

Passed by both Houses



New South Wales

Coastal Protection Amendment Bill 2002

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2002*



New South Wales

Coastal Protection Amendment Bill 2002

Act No , 2002

An Act to amend the *Coastal Protection Act 1979* with respect to the management of certain coastal land; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Coastal Protection Amendment Act 2002*.

2 Commencement

This Act commences on the day that is 3 months after the date of assent.

3 Amendment of Coastal Protection Act 1979 No 13

The *Coastal Protection Act 1979* is amended as set out in Schedule 1.

Schedule 1 Amendment of Coastal Protection Act 1979

(Section 3)

[1] Section 3

Insert after section 2:

3 Objects of this Act

The objects of this Act are to provide for the protection of the coastal environment of the State for the benefit of both present and future generations and, in particular:

- (a) to protect, enhance, maintain and restore the environment of the coastal region, its associated ecosystems, ecological processes and biological diversity, and its water quality, and
- (b) to encourage, promote and secure the orderly and balanced utilisation and conservation of the coastal region and its natural and man-made resources, having regard to the principles of ecologically sustainable development, and
- (c) to recognise and foster the significant social and economic benefits to the State that result from a sustainable coastal environment, including:
 - (i) benefits to the environment, and
 - (ii) benefits to urban communities, fisheries, industry and recreation, and
 - (iii) benefits to culture and heritage, and
 - (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water, and
- (d) to promote public pedestrian access to the coastal region and recognise the public's right to access, and
- (e) to provide for the acquisition of land in the coastal region to promote the protection, enhancement, maintenance and restoration of the environment of the coastal region, and

- (f) to recognise the role of the community, as a partner with government, in resolving issues relating to the protection of the coastal environment, and
- (g) to ensure co-ordination of the policies and activities of the Government and public authorities relating to the coastal region and to facilitate the proper integration of their management activities, and
- (h) to establish the Coastal Council to advise the Minister in relation to the matters referred to in paragraphs (a)–(g) and, in particular, to develop policies in relation to the planning and management of the coastal region.

[2] Section 4A Meaning of maps outlining coastal zone

Omit section 4A (3) (e). Insert instead:

- (e) the boundary is to exclude:
 - (i) 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 that do not, and are not likely to, affect coastal processes, including coastal wave and wind action, and
 - (ii) the waters of Sydney Harbour and Botany Bay.

[3] Section 6 Administration

Omit the section.

[4] Section 36 Administration

Omit the section.

[5] Section 37 Definitions

Omit the definition of *coastal zone* from section 37 (1).

[6] Section 37A Implementation of principles of ecologically sustainable development

Omit “have regard to”. Insert instead “promote”.

[7] Section 38 General supervision of coastal zone

Insert before section 38 (1) (c):

- (b1) be inconsistent with the principles of ecologically sustainable development, or

[8] Section 39 Special provisions respecting coastal development

Insert before section 39 (4) (a):

- (a1) be inconsistent with the principles of ecologically sustainable development, or

[9] Section 44 Matters for consideration in relation to concurrence

Insert before section 44 (a):

- (a1) be inconsistent with the principles of ecologically sustainable development, or

[10] Section 54 Administration

Omit the section.

[11] Section 54A Implementation of principles of ecologically sustainable development

Omit “have regard to”. Insert instead “promote”.

[12] Parts 4A and 4B

Insert after Part 4:

Part 4A Coastal zone management plans

Division 1 General

55A Definition of “beach”

In this Part, *beach* means the area of unconsolidated material between the lowest limit of tidal or lake water level and the highest level reached by wave action.

55B Requirement for coastal zone management plans

- (1) A council whose area, or part of whose area, is included within the coastal zone may, and must, if directed to do so by the Minister, make a coastal zone management plan in accordance with this Part.
- (2) Two or more councils whose areas adjoin may decide to join in the making of a coastal zone management plan in accordance with this Part.
- (3) If, under subsection (2), two or more councils decide to join in the making of a coastal zone management plan, a reference in this Part:
 - (a) to a council includes a reference to those councils, and
 - (b) to an area includes a reference to the areas of those councils.

55C Matters to be dealt with in coastal zone management plans

A coastal zone management plan must make provision for:

- (a) protecting and preserving beach environments and beach amenity, and
- (b) emergency actions of the kind that may be carried out under the *State Emergency and Rescue Management Act 1989*, 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

- (c) ensuring continuing and undiminished public access to beaches, headlands and waterways, particularly where public access is threatened or affected by accretion.

55D Guidelines for preparation of draft coastal zone management plans

- (1) A council is to prepare a draft coastal zone management plan in accordance with the Minister's guidelines.
- (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 *Local Government Act 1993*.

55E Public consultation

After preparing a draft coastal zone management plan, the council is:

- (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 zone management plan may be inspected by the public, and
- (b) to publicly exhibit the draft plan at the place, on the dates and during the times set out in the notice.

55F Submissions

- (1) During the period of public exhibition of a draft coastal zone management plan, any person may make a submission in writing to the council with respect to its provisions.
- (2) The council must consider all submissions so made.
- (3) The council may amend the draft coastal zone management plan as a result of the submissions.

55G Approval of Minister

- (1) After considering any submissions, the council is to submit the draft coastal zone management plan to the Minister for approval.
- (2) The Minister may approve, or refuse to approve, the draft coastal zone management plan.

55H Gazettal and commencement of coastal zone management plans

- (1) If the Minister approves a draft coastal zone management plan, the council is to make the plan and publish it in the Gazette.
- (2) A coastal zone 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.

55I Amendment and repeal of coastal zone management plans

- (1) A coastal zone management plan may be amended or repealed by a coastal zone management plan.
- (2) A coastal zone management plan can be repealed only by a coastal zone management plan that replaces it.

55J Availability of coastal zone management plans

A copy of a coastal zone management plan must be available for inspection by the public without charge at the office of the council during ordinary office hours.

Division 2 Enforcement

55K Breach of coastal zone management plan: offence

A person must not, on land in a local government area within the coastal zone to which a coastal zone 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 zone management plan.

Maximum penalty: 100 penalty units.

55L Breach of coastal zone management plan: restraint

- (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 zone management plan.
- (2) If the Land and Environment Court is satisfied that a breach of a coastal zone management plan has been committed or that a breach of a coastal zone 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.
- (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.
- (4) In this section, *a breach of a coastal zone management plan* means:
 - (a) a contravention of or failure to comply with a coastal zone management plan, and
 - (b) a threatened or apprehended contravention of or a threatened or apprehended failure to comply with a coastal zone management plan.

55M Breach of coastal zone management plan: order

- (1) The Minister or a council may, in respect of a beach in a local government area within the coastal zone, order a person:
 - (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
 - (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
 - (c) in the case of a person who is the owner or occupier of land that has a frontage to such a beach:
 - (i) to refrain from erecting a structure on or near the boundary of the land and the beach, or

- (ii) to remove a structure erected on or near the boundary of the land and the beach, not being a structure lawfully erected before the commencement of this section,

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.
- (2) The provisions of Division 3 of Part 2 of Chapter 7, and section 678, of the *Local Government Act 1993* 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:
 - (a) section 154 (2) of the *Local Government Act 1993* 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.”,
 - (b) a reference in those provisions to the Minister is taken to be a reference to the Minister administering this Part.
- (3) The provisions of section 126, Divisions 2 and 3 of Part 2 of Chapter 7, and section 678, of the *Local Government Act 1993* 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.
- (4) In the application of section 678 of the *Local Government Act 1993* pursuant to this section, the reference in section 678 (2) of the *Local Government Act 1993* to demolishing a building extends to include a reference to the removal of a structure from a beach and material deposited on a beach.
- (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, or which adjoins the tidal waters of Sydney Harbour or Botany Bay, or their tributaries, 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
 - (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.

[13] Section 56A

Insert before section 57:

56A Restoration orders

- (1) The Land and Environment Court, in proceedings under this Act, may order a person to take such steps as are specified in the order, within such time as is so specified (or such further time as the Court on application may allow):
 - (a) to prevent, control, abate or mitigate any harm to the environment or any loss of amenity caused by anything done or omitted to be done by the person, or
 - (b) to make good any resulting environmental damage, or
 - (c) to prevent the continuance or recurrence of any such harm to the environment or any such loss of amenity.
- (2) Without limiting subsection (1), the Court may order a person to remove or clean up material dumped during a beach erosion event.
- (3) In this section, *environment* and *harm* have the same meanings as in the *Protection of the Environment Operations Act 1997*.

[14] Section 58 Penalties

Insert “for which a specific penalty is not provided” after “this Act” in section 58 (1).

[15] Section 58 (1)

Omit “10 penalty units”. Insert instead “100 penalty units”.

[16] Section 58 (2)

Omit “2 penalty units”. Insert instead “10 penalty units”.

[17] Schedule 1 Savings, transitional and other provisions

Insert before clause 1:

Part 1 General

[18] Schedule 1, Part 2

Insert at the end of the Schedule:

**Part 2 Provisions consequent on enactment of
Coastal Protection Amendment Act 2002**

3 Preparation of first coastal zone management plan

- (1) A council to which section 55B applies must submit a draft coastal zone management plan to the Minister in accordance with section 55G (1):
 - (a) within 12 months after it is directed by the Minister under section 55B to make a coastal zone management plan, or
 - (b) within such longer period as may be agreed to by the Minister.
- (2) If a council fails to comply with this clause, the Minister may:
 - (a) make a coastal zone management plan instead of the council, and
 - (b) recover the cost of making the coastal zone management plan from the council.

Such a plan is taken to have been made by the council in accordance with Part 4A.