

COASTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2010 (No 2)

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Schedule of the amendments referred to in the Legislative Council's message of 20 October 2010

- No. 1 Page 10, Schedule 1 [5], proposed section 13. Insert after line 31:
- (2) In exercising its functions, the Coastal Panel is to have regard to the objects of this Act.
- No. 2 Page 11, Schedule 1 [5], proposed section 13 (3), line 2. Insert "the Minister and" after "concurrence of".
- No. 3 Page 12, Schedule 1 [11], lines 19 and 20. Omit all words on those lines. Insert instead:
- [11] Section 55A**
- Omit the section. Insert instead:
- 55A Minister to have regard to objects of Act**
- In exercising his or her functions under this Part, the Minister is to have regard to the objects of this Act.
- No. 4 Page 17, Schedule 1 [25], proposed section 55M, lines 5 to 31. Omit all words on those lines. Insert instead:
- (1) Consent must not be granted under the *Environmental Planning and Assessment Act 1979* to development for the purpose of coastal protection works, unless the consent authority is satisfied that:
- (a) the works will not over the life of the works:
- (i) unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or
- (ii) pose or be likely to pose a threat to public safety, and
- (b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works:
- (i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,
- (ii) the maintenance of the works.
- (2) The arrangements referred to in subsection (1) (b) are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following:
- (a) by legally binding obligations (including by way of financial assurance or bond) of all or any of the following:
- (i) the owner or owners from time to time of the land protected by the works,
- (ii) if the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority—the council or public authority,
- Note.** Section 80A (6) of the *Environmental Planning and Assessment Act 1979* provides that a development consent may be granted subject to a condition, or a consent authority may enter into an agreement

with an applicant, that the applicant must provide security for the payment of the cost of making good any damage caused to any property of the consent authority as a consequence of the doing of anything to which the consent relates.

- (b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the *Local Government Act 1993*).

No. 5 Page 18, Schedule 1 [26], proposed Part 4C, note, lines 4 to 9. Omit all words on those lines.

No. 6 Page 19, Schedule 1 [26], proposed section 55P (2) (e), lines 13 to 16. Omit all words on those lines. Insert instead:

- (e) in relation to material placed before 1 September 2011—the material must be placed by or on behalf of the landowner in accordance with any requirements adopted by the Minister and published in the Gazette for the purposes of this section before 1 January 2011,

No. 7 Page 20, Schedule 1 [26], proposed section 55R (1) (c), lines 31 and 32. Omit all words on those lines. Insert instead:

- (c) in relation to works placed before 1 September 2011—any requirements adopted by the Minister and published in the Gazette for the purposes of this section before 1 January 2011,

No. 8 Page 21, Schedule 1 [26], proposed section 55T. Insert after line 38:

- (6) For the avoidance of doubt, works are not or cease to be emergency coastal protection works for the purposes of this Act if the works are not placed or maintained, respectively, in accordance with the requirements set out in the conditions of a certificate issued under this Division.

**Note.** See also section 55P (2) (a) and 55R (1) (a).

No. 9 Page 22, Schedule 1 [26], proposed section 55T (6), lines 1 to 5. Omit all words on those lines. Insert instead:

- (6) A person must not make an application to an issuing authority for a certificate to authorise the placement of emergency coastal protection works if:
  - (a) a certificate relating to the same works has been issued by another issuing authority and is in force, or
  - (b) an application to another issuing authority in relation to the same works is pending.

- (7) In this section:

***emergency works authorised officer*** means an authorised officer appointed by a council or the Director-General who has been authorised in writing by the council or the Director-General, as appropriate, for the purposes of issuing certificates under this Division.

***issuing authority***, in relation to an application for a certificate under this Division, means the relevant local council and the Director-General.

- No. 10 Page 24, Schedule 1 [26], proposed section 55Y (1) (a), lines 11 and 12. Omit all words on those lines. Insert instead:
- (a) in relation to works placed before 1 September 2011—any requirements adopted by the Minister and published in the Gazette for the purposes of this subsection before 1 January 2011, and
- No. 11 Page 25, Schedule 1 [26], proposed section 55Z (1). Insert after “concerned” on line 18:
- , and
  - (e) to minimise disruption of the public use of the beach concerned.
- No. 12 Page 26, Schedule 1 [26], proposed section 55ZA (3) (a), lines 36 to 37. Omit all words on those lines. Insert instead:
- (a) in relation to an order made before 1 September 2011—any requirements adopted by the Minister and published in the Gazette for the purposes of this subsection before 1 January 2011, and
- No. 13 Page 28, Schedule 1 [26], proposed section 55ZC (1) (d), lines 12 to 16. Omit all words on those lines. Insert instead:
- (d) the works have ceased to be emergency coastal protection works (for example, the works have been in place for longer than the maximum period allowed for emergency coastal protection works or the works are not being maintained as required by Part 4C or this Part or the requirements of the certificate under Division 2 of Part 4C that authorises the works).
- No. 14 Page 28, Schedule 1 [26], proposed section 55ZC. Insert after line 35:
- (4) A Coastal Authority that is a designated authority for land on which a person has placed (or caused to be placed) emergency coastal protection works may order the person to restore land that is adjacent to the land on which the works were placed if the Coastal Authority is of the opinion that the adjacent land has been damaged or disturbed by:
    - (a) the placement, maintenance or removal of the works, or
    - (b) erosion caused by the works.
- No. 15 Page 28, Schedule 1 [26], proposed section 55ZC (4) (a), lines 39 and 40. Omit all words on those lines. Insert instead:
- (a) in relation to an order made before 1 September 2011—any requirements adopted by the Minister and published in the Gazette for the purposes of this subsection before 1 January 2011, and
- No. 16 Page 30, Schedule 1 [26], proposed section 55ZD. Insert after line 28:
- (9) An order under this Part given to a person does not authorise the person to enter land without the permission of the owner of the land.

- No. 17 Page 31, Schedule 1 [26], proposed section 55ZF. Insert after line 23:
- (2) It is a defence to a prosecution for an offence under this section if the defendant establishes that the failure to comply with the order concerned was caused by the refusal of an owner of land to give the defendant permission to enter the land to do the act or thing required by the order.
- No. 18 Page 43, Schedule 1 [38], proposed Schedule 2. Insert after line 17:
- 16 Minutes of meetings**
- The Coastal Panel must cause full and accurate minutes to be kept of the proceedings of its meetings.
- 17 Minutes to be available for public inspection**
- The Chairperson must, on request, make available to any member of the public a copy of the minutes of the proceedings of the meetings of the Coastal Panel.
- No. 19 Page 44, Schedule 2 [1], proposed section 496B, lines 7 to 22. Omit all words on those lines. Insert instead:
- (1) A council may, in accordance with this Act and the regulations, make and levy an annual charge for the provision by the council of coastal protection services for a parcel of rateable land that benefits from the services, being services that relate to coastal protection works constructed:
- (a) by or on behalf of the owner or occupier (or a previous owner or occupier) of the parcel of land, or
- (b) jointly by or on behalf of:
- (i) the owner or occupier (or a previous owner or occupier) of the parcel of land, and
- (ii) a public authority or a council.
- No. 20 Page 45, Schedule 2 [1], proposed section 496B (9), line 17. Omit “Subsections (1) and (2) do”. Insert instead “Subsection (1) does”.
- No. 21 Page 45, Schedule 2 [1], proposed section 496B (10), line 22. Omit “may”. Insert instead “is to”.
- No. 22 Page 45, Schedule 2 [3], proposed section 553B (1), lines 33 to 36. Omit all words on those lines. Insert instead:
- (1) An annual charge for coastal protection services may not be levied on a parcel of rateable land in relation to existing coastal protection works unless the owner (or any previous owner) of that land has consented in writing to the land being subject to such charges.
- No. 23 Page 46, Schedule 2 [3], proposed section 553B (2), lines 3 to 6. Omit:
- if, after the commencement of this section, the owner or occupier of the parcel of rateable land contributed to the upgrade or expansion of the existing coastal protection works.

Insert instead:

if the owner or occupier (or any previous owner or occupier) of the parcel of rateable land contributed, after the commencement of this section, to the upgrade or expansion of the existing coastal protection works.

No. 24 Page 52, Schedule 3. Insert after line 9:

### **3.2 Environmental Planning and Assessment Act 1979 No 203**

#### **Section 79C Evaluation**

Insert at the end of section 79C (1) (iv):

and

- (v) any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*),

No. 25 Page 52, Schedule 3.2. Insert after line 10:

#### **[1] Clause 3 Definitions**

Insert in alphabetical order in clause 3 (1):

*coastal council* means a council whose area, or part of whose area, is included within the coastal zone (within the meaning of the *Coastal Protection Act 1979*) or whose area includes land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries.

No. 26 Page 53, Schedule 3.2 [2], lines 3 to 7. Omit all words on those lines. Insert instead:

#### **4B Annual charges under Local Government Act 1993 for coastal protection services that relate to existing coastal protection works**

In relation to a coastal council—whether the owner (or any previous owner) of the land has consented in writing to the land being subject to annual charges under section 496B of the *Local Government Act 1993* for coastal protection services that relate to existing coastal protection works (within the meaning of section 553B of that Act).

**Note.** “Existing coastal protection works” are works to reduce the impact of coastal hazards on land (such as seawalls, revetments, groynes and beach nourishment) that existed before the commencement of section 553B of the *Local Government Act 1993*.

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