



New South Wales

Coastal Management Bill 2016

Explanatory note

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

Overview of Bill

The object of this Bill is to provide for the integrated management of the coastal environment of New South Wales consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State.

The Bill consequently repeals the *Coastal Protection Act 1979* and the *Coastal Protection Regulation 2011*.

Outline of provisions

Part 1 Preliminary

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 states the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Part 2 Coastal zone and management objectives for coastal management areas

Clause 5 provides that the *coastal zone* means the area of land comprised of a number of coastal management areas, being:

- (a) the coastal wetlands and littoral rainforests area, and
- (b) the coastal vulnerability area, and
- (c) the coastal environment area, and
- (d) the coastal use area.

Clause 6 defines the *coastal wetlands and littoral rainforests area*, being the land identified by a State environmental planning policy to be the coastal wetlands and littoral rainforests area, being land which displays the hydrological and floristic characteristics of coastal wetlands or littoral rainforests and land adjoining those features, and sets out the management objectives for the area.

Clause 7 defines the *coastal vulnerability area*, being the land identified by a State environmental planning policy to be the coastal vulnerability area, being land subject to coastal hazards, and sets out the management objectives for the area.

Clause 8 defines the *coastal environment area*, being the land identified by a State environmental planning policy to be the coastal environment area, being land containing coastal features such as the coastal waters of the State, estuaries, coastal lakes, coastal lagoons and land adjoining those features, including headlands and rock platforms, and sets out the management objectives for the area.

Clause 9 defines the *coastal use area*, being the land identified by a State environmental planning policy to be the coastal use area, being land adjacent to coastal waters, estuaries, coastal lakes and lagoons where development is or may be carried out (at present or in the future), and sets out the management objectives for the area.

Clause 10 contains provisions relating to the identification of coastal management areas including requiring environmental planning instruments under the *Environmental Planning and Assessment Act 1979* that identify a coastal management area (or part of such an area) not be made except on the recommendation of the Minister administering the proposed Act (*the Minister*) and dealing with situations where the same parcel of land is shown by such environmental planning instruments to be within different coastal management areas.

Part 3 Coastal management programs and manual

Division 1 Application of Part

Clause 11 provides that the proposed Part applies to:

- (a) a local council whose local government area, or part of whose local government area, is included within the coastal zone, and
- (b) any other public authority that exercises functions in connection with the coastal zone.

Division 2 Coastal management programs

Clause 12 sets out the purpose of coastal management programs, being to set the long-term strategy for the co-ordinated management of land within the coastal zone with a focus on achieving the objects of the proposed Act.

Clause 13 provides that a local council may, and must, if directed to do so by the Minister, prepare a coastal management program in accordance with the proposed Part. A coastal management program may be made in relation to the whole, or any part, of the area included within the coastal zone.

Clause 14 deals with the preparation of coastal management programs. A local council is to prepare a coastal management program in accordance with the coastal management manual (see below). In preparing a coastal management program, a local council must:

- (a) consider and promote the objects of the proposed Act, and
- (b) give effect to the management objectives for the coastal management areas covered by the program, and

- (c) consider the State and regional policies and plans prescribed by the regulations for the purposes of the proposed section.

The Minister may also direct a local council in its preparation of a coastal management program. Such a direction prevails to the extent of any inconsistency between it and the coastal management manual.

Clause 15 sets out matters to be dealt with in coastal management programs. A coastal management program must:

- (a) identify the coastal management issues affecting the areas to which the program is to apply, and
- (b) identify the actions required to address those coastal management issues in an integrated and strategic manner, and
- (c) identify how and when those actions are to be implemented, including those to be implemented by local councils under Chapter 13 of the *Local Government Act 1993*, those to be implemented under environmental planning instruments and development control plans under the *Environmental Planning and Assessment Act 1979* and those to be implemented by public authorities (other than the local council), and
- (d) identify the costs of those actions and proposed cost-sharing arrangements and other viable funding mechanisms for those actions to ensure the delivery of those actions is consistent with the timing for their implementation under the coastal management program, and
- (e) if the local council's local government area contains land within the coastal vulnerability area and beach erosion, coastal inundation or coastal instability is occurring on that land, include a coastal zone emergency action subplan for the area.

Clause 16 contains provisions dealing with the consultation that must be undertaken before a coastal management program is adopted.

Clause 17 provides for the adoption, certification and gazettal of coastal management programs. A local council may adopt a draft coastal management program and submit it to the Minister for certification. After the Minister has certified that the coastal management program has been prepared in accordance with the requirements of the proposed Part and the coastal management manual, the council is to publish it in the Gazette. A coastal management program takes effect on the date on which it is published in the Gazette or, if a later date is specified in the program for its commencement, on the later date so specified.

Clause 18 deals with the review, amendment and replacement of coastal management programs.

Clause 19 provides that a copy of a coastal management program must be available for inspection by the public without charge at the office of the local council during ordinary office hours. A copy of a coastal management program must also be available for public inspection on the website of the local council within 7 days of its publication in the Gazette.

Clause 20 provides that the Minister may prepare and adopt a coastal management program for a local council if:

- (a) the local council has failed to comply with a direction under the proposed Part, or
- (b) the Minister has refused to certify the local council's draft coastal management program under proposed section 17.

The proposed section contains other provisions dealing with the preparation and adoption of such coastal management programs, including requiring the Minister to seek the advice of the NSW Coastal Council in carrying out this function.

Division 3 Coastal management manual

Clause 21 provides that the Minister is to publish a coastal management manual (*coastal management manual*) for the purposes of the proposed Act. The manual is to impose mandatory requirements and provide guidance in connection with the preparation, development, adoption, implementation, amendment, and review of, and the contents of, coastal management programs.

In particular, the manual is to include the following:

- (a) information to assist local councils addressing the requirements for the preparation of coastal management programs, including addressing the requirement that, in preparing coastal management programs, councils must consider and promote the objects of the proposed Act,
- (b) a risk management process that local councils are to follow when preparing their coastal management programs, including a process of identifying and assessing risks to environmental, social and economic values and benefits and evaluating and selecting management actions to address those risks,
- (c) technical information and guidance on matters such as hazard mapping, ecological health, cost benefit analysis and implementation and funding tools to support local councils in undertaking that process,
- (d) requirements relating to the consultation that must be undertaken in connection with the preparation, development or review of coastal management programs,
- (e) information on the preparation of coastal zone emergency action subplans,
- (f) information on the role of the Minister, public authorities and the NSW Coastal Council in relation to the preparation, development and review of coastal management programs,
- (g) guidance regarding the local council's integration of its coastal management program with its integrated planning and reporting framework obligations under the *Local Government Act 1993*.

Division 4 Obligations of local councils and other public authorities

Clause 22 deals with the implementation of coastal management programs.

A local council is to give effect to its coastal management program and, in doing so, is to have regard to the objects of the proposed Act in the exercise of its functions and, in particular, its functions relating to:

- (a) the preparation, development and review of, and the contents of, the plans, strategies, programs and reports to which Part 2 of Chapter 13 of the *Local Government Act 1993* applies, and
- (b) the preparation of planning proposals and development control plans under the *Environmental Planning and Assessment Act 1979*.

Clause 23 requires other public authorities (other than local councils) to have regard to coastal management programs to the extent that those programs are relevant to the exercise of their functions. In particular, those public authorities are to have regard to relevant coastal management programs and the coastal management manual in the preparation, development and review of, and the contents of, any plans of management that those public authorities are required to produce and, in doing so, are to have regard to the objects of the proposed Act.

Part 4 NSW Coastal Council

Clause 24 provides for the establishment of a NSW Coastal Council. The NSW Coastal Council is to consist of at least 3 and not more than 7 members appointed by the Minister. The provision deals with the appointment of members to the Council. **Schedule 2** deals with the constitution and procedure of the NSW Coastal Council.

Clause 25 sets out the functions of the NSW Coastal Council, including:

- (a) to provide advice to the Minister on any matter referred to the Council by the Minister relating to the following:
 - (i) the Minister's functions under the proposed Act,
 - (ii) the compliance by local councils with management objectives and the coastal management manual in preparing and reviewing coastal management programs,

- (iii) performance audits of local councils' coastal management programs, and
- (b) at the request of the Minister, to provide advice to another public authority on any matter referred to the Council by the Minister relating to coastal management issues, and
- (c) any other function conferred or imposed on it by or under the proposed Act.

Clause 26 provides that the NSW Coastal Council, at the request of the Minister, is to conduct a performance audit of the implementation of a coastal management program of a local council. The purpose of the performance audit is:

- (a) to determine whether a local council is effectively implementing its coastal management program, and
- (b) to identify opportunities for local council capacity building.

Part 5 Miscellaneous

Clause 27 provides that development 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.

The arrangements referred to in proposed section 27 (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,
- (b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the *Local Government Act 1993*).

The proposed section is substantially the same as section 55M of the *Coastal Protection Act 1979* (which is to be repealed by the proposed Act).

Clause 28 deals with the modification of the common law doctrine of erosion and accretion in the same manner as section 55N of the *Coastal Protection Act 1979* (which is to be repealed by the proposed Act).

Clause 29 protects the exercise of certain functions by local councils and other public authorities from legal invalidity and clarifies that the proposed Act does not require or authorise action that is inconsistent with any statutory or other legal obligation of the council or authority.

Clause 30 deals with failures by local councils to comply with Ministerial directions under proposed sections 13 (1) and 14 (2).

Clause 31 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 32 enables the Minister to delegate the exercise of any function of the Minister under the proposed Act (other than this power of delegation) to certain persons or bodies.

Clause 33 provides for the review of the proposed Act in 5 years.

Clause 34 provides that the proposed Act binds the Crown.

Clause 35 repeals the *Coastal Protection Act 1979* and the *Coastal Protection Regulation 2011*.

Schedule 1 Local government areas, coastal sediment compartments and border estuaries

Schedule 1 contains tables of local government areas and coastal sediment compartments and border estuaries for the purposes of the proposed section regarding consultation.

Schedule 2 Constitution and procedure of NSW Coastal Council

Schedule 2 contains provisions relating to the constitution and procedure of the NSW Coastal Council.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 4 Amendment of Acts and instruments

Schedule 4 makes consequential amendments to the Acts and instruments specified in the proposed Schedule. The Schedule also amends the *Environmental Planning and Assessment Act 1979* to extend the powers of consent authorities and other persons to give orders to do or to refrain from doing certain specified things.