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Australian Coastal Society Ltd

PO Box 65, Flinders University, Bedford Park SA 5042

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19 March 2014

Mr Des Mooney  
Registrar General of NSW Land Titles  
General Manager of Land and Property Information Division,  
Department of Finance and Services, GPO Box 15, Sydney 2001

Dear Sir,

**Re: boundaries of coastal properties affected by the landward movement of Mean High Water Mark (MHWM)**

We refer to the submission seeking a referral of a stated case regarding ambulatory boundaries to the NSW Supreme Court, made by Mr Corkill, dated 10 February 2014.

The Australian Coastal Society believes that the legal ambiguity in current NSW property law regarding ambulatory boundaries described in that submission represents a serious concern that, if not resolved prior to the Stage 2 Coastal Reforms, is likely to lead to further uncertainty for coastal councils as well as the NSW Government.

We note that a practical mechanism to swiftly resolve this ambiguity is available via your referral of a stated case to the NSW Supreme Court, under s 124 (1)(a) of the *Real Property Act 1900* (NSW).

The 'stated case' should seek answers to the important questions regarding the operation of NSW law when the MHWM of the tidal waters gradually moves shoreward, due to erosion and/ or sea-level rise, until the waterline of MHWM crosses a property boundary originally defined by survey.

The submission makes the case that it is 'in the public interest' for you to exercise your power as Registrar General to refer a 'stated case' to the NSW Supreme Court. The Society supports this view and believes that there are many very important and diverse aspects of the public interest in coastal lands and waters, including economic values of the public's use of the coast, which are at risk.

The Society is especially concerned that if no action is taken, the following implications arise:

1. Foreshore Crown land and the inter-tidal beach will be erroneously perceived as privately owned due to the movement of the shoreline.
2. Private land owners will seek to defend their properties by the erection of seawalls, creating 'coastal squeeze', with the eventual result of eradicating the beach entirely.
3. The statutory right of public pedestrian access to and along the foreshore will then be lost.
4. The long-standing common law public rights of navigation and fishing along the foreshore will be reduced and then ultimately lost.
5. Local councils, adjoining neighbours and the State of New South Wales will be locked in a cycle of ongoing expensive court cases, seeking damages and compensation.

6. There will be a significant long-term adverse impact on the NSW coastal tourism industry with associated loss of revenue to the state.

We support the idea of a draft referral being tabled for comment by interested parties. Were you to invite stakeholder submissions on a draft referral, the Australian Coastal Society wishes to express an interest in being involved and providing further input. To resolve this ambiguity and reduce uncertainty, we ask that you take this crucial first step towards a speedy referral as soon as possible.

Members of the Society in NSW would be willing to meet you to discuss this letter, if appropriate. Contact can be made to the Chair of our NSW Chapter, Mt Tom Fitzgerald on 0405 564 929 or via email at [tomasage@gmail.com](mailto:tomasage@gmail.com) to arrange a meeting.

Thank you for your consideration of this important matter.

Yours sincerely



Professor Nick Harvey  
PRESIDENT, AUSTRALIAN COASTAL SOCIETY