

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

Our VISION for COASTAL MANAGEMENT

Friday, 10 May 2013

1. The Australian Coastal Society (the ACS) was established to provide advocacy for the coast, to share knowledge and information, and to help improve coastal management. Our vision is a community that is knowledgeable and passionate in championing the values of our coastline, and to promote stewardship of the coast for the benefit of all, now and in the future.
2. We represent the knowledge and interests of over 200 people and organisations from coastal management, law, elected representatives, science, the private sector, government, academia, and members of the public. To recognise the different memberships and different issues across the country, the ACS operates a constituted structure revolving around state-based branches that report to an Executive Board. This representation has been prepared by representatives of the NSW Branch.
3. The ACS welcomes the opportunity to provide constructive, pragmatic input into the ongoing coastal management reforms in NSW. The following statement summarises our vision for good coastal management in NSW:

Well resourced, integrated coastal zone management plans that embody equity for all, address the unfortunate legacies of past unwise development, ensure new development will not repeat the mistakes of the past, protect public access rights to the coast and provide sustainable protection for the natural coastal environment at the appropriate scale. Fundamentally, planning that recognises that the coastal environment is at the very heart of the Australian culture.

Introduction

4. The ACS considers amendments made to the *Coastal Protection Act 1979* (the Act) in recent years to be serious backward steps to coastal management in the State. In particular, the current State government emphasis on emphasising individual actions to protect private property promotes unsustainable, ad-hoc responses to individual property issues. If implemented by private landowners, such responses are highly likely to adversely affect adjoining private and public property.
5. The current emphasis demonstrates a fundamental lack of understanding of the coast, coastal processes and evidence-based coastal zone management; and leaves local councils and the state exposed to legal challenges in the future. In fact, the ACS considers that the provisions contained in the last two amendments to the Act (2010 and 2012) are testament to the State's failure to manage the coast over the 34 years since the Act was introduced, and in particular the management of so called erosion "hot spots," most of which were first identified four decades ago.

6. There exists now an opportunity to rectify this situation, and for the State to take leadership and promote good coastal management. The ACS considers the following recommendations will provide an appropriate foundation.

A new Integrated Coastal Management Act

7. To implement our vision for good coastal management, we propose the State repeal the current *Coastal Protection Act 1979* and replace it with a more holistic Act that promotes sustainable coastal management and provides for the necessary integration of governance and decision-making. This is the **new Integrated Coastal Management Act**. The Act should have two distinct parts: one to set the planning for the future and the other to address the current problem areas. This would allow for a transition from reacting to present issues - to sustainably managing potential future risks.
8. As the basis for ongoing coastal management, the new Act would provide the mechanism for the robust development, implementation, monitoring, and ongoing improvement of **integrated coastal zone management plans** (including estuaries) (ICZMPs). The approach advocated here is broadly similar to that identified in the current Act with a number of key differences:
 - a. The incorporation of a statutory guidance manual,
 - b. A sustainable funding model for delivering actions proposed in the ICZMP,
 - c. A regional approach to governance guided by the extent of coastal systems, and
 - d. A new coastal management oversight body with broad-based membership from the private and public spheres
9. These plans once adopted could then be transposed into statutory planning instruments within the *Environmental Planning and Assessment Act 1979* (or successor). Such a process would not only address the conflict between development, public and private rights and desires, and what is perceived to be hazard management; but would also enable ongoing stewardship of the natural environmental values of the coastal zone. Public access to, and enjoyment of, the coast is a critical value for all that must be maintained over time and enshrined in statute.
10. A properly integrated coastal management framework would allow a clear line of sight between the multitude of agencies, private and public interests and other stakeholders involved in coastal activities. It would not only serve to provide clear links with current ongoing reforms of the NSW Planning System, but also any reforms arising out of the present local government review, as well as the recently announced Marine Estate Management Authority.
11. The current arrangements for emergency / temporary works should be discontinued and proposals for coastal defence (or other coastal management options) should be assessed through the *Environmental Planning and Assessment Act 1979* (or successor) within the context of a statutory integrated coastal zone management plan.
12. The new Act must be centred on a strategic, regional approach that incorporates:
 - a. evidence-based and adaptable planning for future development, and which is statutorily linked to the land use planning system;
 - b. planning for environmental conservation of undeveloped areas of environmental merit¹;
 - c. delineation of areas that should not be developed because of the existing and future hazards associated with coastal processes, including recent (and likely future) increases in

¹ Such as those provided for under SEPPs 26 (coastal littoral rainforest), 14 (wetlands) and 71 (coastal protection)

- the intensity and frequency of storms that will be exacerbated by rising sea levels over time;
- d. appropriate, specific notification to landowners of risks from current and future coastal hazards; and
 - e. together with its land use planning counterpart, equitably addresses the legacies of past unwise coastal development presently at risk.
13. While such a process may take some time to develop and implement, the current political priority is to enable individuals to implement solutions in areas where the legacy of past unwise development is in conflict with existing coastal processes. It must be recognised that the State has been studying most of these legacy problem areas for decades and in fact there is a wealth of knowledge and information as well as a range of options that have been repeatedly and publically aired for each of the affected areas.
14. As risk management is an evolving, adaptive way of managing the coastal environment, the framework must allow for interim measures to be enacted where risks are deemed urgent. Such measures would be put in place to rectify immediate issues based on the current state of understanding of the problem. This allows for a transition period before final integrated coastal zone management plans are adopted. This is similar to the risk management approaches used in planning for bush fire and flood hazards.
15. During the development of the new legislation the ACS would seek clarification over public/private property rights around Mean High Water Mark² - especially with respect to eroding/accreting shorelines. This advice could be provided by the Crown Solicitor, made public and/or a referral of the matter by the Registrar General to the Supreme Court for adjudication via a 'stated case' pursuant to s.124 of the *Real Property Act 1900* (NSW) should occur. The ACS supports public access rights as the pre-eminent domain in the coastal zone.

A statutory process manual for ICZMPs

16. To ensure orderly and structured development of ICZMPs and to provide guidelines as to a responsible, orderly and robust planning process a State sanctioned manual is required, not simply policies and practice notes. The manual would be produced by the new independent Coastal Council (see below) and would establish the overall planning and implementation process, including the steps to be followed. This effectively produces a mandatory "performance standard" to be achieved which will provide councils with an effective defence under s733 of the *Local Government Act 1993*.
17. The manual should also include an explicit policy to prescribe the method of consistent assessment of coastal impacts due to climate and sea level variability (both natural and human-influenced). The method must also take into account local factors that affect relative sea levels such as subsidence, geomorphology, bathymetry, changes to wind and wave climate etc. This will allow for a clear link between global and regional sea level change, and relative sea level change.
18. The above policy would be produced by the new Coastal Council (see below); informed by accepted, standardized risk guidance and mapping from the Commonwealth Government via GeoScience Australia/BoM; and updated regularly with the latest science. Individual councils would then be able to translate this policy into acceptable levels of risk to life and property at the local/regional level. This policy must form a key part of the new CZMPs.

² Corkill, JR, 'Claimed property right does not hold water' (2013) 87(1) Australian Law Journal 49-58

19. An approach that facilitates consistent assessment of relative sea level rise at a regional or local level is consistent with the recommendations of the NSW Chief Scientist in April 2012³. Relative sea level change has already caused significant and costly impacts in an area of the foreshore at Chain Valley Bay, Lake Macquarie since the 1980s. As a result of subsidence caused by mining activity, low lying areas of the foreshore and private residences became prone to flooding and water inundation. Areas affected included waterfront reserves, private property, and key infrastructure services such as roads and boat ramps.

Implementation, accountability and a sustainable funding model

20. A significant factor in the lack of success in solving coastal management problems to date has been the lack of a sustainable funding model. Funding arrangements must, by necessity, be different based on local specifics. There will be some locations, such as National Parks where any actions would be funded by the State and possibly the Federal Government. There will be other locations where there are only public assets at risk, such as Manly and Bondi where Council, the State and Federal Governments should contribute percentages. Yet again there are other locations where private assets front the beach and are potentially under threat where all three of the above spheres of government and the private owners should have a role in the funding formula for that location. Consideration should also be given to the benefits of protecting private beachfront property to the wider community, thus legitimising the contribution from state and federal government sources.
21. An **equitable funding model** for coastal management solutions should be established within the new Act that differentiates appropriately between public and private risk. The methodology for development of a funding model for each location must be outlined in the above-recommended manual.
22. Once the coastal zone management process has created an endorsed plan of action for a particular area, state agencies (and other relevant agents) must be given clear responsibility for managing aspects of the plan. Furthermore, it will be vital that chosen indicators of progress/success are reported on in the appropriate publicly available document/s (e.g. State of the Environment report and NSW 2021). This would provide the plans with the required accountability and public transparency to ensure good coastal socio-environmental outcomes.

A regional approach

23. Local councils are at the forefront of coastal management in NSW today. They will be required to do even more in the coming years, and increasingly, make difficult coastal management decisions. There are 49 councils that abut the coastline from Bega in the south, up to the Tweed bordering Queensland in the north. They each have very different communities, coastal ecosystems and coastal form. In the Sydney area alone, 26 councils have coastal margins.
24. As in the land use planning system, a regional approach to coastal management would provide a more effective and sustainable solution to coastal issues which are by nature **based on geomorphological or ecosystem characteristics** rather than on local council boundaries.
25. In the UK, Shoreline Management Plans⁴ are based not on arbitrary government boundaries but on "sediment cells". Sediment cells are large sections or compartments of the coast with similar

³ NSW Chief Scientist and Engineer, *Assessment of the science behind the NSW Government's sea level rise planning benchmarks*, (2012)

⁴ <http://www.defra.gov.uk/publications/2011/06/10/pb11726-shoreline-guidance>

environmental conditions. Divided by prominent geological features like headlands, the cells form a naturally bounded system where sediment shifts around - pushed and pulled by coastal processes like wind, waves and tides. These processes all work toward resultant changes in coastal landforms. And it is this understanding of the interplay between landform and process that underpins good coastal management.

26. Coastal management jurisdictions representing geographically larger areas would provide a better solution to current constraints. Limited human and financial resources⁵ could be pooled, efficiencies gained, knowledge shared, and funding shortfalls could be better leveraged from other sources. For small councils, inadequate resourcing and limited funds have always been the difficulty in managing the coast effectively.
27. This approach is already finding favour in Australia with Western Australia recently completing a study⁶ defining sediment cells as the basis for its coastal management. Woodroffe et al⁷ in their recent report have also recommended this approach be applied all around the coast of Australia.
28. In developing the new integrated coastal zone management plans, **regional governance structures** could be established with dedicated, multi-stakeholder, representative groups that would bring together the different coastal voices and promote shared understanding and agreed action. This is the only way to ensure “buy-in” from the wider community. Setting the appropriate scale for coastal management can draw significant advantages in terms of economies of scale and coordination, as well as independent and democratic decision-making.
29. These new larger jurisdictions could build on the regional or sub-regional approach set out in the Planning White Paper and provide much clearer links to infrastructure planning and funding.
30. Success in integrating coastal governance has occurred to some degree in NSW over the years but has been issue specific and unsustainable. Despite pockets of relative success (Lake Macquarie Taskforce and the Sydney Coastal Councils Group), the sort of all encompassing, coastal partnership⁸ approach that works well in the UK and could deliver more sustainable outcomes has never been fully realised. This approach embodies the internationally accepted principals of integrated coastal zone management.
31. The most sustainable method of achieving good coastal management is through an evidence-based, integrated process that can take into account local and regional conditions and includes effective collaboration with the community.

Overall governance

32. Councils have long been at the forefront of coastal management in NSW. However there is a need for state-wide coordination of coastal policy (e.g. an updated version of the *NSW Coastal Policy 1997*) and to implement this **ACS recommends the establishment of an independent NSW Coastal Council** with broad-based membership.
33. The role of such a body must provide clear accountability (either to Ministers or as an independent body reporting to the NSW Parliament) and have oversight of all coastal matters e.g. under the *Local Government Act 1993*, coastal zone management and planning, natural resource management, and even nearshore marine management. This new body should provide representative, multi-stakeholder policy and science advice, facilitate stakeholder engagement, co-

⁵ as identified in the recent report of the Independent Review of Local Government: *Future Directions for NSW Local Government: Twenty Essential Steps* April 2013

⁶ http://www.transport.wa.gov.au/mediaFiles/mar_CoastalSedimentCells_web.pdf

⁷ <http://www.nccarf.edu.au/publications/approaches-risk-assessment-australian-coasts>

⁸ <http://ec.europa.eu/ourcoast/index.cfm?menuID=7&articleID=10>

ordinate state agencies, local councils and non-government interests, assist in policy development / testing, commission research, and undertake consultation with the public / landowners / councils. This new body would lead and oversee the integration of coastal zone management in NSW.

34. The value of unbiased, coordinated decision-making in helping to overcome the complexities of the coastal system and the limitations of existing governance arrangements cannot be underestimated and is increasingly being called for⁹.
35. Good governance will rely on the shared experiences, interaction, and deliberative judgment by stakeholders to make what are essentially political decisions of the community. Participation and good communication between stakeholders are two key elements for overcoming conflict and making better coastal management choices. But good coastal decisions must still be made from a sound platform built on the best available evidence, and getting the right governance frameworks in place will make a significant improvement to the quality of outcomes.

Conclusion

36. For further discussion, more detailed information or clarification of any of the points raised in this submission, please contact Angus Gordon, the designated ACS spokesman for this issue. The ACS would be pleased to continue to participate in any reforms to the future planning and management of our coastline, which it recognises and defends as a precious resource to current and future generations.

Yours faithfully,

Angus Gordon
Spokesman for the NSW Branch of ACS
nsw@australiancoastalsociety.org

⁹ <http://www.marineparksaudit.nsw.gov.au/audit-report/>