



New South Wales

# Coastal Protection Amendment Bill 2002

## Explanatory note

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

### Overview of Bill

The objects of this Bill are:

- (a) to amend the *Coastal Protection Act 1979*:
  - (i) to redefine the land that comprises the coastal zone, and
  - (ii) to require local government councils within the coastal zone to prepare coastal management plans if directed to do so by the Minister, and
  - (iii) to modify the doctrine of erosion and accretion, and
- (b) to amend the *Crown Lands Act 1989* with respect to easements for public access over foreshore land within the coastal zone.

## Outline of provisions

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

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

**Clause 3** is a formal provision giving effect to the amendments to the *Coastal Protection Act 1979* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Crown Lands Act 1989* set out in Schedule 2.

## Schedule 1 Amendment of Coastal Protection Act 1979

### Definition of the “coastal zone”

**Schedule 1 [1]** and **[2]** amend the Act with respect to the definition of the *coastal zone*. Currently, under the Act, the urban regions of Sydney, Newcastle, Illawarra and the Central Coast (extending from Newcastle in the north to Shellharbour in the south) are excluded from the coastal zone. As a consequence of the amendments, the areas to be excluded will comprise only:

- (a) those parts of the local government areas of Pittwater, Warringah, Manly, Woollahra, Waverley, Randwick and Sutherland that are not (and are not likely to be) affected by and do not (and are not likely to) affect coastal processes, including coastal wave and wind action, and
- (b) the waters of Sydney Harbour and Botany Bay.

### Coastal management plans

**Schedule 1 [3]** inserts proposed Part 4A (Coastal management plans) into the Act, containing proposed sections 55A–55M.

Proposed section 55A comprises a definition of *beach* for the purposes of the proposed Part.

Proposed section 55B requires a council within the coastal zone to prepare a coastal management plan if directed to do so by the Minister.

Proposed section 55C specifies the matters for which a coastal management plan must make provision.

Proposed section 55D requires a council to prepare a draft coastal management plan in accordance with guidelines determined by the Minister.

Proposed section 55E requires a council to give public notice of, and to publicly exhibit, a draft coastal management plan.

Proposed section 55F enables any person to make a submission during the period of public exhibition and requires the council to consider all submissions made to it.

Proposed section 55G requires the council to submit the draft coastal management plan to the Minister for approval. The Minister may approve, or refuse to approve, the draft coastal management plan.

Proposed section 55H provides that if the Minister approves the draft coastal management plan, the council is to make the plan and publish it in the Gazette.

Proposed section 55I provides for the amendment and repeal of coastal management plans.

Proposed section 55J requires a council to make a copy of its coastal management plan available for public inspection without charge during ordinary office hours.

Proposed section 55K makes it an offence, punishable with a maximum penalty of 100 penalty units, to carry out work otherwise than in accordance with a coastal management plan.

Proposed section 55L enables the Minister or a council to bring proceedings in the Land and Environment Court to restrain a breach, or a threatened or apprehended breach, of a coastal management plan.

Proposed section 55M enables the Minister or a council to make orders for the observance of a coastal management plan and provides for the enforcement of any such order.

### **Modification of doctrine of erosion and accretion**

**Schedule 1 [3]** also inserts proposed Part 4B (Modification of doctrine of erosion and accretion) into the Act, containing proposed section 55N.

Proposed section 55N removes the jurisdiction of a court, the power of the Registrar-General, and the power of the Minister administering the *Crown Lands Act 1989* to make a declaration or determination, or to approve a determination, concerning a boundary defined by reference to a mean high water mark that would increase the area of land to the landward side of the water boundary if:

- (a) a perceived trend by way of accretion is not likely to be indefinitely sustained by natural means, or

- (b) as a consequence of making such a declaration, determination or approval, public access to a beach, headland or waterway will, or is likely to be, restricted or denied.

### **Other amendments**

**Schedule 1 [4]** makes a consequential amendment to the general penalty provision in the Act because of the introduction of a specific penalty by proposed section 55K.

**Schedule 1 [6]** makes a transitional provision relating to the proposed amendments. Those provisions require a council to submit a draft management plan to the Minister within 12 months after it is directed to do so by the Minister, or within such longer period as the Minister may agree to. They provide that if a council fails to comply with the Minister's direction, the Minister may make a coastal management plan instead of the council and may recover the cost of making the plan from the council. **Schedule 1 [5]** makes a consequential amendment.

## **Schedule 2 Amendment of Crown Lands Act 1989**

### **Easements for public access over foreshore land**

Section 56 of the *Crown Lands Act 1989* enables the creation of easements for public access. **Schedule 2** inserts proposed section 58A into the Act to authorise the Minister to create such an easement over freehold land on the foreshores of the coastal zone without the consent of the owner. Such an easement may be created only to secure continued public access to a beach, headland or waterway and only if the creation of the easement is recommended in a coastal management plan. No compensation is payable because of the creation of the easement. An owner or lessee of the land subject to such an easement is not liable (in the absence of his or her negligence) for the death of, or personal injury to, or the loss of, or damage to the property of, a person who enters the land in use of the easement.



New South Wales

# Coastal Protection Amendment Bill 2002

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New South Wales

# Coastal Protection Amendment Bill 2002

No , 2002

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## A Bill for

An Act to amend the *Coastal Protection Act 1979* with respect to the management of certain coastal land; to amend the *Crown Lands Act 1989* with respect to easements for public access; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Coastal Protection Amendment Act 2002</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3 Amendment of Coastal Protection Act 1979 No 13</b>	7
The <i>Coastal Protection Act 1979</i> is amended as set out in Schedule 1.	8
<b>4 Amendment of Crown Lands Act 1989 No 6</b>	9
The <i>Crown Lands Act 1989</i> is amended as set out in Schedule 2.	10

<b>Schedule 1</b>	<b>Amendment of Coastal Protection Act 1979</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 4A Meaning of maps outlining coastal zone</b>	3
	Omit section 4A (3) (e). Insert instead:	4
	(e) the boundary is to exclude:	5
	(i) those parts of the local government areas of	6
	Pittwater, Warringah, Manly, Woollahra,	7
	Waverley, Randwick and Sutherland that are	8
	not, and are not likely to be, affected by and that	9
	do not, and are not likely to, affect coastal	10
	processes, including coastal wave and wind	11
	action, and	12
	(ii) the waters of Sydney Harbour and Botany Bay.	13
<b>[2]</b>	<b>Section 37 Definitions</b>	14
	Omit the definition of <i>coastal zone</i> from section 37 (1).	15
<b>[3]</b>	<b>Parts 4A and 4B</b>	16
	Insert after Part 4:	17
	<b>Part 4A Coastal management plans</b>	18
	<b>Division 1 General</b>	19
	<b>55A Definition of “beach”</b>	20
	In this Part, <i>beach</i> means the area of unconsolidated material	21
	between the lowest limit of tidal or lake water level and the	22
	highest level reached by wave action.	23
	<b>55B Requirement for coastal management plans</b>	24
	A council whose area, or part of whose area, is included within	25
	the coastal zone and who is directed to do so by the Minister	26
	must make a coastal management plan in accordance with this	27
	Part.	28



<b>55C</b>	<b>Matters to be dealt with in coastal management plans</b>	1
	(1) A coastal management plan must make provision for:	2
	(a) protecting and preserving beach environments and beach amenity, and	3 4
	(b) emergency actions of the kind that may be carried out under the <i>State Emergency and Rescue Management Act 1989</i> , or otherwise, during periods of beach erosion, including the carrying out of related works, such as works for the protection of property affected or likely to be affected by beach erosion, where beach erosion occurs through storm activity or an extreme or irregular event, and	5 6 7 8 9 10 11 12
	(c) ensuring continuing and undiminished public access to beaches, headlands and waterways, particularly where public access is threatened or affected by accretion.	13 14 15
	(2) A coastal management plan may recommend the creation of easements under Division 5 of Part 4 of the <i>Crown Lands Act 1989</i> .	16 17 18
<b>55D</b>	<b>Guidelines for preparation of draft coastal management plans</b>	19
	(1) A council is to prepare a draft coastal management plan in accordance with the Minister's guidelines.	20 21
	(2) Without limiting the power of the Minister to determine the guidelines, the Minister may adopt as guidelines a manual referred to in section 733 (5) (b) of the <i>Local Government Act 1993</i> .	22 23 24 25
<b>55E</b>	<b>Public consultation</b>	26
	After preparing a draft coastal management plan, the council is:	27
	(a) to give public notice in a newspaper circulating in the locality of the place at which, the dates on which (comprising a period of not less than 21 days), and the times during which, the draft coastal management plan may be inspected by the public, and	28 29 30 31 32
	(b) to publicly exhibit the draft plan at the place, on the dates and during the times set out in the notice.	33 34

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<b>55F</b>	<b>Submissions</b>	1
	(1) During the period of public exhibition of a draft coastal management plan, any person may make a submission in writing to the council with respect to its provisions.	2 3 4
	(2) The council must consider all submissions so made.	5
	(3) The council may amend the draft coastal management plan as a result of the submissions.	6 7
<b>55G</b>	<b>Approval of Minister</b>	8
	(1) After considering any submissions, the council is to submit the draft coastal management plan to the Minister for approval.	9 10
	(2) The Minister may approve, or refuse to approve, the draft coastal management plan.	11 12
<b>55H</b>	<b>Gazettal and commencement of coastal management plans</b>	13
	(1) If the Minister approves a draft coastal management plan, the council is to make the plan and publish it in the Gazette.	14 15
	(2) A coastal management plan takes effect on the date on which it is published in the Gazette or, if a later date is specified in the plan for its commencement, on the later date so specified.	16 17 18
<b>55I</b>	<b>Amendment and repeal of coastal management plans</b>	19
	(1) A coastal management plan may be amended or repealed by a coastal management plan.	20 21
	(2) A coastal management plan can be repealed only by a coastal management plan that replaces it.	22 23
<b>55J</b>	<b>Availability of coastal management plans</b>	24
	A copy of a coastal management plan must be available for inspection by the public without charge at the office of the council during ordinary office hours.	25 26 27

<b>Division 2</b>	<b>Enforcement</b>	1
<b>55K</b>	<b>Breach of coastal management plan: offence</b>	2
	A person must not, on land in a local government area within the coastal zone to which a coastal management plan applies, carry 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, except in accordance with the coastal management plan.	3 4 5 6 7 8
	Maximum penalty: 100 penalty units.	9
<b>55L</b>	<b>Breach of coastal management plan: restraint</b>	10
	(1) The Minister or a council may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a coastal management plan.	11 12 13
	(2) If the Land and Environment Court is satisfied that a breach of a coastal management plan has been committed or that a breach of a coastal management plan will, unless restrained by an order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.	14 15 16 17 18
	(3) The functions of the Land and Environment Court under this section are in addition to and not in derogation of any other functions of the Court.	19 20 21
	(4) In this section, <i>a breach of a coastal management plan</i> means:	22 23
	(a) a contravention of or failure to comply with a coastal management plan, and	24 25
	(b) a threatened or apprehended contravention of or a threatened or apprehended failure to comply with a coastal management plan.	26 27 28
<b>55M</b>	<b>Breach of coastal management plan: order</b>	29
	(1) The Minister or a council may, in respect of a beach in a local government area within the coastal zone, order a person:	30 31
	(a) to refrain from depositing material on the beach that affects or is likely to affect beach erosion or that affects or is likely to affect public access to a beach or headland, or	32 33 34 35

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|------|---|--|
| (b)  | to remove material deposited by the person on the beach that affects or is likely to affect beach erosion or that affects or is likely to affect public access to a beach or headland, or   | 1<br>2<br>3<br>4                       |
| (c)  | in the case of a person who is the owner or occupier of land that has a frontage to such a beach:   | 5<br>6                                 |
| (i)  | to refrain from erecting a structure on or near the boundary of the land and the beach, or  | 7<br>8                                 |
| (ii) | to remove a structure erected on or near the boundary of the land and the beach,  | 9<br>10                                |
|      | if the structure affects or is likely to affect beach erosion or affects or is likely to affect public access to a beach or headland.   | 11<br>12<br>13                         |
| (2)  | The provisions of Division 3 of Part 2 of Chapter 7, and section 678, of the <i>Local Government Act 1993</i> apply to and in respect of an order given under this section by the Minister in the same way as those provisions apply to and in respect of an order given under section 124 (or under Part 2 of Chapter 7) of that Act by the Minister administering that Act, subject to the following: | 14<br>15<br>16<br>17<br>18<br>19<br>20 |
| (a)  | section 154 (2) of the <i>Local Government Act 1993</i> is taken to read “Division 3 of this Part applies to the Minister in the same way as it applies to a council for the purpose of exercising any such function.”,   | 21<br>22<br>23<br>24                   |
| (b)  | a reference in those provisions to the Minister is taken to be a reference to the Minister administering this Part.   | 25<br>26                               |
| (3)  | The provisions of section 126, Divisions 2 and 3 of Part 2 of Chapter 7, and section 678, of the <i>Local Government Act 1993</i> apply to and in respect of an order given under this section by a council in the same way as those provisions apply to and in respect of an order given under section 124 (or under Part 2 of Chapter 7) of that Act by a council.                                    | 27<br>28<br>29<br>30<br>31<br>32       |
| (4)  | In the application of section 678 of the <i>Local Government Act 1993</i> pursuant to this section, the reference in section 678 (2) of the <i>Local Government Act 1993</i> to demolishing a building extends to include a reference to the removal of a structure from a beach and material deposited on a beach.   | 33<br>34<br>35<br>36<br>37             |
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- (5) A person who carries out work in compliance with a requirement of an order given under this section by the Minister or a council is not subject to Part 5 of the *Environmental Planning and Assessment Act 1979* in carrying out the work.

**Part 4B Modification of doctrine of erosion and accretion**

**55N Modification of doctrine of erosion and accretion**

- (1) This section applies to land:
- (a) which is within the coastal zone, and
  - (b) a boundary (*the water boundary*) of which is defined or otherwise determined by reference to a mean high water mark.
- (2) A court has no jurisdiction to make a declaration concerning a water boundary that would increase the area of land to the landward side of the water boundary if:
- (a) a perceived trend by way of accretion is not likely to be indefinitely sustained by natural means, or
  - (b) as a consequence of making such a declaration, public access to a beach, headland or waterway will, or is likely to be, restricted or denied.
- (3) The Registrar-General has no power under Part 14A of the *Real Property Act 1900* to make a determination concerning a water boundary that would increase the area of land to the landward side of the water boundary.
- (4) The Minister administering the *Crown Lands Act 1989* (or a person authorised by that Minister) has no power under Part 7 of the *Surveyors (Practice) Regulation 2001* (or any regulation made by way of replacement, or in substitution, for that Regulation) to approve a determination concerning a water boundary that would increase the area of land to the landward side of the water boundary if:
- (a) a perceived trend by way of accretion is not likely to be indefinitely sustained by natural means, or

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(b)	as a consequence of making such a determination, public access to a beach, headland or waterway will, or is likely to be, restricted or denied.	1 2 3
<b>[4]</b>	<b>Section 58 Penalties</b>	4
	Insert “for which a specific penalty is not provided” after “this Act” in section 58 (1).	5 6
<b>[5]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	7
	Insert before clause 1:	8
	<b>Part 1 General</b>	9
<b>[6]</b>	<b>Schedule 1, Part 2</b>	10
	Insert at the end of the Schedule:	11
	<b>Part 2 Provisions consequent on enactment of Coastal Protection Amendment Act 2002</b>	12 13
<b>3</b>	<b>Preparation of first coastal management plan</b>	14
(1)	A council to which section 55B applies must submit a draft coastal management plan to the Minister in accordance with section 55G (1):	15 16 17
(a)	within 12 months after it is directed by the Minister under section 55B to make a coastal management plan, or	18 19 20
(b)	within such longer period as may be agreed to by the Minister.	21 22
(2)	If a council fails to comply with this clause, the Minister may:	23
(a)	make a coastal management plan instead of the council, and	24 25



<b>Schedule 2</b>	<b>Amendment of Crown Lands Act 1989</b>	1
	(Section 4)	2
<b>Section 58A</b>		3
Insert after section 58:		4
<b>58A</b>	<b>Easements for public access over foreshore land</b>	5
(1)	An easement for public access may be created under section 56 by the Minister over freehold land:	6
(a)	which is within the coastal zone within the meaning of the <i>Coastal Protection Act 1979</i> , and	7
(b)	a boundary of which is defined by reference to a mean high water mark,	8
	without the consent of the owner or a lessee, mortgagee, caveator or judgment creditor of, or in respect of, the land, despite section 56 (3).	9
(2)	The easement for public access may be created only:	10
(a)	for the purpose of securing continued public access to a beach, headland or waterway, and	11
(b)	if the creation of the easement is recommended in a coastal management plan made under Part 4A of the <i>Coastal Protection Act 1979</i> .	12
(3)	No compensation is payable to an owner, lessee, mortgagee, caveator or judgment creditor of, or in respect of, the land because of the creation of an easement for public access as referred to in this section.	13
(4)	Without limiting subsection (3), no claim may be made on the Torrens Assurance Fund established under section 134 of the <i>Real Property Act 1900</i> because of the creation of an easement for public access as referred to in this section.	14
(5)	The owner or a lessee of land that is subject to an easement for public access as referred to in this section is not liable for:	15
(a)	personal injury to, or the death of, a person who enters the land in use of the easement, or	16
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Coastal Protection Amendment Bill 2002

Schedule 2      Amendment of Crown Lands Act 1989

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- (b)    the loss of, or damage to, property of a person who            1  
         enters the land in use of the easement,                            2  
         unless the injury, death, loss or damage was caused by the       3  
         negligence or other tort of the owner or lessee.                    4