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Planning for Uncertainty under the Coastal Management Framework: Deep Water for Decision-makers?

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| Humanity has always had an uncertain relationship with large bodies of water





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Living with Uncertainty

- The east coast of Australia has long been one of the most desirable places in the country to live, work and play.
- However, the growing population on the coast, together with increases in tourism, has resulted in rapid urban expansion and, consequently, increased pressure on the resources of the coastal zone.
- Scientific consensus is sea levels, storm events and coastal erosion are getting worse. How much worse, and how much intervention, and what form of intervention is needed - remains unknown and whether the legislative response is a robust framework is untested and uncertain.

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The United Nations Intergovernmental Panel on Climate Change Report 2021


- The IPCC report identified that Australia's rising sea levels are increasing at a rate higher than the global average
- From a financial point of view, CoreLogic's recent Coastal Risk Scores for Financial Risk Assessment estimated that more than \$25 billion AUD of residential property was at risk. Let alone infrastructure and public assets



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The Current Coastal Management Framework

1. A new framework for decision-making under the *Coastal Management Act 2016*, no longer based on the premise that "the coastal zone" was one strip of land next to the sea, but rather four potentially overlapping areas with emphasis on amenity, public safety and ecologically sustainable development
2. A new EPI, known as the *State Environmental Planning Policy (Coastal Management) 2018* - which in March this year became Chapter 2 of the *State Environmental Planning Policy (Resilience and Hazards) 2021*
3. New requirements for the preparation of, and certification of, Coastal Management Plans by Councils, supported by an announcement of a 83.6 million dollar Coastal Reform package implementation

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The Coastal-specific Regime and the Planning Toolkit

- The coastal-specific regime under the CM Act operates within an existing planning and legislative framework.
- Local government authorities as creatures of statute must deal with coastal management challenges with the tools available to them, principally: environmental land use planning, development assessment and civil enforcement action
- The existing framework includes other statutory powers and obligations including building certificates, the orders regime under the *EPA Act 1979*, *Local Government Act 1993*, *Protection of the Environment Operations Act 1997*, the Standard Instrument LEP, Crown Land development and Part 5 of the EPAA to name a few.

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The Planning Toolkit

EPA Act CM Act LG Act

SEPPs CMPs LEPs

Policies, Manuals, Guidelines & DCPs

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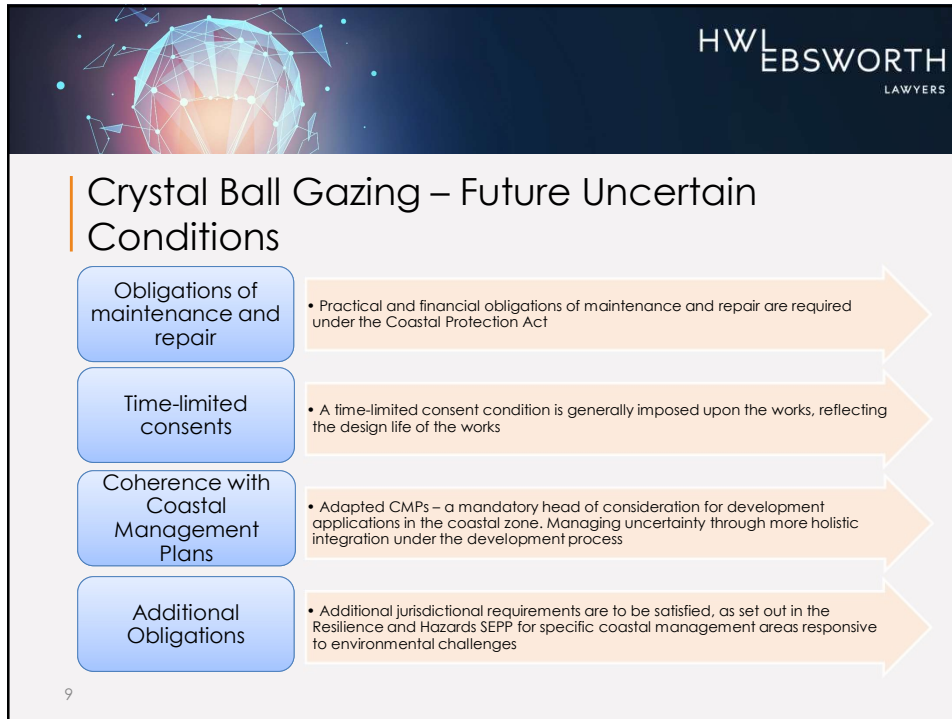


How Does the Coastal Management Act 2016 Operate to Manage Uncertainty of Outcomes?

- Development applications generally and for coastal protection works under Part 4 of the EPA Act are to address additional preconditions to consent which make proposed development more appropriate for an active zone
- Development applications in static environments are issued on the basis that the proposed works will last indefinitely with relatively minor operational conditions if any.
- Coastal protection works are placed into a dynamic environment

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Crystal Ball Gazing – Future Uncertain Conditions

Obligations of maintenance and repair	<ul style="list-style-type: none"> Practical and financial obligations of maintenance and repair are required under the Coastal Protection Act
Time-limited consents	<ul style="list-style-type: none"> A time-limited consent condition is generally imposed upon the works, reflecting the design life of the works
Coherence with Coastal Management Plans	<ul style="list-style-type: none"> Adapted CMPs – a mandatory head of consideration for development applications in the coastal zone. Managing uncertainty through more holistic integration under the development process
Additional Obligations	<ul style="list-style-type: none"> Additional jurisdictional requirements are to be satisfied, as set out in the Resilience and Hazards SEPP for specific coastal management areas responsive to environmental challenges

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Where is Sand Stuck Between the Toes

- While announced in 2016, the legislation did not commence until April 2018. During this time, the local government sector in NSW underwent significant reform with council amalgamations.
- An independent report publicised in early 2020 by the NSW DPIE identifies that this has had a measurable impact on progress towards the development and certification of new CMPs
- The bulk of the 83.6 million dollar Coastal Reform package was allocated to implementation of certified CMPs, not preparation

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Then came the COVID-19 pandemic, Floods, Droughts and Bushfires



COVID-19







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No Coastal Management Plan Means Less Systemic Benefits - Shifting Sands

- The preparation of a CMP capable of being certified is a complex task
- Administrative decision making and policy changes, like development decisions, are capable to challenge judicial review - *Boomerang and Blueys Residents Group Inc v New South Wales Minister for Environment, Heritage and Local Government and MidCoast Council (No 2)* [2019]



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Coastal Management and Competing Priorities

- There are fundamental drivers built into the framework for the maintenance of beach amenity and the character of settlements and natural features which draw residents, tourists and investment to the coastal regions. More recently, storm events have shifted some of the focus to hazard management and response in both emergency and long term planning contexts



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What lessons can be learned from other jurisdictions?

- Maryland, United States of America
- Netherlands, Europe

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Maryland's 'Natural Approach'

- In the last 10 years, Maryland has seen 6 severe storms battering its coastline, including Hurricane Sandy
- Shoreline erosion has stripped acres of land and sediment, putting properties and infrastructure along the coastline at severe risk
- The main policy change, prompted by Maryland's Commission on Climate Change in 2007, is the "natural approach".




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The Netherlands "mega nourishment" Program

- The Netherlands has 350km of coastline with nine million residents living in coastal areas
- The "Sand Motor" is a large scale intervention built in 2011 to protect the coastal zone from sea level rise impacts
- The amount of deposited sand acts as a buffer against sea level rise and slowly moves down the coastline
- Now ten years on, the project appears to have been successful, with the coastline north and south of the sand motor holding its position or moving seaward, confirmation of new habitat established for flora and fauna
- <https://www.researchgate.net/publication/318237848> Usability of the climate-resilient nature-based sand motor pilot The Netherlands

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The Last (Past) Word

The Ocean, n.

A body of water occupying about two-thirds of a world made for man – who has no gills


- Ambrose Bierce

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