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

STAGE TWO WORKSHOP QUESTIONS – ACS RESPONSES
10 May 2013

In developing advice to the Minister for the Environment, the Expert Panel has constructed a set of questions related to coastal management reform. The questions are designed to obtain the considered views of a variety of stakeholders on **some** of the pressing issues related to coastal management in NSW. Not all issues are represented in the set of questions, but the Panel is of the view that advice on matters raised in the workshop will be of great assistance in its deliberations and framing of advice to the Minister and the government. There is a deliberate overlap between many of the questions. This should enable each participant to offer advice to the Panel by focussing on no more than four questions. Participants will be assigned their questions at the workshop, however all participants at the workshop will be invited to offer more specific answers in writing following the workshop to any of the 12 questions.

Q1. In any revised coastal legislation/policy, what specific environmental values on the NSW coast, including estuaries and coastal lakes, must receive explicit recognition for purposes of protection?
Various NSW policies recognise the importance of protecting certain coastal values, for instance coastal wetlands in SEPP 14 and littoral rain forests in SEPP 26. NSW is the only state that refers explicitly to beach protection in legislation (see Part 4 of the CPAct). Indirectly the ban on canal estates (SEPP 50) and regulations on the management of acid sulphate soils have the effect of limiting negative impacts on estuarine ecosystems. The issue is how best to maintain and improve the management and health of environmental assets including beaches, foredunes, rock platforms, littoral forests, mangroves, salt marshes and sea grasses (and associated fauna) in areas outside national and marine parks?

All of those values should be explicitly recognised and protected, including the maintenance of public access and the accommodation of natural coastal processes including as they will be affected by climate change over time, and the recognition of outstanding landscapes. As a resource, as a tourist attraction, as a fundamental aspect of Australian culture and national wellbeing – the coast is an incredibly valuable asset to the people of NSW. These have all been enshrined in *NSW Coastal Policy* since 1997. The principles and objectives of this document remain fundamentally relevant and should be reaffirmed and updated with any reform.

Q2. Should the objectives and area of coverage of the Coastal Protection Act 1979, Marine Parks Act 1997, Coastal Policy 1997, and SEPP 71 be revised, and if so in what form should the changes be made?

We attach a list of objectives for various instruments. They are generally consistent, but are they adequate given the challenges of increasing population, private versus public interests and climate change. There is also a question as to the area covered by these instruments. Much confusion has surrounded the definition of Coastal Zone and where it applies since the introduction of the Coastal Policy in 1997. First should the objectives be revised so they cover all or just part of the NSW coast; second how should the metropolitan region be treated; third what is the relation between coast and marine management given the Government's recent announcements on marine parks

The values enshrined in the *NSW Coastal Policy 1997* and SEPPs 14, 26, 50 and 71 should be at least preserved in whatever replacement policy, legislation or process that is being devised AND the current statutory weight afforded to their protection should be strengthened.

See attached submission for relationship between planning framework, marine management, local government reform and coastal zone management.

Q3. Is there a need for Coastal Zone Management Plans as currently defined in the CP Act, and if so should they receive statutory recognition through any revised planning legislation?

Amendments to the CPAct have defined the role of CZMPs. They have evolved from former Coastline and Estuarine plans as set out in respective manuals. Such plans are linked to s 733 of the Local Government Act and offer a council some level of protection from liability under the good faith clause. Various national reviews highlight this system in NSW as best practice from a local government perspective. Yet there is a concern that matters dealt with in a CZMP are not linked or do not easily translate into statutory planning instruments such as LEPs. Is there scope for improvement so that any change to planning legislation can better reflect the need to protect coastal values and give more certainty to private investors and public decision makers?

CZMPs are very much out of political favour based on the fact that they have not been widely implemented in the past due to a lack of sustainable funding. Also because they are difficult to incorporate into the current planning legislation, especially since the introduction of the Standard Instrument which does not include a coastal hazard zone. Integrated CZMPs should be mandated, based on a geomorphic / ecosystem extent and include a clearly articulated funding model. The resulting ICZMPs should have a similar statutory weight as the LEP (if not incorporated into same). Importantly, the plan should specify if, when and where coastal protection works are required and who will be responsible for constructing and maintaining them. Individual ad-hoc works by private landowners should NOT be encouraged. The cost should be shared amongst all beneficiaries and raised through a combination of state and federal grants / contributions where appropriate, council rates and/or special levies. The plan should also identify coastal hazard zones in which only appropriate development would be permitted as well as environment protection zones.

Q4. In what way should NSW legislation be improved to ensure long-term coastal protection and effective coordination in decision-making between all agencies of State Government and local government?

For example, many coastal features such as beaches and foreshore habitats of estuaries are transient. They can change position as a result of natural processes or through human intervention. Unlike other tracts of land the boundaries of these natural features can grow sea ward, recede or oscillate around a mean/fixed position. This situation can lead to a clash of policy interests of different levels within and between governments requiring a consistent and coordinated position that understands the consequences of shoreline change over time

NSW policy should reflect case law on the issue of 'transient' boundaries as summarised by Corkill[1]. The *NSW Coastal Policy 1997* is well overdue for an overhaul and would be an excellent vehicle by which effective coordination in decision-making could be made so long as it is given statutory weight in some way (currently provided by SEPP71).

Q5. Should protection of beach amenity and access to and along beaches and the foreshores of estuaries and coastal lakes be a mandatory obligation in the assessment of development applications by private landowners and public authorities?
SEPP 71 made quite explicit the policy position on the need to maintain public access to and along the beach and the CPAct recognises the need to protect beach amenity. Historically actions by councils and individual landowners have placed rocks and other "alien" objects on beaches to prevent shoreline erosion and property/asset loss. This has lead to concerns over loss of beach and public safety and accessibility. Application of the Public Trust Doctrine in the USA is one way of ensuring that governments take their duty of care role seriously in preventing such actions. However, it raises the question of who owns a receding beach under NSW property law? In the US and UK this is not such an issue as the intertidal beach/foreshore becomes public land even as the beach "invades" private property thus limiting the scope for protective works.

According to research by Corkill, the same would seem to apply in NSW i.e. once private property is submerged below MHWM it reverts to the Crown. If that is indeed the case, the question of seawalls becomes even more important as along many estuaries, private property is protected from 'incursion' of the sea via a seawall and backfill, thus raising the property well above MHWM. Regardless of the current legislation, it is paramount that public foreshore access be maintained, even where an ICZMP or equivalent determines that foreshore protection can be constructed e.g. it should be topped by a walkway and access ramps to the beach provided. In some already built up areas, we may have to accept that such protection WILL be provided, the issue therefore remains as to the form and process (see answer to Q3).

Q6. How best can private landowners receive information on current and future risk from extreme weather events and rising sea levels?
Notification of risk can be undertaken through a government process or through the insurance industry. It is a difficult matter given the implications on land value, insurance premiums (or no insurance), rate income for councils and how to measure the risk. There may be a need to update risk assessments as more information on sediment dynamics and climate change become available. Estimates of probability of change confront technical and communication difficulties. Use of s149 certificates can be quite contentious as are time and distance consents, and covenants. There is a need for consistent information backed by coastal and engineering science that would be acceptable in principle to all parties including the courts. Preferably from a national perspective this could be from a federal agency which has a strong science base.

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

A Federal science agency such as Geoscience Australia/BoM/CSIRO is unlikely to provide information accurate enough (scalable) for the purpose of s149 certificates. Local councils, through their coastal and flood hazard studies/mapping are best placed to interpret national level data and state level policies to the local level. The use of s149 certificates to inform landowners and prospective buyers was effective until just prior to the last election when a group of vocal landowners at Gosford erroneously believed that their insurance premiums were raised substantially because Council had noted on their s149 that part of their land may be affected by sea level rise in 2100. Unfortunately, that notation coincided with the insurance industry decision to cover policy holders for flood (which cover had previously been unavailable) and that residents in low lying land would be charged an additional premium for that cover or have the opportunity to opt out of that cover. Regardless of this fact they insisted it was due to the new notation on the s149. For political expediency, they were promised by their local Member that if the LNP won office the system by which their council was communicating future hazards related to climate change and sea level rise would be scrapped. It should be noted that the insurance industry does NOT currently factor climate change into its premiums. Clearly there is the need for communication to all landowners on this issue.

See attached ACS submission for the role of the new Coastal Council in providing the relevant science and understanding for robust ICZMPs.

Q7. What is the role of governments in the use of public funds for the protection of private property in areas subject to current and future inundation and erosion?
NSW has a legacy of private and public assets at risk from storm surge, coastal erosion, river flooding and long-term inundation. Recent experience in the US highlights the vulnerability of property to surge impacts and associated erosion and flooding. There are hot spots on the NSW coast including in the estuaries where buildings and infrastructure can be destroyed or damaged during coastal storms and floods under current conditions. Compared to the open ocean, more than 10 times residential properties around estuaries are at risk to higher sea levels combined with floods around estuarine and lake shores. There are frequent calls for federal/state natural disaster funds or other government grants to help reduce impacts of such threats often without considering adverse impacts on environmental values, beach amenity or safety, or where sea walls may impact on an adjoining property. Various options are invoked including geotextiles and soft engineering such as sand nourishment. But who is to pay? Different models could be explored although the absence of federal programs such as FEMA and the Corps of Engineers in the US may limit the capacity of local areas to develop publicly funded protective solutions at the present time.

See attached submission for an equitable and sustainable funding model.

Q8. What coastal protection works could be considered as either temporary or exempt development and if so under what conditions?
Changes to legislation and the release of guidelines in 2010, and more recently, have created a degree of confusion and inconsistency in what was once classed as emergency works and is now termed temporary works. What applies on private land does not apply on public land even when the private land can extend to and below low tide; what works require certification by an engineer and what does not is also an issue; local councils can do certain types of protective works under the ISEPP leading to rocks on the beach that private landowners cannot do unless consistent with a CZMP or has consent granted by the statutory

Coastal Panel. An opportunity may exist to bring the approvals process under planning legislation for instance using the class of exempt development that exists in the EP&AAct.

See answer to Q3 above.

Q9. Who is best placed to provide technical information on short term and long term changes to coastal processes and impacts for purposes of government and private sector decision-making?

The science and data collection that underpins the understanding of coastal change continues to evolve internationally (IPCC), nationally (CSIRO) and universities, and within the state agencies (OEH,MHL).Coastal biophysical and social science and engineering all require an appreciation of drivers at different time and space scales. Sustaining the technical capacity will remain a major challenge. The federal government as the major funder of science should be expected to take a leading role especially in communicating the science to other levels of government, to industry and the community. Translating the science into policy and action given the uncertainties of future change at a local scale require a long term commitment from and coordination across all levels of government.

As per answer to Q6, information derived at the national or state level will need to be translated at the regional / local level based on regional geomorphological characteristics, ecosystems and coastal dynamics. Adjoining coastal Councils should be encouraged to cooperate at such a regional level for cost effective studies leading to their coastal management plans.

Also refer to the attached ACS submission for governance models.

Q10. How can a more risk-based approach to projected sea-level rise and potential changes in the magnitude and frequency of extreme events be adopted in coastal management and planning in NSW?

The consensus from climate and ocean science is that sea level will continue to rise, possible at an increasing rate, and that storms/cyclones will get more intense and/or more frequent. How these changes will impact any given area will vary, but the basic principle should be to limit the exposure of major assets to harm. This could mean the adoption of "allowances" for sea level rise based on projected life cycle of an asset or asset class (eg medical facilities); more valuable assets should face less risk than lower valued assets. The challenge is to convert the principle into practical and acceptable public policy involving assessment of the probabilities of risk and then making planning decisions that weighs up that risk against other factors.

As per answer to Q3 a statutory coastal plan based on the best available science and engineering for that particular coastal region would be the best way to delineate where and what coastal protection works would be necessary/acceptable. The current statutory planning system does not easily accommodate 'changing probabilities and risk over time'; it strongly relies on 'solid lines on a map'. That is why the notion of consistent sea level rise 'planning benchmarks' (not projections) were devised i.e. consistent figures to be incorporated into Councils' hazard studies. Unfortunately, due to socio-political circumstances described in the answer to Q6 this government has abandoned those benchmarks. However it is interesting to note that recent legal advice prepared for coastal Councils suggests they should stay with them until if and when the State replaces them with new figures.

There are Australian Standards that outline the preferred approaches to risk management (AS/NZS 31000:2009) and climate change adaptation (Draft AS 5334) that could be easily adopted.

Q11. To what extent should a CZMP include climate change adaptation strategies recognising the possible need to adopt a pathways approach involving tipping points?
Assuming that CZMPs can be incorporated into the planning framework, then how can an appreciation of risk associated with climate change be used to develop adaptation strategies? Much depends on projected timing of future events. However management of natural resources and the built environment will involve decisions that should pre-empt the impact of climate change induced "shocks". Monitoring change and engaging communities in the process of long term resilient thinking should be encouraged at local government levels with the state government providing oversight and support. Are CZMPs the best mechanism for achieving such strategic outcomes if subject to revision every 5 years?

An ICZMP or its statutory equivalent discussed in the answer to Q3 must incorporate climate change adaptation strategies. These will be different for already built up or residentially zoned land where protection is likely to be the only viable option longer term. Where land is zoned rural, it should not be 'up-zoned' if coastal hazard or flood hazard studies indicate that the level of risk will be unacceptable in the future.

Q12. What ways can private and public interests in coastal AND marine management be best shared given the various responsibilities of different state agencies and local government?
The NSW Government has recently announced changes to the way the marine domain will be managed in future. It is important that entities responsible for marine management obtain an appreciation of governance and issues in the coastal zone, and vice versa. It is not clear at this stage how coordination of the different interests can best be achieved. Competing and conflicting interests are manifest in both domains especially where there are potentially overlapping boundaries or where the actions in one domain adversely impacts on the other.

An integrated management approach should be established to protect common values and to reduce if not eliminate conflicting decisions. The former Coastal Council provided a useful forum for such integration.

See attached submission.