

Retreat, Existing Coastal Settlements, and the Effects of Climate Change – Is There a Role for Rolling Easements in Western Australia?

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Coastal settlement example – City of Busselton (Siesta Park)

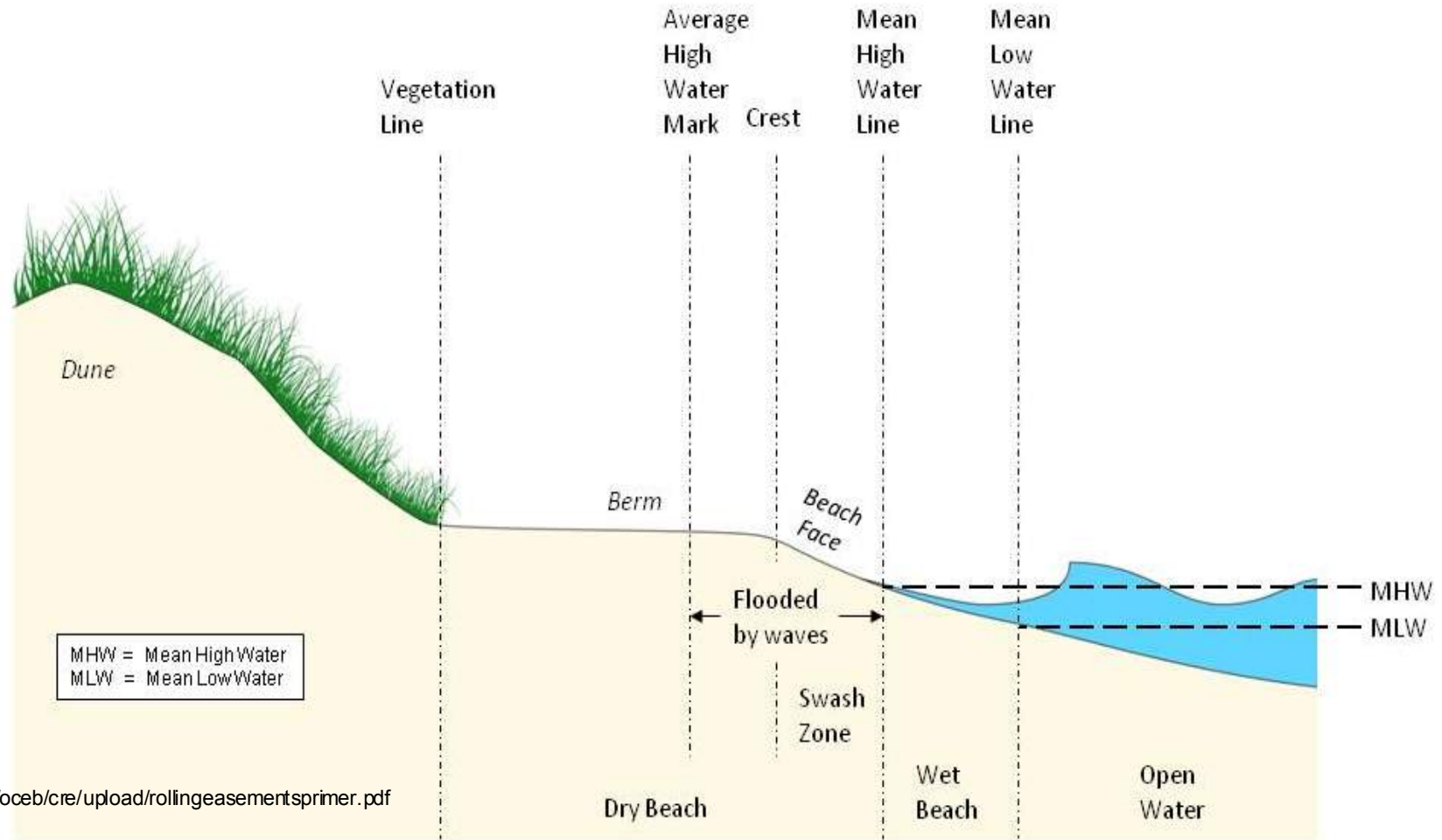


Source: Google Earth



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Typical cross-section of the coast

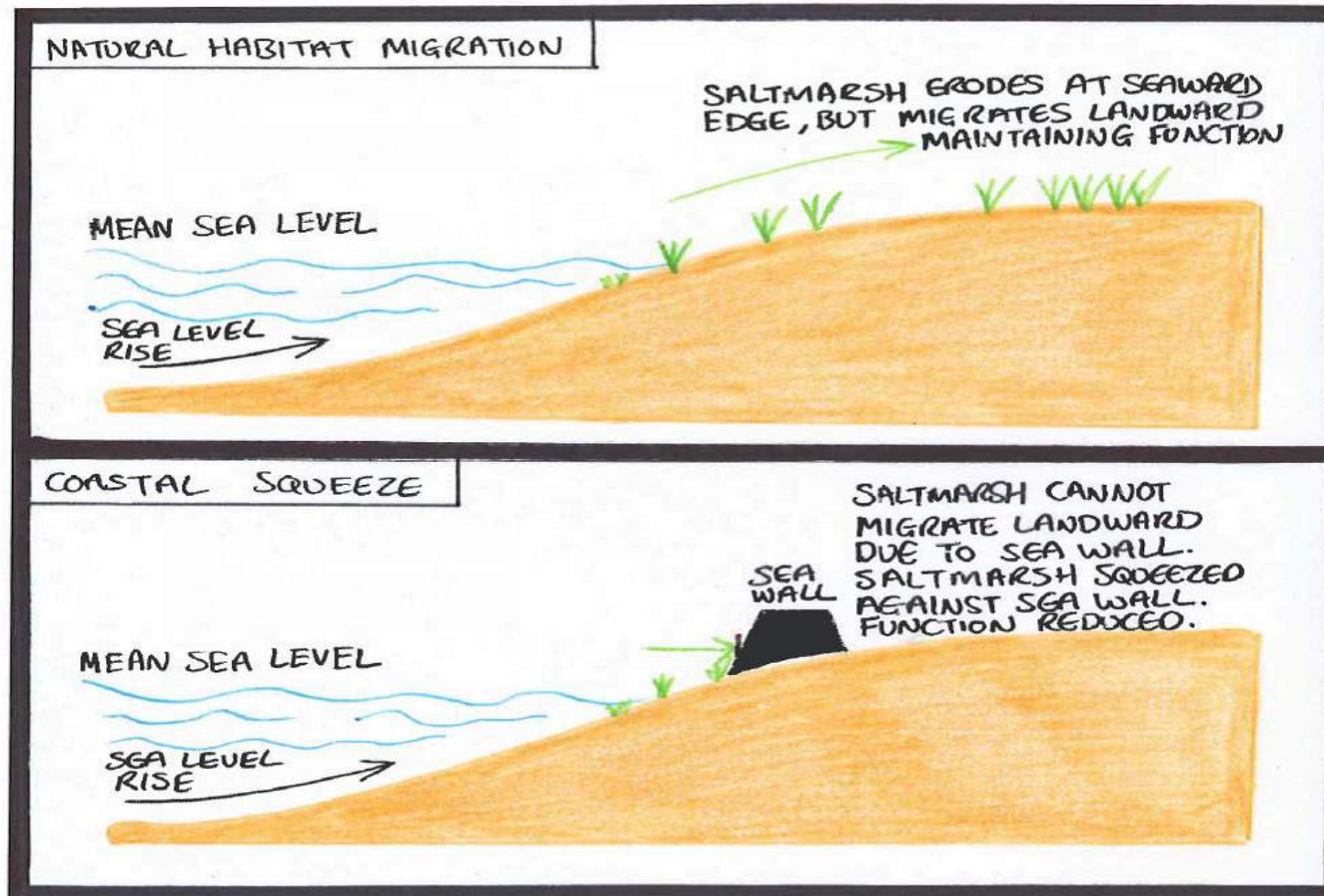


Source:
water.epa.gov/type/oceb/cr/upload/rollingeasementsprimer.pdf



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What is “coastal squeeze”?



Source:
<http://www.escp.org.uk/what-coastal-squeeze>



The problem

- Can 'coastal squeeze' of dry beach against adjoining private land be avoided...
- ...without significantly interfering with private property interests?

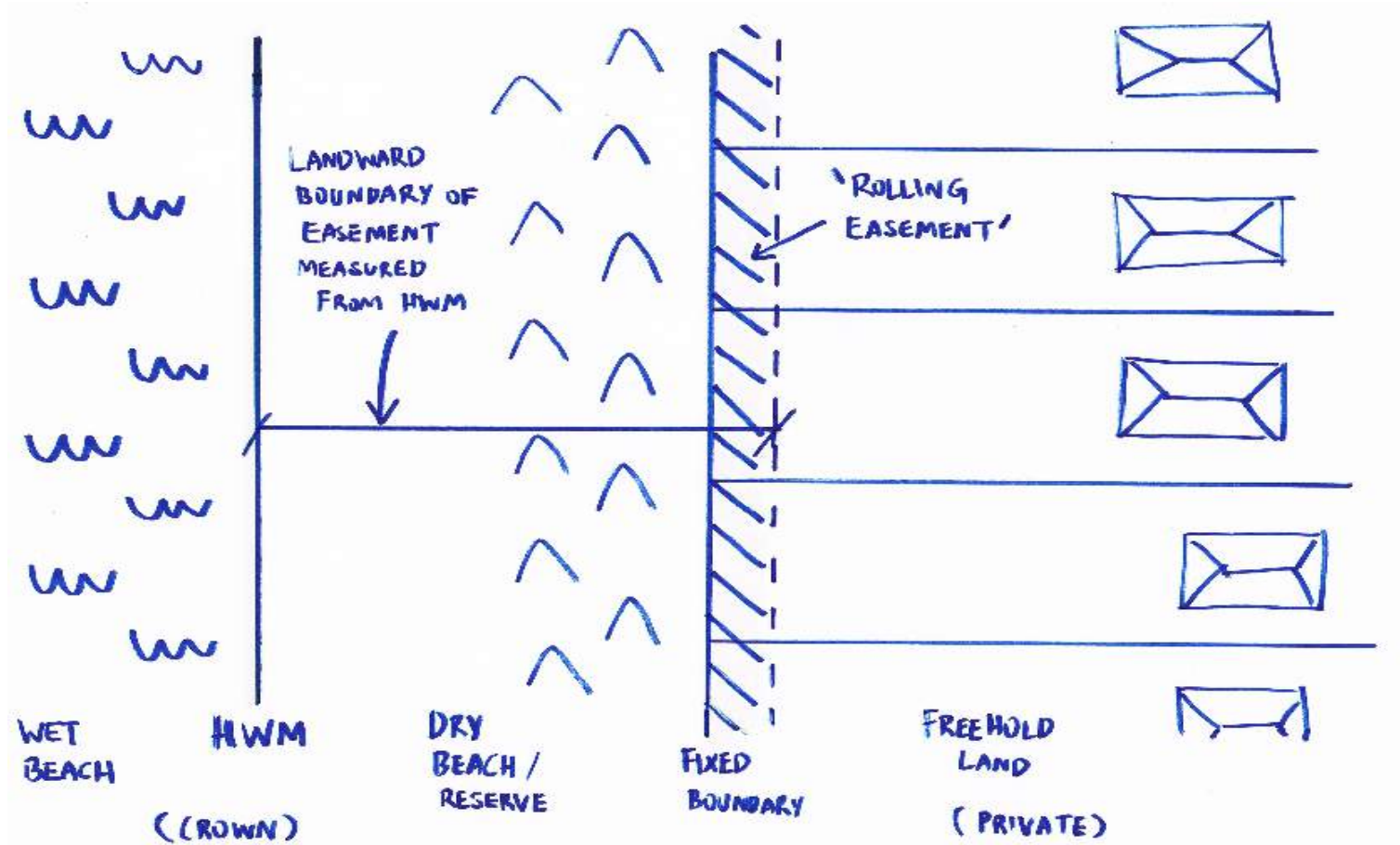


A possible solution – ‘Rolling easement’

- Acquire easement over adjoining private land that moves with the HWM
- Subsequent owners notified – easement registered under 65A(1) *Transfer of Land Act 1893* (WA)
- If HWM doesn’t move, then neither does the easement



Width of easement



Compulsory acquisition or 'taking'

- Difficulties with compulsory acquisition:
 - a) Coastal management works may not constitute 'public works' necessary to allow the taking of land
 - b) Compensation - LAA Part 10 and s 241(2) and (6) do not appear to contemplate interests in land that are ambulatory



Acquisition by agreement

- Parties free to negotiate rights under the easement, and purchase price
- Less forceful approach, but possible that landowners will not agree



Other issues

- Long-term policy, could be unwound by later governments
- Regular surveying and maintenance required
- Cannot remove fences without making adequate security provision, except by agreement (s 198 LAA)



A role for local government?

- Management should remain with Crown/State Government agency
- Councils should have a front-line role in managing adaptive measures
- Ancillary property-based functions of council affected, such as rating of property



Conclusion

- Rolling easements preserve coast while minimising property impacts
- Statutory framework requires modification to support compulsory acquisition and reflect ambulatory nature of rolling easements
- Controversial – public vs private - political and legal challenges likely
- Successful implementation will be a question of politics and law



The end...for now.

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