

LEGISLATIVE COUNCIL

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

First print

Proposed amendments

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- 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.

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(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 Pages 18-19, Schedule 1 [26], proposed section 55P (2) (b), line 36 on page 18 to line 2 on page 19. Omit all words on those lines. Insert instead:

(b) the material must be placed by or on behalf of a landowner to protect a lawfully erected building used for residential, commercial or community purposes from damage due to erosion,

No. 7 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. 8 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. 9 Page 21, Schedule 1 [26], proposed section 55S (1), line 10. Omit “(other than public land)”.

No. 10 Page 21, Schedule 1 [26], proposed section 55T. Insert after line 30:

(4) A condition under subsection (3) may, for example, require the owner of land to whom the certificate is issued to obtain adequate public liability insurance in respect of the works within a specified time.

No. 11 Page 21, Schedule 1 [26], proposed section 55T. Insert after line 38:

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- (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. 12 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. 13 Page 25, Schedule 1 [26], proposed section 55Z (1), line 7. Insert “on land owned by the person” after “works”.
- No. 14 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. 15 Page 25, Schedule 1 [26], proposed section 55Z (3), line 33. Omit (whether public or private)”. Insert instead “owned by the person”.
- No. 16 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. 17 Page 28, Schedule 1 [26], proposed section 55ZC (1), line 4. Omit “may”. Insert instead “must”.
- No. 18 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. 19 Page 28, Schedule 1 [26], proposed section 55ZC (2), line 19. Omit “(whether public or private land)”.
- No. 20 Page 28, Schedule 1 [26], proposed section 55ZC (3) (a), line 29. Omit all words on that line. Insert instead:
- (a) to avoid using or occupying the public land for the placing and maintaining of the works on land owned by the person, or
- No. 21 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

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the Gazette for the purposes of this subsection before 1 January 2011, and

No. 22 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. 23 Page 45, Schedule 2 [1], proposed section 496B (10), line 22. Omit "may". Insert instead "is to".

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 53, Schedule 3.2. Insert after line 7:

**[3] Schedule 3 Designated development**

Insert after clause 12:

**12A Coastal protection works**

Coastal protection works (within the meaning of the *Coastal Protection Act 1979*) that are constructed using any rocks, concrete, construction waste or other debris.

No. 26 Page 54, Schedule 3. Insert after line 4:

**3.4 State Environmental Planning Policy (Infrastructure) 2007**

**[1] Clause 129 Development permitted without consent**

Omit clause 129 (2) (c) and (d). Insert instead:

- (c) environmental management works erected or placed on a beach, or a sand dune adjacent to a beach, that are constructed using material or objects other than rocks, concrete, construction waste or other debris, including but not limited to the following:
  - (i) beach nourishment works,
  - (ii) foreshore erosion control works,
  - (iii) dune and foreshore stabilisation works,
  - (iv) headland management works,

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- (v) weed management works,
  - (vi) revegetation activities,
  - (vii) foreshore and dune access way works,
  - (viii) foreshore amenity works.

**[2] Clause 129 (4)**

Insert after clause 129 (3):

- (4) Development for the purpose of emergency works required as a result of flooding, storms or coastal erosion may be carried out by or on behalf of a public authority without consent, but only if:
  - (a) the development is carried out for the purpose of protecting public infrastructure, and
  - (b) the development comprises the placement of works:
    - (i) that would constitute emergency coastal protection works within the meaning of section 55P of the *Coastal Protection Act 1979* (other than 55P (2) (a) and (b)), and
    - (ii) for a period that does not exceed 12 months commencing on the placement of the works (or such longer period as the Minister administering that Act, with the concurrence of the Coastal Panel established under that Act, allows), and
    - (iii) that are maintained in accordance with any requirements referred to in section 55R (1) (b)–(d) of that Act, and
  - (c) within 6 months after the works are removed, the land on which the development was carried out is restored in accordance with any requirements referred to in section 55Y (1) (a) and (b).