

 <p>Mackay REGIONAL COUNCIL</p>	COUNCIL POLICY	
	Coastal Erosion Protection Works – Contribution and Costs Recovery Policy	
	POLICY NO	032
	DEPARTMENT	Development Services
	PROGRAM	Strategic Planning
ENDORSED BY COUNCIL	24 October 2018, Folio 59315	

1.0 Scope

To establish the circumstances under which Mackay Regional Council (MRC) may be willing to act as lead agent for the planning, design, construction and maintenance of coastal erosion protection works.

2.0 Purpose

Where MRC elects to take this lead agency role, the policy outlines the cost sharing arrangements which will apply. It allows for MRC to meet the initial cost of the works and any ongoing maintenance costs to recover its expenditure via a special rate or charge.

Each specific case will be dealt with on its merits in terms of whether MRC accepts the lead agency role, the apportionment of costs and the establishment of scheme beneficiaries.

3.0 Reference

- Chapter 4, Part 1, Section 92 of the *Local Government Act 2009*
- *Coastal Protection and Management Act 1995*
- *Coastal Protection & Management Regulation 2017*
- *Planning Act 2016*
- State Planning Policy
- State Development Assessment Provisions (SDAP) State Code 8: Coastal development and tidal works
- Building and engineering standards for tidal works (DEHP 2013)

4.0 Background

Coastal strips are retained in public ownership to provide access to and from the water's edge and to provide buffer zones between housing or other infrastructure and the water line. Wider coastal strips may be developed as structured parkland to meet public demand for recreational facilities adjacent to the beach. The title of this land is generally "Esplanade", "Recreational Reserve" or "Unallocated State Land". However,

in some cases the land may be owned by MRC in freehold because of historic planning arrangements.

MRC administers and maintains a range of beaches and coastal strips within its region. Ultimate authority over these areas usually rests with the State through the Department of Environment & Science (DES). Establishment of structures on these areas is therefore subject to various State controls and DES permits which are required prior to the construction or implementation of any erosion protection works.

DES generally views coastal erosion as a natural fluctuation of the coast and has demonstrated a preference of allowing nature to take its course or to utilise beach nourishment rather than constructing permanent structures to control erosion. Nevertheless, some infrastructure may be substantiated in exceptional circumstances to protect public infrastructure or private property.

5.0 Policy Statement

Head of Power

Chapter 4, Part 1, Section 92 of the *Local Government Act 2009* gives MRC the authority to impose a special rate or charge.

To impose a lawful rate or charge under Chapter 4, Part 1, Section 92 of the *Local Government Act 2009*, the rate must be for services, facilities and activities that have a special association with the particular land because: -

- a) the land or its occupier
 - (i) specifically benefits from the service, facility or activity; or
 - (ii) has or will have special access to the service, facility or activity; or
- b) the land is or will be used in a way that specially contributes to the need for the service, facility or activity; or
- c) the occupier of the land specially contributes to the need for the service, facility or activity

Protection of Public Infrastructure

Foreshore erosion protection measures will only be utilised to protect essential constructed public infrastructure where it is both economic to do so and there is limited opportunity to relocate the infrastructure at risk. They will not be utilised merely to protect MRC controlled esplanade or parkland areas as these exist in part, to provide a buffer to cyclical coastal movements. However, it is provided that construction of coastal erosion protection may be undertaken in any instance where MRC considers the protection of such an area as being overwhelmingly in the public interest.

Where MRC elects to undertake foreshore erosion protection works to protect essential constructed infrastructure and in doing so also provides protection to private property, it will apply a special rate or charge to recover a contribution from the benefited landholders.

In general, it is proposed that the division of cost recovery associated with works of this nature would be established as follows:

- Works for public infrastructure protection and benefiting private landowners.

Costs shall be borne by MRC, landowner and State / Federal Governments subject to sourcing available grant funds. Determination of contributions breakdown to be determined upon project initiation.

Costs to be recovered from private landowners shall be done so via a special rate or charge established under Chapter 4, Part 1, and Section 92 of the Local Government Act 2009.

- Work solely for public infrastructure protection.

Costs shall be borne by MRC together with possible grant funds sourced from State and Federal Governments.

For clarity, this section on protection of public infrastructure only applies where foreshore erosion protection works are solely initiated by MRC. Where works are initiated by benefiting private landowners, the following sections “Works initiated by and benefiting private landowners” and “Private Infrastructure and Housing” applies, regardless of the existence of public infrastructure.

- Works initiated by and benefiting private landowners but also protecting essential public infrastructure

Costs shall be borne by MRC and landowners with a determination of contributions breakdown to be assessed upon project initiation. Refer to Section “*Private Infrastructure and Housing*” following.

For the purpose of this Policy, essential constructed infrastructure includes, but is not limited to:

- a. Water mains and associated pumping infrastructure;
- b. Sewerage mains and associated pumping infrastructure;
- c. Roads which provide the only access to occupied properties.

Essential constructed infrastructure does not include:

- a. Equipment;
- b. Carparks;
- c. Public toilets;
- d. Playground.

Private Infrastructure and Housing

Coastal erosion affecting private infrastructure or housing predominantly occurs where privately owned land abuts coastal strips. That is, there is no roadway separating the private land from the water line.

In these cases, due to the private land separating the coastal strip from the roadway, public access is somewhat limited, and it is unlikely that the MRC controlled land will be used for significant structured parkland. The predominate purpose of these coastal strips is to provide some buffer between the water’s edge and the privately owned land. Consequently, the primary beneficiary of protecting such coastal strips is the private landholders whose properties may be at risk. The onus therefore rests with the private

landholder to take any necessary action within the confines of their property and government regulation to mitigate such risks.

Ultimately, individuals who elect to construct or purchase property which abuts coastal strips often do so in order to obtain the amenity associated with such locations. In making this choice they must accept the associated risk of coastal erosion. This is akin to the risk incurred by private landholders who elect to build on the side of a hill, in remote locations or adjacent to seasonal creeks or rivers.

Notwithstanding the benefit and onus resting with private landholders adjacent to coastal strips as outlined above, MRC may assist with facilitating the construction of foreshore erosion protection measures to the benefit of multiple landowners. That is, where there are multiple individually owned properties at risk, MRC may elect to assist by facilitating a single solution. MRC is under no obligation to agree to facilitate the works and cost recovery of the project, however factors that it will take into consideration include the following:

- (a) The involvement of MRC in coordinating a number of private landowners to undertake foreshore erosion protection works will only occur if at least 75% of all affected landowners agree on the type and need for the proposed measures and are prepared to pay for a component of its planning, design, construction and maintenance costs.
- (b) The foreshore erosion protection works is considered by MRC, after consultation with DES, as the preferred option.
- (c) The engineering design of the foreshore erosion protection measures is practical to build and maintain and meets the State's relevant Building and engineering standards for tidal works. Structures proposed for design at a lower standard which would necessitate further development consents and further capital investments are considered outside the scope of this policy.
- (d) Dependent on the type of foreshore protection undertaken, ongoing maintenance costs will also be the subject of costs recovery.

Cost Recovery Arrangements

Where MRC has agreed to facilitate coastal erosion, protection works for the benefit of multiple private landholders, costs shall be recovered / borne based on the following:

- Costs shall be borne by MRC, landowners together with the State and Federal Governments subject to the receipt of grant funding. Determination of contributions breakdown would be assessed upon project initiation.
- Costs to be recovered from private landowners shall be done so via a special rate or charge established under Chapter 4, Part 1, and Section 92 of the Local Government Act 2009.
- The recovery of rates shall apply to all benefited landholders irrespective of whether they were part of the minority not supporting the works.

The cost to be recovered from private landowners will be recovered against all ratable land deriving special coastal protection benefit, as a proportion of coastal frontage that the landowner has of the total coastal frontage of all properties subject to the special

rate or charge, or such other appropriate basis as MRC determines in the particular circumstances.

MRC, as part of project initiation, will establish the special rate or charge on benefiting landowners or occupiers together with the period over which the special rate or charge shall be in place. Note that the special rate or charge should reflect the actual cost of the works.

As part of the determination of the special rate or charge, future maintenance costs over the life of the asset shall be included in the assessment of annual costs to be recovered, or the subject of a future special rate as necessary.

In determining the duration of the recovery period, MRC will give consideration to:

- (a) The total cost of the project.
- (b) Construction material utilized and the anticipated life of the erosion protection measure.
- (c) The preference of the affected landholders.
- (d) MRC's financial position.
- (e) Future required maintenance costs.

MRC's debt recovery policy would apply when recovering the special rate or charge.

6.0 Review of Policy

This policy will be reviewed when any of the following occur:

1. The related documents are amended or replaced.
2. Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than three years.

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New Policy		Council	13.06.12
2	Review of Policy	Amendment document to	Council	24.10.18

