2.1 Typical features of a dynamic beach system.

Including all the elements of a ‘beach system’ into a single definition of ‘beach’ is therefore not supported. This approach reproduces the error of the *Crown Lands (Public Ownership of Beaches) Amendment Bill 2014* which also sought to define as ‘**core beach area**’ the whole of the ‘beach system’ even submerged lands to a depth of 40m! This was, and is, illogical.

In the view of the ACS the meaning of ‘beach’ should not have a special or extended meaning beyond the plain and ordinary meaning of the word. This starting point is consistent with the ‘literal approach’ to, or the ‘golden rule’ of, statutory interpretation. (See Ellis, 2013, 227-8). Thus, to assist statutory interpretation by good drafting in keeping with best practice, the legislative definition of ‘beach’, should not include areas which (though part of a ‘beach system’) are plainly not ‘beach’ in any normal sense or ordinary usage of the word: like the permanently submerged lands to 40m depth, or the crests or hind-slopes of coastal dunes.

Any person standing (or floating) in these locations would not consider themselves at the ‘beach’ and would, if asked, have to move – one seaward, the other landward - in order to be standing on the ‘beach’.

### Two-pronged approach

The ACS would therefore recommend a two-pronged approach to the definitional issue.

1/ Insert “system” after ‘beach’ in an amended version of the current definition.

2/ An insert above it a better definition of ‘beach’: for which see discussion below.

These recommended definitions are provided in the concluding summary.

As a starting point it may be useful to note that the national standard reference for spelling and definitions used in examinable legal academic writing, is the Macquarie Dictionary. (See Melbourne University Law Association, *Guide to Legal Citations* 3<sup>rd</sup> ed, 2010, 24). Though there may be other texts which could be cited, or different views about what ‘beach’ really means, or could mean, the following definition encapsulates the core of accepted current usage in Australian English.

### Ordinary meaning of ‘beach’

The *Macquarie Dictionary* (3<sup>rd</sup> ed, 1997) page 18 defines it thus

**beach** *noun* **1.** The sand or loose water-worn pebbles of the seashore. **2.** That part of the shore of the sea, or of a large river or lake, washed by the tide or waves.

Clearly there are two elements in the definition: one is the material underlying the seashore and the second is the area encompassed. Note my inclusion of the word ‘and’.

Note too that the word ‘seashore’ has a legal definition given by the common law courts, which equates ‘seashore’ with ‘foreshore, being ‘land between high and low water mark. (See *Mellor v Walmsley* (1905) 2 Ch 164, Romer 177)

As regards the first element, material: the use of ‘sand’, and ‘pebbles’ is clearly warranted. Though some may think of ‘pebbles’ as being smallish up to 60 mm, the ‘beach’ in Ballina Shire with ‘pebbles’ well in excess of 100 mm, often 150 mm, is well named as ‘Boulders’ Beach’. The suggested addition of ‘shell’ as a relevant material to include in the definition is based on personal experience of small areas of ‘beach’ being comprised of large volume of shell fragments. It is unlikely that the everyday understanding of ‘beach’ includes areas comprised of mud or silt, so the use of the term ‘similar sediment’ is not supported.

### **Geographic footprint**

Defining the geographic footprint of ‘beach’ in a generic sense, for the purposes of the Act, is the principal challenge. As noted above the current ambit of ‘beach’ as proposed to be defined, is too wide. Further, adopting useful definitions of appropriate boundaries is difficult because of the highly dynamic interface between land and sea.

This inclusion of the lands below low water mark, (LWM) ie permanently submerged lands down to 40m depth as ‘beach’ is not, in the view of the ACS, consistent with the normal meaning of ‘beach’ as given by the Macquarie Dictionary definition. Interpreting ‘beach’ to include all permanently submerged land below LWM down to 40 m depth, because they are ‘washed by the tides or waves’ would be to render the term meaningless. Submerged lands are not ‘washed by’ the tides and waves, they are permanently covered by tidal waters.

No sailor, swimmer, diver, surfer or boatie would, if they were on or in the state’s coastal waters below LWM, consider themselves to be on the ‘beach’. The inclusion of lands below LWM as ‘beach’ is thus not consistent with the plain and natural meaning of the word. It would be illogical to continue to include submerged lands within the definition of ‘beach’.

### **Low water mark limit of ‘beach’**

In the view of the ACS the LWM is the appropriate seaward boundary to adopt for the definition of ‘beach’, because clearly (sandy, pebbly) lands above this point are ‘washed by the tides or waves’, rather than permanently covered, as are submerged lands. The LWM has the advantage of being a well known and definable line. The LWM is the boundary of the territory of New South Wales and the boundary of coastal local government areas. It is also the baseline from which all distances seaward, applicable under international law, are measured.

All land between the water line (somewhere between LWM and MHWL depending on the tide) and the dry sand above MHWL would be the core part of the ‘beach’ as most people understand the term and this approximates the area known formally in law as the foreshore: being land between LWM and MHWL. This area of wet sand or pebbles would be regularly “washed by tides or waves”. But most people’s idea of the ‘beach’ would extend beyond the landward limit of the foreshore and also include areas of dry sand above MHWL. The question is to what extent to the landward?



### Lands above MHWM washed by tides are part of the ‘beach’

Sand or pebbles above the mean high water mark (MHWM) are also routinely wet by tides and or waves during monthly spring tides as part of the regular normal tidal cycle, so MHWM is not an appropriate definitional limit. (Thus the term ‘foreshore’ is also not appropriate because its landward boundary is MHWM.)

Clearly these sometimes dry areas of land “washed by the tide or waves” under normal tidal cycles but above MHWM, should fall within the definition of ‘beach’. However adopting a landward boundary of high water mark at spring tides (as in Queensland and NZ) is also too limited. If tidal height were the sole factor to consider in identifying lands as ‘beach’, the line of Highest Astronomical Tide (HAT) might be a useful landward limit. However, using HAT to define ‘beach’ is also unsatisfactory, since much of the beach forming actions of tides and waves occur outside normal tidal conditions, during ‘storm surges’ when sea level is elevated above predicted tide heights. Depending on storm strength, wind and wave direction and other factors, storm surge along NSW coast could be between 0.3 and 0.6 m above predicted tidal height. (See CMM B-12). These unpredictable but entirely ‘natural’ factors make use of phrase such as ‘lands subject to tidal cycles’ too limited.

### Extent of wave action assists in defining ‘beach’

However, the Macquarie definition (and coastal processes) is not solely about tides: it refers to waves too. The core idea of the area of ‘beach’ being defined by the action, and therefore extent, of waves, necessitates moving the landward boundary further landward and above HAT. As is well known, wave set up can further elevate tidal heights, by up to 1.5m on the NSW coast, and wave action can extend above and beyond the nominal water level during a storm surge. Depending on the force of the storm, shape of the beach profile and other factors, ‘wave uprush’ may extend 3m – landwards of the mean storm water-line.

(See Figure B4.1 from NSW Government *Coastal Management Manual* 1990, p B-12 below).

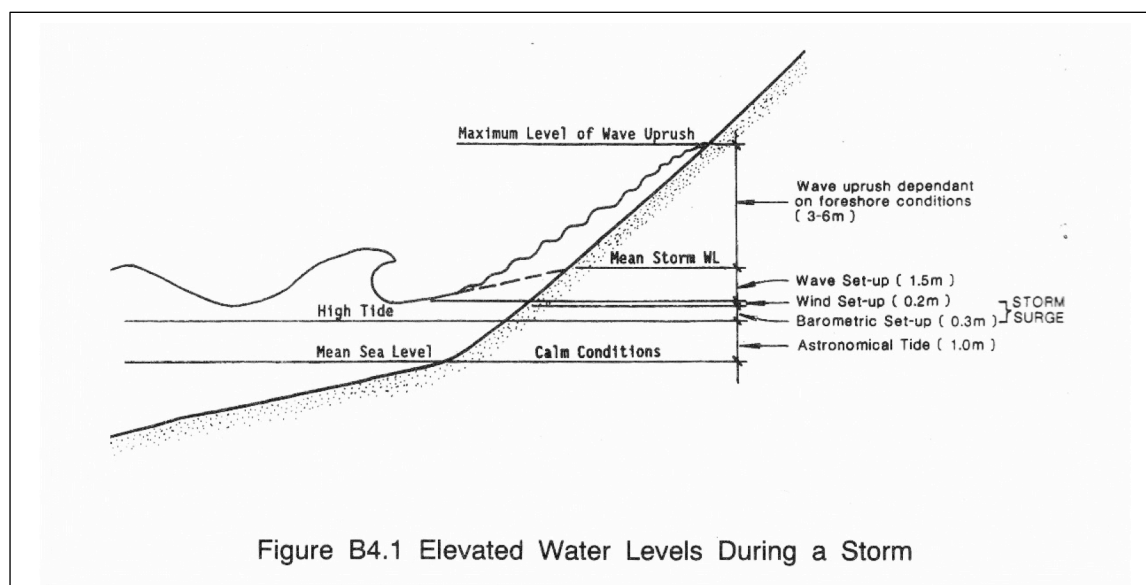


Figure B4.1 Elevated Water Levels During a Storm

Sandy lands swept by waves during storm would be consistent with most people’s normal understanding of ‘beach’, and hence in ACS’s view should fall within the legislative definition.

So in the view of the ACS, the furthest reach of waves under storm conditions is the appropriate landward limit of ‘beach’.

Of course it must be remembered that the extent of the ‘beach’ – being furthest reach of tides or waves over sandy lands - varies over time in any one given place. The actual width of the beach at any point in time depends on many factors including the period since the last big storm, the fullness of the beach profile, the extent of accretion since the last storm, and the duration, direction and intensity of that last storm.

focus on ‘waves’ and or ‘wave action’ as a definitional tool is useful in the view of the ACS. Indeed such an approach is analogous to that adopted in defining the “swept prism”, viz:

**Swept Prism** The active area of the coastal system in which sediment may be mobilized by the forces of wind and wave action. On a sandy beach, it extends into the dune system and offshore to the limit of the nearshore zone.” (CMM p 47)

Note that this definition acknowledges the dynamic nature of the coastal area, where sediment “may be mobilized” and that the area of swept prism, ie wave action, “extends into the dune system”. This is an important point because, typically, beyond the edge of the plane of sandy or pebbly material formed by wave action ie the ‘beach’, is the dune system.

In an unmodified landscape with a sandy substrate, the adjoining geographic feature, is any incipient dune formed to the seaward of the fore-dune. The immediately landward coastal land unit in the ‘beach system’ is typically the ‘sand dunes’. See Figure 2.1 shown above.

### **Erosion escarpment**

The intersection of the plane of the ‘beach’ - formed by the extent of wave action during storm conditions - and any adjoining dune is typically represented as an erosion escarpment within the dune, often characterised as ‘storm bite’.

It is this escarpment which properly represents the landward limit of the effect of wave action under storm conditions. While it might be argued that the ‘toe of the escarpment’ is the appropriate boundary, this is not so. A more accurate indicator of the furthest landward extent of wave action on sandy, or pebbly substrate is the top of the erosion escarpment. Land under, or the seaward of that line of the top of the escarpment, has been affected by wave action and undercut to such an extent that typically it collapses, and some sand slumps forward (seaward). Thus the top, not the toe, of the escarpment indicates the line of furthest landward extent of land affected by wave action.

In some unmodified landscapes, there may be several erosion escarpments or terraces evident, due to accretions after major storms and subsequent storm bites into accreted material. These erosion escarpments are often identifiable in contemporary aerial photographs, and the tops of these storm bites, unlike their toes, often remain discernible in the landscape for many years after their formation. In these situations, the historical location of the furthest landward extent of wave action, is indicated by the most landward erosion escarpment in the adjoining dune system. Typically this most landward erosion escarpment indicates the 20<sup>th</sup> century historical maximum beach width.

In modified landscapes the furthest extent of wave action during storm conditions may extend not into adjoining dunes, but onto some artificial structure, such as a seawall, or revetment, well above MHW. Though the tides and wave action would obviously extend beyond the toe of the structure, clearly the sandy or pebbly substrate would not, and the tides and waves would ‘wash’ over fixed

rock and or concrete, and the so the logical limit of the two-part definition of ‘beach’ would be reached. Clearly a rock wall, even one regularly overtopped by wave action, is not ‘beach’.

### **Coastal squeeze affects ‘beaches’**

In these situations there would only be ‘beach’ in front of a seawall (if its toe was located above LWM) when the tide was low enough to expose some sand or pebbly material. At higher tides there may be no ‘beach’ when no sand or pebbly material is exposed to being ‘washed by the tides or waves’ and the substrate remains covered by the sea.

Where erosion increases at the toe of a seawall, typically at or below LWM, there may be such a substantial loss of sediment and resultant deepening of the immediate nearshore waters, that there is a total loss of the beach, at any stage of the normal tidal cycle. In this way the sandy sections of coastal lands known as ‘beaches’ face being caught in ‘coastal squeeze’, between a rising sea level and immobile coastal engineering ‘works’.

### **Conclusion**

To be consistent with the ordinary meaning of the term ‘beach’ the definition to be used in the Coastal Management Bill 2016 should adopt the low water mark and the line of furthest extent of wave action, as the relevant boundaries of the area to be defined as ‘beach’.  
In unmodified landscapes this line of maximum extent of wave action may be indicated by the top of the most landward erosion escarpment in an adjoining dune system.

Including any area to the landward of the erosion escarpment, such as the dune crest, hind-slopes, or hind dunes as the current draft definition implies, is not desirable and would be inconsistent with this ordinary meaning. Clearly these areas of the dune system form part of the ‘beach system’ and hence they would likely fall within a ‘beach fluctuation zone’ as the term is proposed to be defined – but they are not properly, or logically, the ‘beach’.

Use of the term ‘beach fluctuation zone’ is not supported by the ACS. While its meaning is not contested, and the recognition of the fluctuating ‘nature’ and location of many beaches is appropriate, the introduction of another term given as a ‘zone’ is not thought appropriate.

Moreover, it is by no means certain that there is a long-term trend of beach fluctuation. This fluctuation may better described as a short to medium term process, where there is both major erosion and minor accretion, but in some, perhaps many, locations the long term trend, and the nett effect of this fluctuation, when coupled with higher sea levels due to climate change, may be the landward recession of the shoreline and the beach.

Hence, reliance on an understanding of the meaning of ‘beach fluctuation zone’ is not considered the right approach to defining the ‘beach’. Deleting this term is recommended.

### **Recommendations**

The ACS recommendations on the appropriate definitions for ‘beach’ and ‘beach system’ are given in paragraphs **A4** of the Appendix to this Submission.

#### **A4.1**

In current provision, after ‘beach’ insert “system” to provide a definition of ‘beach system’. viz:

**beach system** coastal lands generally composed of sand, pebbles or shell, which lie between a seaward limit of 40 metres depth in the state’s coastal waters; and a landward limit which extends beyond the beach, to the foot of the landward slope of any hind-dune, and includes any and all sand dunes in any adjoining dune system”.

This term and definition may be appropriate for use in section (2) (g) (v) of the Bill.

#### **A4.2**

Before ‘beach system’ insert new definition of ‘beach’

**beach** any coastal lands composed of sand, pebbles or shell, formed into a continuous plane by action of tides or waves, which lie between low water mark and the furthest landward reach of wave action under storm conditions.

This definition is appropriate for the intended application of the word ‘beach’ in section 7 (2) (c) and (d); 7 (2) (g) (iii) and (v), sections 8 (2) (e) and (f) of the Bill.

## **Rationale for Model AA - coastal conservation area and modified management objectives**

### **Introduction**

Four Coastal Management Areas are specified in both the Draft Bill and the SEPP Explanation of Intended Effect. Three of these (a), (b) and (c) address the natural coastal environment.

**Part 2 s5** lists the four areas and objectives for each:

- a) coastal wetlands and littoral rainforest areas.
- b) coastal vulnerability area.
- c) coastal environment area.
- d) coastal use area.

s10.3 also specifies an “Hierarchy of management objectives if overlapping.”

The priority is stated as a) “Coastal Wetlands and Littoral Rainforests as the first priority, then (b) “Coastal Vulnerability Area” ahead of (c) “Coastal environment area” and (d) “Coastal use area.”

### **Discussion**

The ACS supports the greater integration of the physical and hydrological coastal environment with coastal biodiversity and ecosystem integrity, expressed both in the objects of the Draft Bill and the scope and objectives of Areas (a) and (c), as well as in the SEPP Statement of Intended Effect and Coastal Management Manual.

An integrated approach is critical, given the extent to which sensitive coastal environments have become degraded with most unique coastal ecosystems listed as Endangered Ecological Communities and species listed Threatened and the Coastal Lakes Inquiry 2002 recognising only 16 of over 90 coastal lakes as in natural or near natural condition. These 16 coastal lakes identified for “Comprehensive Protection,” are increasingly recognised as highly vulnerable to degradation from development and use pressures.

We propose that the refocus on the coastal environment, and its significance to the achievement of all other objectives, be reflected in an holistic “catchment to coastal waters” approach to conservation, protection and management, rather than the proposed artificial separation of Area A, “Coastal Wetlands and Littoral Rainforest areas” from the “Coastal environment area.” Coastal physical environments and ecosystems do not exist in isolation and should be considered holistically, in parallel with recognition of coastal compartments.

A “Coastal Conservation Area” would bring together all high conservation value coastal environments in recognition of the inter-relationship of the physical, hydrological and biological coastal systems, rather than separating Littoral Rain Forests and Coastal Wetlands from other related coastal environments.

One “Coastal Conservation Area” would better integrate with Environment and Water Zones as defined in the LEP Standard Instrument, Council principal Local Environment Plans and existing Council Coastal Zone Management Plans. It would reduce confusion regarding coastal ecosystems that encompass categories such as coastal lakes, estuaries and wetlands which, where they occur

together, should be conserved, protected and managed under one set of objectives and with planning and development provisions, specified for category.

**Inappropriate hierarchy of objectives.**

The objectives of the “Littoral Rain Forest and Coastal Wetlands Area ” are identified as the first priority in the proposed hierarchy followed by “Coastal Vulnerability Area” objectives and then “Coastal Environment Area,” then the “Coastal Use Area.” This order of priority inappropriately suggests that these ecosystems are more environmentally significant and sensitive than other ecosystems identified in the Coastal Environment Area.

This implication is clearly inappropriate, when most coastal vegetation communities are listed as Endangered Ecological Communities in the NSW Threatened Species Conservation Act or the NSW Fisheries Act. Moreover coast-specific fauna species such as native and migratory shorebirds are listed as Threatened under either or both the NSW Threatened Species Conservation Act and the Australian Government Environment Protection and Biodiversity Conservation Act. This concern regarding the low priority accorded to high conservation value environments and species in the proposed hierarchy, applies throughout the draft Bill and to the SEPP Statement of Intended Effect.

The proposed hierarchy of objectives also suggests that planning and actions to minimise erosion and inundation specified in “Coastal vulnerability Area” objectives are of higher priority than protection of threatened ecosystems specified in c) “Coastal Environment Area.”

This order of priority is inconsistent with the principles of Ecologically Sustainable Development. Application of the precautionary principle to coastal hazards and risk management strategies, would require that objectives for all coastal environment areas, that is the proposed “Littoral Rain Forest and Coastal Wetlands” Area and “Coastal Environment Area” are included in the first priority objectives and prior to the Coastal Vulnerability Area objectives.

Accordingly all coastal environmental values, objectives and actions for their protection and enhancement should be identified as the first priority in their own right.

We recommend that Area (a) be renamed Coastal Conservation Area”

This recommendation is based on several concerns.

**Artificial separation of Littoral Rainforests and Coastal Wetlands from estuaries, lakes and lagoons and their catchments.**

Separation of Littoral Rainforests and Coastal Wetlands from high conservation value coastal environments that include them is artificial and ignores the interdependence of coastal physical, hydrological and ecological environments. Littoral Rainforests and Coastal Wetlands are for the most, integral parts of estuaries, lakes and lagoons (although Coastal Wetlands are fresh water wetlands behind dunal barriers.)

They together with beaches and dune systems, headlands and rock platforms are all part of a continuum from terrestrial catchments to the dynamic interface between aquatic and terrestrial environments at the immediate coastline. The coastal ecosystems they support are ephemeral rather than static, with for example coastal salt marsh occurring in wetlands in estuaries, lakes and

lagoons dependent on seasonal water levels and lake opening duration, sometimes re-emerging after many years of being inundated.

All are dependent on the natural quality and variability of the catchment environment being maintained, particularly the quality of native vegetation cover and the natural-low nutrient surface and ground water runoff as well as maintenance of the natural dynamic interface between terrestrial and ocean conditions. Therefore they should be conserved, protected and managed holistically.

#### **Lack of recognition and priority accorded to high conservation value biodiversity and ecosystems**

greater focus on coastal biodiversity and ecosystems is justified given that many coastal vegetation communities are Endangered Ecological Communities, when most coastal fauna species are listed as Threatened. This concern applies throughout the draft Bill and SEP Statement.

The coast-specific Endangered Ecological Communities are not mentioned in either the draft Bill or SEPP Explanation of Intended Effect. These include Coastal Saltmarsh, Bangalay Sand Forest in the Sydney Basin and South East Corner Bioregion, Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner Bioregion and Swamp Sclerophyll forest of coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregion.

Together with Coastal Wetlands these ecological communities are under increased threat from climate change, including sea level rise and increased storminess.

#### **Confusion regarding definitions of “Wetland.”**

A “catchment to coast” area would also reduce confusion regarding coastal ecosystems that encompass categories such as wetlands, estuaries, coastal lakes and lagoons, which, where they occur together, should be conserved, protected and managed under one set of objectives, whilst allowing for maintaining and enhancing existing planning and development controls for existing Littoral Rain Forests and SEPP 14 Wetlands as well as additional protections. Such integration would still allow for separate planning and development controls to apply for Littoral Rainforests and Coastal Wetlands estuaries, to those which are proposed for estuaries, coastal lakes and lagoons and their catchments.

The definition of coastal “wetlands” in the Bill is as defined in the current SEPP 14. However, different definitions also apply to Wetlands of International Importance under the Ramsar Convention and Wetlands of National Importance as listed in the Directory of Important Wetlands of Australia. Both these Wetland categories include coastal estuaries, coastal lakes and lagoons, as well parts of these environments that are mapped in Coastal Wetlands SEPP 14.

#### **Lack of recognition of the environmental significance of “beaches.”**

Physical features of beaches, sand bars, dunes and foreshores are critical elements of the coastal environment. They also support unique ecosystems including coastal dune and foreshore vegetation, Endangered Ecological Communities and fauna, including Threatened shorebirds and seabirds aquatic and terrestrial organisms on which they depend.

It is concerning also that “beaches, sand bars, dunes and foreshores” are not included in the definition of “Coastal Environment Area in 8.1) Objective 8.2. e) “to maintain the presence of

beaches and foreshores” simply repeats the Coastal Vulnerability objective for “beach.” This definition is inadequate to address the environmental significance of beaches.

**Need for objectives to be consistent for related environments.**

The adoption of a “Coastal Conservation Area” that incorporates Coastal Wetlands, Littoral Rain Forests, estuaries, lakes and lagoons and their catchments would resolve inconsistencies between the proposed “Littoral Rain Forests and Coastal Wetlands Area” and the “Coastal Environment Area.”

If recommendations for a “Coastal Conservation Area” are not accepted and the proposed areas are retained, then the following inconsistencies between the objectives of the “Littoral Rain Forests and Coastal Wetlands Area” and the “Coastal Environment Area” would need to be rectified.

It is inappropriate for objectives relating to interdependent physical, hydrological and ecological environments such as Coastal Wetlands, Littoral Rain Forests, estuaries, lakes and lagoons and their catchments to be inconsistent. Yet, there are inconsistencies in objectives between those of Area (a) and Area (c).

Area (a) objectives do not contain an objective for improving the resilience of wetlands and littoral rainforests to impacts of climate change, including provision of opportunities for species migration, although such objectives are included for estuaries, lakes and lagoons in Area c).

An objective for “Maintaining water quality and ecosystem health and reducing threats,” should be included in Area (a) as applicable to wetlands and littoral rain forests as it is for “Coastal Environment Area” in (c) applying to related ecosystems.

Whilst the specified levels of protection for Coastal Wetlands and Littoral Rain Forests is justified, protection of coast-specific Endangered Ecological Communities is not mentioned in either the draft Bill or SEPP Explanation of Intended Effect.

Coastal aquatic species, such as sea grasses, algae and fauna and coastal bird species, including shorebirds and threatened species and migratory species are not specifically mentioned in the Bill/SEPP Explanation of Intended Effect.

Whilst the Coastal Wetlands and Littoral Rain Forests objectives refer to opportunities for migration of coastal aquatic systems landward in response to climate change, Objective b) for Coastal Environment Areas does not include this objective.

Opportunities for migration should also apply to beaches, sand bars and dunes, coastal estuaries and lakes and coastal ecological communities such as Coastal Salt Marsh, sea grasses and algae as well as foreshore ecosystems. The objective should be expanded and refer to “the impacts of climate change, including sea level rise and increased storminess, allowing opportunities for migration.”

A “Coastal Conservation Area” should also include specific objectives **to protect and conserve native coastal vegetation and wildlife corridors** as is proposed in the development controls for Coastal Use Areas.

Coastal wildlife corridors are essential to annual migration of native species, particularly birds, including internationally recognised migratory shorebird and other species now and in the future, as coastal and ocean temperatures rise with global warming. Wildlife corridors are being established



for east-west fauna movement and north-south in the Great Eastern Ranges, but not north-south for coastal species. The Coastal Bill must allow for coastal habitat corridors recognized as part of the East Asian-Australasian Flyway to be recognised and protected.

It is concerning that the objects of the draft Bill simply seek to “acknowledge Aboriginal peoples’ spiritual, social, customary and economic use of the coastal zone” and that their rights in relation to the coast are not mentioned any further in the Draft Bill or Coastal Management SEPP-Expression of Intended Effect.

Instead the objectives should recognize and ensure that planning and management of the NSW coast recognizes and is consistent with Aboriginal people’s Native Title Rights. The Bill should also ensure that Aboriginal people are engaged in and consulted about all issues relating to the coast and their rights.

### **Recommendations**

That the Coastal Management Areas comprise:

- a) “Coastal Conservation Area.”
- b) “Aboriginal spiritual, social, customary and economic use Area.”
- c) “Coastal Vulnerability Area.”
- d) “Coastal Development Area.”

That the area in section 5 A) and in section 6 should be re-named “Coastal Conservation Area.”

That this Area include all high conservation value, sensitive coastal environments, including:

- Coastal Wetlands and Littoral Rainforests.
- Land containing coastal features, including the coastal waters of the State, estuaries, coastal lakes and lagoons and land adjoining those features including headlands, rock platforms, beaches and dunes in natural and near natural condition and their catchments.
- Areas identified as coastal vegetation communities listed as Endangered Ecological Communities under the Threatened Species Conservation Act and Australian Government Environment Protection and Biodiversity Conservation Act.
- Aquatic vegetation including Mangroves, Seagrasses, Coastal Salt Marsh.
- Habitat for all coastal threatened flora and fauna listed as Threatened under the Threatened Species Conservation Act or under the Environment Biodiversity Conservation Act as threatened or migratory species.
- Coastal wildlife corridors, both north-south and east-west, essential to migration of native coastal species and international migratory coastal species, particularly shorebirds, waders and seabirds.

That the Coastal Conservation Area be defined as

“1. The Coastal Conservation Area means land identified by a State Environmental Planning Policy to be for the purposes of this Act, land and coastal waters of the State containing Littoral Rainforests, Coastal Wetlands, coastal estuaries, coastal lakes and lagoons and land adjoining these features including beaches, dune systems, headlands, rock platforms, foreshores, riparian areas and catchments.”

That the objectives of the “Coastal Conservation Area” comprise:

2. The management objectives for the Coastal Conservation Area are as follows:

- (a) to protect and enhance in their natural state, including their biological diversity and ecological integrity, the coastal environmental values and natural processes of coastal waters, Littoral Rainforests and Coastal Wetlands, coastal estuaries, coastal lakes and lagoons and land adjoining these features including beaches, dune systems, headlands, rock platforms, foreshores, riparian areas and catchments.
- (b) to reduce threats to and improve the resilience of coastal waters, beaches, Littoral Rainforests, Coastal Wetlands, coastal estuaries, coastal lakes and lagoons, to the impacts of climate change, including sea level rise and storminess, allowing opportunities for migration.
- (c) to promote the rehabilitation and restoration of degraded Littoral Rainforests, Coastal wetlands.
- (d) to maintain and improve natural water quality and ecosystem health of Littoral Rainforests, Coastal Wetlands, coastal estuaries, coastal lakes and lagoons.
- (e) to progress the listing under the Ramsar Convention of coastal water bodies assessed as meeting criteria for listing as Wetlands of International Importance.
- (f) to maintain and improve the biological diversity and ecological integrity of coastal aquatic and terrestrial vegetation communities, flora and fauna, in particular Endangered Ecological Communities, vegetation protected under the Fisheries Act, Threatened Species and species listed under international treaties including Migratory shorebirds.
- (g) To support the social and cultural values of coastal waters, Littoral Rainforests, Wetlands, Estuaries, Coastal Lakes and Lagoons, recognising the native title rights of Aboriginal people.
- (h) To maintain ecologically sustainable public access, amenity and use of beaches, foreshores, headlands, rock platforms and coastal water bodies

That section 10.3 Hierarchy of management objectives be replaced by the following order of objectives;

- a) “Coastal Conservation Area.” b) “Aboriginal Area”- first priority.
- c) “Coastal Vulnerability Area.”-second priority.
- d) “Coastal Development Area.”-third priority.

Amendments proposed to give effect to these recommendations are shown in 1 paragraphs **AA5**, **AA6** and **AA10** of Appendix 1.