

Department of Planning and Environment

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Crown Land Management

# Coastal Crown Land Guidelines

# Document Control Sheet

## Document Contact

Name	Organisation	Phone	Email
Coastal Unit	DPE – Crown Lands	1300 886 235	<a href="mailto:coastal.unit@crowland.nsw.gov.au">coastal.unit@crowland.nsw.gov.au</a>

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### Coastal Crown Land Guidelines

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### [More information](#)

NSW Department of Planning and Environment – Crown Lands

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# Definitions

Name / term	Description
Beach nourishment	A type of coastal protection work, beach restoration or augmentation using clean dredged or fill sand. Dredged sand is usually hydraulically pumped and placed directly onto an eroded beach or placed in the littoral transport system. See further <a href="#">Coastal Management Glossary</a>
Coastal Crown land	Crown land within the meaning of section 1.7 of the <i>Crown Land Management Act 2016</i> and Crown roads administered under the <i>Roads Act 1993</i> that is within the coastal zone as defined under Part 2 of the <i>Coastal Management Act 2016</i> .
Crown road	Has the meaning given to it as in the <i>Roads Act 1993</i>
Coastal hazard	Has the meaning given to it in section 4 of the <i>Coastal Management Act 2016</i> . That section identifies the following as coastal hazards: <ol style="list-style-type: none"> <li>1. beach erosion</li> <li>2. shoreline recession</li> <li>3. coastal lake or watercourse entrance instability</li> <li>4. coastal inundation</li> <li>5. coastal cliff or slope instability</li> <li>6. tidal inundation</li> <li>7. erosion and inundation of foreshores caused by tidal waters and wave action, including the interaction of those waters with catchment floodwaters.</li> </ol>
Coastal Management Program	Is prepared, adopted and certified under Part 3 of the <i>Coastal Management Act</i> or previously made under the <i>Coastal Protection Act 1979</i> as a ‘Coastal Zone Management Program’ and continues to have effect or is taken to be a Coastal Management Program because of schedule 3 of the <i>Coastal Management Act</i> .
Coastal Management Manual	The manual imposes mandatory requirements and provides guidance on the preparation, development, adoption, implementation, amendment, and review of, and the contents of, Coastal Management Programs (CMPs). Refer to s.21 of the <i>Coastal Management Act</i> .
Coastal protection works	Means works consistent with section 4 of the <i>Coastal Management Act</i> , that is: <ol style="list-style-type: none"> <li>(a) beach nourishment activities or works, and</li> <li>(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.</li> </ol>
Coastal Unit	The business unit within Crown Lands (Land and Asset Management Directorate) providing specialist coastal advice.
Coastal zone	Has the same meaning as section 5 of the <i>Coastal Management Act 2016</i> and includes Coastal Waters of the State (see “Scope and Application” below).
The department	Means Crown Lands within the Department of Planning and Environment.
Landowner’s consent	Means written consent from the department to lodge a development application for development on Crown land as required under section 23 of the <i>Environmental Planning and Assessment Regulation 2021</i> . Note: Some development undertaken by Crown land managers and tenure holders may have deemed consent to make an application. Refer also to section 2.23 of <i>Crown Land Management Act 2016</i> and clause 14 of the <i>Crown Land Management Regulation 2018</i> .

Name / term	Description
Open coast	That part of the coastal zone subject to physical coastal processes and wave action from the open coast, including the entrance to an estuary or the entrance to a coastal lake that is open to the ocean.
Private structural coastal protection works	Refers to coastal protection works that are hard and structural in nature, for example seawalls, revetments and groynes, that are not installed by public authorities and protect privately-owned assets

# Overview

Crown land is public land held and administered in trust for the benefit of the people of New South Wales. It includes coastal assets such as beaches, headlands, estuaries and waterways<sup>1</sup> and the seabed and subsoil to three nautical miles off the coast<sup>2</sup>. Many surfing reserves, regional harbours, river entrance breakwaters and holiday parks are located on Crown land. The management of coastal Crown land is complex because of its high environmental, economic, social and cultural values and unique issues including:

- dynamic coastal processes and hazards, such as erosion and inundation, which are being exacerbated by climate change
- diverse and significant coastal and estuarine ecosystems and ecological communities
- increasing population and development intensity
- high public usage, contested spaces and the need for fair and equitable public access
- high Aboriginal cultural heritage values
- Aboriginal land rights and native title rights and interests
- multiple and overlapping governance and regulatory arrangements.

## Scope and application

These guidelines apply generally to the administration of Crown land under the *Crown Land Management Act 2016* (the Crown Land Management Act) and Crown roads under the *Roads Act 1993* (the Roads Act) where they are in the ‘coastal zone’ within the meaning of section 5 of the *Coastal Management Act 2016* (the Coastal Management Act).

For clarification, these guidelines do not apply to:

- the designated ports for Sydney Harbour (Port Jackson), Botany Bay, Port Kembla and Port Hunter (Newcastle), which are administered under the *Ports and Maritime Administration Act 1995*
- land managed under the *National Parks and Wildlife Act 1974*.

The ‘coastal zone’ is made up of four overlapping coastal management areas. These are:

1. coastal wetlands and littoral rainforests area – areas which display hydrological and floristic characteristics of coastal wetlands or littoral rainforests and land adjoining those features.
2. coastal vulnerability area – areas subject to coastal hazards such as coastal erosion and tidal inundation

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<sup>1</sup> Exceptions include the ports of Sydney Harbour (Port Jackson), Botany Bay, Port Kembla and Port Hunter.

3. coastal environment area – areas with natural coastal features such as coastal waters of the State<sup>2</sup>, estuaries, coastal lakes, coastal lagoons and land adjoining those features, including headlands and rock platforms
4. coastal use area – land adjacent to coastal waters, estuaries and coastal lakes and lagoons, and where development is or may be carried out.

Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (the Resilience and Hazards SEPP) identifies and maps the coastal management areas.

## Coastal Crown land

Crown land which is located within the coastal zone is referred to in these guidelines as ‘coastal Crown land’ (see also definitions).

The department, through its functions under the Crown Land Management Act administers and regulates a diversity of activities on coastal Crown land. These guidelines support departmental staff and Crown land managers to meet legislative requirements and respond strategically, consistently and effectively to complex and unique coastal issues.

These guidelines also support departmental staff in advising and collaborating with local councils on the development of Coastal Management Programs (CMPs).

These guidelines integrate Crown land management with the NSW Coastal Management Framework setting out principles to guide the management and administration of coastal Crown land, including the provision of approvals for certain activities and development.

These guidelines focus on aligning decisions made under the Crown Land Management Act with the objects and principles of the Coastal Management Act and promote the integration of Crown land management with CMPs.

These guidelines are to be applied to certain dealings, decision-making procedures and processes that are relevant to coastal Crown land management, including the following:

- preparing other strategic plans and CMPs, including providing formal agreement to a CMP under section 15(4)(b) of the Coastal Management Act
- assessing applications for landowner’s consent for development applications on Crown land and require the department to provide consent under section 23 of the *Environmental Planning and Assessment Regulation 2021* (the Environmental Planning and Assessment Regulation)

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<sup>2</sup> ‘Coastal waters of the State’ has the same meaning as in section 58 of the *Interpretation Act 1987* and extends three nautical miles seaward of the territorial sea baseline (being the low water mark) consistent with the provisions of the *Coastal Waters (State Powers) Act 1980* (Cth). For further detail see: <https://www.ga.gov.au/scientific-topics/marine/jurisdiction/maritime-boundary-definitions>



- assessing applications for issuing a tenure under the Crown Land Management Act, for example lease or licence applications for dredging in waterways and coastal protection works
- preparing plans of management under the Crown Land Management Act.

The principles in these guidelines are not to be taken to diminish or exclude the requirements or directions of any relevant legislation, policies or NSW government strategic directions<sup>1</sup>, that apply to activities, development and dealings in coastal Crown land.

These guidelines are not the only relevant resource for managing coastal Crown land.

A number of other relevant requirements and/or resources are set out in the 'Related Documents' section at the end of the guidelines.

## Crown Lands Coastal Unit

Crown Lands Coastal Unit has the technical knowledge and expertise to assess the requirements of this guideline and assist with interpretation and implementation. Crown land managers, departmental staff and external stakeholders are encouraged to seek advice from the Coastal Unit regarding the application of these guidelines and the principles.

## NSW Coastal Management Framework

Coastal Crown land is managed under the Crown Land Management Act. However, the NSW Government has a legislative and policy framework in place for responding to existing and future coastal management challenges and opportunities. This framework is the NSW Coastal Management Framework, and is comprised of the following:

- Coastal Management Act
- Resilience and Hazards SEPP
- NSW Coastal Management Manual
- Coastal Management Programs
- NSW Coastal Council
- Coastal and Estuary Grants Program.

The Coastal Management Framework supports the aims of the *Marine Estate Management Act 2014*, as the coastal zone forms part of the marine estate.

## ***Coastal Management Act 2016***

The Coastal Management Act establishes the framework and overarching objects for coastal management in NSW.

There is significant alignment between the objects of the Coastal Management Act, the objects and principles of the Crown Land Management Act and with the priorities in Crown Lands' state strategic plan, *Crown land 2031* (Table 1).

The objects of the Coastal Management Act are broadly to manage the coastal environment of NSW consistently with the principles of ecologically sustainable development for the social, cultural and economic wellbeing of the people of NSW.

**Table 1. Alignment of the objects of the Crown Lands Management Act and the priorities of the Crown land 2031 State Strategic Plan with the Coastal Management Act.**

Crown Land Management Act Object	Crown land 2031 State Strategic Plan Priority
Object in section 1.3 (c): Environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land aligns with Coastal Management Act objects in section 3(a), (b), (d), (e), (f) and (g)	Priority: Strengthen community connections with Crown Land aligns with Coastal Management Act objects in section 3(a), (b) and (k)
Object in section 1.3(d): Consistent, efficient, fair and transparent management of Crown land for the benefit of the people of NSW aligns with Coastal Management Act objects in section 3(h), (j) and (k)	Priority: Accelerate economic progress in regional and rural NSW aligns with Coastal Management Act object in section 3(d)
Object in section 1.3 (e): Facilitate the use of Crown land by the Aboriginal people of NSW because of the spiritual, social, cultural and economic importance of land to Aboriginal people and, where appropriate, to enable the co-management of dedicated or reserved Crown land aligns with Coastal Management Act object in section 3(c)	Priority: Accelerate the realisation of Aboriginal land rights and native title in partnership with Aboriginal people aligns with Coastal Management Act object in section 3(c)  Priority: Protect cultural heritage on Crown land aligns with Coastal Management Act objects in section 3(b) and (c)  Priority: Protect environmental assets, improve and expand green space and build climate change resilience aligns with Coastal Management Act objects in section 3(a), (e), (f), (g), (i) and (l)

## State Environmental Planning Policy (Resilience and Hazards) 2021

The State Environmental Planning Policy (Resilience and Hazards) 2021 (the Resilience and Hazards SEPP) identifies and maps the coastal zone according to definitions in the Coastal Management Act.

It streamlines coastal development assessment requirements and identifies development controls for consent authorities to apply to each coastal management area to achieve the objectives of the Coastal Management Act.

The Resilience and Hazards SEPP regulates certain types of development in the Coastal zone and has implications for both Part 4 and Part 5 development and assessment pathways under the *Environmental Planning and Assessment Act 1979* (the Environmental Planning and Assessment Act). The Resilience and Hazards SEPP establishes the approval pathway for coastal protection works.

State-wide mapping is available at the [NSW Planning Portal Spatial Viewer](#) for:

- coastal wetlands and littoral rainforest area

- coastal environment area
- coastal use area

These maps are approved by the minister administering the Resilience and Hazards SEPP, currently the Minister for Planning and Public Spaces.

## Coastal Management Programs

Coastal Management Programs (CMPs) are prepared by local councils under the Coastal Management Act in accordance with the coastal management manual and in consultation with the community and relevant public authorities.

The purpose of a CMP is to set the long-term strategy for the coordinated management of the coastal zone with a focus on achieving the objects of the Coastal Management Act<sup>3</sup>.

CMPs identify coastal management issues affecting the coastal zone in a local government area (either in whole or in part) and identify actions to address those issues in a strategic and integrated manner. CMPs identify how and when those actions are to be implemented, as well as associated costs and viable funding mechanisms for delivering the actions.

The minister responsible for the Crown Land Management Act, the Ministerial Corporation (Land Administration Ministerial Corporation) as well as the department<sup>4</sup> are 'public authorities' for the purpose of the Coastal Management Act. If a CMP identifies actions for delivery by a public authority, or identifies actions that relate to, affect or impact on any land or assets that are owned or managed by that public authority, then the affected public authority must agree to those actions before the CMP can be certified.

In accordance with section 23 of the Coastal Management Act, the department needs to have regard to certified CMPs to the extent that those programs are relevant to the exercise of their functions and making decisions about the use of coastal Crown land. For example, when a plan of management is being prepared under the Crown Land Management Act – consistency and alignment with any applicable CMP is an important consideration.

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<sup>3</sup> Section 12 of the Coastal Management Act; OEH, NSW Coastal Management Manual, 2018, at p.15

<sup>4</sup> The term 'public authority' as defined in section 4 of the *Coastal Management Act* includes a Public Service agency. The department is a Public Service agency as per Schedule 1 of the *Government Sector Employment Act 2013*

## Marine Estate Management Strategy 2018-2028

The Marine Estate Management Authority (the Authority) is established under the *Marine Estate Management Act 2014* (Marine Estate Management Act). The Authority developed the 'Marine Estate Management Strategy 2018–2028' on behalf of the NSW Government in consultation with the broader community. The objective of the MEMS is to co-ordinate the management of the marine estate<sup>5</sup> with a focus on achieving the objects of the Marine Estate Management Act, and capturing any relevant threat and risk contained in a risk assessment report prepared under that Act. Section 19 of the Marine Estate Management Act requires that public authorities are to have regard to the MEMS to the extent that the strategy is relevant to the exercise of their functions.

Development of the Marine Estate Management Strategy was preceded by preparation of the New South Wales Marine Estate Threat and Risk Assessment Report Final Report' (August 2017). These guidelines have been developed with the assistance of funding under the Marine Estate Management Strategy. These guidelines align Crown land management with the Marine Estate Management Strategy, specifically action 2.3 which is to '*Develop and implement a state-wide policy for the management of coastal Crown lands (including submerged lands) in collaboration with CMPs*'.

There are other project outputs that will be generated under the Marine Estate Management Strategy that may be relevant to the administration of coastal Crown land, and the implementation of the principles in these guidelines. If considered appropriate, these outputs will be integrated into these guidelines in the future, as part of any evaluation and review. Alternatively, these outputs may be integrated into other guidelines that are produced by Crown Lands on specific matters.

### Review of guidelines

An evaluation of the guidelines will be undertaken 3 years after their endorsement and implementation. The evaluation will determine policy gaps in the interaction between the management of coastal Crown land and the NSW Coastal Management Framework, or any learnings or improvements which could be incorporated into the guidelines, including other outputs of the Marine Estate Management Strategy.

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<sup>5</sup> Section 6 of the Marine Estate Management Act provides that the Marine Estate includes: (a) the coastal waters of the state; (b) estuaries; (c) lakes, lagoons and other partially enclosed bodies of water that are permanently, periodically or intermittently open to the sea; (d) coastal wetlands; (e) lands immediately adjacent to, or in the immediate proximity of, the coastal waters of the State that are subject to oceanic processes (including beaches, dunes, headlands and rock platforms); and, (f) any other place or thing declared by the regulations to be the marine estate, but does not include any place or thing declared by the regulations not to be the marine estate.

# Assistance

For further assistance or information regarding the guidelines, please contact the Crown Lands Coastal Unit.

Email: [coastal.unit@crowland.nsw.gov.au](mailto:coastal.unit@crowland.nsw.gov.au)

# Coastal Crown land management principles

These principles guide the management and administration of coastal Crown land, including the provision of approvals for certain activities and development. They are designed to align decisions made under the Crown Land Management Act with the objects and principles of the Coastal Management Act, and to promote the integration of Crown land management with Coastal Management Programs.

- 1. Crown land management should align with Coastal Management Programs (CMPs)**
  - 1.1. Any CMP being prepared by a council in accordance with the Coastal Management Act, should be referred to the department in draft form at key stages of its development and before the CMP is adopted by council.
  - 1.2. Any CMP that proposes actions or activities to be carried out by the department or that proposes actions that relate to or affect Crown land, must be formally agreed to by the department before the CMP is submitted for certification.
  - 1.3. If the department has agreed to a CMP action under the provisions of the Coastal Management Act, it is likely that it is broadly consistent with the objects of the Crown Land Management Act. This means that the department's consideration of any directly related dealing or authorisation under the Crown Land Management Act will be streamlined.
  - 1.4. Dealings and approvals under the Crown Land Management Act or the Roads Act for coastal Crown land must have regard to and should be consistent with any relevant CMP.
  - 1.5. Any plan of management prepared with respect to coastal Crown land:
    - (a) must have regard to any relevant CMP, or in the absence of a CMP, the objects of the Coastal Management Act.
    - (b) should consider the coastal hazard and climate change risks that are relevant to coastal Crown land
- 2. Coastal hazard risks should be considered when issuing tenures over coastal Crown land**
  - 2.1. Any significant risks posed by coastal hazards, both now and in the future, including risks from climate change, should be considered before a tenure, for example a lease, license, permit or easement, is issued over coastal Crown land.
  - 2.2. The terms and conditions of all tenures -including renewals- over coastal Crown land are to be commensurate with the level of risk posed by coastal hazards, both now and in the future, including risks from climate change.
- 3. Coastal protection works on coastal Crown land on the open coast, should be low impact or non-structural, where feasible or practicable**



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- 3.1. Low impact or non-structural measures that restore or enhance natural defences, for example foreshore realignment, dune or foreshore reshaping, beach scraping, vegetation management and habitat restoration, should be considered in the first instance to mitigate risks from coastal hazards.
  - 3.2. Structural coastal protection works wholly or partly located on coastal Crown land on the open coast may only be considered if low impact or non-structural measures are not feasible or effective and only then if they are consistent with a relevant CMP.
- 4. Private structural coastal protection works on the open coast should be wholly located within the boundaries of the property the works are intended to protect**
- 4.1. Private structural coastal protection works on the open coast should be contained wholly within the proponent's private freehold land unless extenuating circumstances apply.
  - 4.2. Private structural coastal protection works, wholly or partly located on coastal Crown land, will only be considered when extenuating circumstances apply, that is, where:
    - (a) low impact or non-structural measures are not feasible or effective (refer Principle 3)
    - (b) they are consistent with a relevant CMP (refer Principle 1)
    - (c) historic, legacy issues will be addressed by the works
    - (d) there is a substantial public and/or environmental benefit to be derived from the works.
  - 4.3. Landowner's consent that is being sought by a private proponent for a development application for structural coastal protection works, wholly or partly on Crown land on the open coast, will only be considered if the following conditions are met to the satisfaction of the department:
    - (a) the proponent can satisfy the conditions in clause 4.2
    - (b) the proponent agrees to enter into a deed of agreement which may cover, amongst other things, agreement to enter a tenure(s) subject to certain conditions and the creation of easements
    - (c) the proponent agrees to meet all the department's costs in relation to the deed of agreement
    - (d) the proponent agrees to pay all necessary costs for designing, seeking approval and constructing coastal protection works, including ongoing maintenance responsibilities, compensation for creation of easements and any other matter necessary to facilitate the structure for example, community engagement, Native Title compensation, Indigenous Land Use Agreements, section 24FA protection under the *Native Title Act 1993* (Cth).
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- (e) the proponent agrees to indemnify the State of NSW from all liabilities associated with the works.

**5. Non-Commercial dredging on coastal Crown land should be in the broader public and/or environmental interest**

- 5.1. The department may consider applications for non-commercial dredging works and/or undertake dredging, as required, to maintain navigation channels and harbour entrances, and/or to meet environmental, coastal management and beach renourishment needs.
- 5.2. Dredging works must have regard to and should be consistent with any relevant coastal management program.
- 5.3. Where the department has provided an approval for, or undertaken non-commercial dredging in active marine margins, the spoil should, within practical limits, be returned for use within the active marine area of the coastal sediment compartment, with the highest priority accorded to use where beach nourishment is identified as an action in a relevant coastal management program.

# Supporting material

This supporting material is designed to assist users with implementation of the Principles.

## Principle 1 - Crown land management should align with Coastal Management Programs (CMP)

1.1 Any CMP being prepared by a council in accordance with the Coastal Management Act, should be referred to the department in draft form at key stages of its development and before the CMP is adopted by council.

Section 16(1)(c) of the Coastal Management Act provides that before adopting a CMP, a local council must consult on the draft program with other public authorities if the CMP:

- (i) proposes actions or activities to be carried out by that public authority, or
- (ii) proposes specific emergency actions or activities to be carried out by a public authority under the coastal zone emergency action subplan, or
- (iii) relates to, affects or impacts on any land or assets owned or managed by that public authority.

The department's preference is to be engaged at all key stages of CMP development, including the scoping study stage. This ensures that CMPs are consistent with the objects and principles of the Crown Land Management Act and facilitate integrated management of the coastal zone.

This early-stage consultation will facilitate sharing of information and the following outcomes:

- Identifying the scope of the CMP and specific Crown land management arrangements, for example who manages certain coastal Crown land and for what purpose
- Identifying persons or bodies with an interest, right, power or privilege in connection with the land who may be impacted by actions proposed in the CMP
- Identifying current and future land use, legacy issues and barriers that may constrain or add complexity to the CMP planning process
- Identifying management issues affecting certain coastal Crown land and integrating the resolution of these issues into the CMP
- Ensuring that any roles, responsibilities and actions to be developed under the program that affect Crown land, are attributed to the appropriate person or body with responsibility for the land's management and are consistent with the Crown Land Management Act.

1.2 Any CMP that proposes actions or activities to be carried out by the department or that proposes actions that relate to or affect Crown land, must be formally agreed to by the department before the CMP is submitted for certification.

The Coastal Management Act provides<sup>6</sup> that a CMP must not include proposed actions or activities to be carried out by any public authority, 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 program.

Almost all CMPs contain actions that affect Crown land, therefore most draft CMPs must be submitted to the department for review and consideration with respect to the provision of formal agreement under the Coastal Management Act.

The Coastal Unit coordinates the review of draft CMPs and the issuing of formal letters of agreement under the Coastal Management Act. This review process may require the negotiation of amendments to CMP actions so they are consistent with the objects and principles of the Crown Land Management Act and can be agreed to by the department. This agreement must be obtained from Crown Lands before the CMP is submitted for certification to the Minister administering the Coastal Management Act.

1.3 If the department has agreed to a CMP action under the provisions of the Coastal Management Act, it is likely that it is broadly consistent with the objects of the Crown Land Management Act. This means that the department's consideration of any directly related dealing or authorisation under the Crown Land Management Act will be streamlined.

As part of providing formal agreement to actions in a CMP that affect Crown land, the department considers alignment and consistency with the objects and principles of the Crown Land Management Act. This means that any dealings or authorisations that directly relate to actions in a certified CMP will already have been subject to a level of scrutiny and consideration by the department. This being the case, the department's consideration of any dealing or authorisation directly related to an action in a CMP, will likely be broadly consistent with the objects and principles of the Crown Land Management Act and therefore this part of the process will be streamlined. This principle does not exclude the need for the department to undertake a thorough assessment of applications and to consider a range of statutory considerations.

1.4 Dealings and approvals under the Crown Land Management Act or the Roads Act for coastal Crown land must have regard to and should be consistent with any relevant CMP.

This principle requires that any dealings or authorisations under the Crown Land Management Act and the Roads Act relating to coastal Crown land, must have regard to and should be consistent with any relevant CMP. Regard must be had to, amongst other things, consistency with any strategies, policies, direction or actions that are set out in a CMP that may be relevant to the subject coastal Crown land.

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<sup>6</sup> Section 15(4)(b)

Examples of the dealings and/or authorisations under the Crown Land Management Act and Roads Act to which this principal applies, include, but are not limited to:

- issuing tenures over Crown land e.g. licences, leases, permits or easements
- the provision of landowner's consent under section 23 of the Environmental Planning and Assessment Regulation
- the provision of funding under the Crown Reserves Improvement Fund (or equivalent)
- transfer or vesting of Crown land including disposal of Crown roads<sup>7</sup>
- Crown reserve dedications
- Crown land manager appointments.

1.5 Any plan of management prepared with respect to coastal Crown land:

- (a) must have regard to any relevant CMP, or in the absence of a CMP, the objects of the Coastal Management Act.
- (b) should consider the coastal hazard and climate change risks that are relevant to the coastal Crown land

The Crown Land Management Act authorises local councils that have been appointed to manage dedicated or reserved Crown land (council managers) to manage that land as if it were public land under the *Local Government Act 1993*<sup>8</sup>.

Under the Local Government Act<sup>9</sup>, public land is required to be classified as either operational land or community land. A plan of management must be adopted<sup>10</sup> by council for all community land<sup>10</sup>.

Section 39 of the Local Government Act requires that any plan of management for a Crown reserve is to be referred to the department (as owner of the land) in draft form prior to council placing the plan of management on public exhibition. This gives the landowner an opportunity to review the draft plan of management to ensure its interests and obligations are addressed.

This principle is consistent with sections 22 and 23(2) of the Coastal Management Act.

Plans of management for reserved or dedicated coastal Crown land are a mechanism by which the strategies and actions in any relevant CMP can be implemented. Any applicable actions and strategies in a CMP should be integrated, where appropriate, into plans of management prepared over Crown land.

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<sup>7</sup> Includes disposal of roads to local councils as well as private entities. Matters to take into account should include, amongst other things, whether the road forms a suitable buffer to protect built assets from current or foreseeable future coastal hazards and therefore should remain in the Crown estate, whether as a Crown road or reserved Crown land required for the essential public purpose of environmental buffer.

<sup>8</sup> Section 3.21 of the Crown Land Management Act

<sup>9</sup> Section 25 and 26 of the Local Government Act

<sup>10</sup> Section 36(1) of the Local Government Act

If a CMP does not apply to a location for which a plan of management is being prepared for coastal Crown land, the plan of management should have regard to the objects of the Coastal Management Act, and it should describe how the plan is consistent with and help achieve these objects. This includes consideration of how the plan of management ‘supports the objects of the Marine Estate Management Act’, which is object (m) in section 3 of the Coastal Management Act. As part of this process, the plan of management could also consider any relevant aspects of the Marine Estate Management Strategy, including associated actions and outputs.

Plans of management should avoid creating or exacerbating coastal hazard and climate change risks that are likely to be realised over the implementation timeframe of the plan. This requires an evidence based, scientifically robust understanding of the risks to the Crown land from coastal hazards and climate change. This includes knowledge of current, future and cumulative threats and risks from coastal hazards and climate change, and that may extend beyond the timeframe associated with the plan of management.

Actions to manage significant coastal hazards and climate change risks should be included in the plan of management, where appropriate, and should be consistent with any relevant CMP that applies to the subject Crown land. Technical knowledge regarding these risks should be obtained from the CMP including any associated studies, for example a coastal hazard risk assessment undertaken by a local council in accordance with the coastal management manual.

If technical studies are not available regarding coastal hazard and climate change risks, the process of preparing the plan of management will necessitate carrying out technical studies to obtain the required level of knowledge. These technical studies should be informed by the guidance material provided in the NSW Government’s [coastal management manual](#) and the process of selecting an appropriate risk management response should reflect due consideration of the relevant objects of the Coastal Management Act.

Further guidance, consistent with this principle, for councils preparing plans of management for Crown land under the Local Government Act, can be found at the department’s [Reserve Management Website](#).

## Principle 2 - Coastal hazard risks should be considered when issuing tenures over coastal Crown land

2.1 Any significant risks posed by coastal hazards, both now and in the future, including risks from climate change, should be considered before a tenure, for example a lease, license, permit or easement, is issued over coastal Crown land.

It is important that any significant coastal hazard risks associated with coastal Crown land are adequately considered before a tenure for the use and/or occupation of that Crown land is issued. This includes adequate consideration of local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline. It is important that use and/or occupation of Crown land does not significantly exacerbate coastal hazard risks and that coastal hazard risks can be mitigated over the lifetime of the tenure, remaining at an acceptable level.

If the relevant use or occupation of coastal Crown land has or will be assessed and authorised under Part 4 or Part 5 planning pathways in the Environmental Planning and Assessment Act, then it is assumed that coastal hazard risks have or will be considered through environmental impact assessments associated with these pathways. The applicant to a tenure of this kind, will need to document how coastal hazard risks have or will be considered and mitigated as part of meeting these assessment requirements under the Environmental Planning and Assessment Act. This documentation should be submitted as part of any tenure application.

If the development or activity has not been assessed and approved under Part 4 or Part 5 planning pathways in the Environmental Planning and Assessment Act, the applicant will need to demonstrate the appropriate planning pathway and adequate consideration of coastal hazard risks and any necessary measures for mitigating significant risks. Documentation to this effect should be submitted as part of the tenure application process. As part of this, the applicant may need to contact the local council for information on the coastal hazard risks and strategies that apply to the subject Crown land, and which may be detailed in a CMP.

2.2 The terms and conditions of all tenures (including renewals) over coastal Crown land are to be commensurate with the level of risk posed by coastal hazards, both now and in the future, including risks from climate change.

Business models and investment horizons for Crown land tenures need to be guided by evidence-based, scientifically robust coastal hazard and climate change risk assessments. Targeted terms and conditions in tenures will ensure that associated business models and investment horizons are underpinned by a comprehensive understanding of coastal hazard risks and will not be exacerbated by the leasing activity.

An example of a targeted tenure condition is limiting a tenure term for the period until coastal erosion is projected to pose a high / unacceptable risk to the subject Crown land. This type of condition would be informed by a scientifically robust coastal hazard risk assessment.

Tenures considered by the department with respect to coastal Crown land will be referred to the Coastal Unit for advice on coastal hazard risks, prior to approval. This is an operational requirement of the department, ensuring there is consistency in decision making and that evidence-based, scientifically robust coastal hazard risk assessments inform tenure terms and conditions on coastal Crown land.



## Principle 3 - Coastal protection works on coastal Crown land on the open coast, should be low impact or non-structural, where feasible or practicable

3.1 Low impact or non-structural measures that restore or enhance natural defences, for example foreshore realignment, dune or foreshore reshaping, beach scraping, vegetation management and habitat restoration, should be considered in the first instance to mitigate risks from coastal hazards.

Where coastal Crown land is subject to coastal hazard risks and a management intervention is required, low impact or non-structural measures are preferred by the department, where they are feasible or practicable.

Low impact or non-structural measures include the relocation of high-risk development and infrastructure, restoring or enhancing natural defences such as coastal dunes, bank vegetation and wetlands, beach nourishment and beach scraping. The department's preference for these types of interventions is because they are more likely to protect and enhance natural coastal processes and environmental values, which is the first object of the Coastal Management Act. In addition, such measures generally help preserve important community values such as public and recreational amenity, including access to and use of beaches, foreshores, rock platforms and headlands. These outcomes are consistent with the relevant management objectives for the 'coastal vulnerability area', referred to in section 7(2) of the Coastal Management Act.<sup>11</sup>

This principle applies to the department's consideration of:

- applications for landowner's consent for development applications on Crown land and require the department to provide consent under section 23 of the Environmental Planning and Assessment Regulation
- applications submitted to obtain an authority/tenure to occupy Crown land under the Crown Land Management Act
- any strategy or action in a CMP that affects Crown land in accordance with section 16(1)(c) of the Coastal Management Act
- plans of management or other plans that require authorisation under the Crown Land Management Act.

3.2 Structural coastal protection works wholly or partly located on coastal Crown land on the open coast may only be considered if low impact or non-structural measures are not feasible or practicable and only then if they are consistent with a relevant CMP.

<sup>11</sup> Section 7(1) of the Coastal Management Act defines the coastal vulnerability area as '...land identified by a State environmental planning policy (SEPP) to be the coastal vulnerability area for the purposes of this Act, being land subject to coastal hazards. Subject to identification in a SEPP, most coastal protection works will be located on land located in the coastal vulnerability area.'

For the purpose of this principle, ‘structural coastal protection works’ include, but are not limited to:

- geofabric container (sandbag) seawalls (subject to the exclusions referred to below)
- rock revetment seawalls
- vertical concrete/block seawalls
- stepped concrete/block seawalls
- groynes.

The following types of structural coastal protection works are excluded from the operation of this principle:

- geofabric container (sandbag) seawalls undertaken by a public authority that are to be in place for not more than 90 days and are development without consent under clause 2.16(2) of the Resilience and Hazards SEPP
- routine maintenance works or repairs to any existing and approved structural coastal protection works
- emergency coastal protection works undertaken by a public authority in accordance with a coastal zone emergency action subplan.

Before structural coastal protection works are considered for coastal Crown land on the open coast, an evaluation should be undertaken of whether low impact or non-structural measures are feasible or practicable to manage coastal hazard risks. The evaluation may be undertaken as part of developing a CMP. Alternatively, the evaluation may be undertaken independently of a CMP, by an appropriately qualified coastal management specialist or engineer on behalf of a proponent.

If low impact or non-structural measures are feasible or practicable on the open coast, then alternative, structural measures are unlikely to be approved or authorised under the Crown Land Management Act, and the department is unlikely to agree to actions in a CMP that propose such works on Crown land.

If low impact or non-structural measures are not feasible or practicable on the open coast, then structural coastal protection works may be considered by the department in terms of providing an approval or authorisation under the Crown Land Management Act, and the department may provide agreement to actions in a CMP that propose such works on Crown land.

However, if the proposed structural measures are inconsistent with a strategic direction or action in a CMP, they will not be considered by the department and the proponent will not obtain the necessary approvals or authorisations under the Crown Land Management Act.

If there is no CMP in place for the subject location, consistency with a CMP is not a consideration.

This principle applies to the department’s consideration of:

- applications for landowner’s consent for development applications on Crown land, and require the department to provide consent under section 23 of the Environmental Planning and Assessment Regulation

- applications submitted to obtain an authority/tenure to occupy Crown land under the Crown Land Management Act
- any strategy or action in a CMP that affects Crown land in accordance with s. 16(1)(c) of the Coastal Management Act
- plans of management or other plans that require authorisation under the Crown Land Management Act.

The proponent for the coastal protection works may be either a public authority or a private individual or entity. Additional measures will be required for private coastal protection works on coastal Crown land on the open coast, refer to Principle 4.

A tenure or other authorisation under the Crown Land Management Act will generally be required for any coastal protection works on coastal Crown land. Principle 4 sets out additional considerations for works on coastal Crown land which may substantially benefit private land.

## Principle 4 - Private structural coastal protection works on the open coast should be wholly located within the boundaries of the property the works are intended to protect

4.1 Private structural coastal protection works on the open coast should be contained wholly within the proponent's private freehold land unless extenuating circumstances apply.

Private structural coastal protection works means structural coastal protection works that are being constructed for the primary purpose of protecting land which is not owned or managed for the benefit of the public.

For the purpose of this principle, structural coastal protection works include, but are not limited to:

- geofabric container (sandbag) seawalls
- rock revetment seawalls
- vertical concrete/block seawalls
- stepped concrete/block seawalls
- groynes.

Coastal Crown land is highly valued by the community and structural coastal protection works on the open coast can have deleterious effects on public safety, access and amenity, as well as coastal and environmental values.

Therefore, in the absence of extenuating circumstances and strong evidence to the contrary, it is to be presumed to be in the public interest to contain private structural coastal protection works wholly within the boundaries of the private land that is being protected.

This aims to achieve the following outcomes:

- to avoid compromising public use and enjoyment of coastal Crown land<sup>12</sup>
- to help ensure that the use of coastal Crown land is consistent, efficient, fair and transparent and for the benefit of the people of NSW as a whole<sup>13</sup>
- to ensure that Crown land is occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State and consistent with the objects and principles of the Crown Land Management Act.<sup>14</sup>

The extenuating circumstances referred to in this clause are detailed in clause 4.2.

This principle applies to the department's consideration of:

<sup>12</sup> Section 1.4(c) of Crown Land Management Act

<sup>13</sup> Section 1.3(d) of Crown Land Management Act

<sup>14</sup> Section 1.4(f) of Crown Land Management Act

- applications for landowner's consent for development applications on Crown land and require the department to provide consent under section 23 of the Environmental Planning and Assessment Regulation
- applications submitted to obtain an authority/tenure to occupy Crown land under the Crown Land Management Act
- any strategy or action in a CMP that affects Crown land in accordance with section 16(1)(c) of the Coastal Management Act.

4.2 Private structural coastal protection works on the open coast, wholly or partly located on coastal Crown land will only be considered when extenuating circumstances apply, that is, where:

- (a) low impact or non-structural coastal management measures are not feasible or practicable (refer to Principle 3)
- (b) the proposed works are consistent with a relevant CMP (refer to Principle 1)
- (c) historic, legacy issues will be addressed by the proposed works
- (d) there is a substantial public and/or environmental benefit to be derived from the proposed works.

To the satisfaction of the department, the advice of an appropriately qualified independent expert should be obtained to respond to the requirements in this clause and to establish that extenuating circumstances apply.

The advice should include, but not be limited to:

- an evaluation of non-structural alternatives to the proposed structural works
- an evaluation of all reasonable options to contain the works wholly within private land
- analysis of the proposed works and their consistency with any relevant direction, strategy or action in a relevant CMP
- analysis of the issues posed by historic, legacy issues at the site and how the proposed works will address these issues / risks
- analysis of the public and environment impacts likely to be derived from the proposed works, including impacts on coastal and ecological processes, beach access and amenity and any positive impacts / benefits which in accordance with this principle, need to be substantial.

Clause 4.2(b) does not apply if there is no CMP in place for the subject location.

This principle applies to the department's consideration of:

- applications for landowner's consent for development applications on Crown land and require the department to provide consent under section 23 of the Environmental Planning and Assessment Regulation

- applications submitted to obtain an authority/tenure to occupy Crown land under the Crown Land Management Act, except applications for short term occupations of (or access to) Crown land, to facilitate construction of private structural coastal protection works, or to maintain such works that are contained wholly within private freehold land. Applications of this nature will be considered on a case-by-case basis
- any strategy or action in a CMP that affects Crown land in accordance with section 16(1)(c) of the Coastal Management Act.

4.3 Landowner's consent that is being sought by a private proponent for a development application for structural coastal protection works, wholly or partly on Crown land on the open coast, will only be considered if the following conditions are met to the satisfaction of the department:

- (a) the proponent can satisfy the conditions in clause 4.2
- (b) the proponent agrees to enter into a deed of agreement which may cover, amongst other things, agreement to enter a tenure(s) subject to certain conditions and the creation of easements
- (c) the proponent agrees to meet all the department's costs in relation to the deed of agreement
- (d) the proponent agrees to pay all necessary costs for designing, seeking approval and constructing private coastal protection works, including ongoing maintenance responsibilities, compensation for creation of easements and any other matter necessary to facilitate the structure for example, community engagement, Native Title compensation, Indigenous Land Use Agreements, section 24FA protection under the *Native Title Act 1993* (Cth).
- (e) the proponent agrees to indemnify the State of NSW from all liabilities associated with the works.

Section 23 of the Environmental Planning and Assessment Regulation provides that a development application may only be made by:

- (a) the owner of the land to which the development application relates, or
- (b) another person, with the written consent of the owner of the land.

Accordingly, in most situations<sup>15</sup>, private proponents must seek landowner's consent from the department if they wish to lodge a development application for private coastal protection works located on Crown land, including submerged Crown land.

This is a separate process to seeking a tenure and/or easement for the occupation and or use of Crown land (the latter is covered in clause 4.1). An application for a tenure may be made

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<sup>15</sup> Noting that for some development applications, deemed consent to make an application may apply. See section 2.23 of Crown Land Management Act and clause 14 of Crown Land Management Regulation.

following the provision of landowner's consent and the consent authority's determination of a development application by way of approval. The provision of landowner's consent from the department does not guarantee a tenure will be issued by the minister (or the minister's delegate), even if a development application is approved by the consent authority.

Landowner's consent that is being sought by a private proponent for a development application for structural coastal protection works on coastal Crown land, will only be considered if the proponent agrees to enter into a deed of agreement which may cover, amongst other things:

- agreement to a tenure(s) subject to certain conditions
- the creation of easements
- to meet all the department's costs
- agree to indemnify the State of NSW from all liability associated with the works
- there being no objections from other public authorities whose concurrent consent is required (for example, an authorisation under the *Fisheries Management Act 1994*).

The proponent's direct costs may include:

- the costs incurred to obtain development consent,
- establishing required easements,
- acquisition/compensation for example, land value, or loss of public access, community engagement, Native Title compensation and Indigenous Land Use Agreements
- costs incurred to obtain the consent of persons or bodies with an interest or right in the land
- establishing tenures
- construction and maintenance costs for the life of the structure
- any costs in connection with investigations to satisfy the requirements of these guidelines
- conducting community engagement under the Crown land Community Engagement Strategy.

For landowner's consent to be provided, the department should be satisfied that the requirements in clause 4.3 are capable of being met. This includes (without limitation) whether there are any non-structural alternatives and evidence that all reasonable options to contain the works wholly within private land have been exhausted.

Crown land tenure/s and/or easements will be required for any use or occupation of Crown land associated with the works, over the full and entire lifetime of the works, including use or occupation associated with:

- design and investigation activities
- construction activities
- maintenance activities

- the footprint of the constructed works
- alienating or rendering Crown land unusable as a result of the works
- management of the structures in perpetuity
- decommissioning works.

The department will determine the Crown land tenure type, i.e. lease, licence and/or easement.

An easement/s on the title of the subject Crown land binding the benefitting private land (on title) will generally be the required form of tenure for a permanent coastal protection work. Several forms of tenure may be necessary, for example an easement for the structure footprint and for the ongoing maintenance of the structure.

Any easement/s will need to be registered on the proponent's private property title, with requirements for management of the structures in perpetuity, and as set out in a Deed of Agreement. The Deed of Agreement is an important part of the Crown land tenure, which may be issued by the department, or in some circumstances, a council Crown land manager. The Deed of Agreement will need to be executed by all benefitting landholders (subject of the development consent) before the department authorises any use or occupation of Crown land.

The Deed of Agreement outlines funding, obligations and other arrangements associated with the works. Its conditions will reflect the terms of any development consent and set out the required tenure and any terms to be included such as ongoing public liability insurance.

Applications for landowner's consent will only be considered if proposed works are consistent with the other principles in these Guidelines. Nothing in these guidelines should be taken to infer that a proponent's consent to the conditions in clause 4.3 will result in the department providing landowner's consent in every case.

Department staff should seek advice from the Coastal Unit before landowner's consent is provided to a private proponent of a development application for structural coastal protection works on coastal Crown land.



## Principle 5 - Non-commercial dredging on coastal Crown land should be in the broader public and/or environmental interest

5.1 The department may consider applications for non-commercial dredging works and/or undertake dredging, as required, to maintain navigation channels and harbour entrances, and/or to meet environmental, coastal management and beach renourishment needs.

Many estuaries and tidal waterways, including intermittently closed and open lakes and lagoons (ICOLLs) and regional harbours, are submerged Crown land. Dredging and removal of sand and other materials from submerged Crown land usually requires an authorisation under the Crown Land Management Act.<sup>16</sup> This authorisation is usually by way of a licence; however, it may also be through the creation of a Crown reserve and appointment of a Crown Land Manager.

Applications for dredging that provides a public benefit, such as to maintain navigation channels and harbour entrances, to reduce inundation risk to foreshore infrastructure and property, or to win sand for environmental, coastal management and beach nourishment purposes, will be considered. This principle does not apply to commercial dredging and extraction operations.

5.2 Dredging works must have regard to and should be consistent with any relevant coastal management program.

Consistent with Principle 1 and clause 1.4, dealings and approvals under the Crown Land Management Act for dredging on coastal Crown land, including submerged Crown land, must have regard to and should be consistent with any relevant CMP.

5.3 Where the department has provided an approval for or undertaken non-commercial dredging in active marine margins, the spoil should, within practical limits, be returned for use within the active marine area of the coastal sediment compartment, with the highest priority accorded to use where beach nourishment is identified as an action in a relevant coastal management program.

Non-commercial dredging on coastal Crown land may be necessary to support navigation and other activities such as management of ICOLL entrances, regional harbours, and environmental and coastal hazards. Dredging and removal of sediments within active marine margins should be undertaken with careful and due consideration of impacts on coastal and ecological processes.

Where dredging is considered necessary, it is preferable that the sand be retained /reused within the same coastal sediment compartment<sup>17</sup>. Further, dredging operations should incorporate and

<sup>16</sup> Offshore dredging and sand extraction may be regulated under the *Offshore Minerals Act 1999* and in this context may not require authorisation under the Crown Land Management Act.

<sup>17</sup> Regional scale coastal sediment compartments are identified in Schedule 1, Part 1 of the Coastal Management Act.

support beach nourishment opportunities wherever possible. Beach nourishment is a coastal hazard management strategy that can provide a form of soft ‘protection’ from coastal erosion / shoreline recession. Dredging operations should prioritise the disposal of dredged sand where it will benefit beaches identified in a CMP as requiring beach nourishment. Only sand of an appropriate size and composition, free from contaminants, should be used for beach nourishment. Unsuitable or contaminated sand should be treated/disposed of according to requirements of the relevant environmental legislation.

## Related Documents

- Crown land Community Engagement Strategy and Crown land Community Engagement Strategy and Community Engagement Guidance and Resources, available at: <https://www.crownland.nsw.gov.au/about-us/our-vision-future/community-engagement-strategy>
- Crown Land Compliance and Enforcement Policy and Guideline – Crown land compliance and enforcement policy available at: <https://www.crownland.nsw.gov.au/protection-and-management/compliance>
- Department of Planning and Environment - Crown Lands, [Aboriginal land claims fact sheet](#)
- Developing plans of management for community land Crown reserves Guidelines For Council Crown Land Managers, available under ‘Plan of management (PoM)’ at: <https://reservemanager.crownland.nsw.gov.au/who-we-are/who-manages-crownland/council-crown-land-manager>
- Environmental Protection Authority - Victoria, “[Best Practice Environmental Management – Guidelines for Dredging](#)”, 2001.
- Fact Sheet Easements on Crown land, available at: <https://www.crownland.nsw.gov.au/protection-and-management/easements>
- Leasing of Crown land by direct negotiation: [Apply for or managing a Crown lease](#)
- Licencing, leases and permits, further information available at: <https://www.crownland.nsw.gov.au/licences-leases-and-permits>
- Native title guidance, available at: <https://www.crownland.nsw.gov.au/protection-and-management/aboriginal-land-rights-and-native-title/native-title>
- Plans of Management - information for non-council Crown land managers, available at: <https://reservemanager.crownland.nsw.gov.au/land-management/plans-of-management>
- Sale or lease of Crown land by direct negotiation Policy – available at: <https://www.crownland.nsw.gov.au/sites/default/files/2022-06/IND-O-182-Sale-or-lease-of-Crown-land-by-direct-negotiation-policy.pdf>
- Short-term Licence— guidelines, available at: <https://www.crownland.nsw.gov.au/sites/default/files/2022-07/short-term-licence-guidelines.pdf>
- Water Research Laboratory (UNSW), “[Guidelines for Sand Nourishment](#)”, 2017.



## Relevant NSW Legislation

### Acts of Parliament

- *Aboriginal Land Rights Act 1983*
- *Coastal Management Act 2016*
- *Crown Land Management Act 2016*
- *Environmental Planning and Assessment Act 1979*
- *Fisheries Management Act 1994*
- *Local Government Act 1993*
- *Marine Estate Management Act 2014*

### Regulations

- *Crown Land Management Regulation 2018*
- *Environmental Planning and Assessment Regulation 2021*
- *Marine Estate Management (Management Rules) Regulation 1999*
- *Surveying and Spatial Regulation 2017*

### Environmental Planning Instruments (EPIs)

- *State Environmental Planning Policy (Resilience and Hazards) 2021*

### Relevant Commonwealth Legislation

- *Native Title Act 1993*