

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make amendments to the *Coastal Protection Act 1979* (the **Principal Act**) and other legislation to deal with coastal erosion and projected sea level rise, including amendments relating to the following:

- (a) the improvement of the operation and enforcement of the Principal Act,
- (b) enabling landowners to place certain emergency coastal protection works (such as sandbags) on beaches and sand dunes to mitigate erosion in specified circumstances without obtaining development consent or other specified permissions,
- (c) enabling local councils to make and levy an annual charge for the provision of coastal protection services (such as services to maintain coastal protection works or to manage the impacts of such works) on rateable land that benefits from such services.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Explanatory note page 2

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Coastal Protection Act 1979 No 13

Schedule 1 [1] amends section 3 of the Principal Act to provide for further objects of that Act, being to encourage and promote plans and strategies for adaptation in response to coastal climate change impacts, including projected sea level rise and to promote beach amenity.

Schedule 1 [2] amends section 4 of the Principal Act to insert certain definitions for the purposes of that Act.

Schedule 1 [3] makes a law revision amendment to take account of a change in a departmental name.

Schedule 1 [4] inserts proposed section 4C into the Principal Act to provide which designated authorities may exercise certain powers in relation to land under the Principal Act (see proposed Part 4D in **Schedule 1 [26]**).

Schedule 1 [5] inserts proposed Parts 2 (proposed sections 6–11) and 2A (proposed sections 12 and 13) into the Principal Act. Proposed Part 2 deals with matters relating to the administration of that Act. More specifically, the proposed Part:

- (a) provides for the identification of Coastal Authorities (being the Minister administering the Principal Act (the **Minister**), the Minister administering the *Crown Lands Act 1989* and certain roads authorities, coastal local councils and other public authorities with land or responsibilities relating to coastal areas) who may exercise certain powers under the Principal Act (proposed section 6), and
- (b) provides for the appointment and functions of authorised officers by Coastal Authorities to enforce the Principal Act (proposed section 7), and
- (c) deals with identification cards for authorised officers and the delegation of functions by Coastal Authorities (proposed sections 8 and 9, respectively), and
- (d) provides that the investigative functions contained in Chapter 7 of the *Protection of the Environment Operations Act 1997* are conferred on authorised officers for the purposes of exercising functions under the Principal Act (proposed section 10), and
- (e) creates certain offences relating to authorised officers and the exercise of their functions under the Principal Act (proposed section 11).

Proposed Part 2A establishes a NSW Coastal Panel. The Coastal Panel is to consist of 7 members appointed by the Minister of whom:

(a) one is to be a person nominated by the Director-General of the Department of Environment, Climate Change and Water, and

Explanatory note page 3

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

(b) one is to be a person nominated by the Director-General of the Department of Planning, and

(c) three are to be nominated by the Local Government and Shires Associations of New South Wales, and

(d) one is to be a person nominated by the Chief Executive of the Land and Property Management Authority, and

(e) one is to be appointed by the Minister with the concurrence of the Local Government and Shires Associations of New South Wales.

The NSW Coastal Panel is to have the following functions (and may delegate those functions in certain circumstances):

(a) to provide advice to the Minister on any matter referred to the Coastal Panel by the Minister relating to the coastal zone or otherwise in connection with the operation of the Principal Act,

(b) to provide advice to local councils in relation to such other matters as the Minister determines and notifies to the Coastal Panel,

(c) such functions conferred or imposed on it by or under the *Environmental Planning and Assessment Act 1979* relating to the granting of development consent,

(d) any other function conferred or imposed on it by or under the Principal Act, the *Environmental Planning and Assessment Act 1979* or any other Act.

Sections 38 and 39 of the Principal Act require that the Minister give concurrence to certain development or the granting of certain rights or consent in relation to such development in the coastal zone. **Schedule 1 [6] and [7]** amend sections 38 and 39 of the Principal Act to remove the requirement that certain public authorities obtain the Minister's concurrence twice in relation to the same development in the coastal zone. The amendments also provide that public authorities need not obtain such concurrence in relation to the carrying out of development for the placement or maintenance of emergency coastal protection works.

Schedule 1 [8] omits certain sections as a consequence of the enactment of proposed Part 2 (see above).

Schedule 1 [9] omits section 53 as a consequence of the consolidation of all the provisions of the Principal Act dealing with regulations into proposed section 60 (see **Schedule 1 [34]** below).

Schedule 1 [10] makes an amendment to provide that section 55 of the Principal Act (which relates to the carrying out of works under the *Public Works Act 1912*) does not authorise the Minister or the Governor to direct a specified person to carry out specified work.

Schedule 1 [11] makes a consequential amendment.

Explanatory note page 4

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

Schedule 1 [12]–[20] make amendments relating to the making of coastal zone management plans. More specifically, the amendments deal with the following:

(a) directions by the Minister to councils to make plans and review and remake plans,

(b) providing that, if a council fails to review and remake a plan as directed, the Minister may review and remake the new plan and recover the costs of doing

so from the council,

(c) the matters to be included and not to be included in such plans,

(d) matters relating to the guidelines for the preparation of plans,

(e) providing that plans are to be certified rather than approved by the Minister,

(f) providing that, before certifying a plan, the Minister may refer the plan to the Coastal Panel for advice and that, if the Coastal Panel recommends changes to the plan, may direct the council to amend and resubmit the plan with the recommended changes,

(g) clarifying that plans may be amended in whole or in part,

(h) requiring plans to be published on the internet.

Schedule 1 [21] and [22] make amendments relating to the enforcement of coastal zone management plans. More specifically, the amendments deal with the following:

(a) expanding the offence in section 55K of the Principal Act (that currently only applies to land in a local government area within the coastal zone to which a coastal zone management plan applies) to prohibit in all cases persons from carrying out work for the purpose, or that has the effect, of preventing or remediating beach erosion, or for protecting property affected or likely to be affected by beach erosion, unless the work is:

(i) in accordance with the relevant coastal zone management plan, or

(ii) development for which consent has been granted or exempt development under the *Environmental Planning and Assessment Act 1979* or an approved project within the meaning of Part 3A of that Act,

or

(iii) emergency coastal protection works,

(b) increasing the maximum penalty for that offence to 4,500 penalty units in the case of a corporation (currently \$495,000) and 2,250 penalty units in any other case (\$247,500),

(c) providing that section 55L of the Principal Act (that enables the Minister or a council to bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a coastal zone management plan) does not apply to the carrying out of work that is development for which consent has been granted, exempt development or development that does not need consent under the *Environmental Planning and Assessment Act 1979* or an approved project within the meaning of Part 3A of that Act or that is emergency coastal protection works,

Explanatory note page 5

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

(d) providing that a council may not bring proceedings under section 55L of the Principal Act to remedy or restrain a breach of a coastal zone management plan by the State or a NSW Government agency.

Schedule 1 [23] is a consequential repeal.

Schedule 1 [24] is a consequential amendment to a Part heading.

Schedule 1 [25] inserts proposed new section 55M into Part 4B of the Principal Act.

The proposed section provides that consent must not be granted under the *Environmental Planning and Assessment Act 1979* to development for the purpose of coastal protection works (that is, long term works such as seawalls) unless the consent authority is satisfied (by conditions imposed on the consent or otherwise) that satisfactory arrangements have been made for the following for the life of the works:

(a) the restoration of a beach, or land adjacent to the beach not protected by the works, if any increased erosion of the beach or adjacent land is caused by the presence of the works,

(b) the maintenance of the works,

- (c) the minimisation of risks to public safety,
- (d) the maintenance of reasonable public access to the beach concerned.

Where the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority, the arrangements are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following:

- (a) legally binding obligations of all or any of the following:
 - (i) the owners from time to time of the land protected by the works,
 - (ii) the council or public authority,
- (b) payment to the relevant council of an annual charge for coastal protection services (within the meaning of the *Local Government Act 1993*). (See Schedule 2 below).

Such funding obligations are to include the percentage share of the total funding of each landowner, council or public authority concerned.

Schedule 1 [26] inserts proposed Parts 4C and 4D into the Principal Act.

Proposed Part 4C (proposed sections 55O–55Z) deals with emergency coastal protection works (in general, emergency sand and sandbags placed on a beach or a sand dune to mitigate erosion). Proposed Division 1 of the Part contains proposed sections 55O–55S.

Proposed section 55O provides that a person does not require regulatory approval under the Principal Act or any other law for emergency coastal protection works if the works are authorised by a certificate under proposed Division 2.

Explanatory note page 6

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

Proposed section 55P defines **emergency coastal protection works** to mean works comprising the placement of the following material on a beach, or a sand dune adjacent to a beach, to mitigate the effects of wave erosion on land:

- (a) sand, or fabric bags filled with sand, (other than sand taken from a beach or a sand dune adjacent to a beach),
- (b) other objects or material prescribed by the regulations under the Principal Act (other than rocks, concrete, construction waste or other debris).

The placement of the material as emergency coastal protection works must comply with the following requirements:

- (a) the material must be placed in accordance with a certificate under proposed Division 2,
- (b) the material must be placed by or on behalf of a landowner to reduce the impact or likely impact from the erosion on a building being lawfully used for residential, commercial or community purposes,
- (c) the material must be placed when:
 - (i) beach erosion is occurring, or
 - (ii) beach erosion is imminent, or
 - (iii) it is reasonably foreseeable (because of proximity to the erosion escarpment) that beach erosion is likely to impact on a building being lawfully used for residential, commercial or community purposes,
- (d) the material must be placed by or on behalf of the landowner in accordance with any emergency action subplan that applies to the land concerned,
- (e) the material must be placed in accordance with any requirements adopted by the Minister and published in the Gazette,
- (f) the material must be placed in accordance with any requirements specified in the regulations under the Principal Act.

Proposed section 55Q provides that the maximum period allowed for emergency coastal protection works is 12 months commencing on the placement of the works. Works cease to be emergency coastal protection works for the purposes of the

Principal Act if the works remain in place for longer than that maximum period. That period can be extended if at the expiry of that 12-month period, a development application under the *Environmental Planning and Assessment Act 1979* for consent to development for the purposes of coastal protection works on the same land (that is, long term works) is pending.

Proposed section 55R provides that emergency coastal protection works must be maintained by or on behalf of the landowner in accordance with the following requirements:

(a) any requirements of the certificate under proposed Division 2 that authorises the works,

Explanatory note page 7

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

(b) any requirements of an emergency action subplan (being part of the council's coastal zone management plan) that applies to the land concerned,

(c) any requirements adopted by the Minister and published in the Gazette for the purposes of the proposed section,

(d) any requirements specified in the regulations under the Principal Act for the purposes of the proposed section.

Proposed section 55S provides that emergency coastal protection works may be placed on a parcel of private land only once.

Proposed Division 2 (proposed sections 55T–55V) provides for the issue by authorised officers of relevant councils and the Director-General of the Department of Environment, Climate Change and Water of certificates authorising the placement of emergency coastal protection works. (The function of issuing a certificate must be delegated to an emergency works authorised officer appointed for this purpose). A certificate under the proposed Division does not authorise the placement of emergency coastal protection works more than 2 years after it was issued. Councils and the Department of Environment, Climate Change and Water must notify each other of the issue of such certificates.

Proposed Division 3 contains proposed sections 55W–55Z.

Proposed section 55W provides that if a person does not require regulatory approval under the Principal Act or any other law for emergency coastal protection works (under proposed section 55O), such works may be placed and maintained despite certain restrictions and limitations contained in the *Environmental Planning and Assessment Act 1979*, the *Fisheries Management Act 1994*, the *Marine Parks Act 1997*, the *Local Government Act 1993* and, where the beach or dune is a road (or road reserve), the *Roads Act 1993*.

Proposed section 55X provides that a landowner must, at or about the time the emergency coastal protection works are to be placed on land, notify the relevant local council of the placing of the works and, if the works are or are about to be placed on public land in reliance on proposed section 55Z, notify the public authority that is the owner of, or has the care, control or management of, the land.

Proposed section 55Y provides that a person who has placed emergency coastal protection works (or caused such works to be placed) on land must, before the expiry of the maximum period allowed for emergency coastal protection works, remove the works and restore the land in accordance with:

(a) any requirements adopted by the Minister and published in the Gazette for the purposes of this provision, and

(b) any requirements specified in the regulations for the purposes of this provision.

Failure to comply with the provision is an offence carrying a maximum penalty of 4,500 penalty units (currently \$495,000) and 400 penalty units (currently \$44,000) for each day the offence continues (in the case of a corporation) or

Explanatory note page 8

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

2,250 penalty units (currently \$247,500) and 200 penalty units (currently \$22,000) for each day the offence continues (in any other case).

If a person does not comply with the provision (whether that person has been convicted of an offence in respect of the non-compliance or not), the Coastal Authority concerned may remove the works and restore the land. Any costs reasonably incurred by the Coastal Authority under the provision may be recovered in a court of competent jurisdiction from the person as a debt due to the Coastal Authority.

Proposed section 55Z facilitates the use of certain other land for emergency coastal protection works. Specifically, the proposed section provides that a certificate under proposed Division 2 that authorises a person to place and maintain emergency coastal protection works on land owned by the person extends to authorising the person to use and occupy public land (without obtaining a lease, licence or permit in respect of, or an easement or right-of-way in relation to, the land), but only if the person takes all reasonable measures:

- (a) to avoid using or occupying the public land for the placing and maintaining of the works, and
- (b) to avoid damage to assets and vegetation on the public land, and
- (c) to minimise risks to the public on the public land, and
- (d) to maintain reasonable public access (including access by local and public authorities) to and through the beach concerned.

The proposed section also provides that a certificate under proposed Division 2 that authorises a person to place and maintain emergency coastal protection works on land owned by the person extends to authorising the person to use and occupy adjacent land (other than public land) for the placing, maintaining and removal of the works, but only if the person has obtained a lease, easement, right-of-way or other interest in land from the owner of the adjacent land to use and occupy that land for that purpose.

Proposed Part 4D (proposed sections 55ZA–55ZH) confers certain powers and functions on Coastal Authorities relating to beaches.

Proposed section 55ZA gives a Coastal Authority that is a designated authority for a beach the power to make orders to remove materials or structures from the beach (including private land that is or fronts a beach) where the Coastal Authority is of the opinion that the material or structure:

- (a) causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or
- (b) unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or
- (c) poses or is likely to pose a threat to public safety.

Explanatory note page 9

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

The proposed section does not apply to material deposited on a beach, or a structure erected, in the course of development for which consent has been granted or that is exempt development or development that does not need consent under the *Environmental Planning and Assessment Act 1979* or is an approved project within the meaning of Part 3A of that Act or in relation to emergency coastal protection works. The proposed section is a remaking of, and makes provision for substantially the same matters as, current section 55M of the Principal Act.

Proposed section 55ZB gives a Coastal Authority that is a designated authority for land the power to make stop work orders to prohibit an activity on a beach on the land

that, in the opinion of the Coastal Authority:

- (a) causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or
- (b) unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or
- (c) poses or is likely to pose a threat to public safety.

Such an order cannot be made in relation to an activity carried out in the course of development for which consent has been granted or that is exempt development or development that does not need consent under the *Environmental Planning and Assessment Act 1979* or an approved project within the meaning of Part 3A of that Act or in relation to emergency coastal protection works.

Proposed section 55ZC gives a Coastal Authority that is a designated authority for land the power to make certain orders to remove, alter or repair emergency coastal protection works on the land and to restore the land if the Coastal Authority is of the opinion that:

- (a) the works are causing increased erosion of a beach or land adjacent to a beach, or
- (b) the works unreasonably limit public access to a beach or headland, or
- (c) the works pose a threat to public safety, or
- (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 the proposed Part).

The proposed section also provides that 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 (whether public or private land) may order the person to restore any assets or vegetation on public land that have been damaged in the course of the placement of the works.

The proposed section also enables a Coastal Authority that is a designated authority for public land on which a person has placed (or caused to be placed) emergency coastal protection works to order the person to move, alter or remove the works and

Explanatory note page 10
Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

restore the land if the Coastal Authority is of the opinion that the person did not take all reasonable measures:

- (a) to avoid placing those works on the public land, or
- (b) to avoid damage to assets and vegetation on the public land, or
- (c) to minimise risks to the public on the public land, or
- (d) to maintain reasonable public access (including access by local and public authorities) to and through the beach concerned.

Proposed section 55ZD contains general provisions regarding the operation of orders under the proposed Part.

Proposed section 55ZE enables a Coastal Authority to recover the administrative costs of preparing and giving orders under the proposed Part. A person who is given an order under the proposed Part by a Coastal Authority must within 30 days pay a fee of \$444 (or such higher fee as may be prescribed by the regulations) to the Coastal Authority.

Proposed section 55ZF makes it an offence to fail to comply with an order under the proposed Part. The offence will carry a maximum penalty of 4,500 penalty units (currently \$495,000) and 400 penalty units (currently \$44,000) for each day the offence continues (in the case of a corporation) or 2,250 penalty units (currently \$247,500) and 200 penalty units (currently \$22,000) for each day the offence continues (in any other case). If a person does not comply with the requirements of

an order within the time specified (whether that person has been convicted of an offence in respect of the order or not), the Coastal Authority concerned may, where the order required the doing of any act or thing, do the act or thing (through its authorised officers). Any costs incurred by the Coastal Authority doing that act or thing may then be recovered in a court as a debt due to the Coastal Authority. Proposed section 55ZG provides for the resolution of disputes between Coastal Authorities.

Proposed section 55ZH provides that successors in title to land subject to certificates under proposed Division 2 of Part 4C may be taken for the purposes of the Principal Act to be the original owners of the land. Orders under proposed Part 4D given to the original owners of the land may be enforced against successors in title. (See also **Schedule 3.2 [2]** regarding the notice that purchasers of land receive of emergency coastal protection works and orders under this proposed Part.)

Schedule 1 [27] amends section 56A of the Principal Act to make it clear that the Land and Environment Court may make an order under that section that a person remove or clean up material dumped following (as well as during) a beach erosion event.

Explanatory note page 11

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

Schedule 1 [28] inserts proposed section 56B into the Principal Act to allow regulations to be made for or with respect to the following:

(a) the categorisation of land within the coastal zone into risk categories according to the level of the risk that particular land will be adversely affected by coastal hazards,

(b) the determination by the Minister of the risk category to which particular land is to be allocated,

(c) the determination by the Minister of the likely response of public authorities to the risks posed by coastal hazards to land within the coastal zone (on the basis of the relevant coastal zone management plan and any other instrument or public document),

(d) requiring the inclusion in a certificate under section 149 of the *Environmental Planning and Assessment Act 1979* issued in respect of land within the coastal zone of a statement of the risk category of the land under the regulations and of the likely response of public authorities to the risks posed by coastal hazards to the land as determined by the Minister under the regulations,

(e) providing for notification of councils of the information required to be included by the regulations in a certificate under section 149 of the *Environmental Planning and Assessment Act 1979* in respect of land within the coastal zone.

Schedule 1 [29] amends section 58 (1) of the Principal Act to increase the maximum penalty for offences against the Principal Act for which a specific penalty is not provided to 4,500 penalty units (currently \$495,000) in the case of a corporation and 2,250 penalty units (currently \$247,500) in any other case. Currently that maximum penalty is 100 penalty units (currently \$11,000).

Schedule 1 [30] amends section 58 (2) of the Principal Act to increase the maximum penalty for offences against the regulations under the Principal Act to 400 penalty units (currently \$44,000) in the case of a corporation and 200 penalty units (currently \$22,000) in any other case. Currently that maximum penalty is 10 penalty units (currently \$1,100).

Schedule 1 [31] and [32] amend section 59 of the Principal Act to provide that proceedings for offences against proposed section 55K or 55Y or proposed Part 4D may be taken before the Land and Environment Court. Proceedings for other offences will continue to be taken before the Local Court. The amendments also

provide that proceedings for offences under the Principal Act may be commenced within but not later than 12 months after the date on which the offence is alleged to have been committed (rather than the default 6 months as currently applies).

Schedule 1 [33] inserts proposed sections 59A and 59B into the Principal Act to deal with continuing offences and the issuing of penalty notices.

Schedule 1 [34] (in conjunction with **Schedule 1 [9]**) omits sections 60 and 61 to consolidate provisions of the Principal Act dealing with regulations into a proposed Explanatory note page 12

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

new section 60. The amendment also inserts a proposed new section 61 into the Principal Act to deal with service of notices.

Schedule 1 [35] inserts proposed sections 63–65 into the Principal Act. Proposed section 63 deals with the delegation of the Minister's functions under the Principal Act (other than the functions of the Minister as a Coastal Authority which are dealt with under proposed section 9).

Proposed section 64 provides that the Minister is to review Part 4C (Emergency coastal protection works) of the Principal Act to determine whether its policy objectives remain valid and whether its terms remain appropriate for securing those objectives. The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to the proposed Act and a report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

Proposed section 65 provides that the Minister is to review the Principal Act to determine whether its policy objectives remain valid and whether its terms remain appropriate for securing those objectives. The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the proposed Act and a report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 [36] enables regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

Schedule 1 [37] makes a law revision amendment to allow the Minister to publish a coastal zone management plan made by the Minister (where a council has failed to make such a plan) in the Gazette and by doing so bring the plan into effect.

Schedule 1 [38] inserts proposed Schedule 2 into the Principal Act that deals with matters relating to the constitution and procedure of the proposed NSW Coastal Panel.

Schedule 2 Amendment of Local Government Act

1993 No 30

Schedule 2 [1] inserts proposed section 496B into the *Local Government Act 1993* to enable a council to make and levy an annual charge for the provision of coastal protection services for rateable land that benefits from the services. The charge may be levied if the services relate to coastal protection works that were jointly constructed (or are being constructed) by or on behalf of owners or occupiers, or previous owners or occupiers, of the land, and a public authority or a council and must be levied if the works were constructed (or are being constructed) solely by or on behalf of such private owners or occupiers of land. The Minister administering the Principal Act may issue guidelines relating to the making and levying of charges. A council is to have regard to any such guidelines when making and levying such charges. **Schedule 2 [2]** makes a consequential amendment.

Explanatory note page 13

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

Schedule 2 [3] inserts provisions into the *Local Government Act 1993* restricting the

levying of the new coastal protection services charge under proposed section 496B. A charge may not be levied in relation to any coastal protection works that existed before the commencement of the proposed section without the consent of the owner of that land. A limited exception is made for coastal protection services that relate to existing coastal protection works if the owner or occupier of the parcel of rateable land contributed to the upgrade or expansion of the existing coastal protection works after the commencement of the proposed section. Also, a charge may not be levied in relation to any coastal protection works if:

- (a) the maintenance of the works or the management of the impacts of the works (as appropriate) is a condition of an approval or consent under the *Environmental Planning and Assessment Act 1979* relating to the works, and
- (b) that maintenance or management work is not being carried out by or on behalf of the council.

Schedule 2 [4] inserts proposed sections 606A, 606B and 606C into the *Local Government Act 1993*. Proposed section 606A provides that a council must, on request, before new coastal protection works are constructed, give each person who would be liable to pay a coastal protection services charge under proposed section 496B an estimate of the person's liability for that charge for each of the following 5 years.

Proposed section 606B provides that a council must, on request, provide a person who is liable to pay an annual charge for coastal protection services with a report prepared by an independent person on the cost to the council of providing those services. If a council provides such a report, the council is to make the report available to all other persons liable to pay an annual charge in relation to the same services. A council is not required to provide a new report under the proposed section to a person if the council has in the previous 3 years provided or made available to the person such a report in relation to the same coastal protection services.

Proposed section 606C provides that the Minister may direct a council to provide the Minister with a report prepared by an independent person on the cost to the council of providing coastal protection services. If a council fails to comply with such a direction within the specified time, the Minister may commission an independent person to prepare the report and recover the cost of preparing the report from the council. A council is to have regard to any report of an independent person referred to in this proposed section in determining an annual charge for the coastal protection services concerned.

Schedule 2 [5] and [6] make amendments to section 733 of the *Local Government Act 1993* to extend the exemption from liability that a council possesses in relation to flood liable land and land in the coastal zone to the following things done in good faith by the council:

- (a) the preparation or making of a coastal zone management plan, or the giving of an order, under the Principal Act,

Explanatory note page 14

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

- (b) any thing done or omitted to be done regarding beach erosion or shoreline recession on Crown land or land owned or controlled by a council or a public authority,
- (c) the failure to upgrade flood mitigation works or coastal management works in response to projected or actual impacts of climate change,
- (d) the failure to undertake action to enforce the removal of illegal or unauthorised structures on Crown land or land owned or controlled by a council or a public authority that results in beach erosion,
- (e) the provision of information relating to climate change or sea level rise,
- (f) anything done or omitted to be done regarding the negligent placement or

maintenance by a landowner of emergency coastal protection works.

Section 733 (4) provides that, unless the contrary is proved, a council is taken to have acted in good faith for the purposes of section 733 if advice was furnished, or a thing was done or omitted to be done, substantially in accordance with the principles contained in a specified manual relating to the management of flood liable land or the management of the coastline identified by the Minister for Planning. **Schedule 2 [7]** provides that guidelines may also be adopted for this purpose.

Schedule 2 [7] inserts a number of definitions for the purposes of section 733, including a definition to make it clear that in that section references to the **coastal zone** include land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries.

Schedule 2 [8] provides that regulations may be made under the *Local Government Act 1993* relating to coastal protection services. For example, regulations may be made setting the minimum standards in carrying out such coastal protection services.

Schedule 2 [9] enables regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

Schedule 2 [10] inserts new definitions into the Dictionary to the *Local Government Act 1993*, including the following:

coastal protection service, which is defined to mean a service:

(a) to maintain and repair coastal protection works, or

(b) to manage the impacts of such works (such as changed or increased beach erosion elsewhere),

but does not include a service that relates to emergency coastal protection works.

coastal protection works, which is defined to mean activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters and includes seawalls, revetments, groynes and beach nourishment.

Explanatory note page 15

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

Schedule 3 Amendment of other legislation

Schedule 3.1 [2] amends the *Conveyancing (Sale of Land) Regulation 2010* to provide that, in a contract for the sale of land, the vendor warrants that, as at the date of the contract and except as disclosed in the contract, the land is not subject to an annual charge for the provision of coastal protection services under the *Local Government Act 1993* (see **Schedule 2 [1]**). **Schedule 3.1 [3]** makes an amendment to provide that, without limiting any other manner in which disclosure may occur, the vendor may disclose that land is subject to an annual charge for the provision of coastal protection services by attaching to the contract a certificate under section 603 of the *Local Government Act 1993* relating to the land (being a certificate as to rates and charges). **Schedule 3.1 [4] and [5]** make parallel amendments to provisions relating to options to purchase land. **Schedule 3.1 [1]** provides a definition of a **section 603 certificate**. **Schedule 3.1 [6]** adds to the list of adverse affectations that must be disclosed in contracts for the sale of land, outstanding orders under proposed Part 4D of the Principal Act in relation to emergency coastal protection works on the land (or on public land adjacent to that land).

Schedule 3.2 [1] amends the *Environmental Planning and Assessment Regulation 2000* to provide that the factors to be taken into account when consideration is being given to the likely impact of an activity on the environment for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* are to include the impact on coastal processes and coastal hazards, including those under projected climate change conditions.

Schedule 3.2 [2] amends the *Environmental Planning and Assessment Regulation 2000* to provide that a planning certificate under section 149 of the *Environmental Planning and Assessment Act 1979* (which must be attached to a

contract for the sale of land) issued by a coastal council is to include information as to whether in the knowledge of the relevant council, any orders under proposed Part 4D of the Principal Act have been made in relation to the land concerned or whether any emergency coastal protection works remain on the land concerned. The provision also requires the certificate to state whether the council has been notified under proposed section 55X that emergency coastal protection works have been placed on the land (or on public land adjacent to that land) and, if so, whether the council is satisfied that the works have been removed and the land restored. The provisions complement proposed section 55ZH of the Principal Act to enable the provisions of Parts 4C and 4D to apply to successors in title to the landowner who placed emergency coastal protection works on land (or caused them to be placed). The amendment also provides that such planning certificates must include such information (if any) as may be required by the regulations under proposed section 56B of the Principal Act to be included in the planning certificate (see Schedule 1 [28] above).

Explanatory note page 16

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Explanatory note

Schedule 3.3 makes amendments to the *Local Government (General)*

Regulation 2005 in relation to the proposed coastal protection services charge (see

Schedule 2 [1]). Specifically:

(a) **Schedule 3.3 [1]** provides that a council's annual statement of its revenue policy is to include a map or list (or both) of the parcels of rateable land that are to be subject to the charge in the following year (if any), and

(b) **Schedule 3.3 [2]** provides that a council's annual report is, if the council levied a coastal protection services charge in the relevant year, to include a statement detailing the coastal protection services provided by the council during that year and also makes a law revision amendment, and

(c) **Schedule 3.3 [3]** provides that coastal protection services provided by the council are to be of a certain specified standard.