



New South Wales

# Coastal Protection Regulation 2011

under the

Coastal Protection Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Coastal Protection Act 1979*.

FRANK SARTOR, MP  
Minister for Climate Change and the Environment

## Explanatory note

The object of this Regulation is to make provision for certain matters under the *Coastal Protection Act 1979*.

The Regulation remakes (with only minor changes in substance) certain provisions of the *Coastal Protection Regulation 2004* which was repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

Specifically, the Regulation:

- (a) prohibits the carrying out of certain development on any part of the coastal zone below the mean high water mark (excluding any estuary, lake or artificial harbour), except with the concurrence of the Minister for Climate Change and the Environment, and
- (b) provides that requirements specified in a Code of Practice published by the Department of Environment, Climate Change and Water in March 2011 must be complied with in relation to:
  - (i) the placement, maintenance and removal of emergency coastal protection works, and
  - (ii) orders to remove material, structures and emergency coastal protection works on beaches, and
  - (iii) the restoration of land after the removal of material, structures and emergency coastal protection works, and

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#### Explanatory note

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- (c) provides for a scheme of 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, including providing for the following:
  - (i) the determination by the Minister, by certification of a council's coastal zone management plan, of the risk category to which particular land is to be allocated,
  - (ii) the inclusion in planning certificates issued under section 149 of the *Environmental Planning and Assessment Act 1979* of information regarding such determinations, and
- (d) authorises persons to whom a Coastal Authority may delegate the exercise of its functions, and
- (e) prescribes certain offences under the *Coastal Protection Act 1979* as penalty notice offences and prescribes penalty notice amounts for those offences, and
- (f) provides for transitional arrangements for draft coastal zone management plans submitted to the Minister for approval before the commencement of the *Coastal Protection and Other Legislation Amendment Act 2010*.

This Regulation is made under the *Coastal Protection Act 1979*, including sections 39 (2), 55P (2) (f), 55R (1) (d), 55Y (1) (b), 55ZA (3) (b), 55ZC (5) (b), 56B, 59B and 60 (the general regulation-making power) of, and clause 1 (1) of Schedule 1 to, that Act.

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Part 1 Preliminary

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## Coastal Protection Regulation 2011

under the

Coastal Protection Act 1979

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Coastal Protection Regulation 2011*.

#### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

#### 3 Definitions

(1) In this Regulation:

***Code of Practice*** means the document entitled *Code of Practice under the Coastal Protection Act 1979* published by the Department in March 2011.

**Note.** A copy of the Code of Practice is available for inspection at [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au).

***the Act*** means the *Coastal Protection Act 1979*.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Regulation of coastal development

### 4 Application of Part

- (1) This Part applies to such part of the coastal zone as is below the mean high water mark, excluding any estuary, lake or artificial harbour.
- (2) In this clause, *estuary* includes:
  - (a) any part of a river whose level is affected (including intermittently affected) by coastal tides, or
  - (b) any partially enclosed body of water that is intermittently open to the sea.

### 5 Regulation of development generally

A person (including a public authority) must not, without the concurrence of the Minister, carry out development on any part of the coastal zone to which this Part applies.

**Note.** Contravention of this clause (otherwise than by the Crown) constitutes an offence for which the maximum penalty under section 58 of the Act is 400 penalty units (in the case of a corporation) or 200 penalty units (in any other case).

Section 37B of the Act provides that concurrence of the Minister under Part 3 of the Act is not required in relation to the carrying out in the coastal zone of any development (within the meaning of the *Environmental Planning and Assessment Act 1979*) that:

- (a) requires development consent under that Act, or
- (b) is exempt development under that Act, or
- (c) is carried out in accordance with a coastal zone management plan under Part 4A of the Act.

Section 39 (3) of the Act provides that this Part does not apply to or in respect of an area that is subject to an environmental planning instrument (other than a State environmental planning policy).

Section 75U (1) (a) of the *Environmental Planning and Assessment Act 1979* provides that concurrence under this Part is not required for an approved project within the meaning of Part 3A of that Act.

### 6 Exemption of certain development from this Part

Clause 5 does not apply to the following:

- (a) the dredging of sediment from the seabed, where the dredging occurs in water of a depth greater than 30 metres below mean sea level and the volume of sediment removed is less than 100 cubic metres per year,
- (b) the placement of sediment on the seabed where the depth of water following the placement will be greater than 30 metres below mean sea level and the volume of sediment placed is less than 10,000 cubic metres per year,

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Part 2 Regulation of coastal development

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- (c) the placement of any solid object on the seabed where the top of the object after placement is to be greater than 30 metres below mean sea level,
- (d) the temporary disturbance of the seabed (less than 30 days in any location) associated with the carrying out of development under the seabed such as the laying of pipes and cables.

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## **Part 3 Requirements relating to emergency coastal protection works**

### **7 Requirements for placement of material as emergency coastal protection works**

For the purposes of section 55P of the Act, the requirements set out in Parts 1 and 2 of the Code of Practice relating to the placement of material as emergency coastal protection works are specified.

### **8 Requirements for maintenance of emergency coastal protection works**

For the purposes of section 55R of the Act, the requirements set out in Parts 1 and 3 of the Code of Practice relating to the maintenance of emergency coastal protection works are specified.

### **9 Requirements for removal of emergency coastal protection works and restoration of land**

For the purposes of section 55Y (1) of the Act, the requirements set out in Parts 1 and 4 of the Code of Practice are specified.

### **10 Requirements for restoration of land in compliance with order to remove certain materials and structures unlawfully placed on beaches**

For the purposes of section 55ZA (3) (b) of the Act, the requirements set out in Part 5 of the Code of Practice are specified.

### **11 Requirements for restoration of land in compliance with order relating to emergency coastal protection works**

For the purposes of section 55ZC (5) (b) of the Act, the requirements set out in Part 4 of the Code of Practice are specified.

### **12 Failure to comply with any requirements not an offence**

For the avoidance of doubt, requirements set out in the Code of Practice are specified for the purposes of sections 55P, 55R, 55Y, 55ZA and 55ZC of the Act only and are not directions or prohibitions by or under this Regulation. Therefore, a failure to comply with any such requirement is not an offence under section 57 (2) of the Act.

**Note.** If works have been placed or maintained contrary to a requirement set out in the Code of Practice, the works are not “emergency coastal protection works” for the purposes of the Act. Such works therefore cannot benefit from the operation of section 55O of the Act. That section provides that a person who places emergency coastal protection works that are authorised by a certificate under Division 2 of Part 4C of the Act is not required to obtain regulatory approval under the Act or any other law.

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Part 4 Categorisation of coastal risks to land

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### Part 4 Categorisation of coastal risks to land

#### 13 Coastal hazard risk categories

Land within the coastal zone that is, or is likely to be, adversely affected by a coastal hazard may be categorised under this Part according to the following risk categories:

- (a) Risk Category 1—that the land is, or is likely to be, adversely affected by the coastal hazard at the present time (a current coastal hazard),
- (b) Risk Category 2—that the land is not, and is not likely to be, adversely affected by the coastal hazard at the present time, but is likely to be adversely affected by the coastal hazard in the year 2050 (a 2050 coastal hazard),
- (c) Risk Category 3—that the land is not, and is not likely to be, adversely affected by the coastal hazard at the present time or in the year 2050, but is likely to be adversely affected by the coastal hazard in the year 2100 (a 2100 coastal hazard).

#### 14 Determination by the Minister of the risk category of particular land

- (1) For the purposes of section 56B (b) of the Act, the Minister may, in relation to a coastal hazard that adversely affects or is likely to adversely affect particular land within the coastal zone, determine that the land is allocated to a risk category for the coastal hazard.
- (2) A determination under this clause may be made by certifying, under section 55G of the Act, a draft coastal zone management plan for a council that allocates particular land to a risk category for a coastal hazard.
- (3) Any such determination takes effect 45 days after the date on which the coastal zone management plan takes effect.

**Note.** 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 that later date so specified—see section 55H (2) of the Act.

#### 15 Information regarding coastal hazard risk category to be included on planning certificates

If a determination under this Part in relation to particular land has taken effect, a certificate under section 149 of the *Environmental Planning and Assessment Act 1979* issued in respect of the land must include a statement that sets out:

- (a) the year that the determination was made, and



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- (b) the risk category to which the determination has allocated the land in relation to each coastal hazard that adversely affects, or is likely to adversely affect, the land.

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Part 5 Miscellaneous

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### Part 5 Miscellaneous

#### 16 Delegation of functions of Coastal Authorities

For the purposes of section 9 of the Act, the following persons and classes of persons are authorised:

- (a) in relation to the Minister—any member of staff of the Department,
- (b) in relation to the Minister administering the *Crown Lands Act 1989*—any member of staff of the Land and Property Management Authority,
- (c) in relation to a council—any member of staff of the council,
- (d) in relation to a roads authority:
  - (i) any member of staff of the Land and Property Management Authority, and
  - (ii) if the roads authority is a Minister—any member of staff of a Department responsible to the Minister, and
  - (iii) if the roads authority is not a Minister—any member of staff of the roads authority,
- (e) in relation to a public authority—any member of staff of the public authority.

#### 17 Penalty notice offences and penalties

- (1) For the purposes of section 59B of the Act:
  - (a) each offence created by a provision specified in Column 1 of Schedule 1 is an offence for which a penalty notice may be served, and
  - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

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**18 Transitional provision—draft coastal zone management plans submitted to Minister for certification before 1 January 2011**

- (1) Section 55C (1) (d)–(g) of the Act, as inserted by the *Coastal Protection and Other Legislation Amendment Act 2010*, do not apply in relation to a draft coastal zone management plan submitted to the Minister for approval under section 55G of the Act before 1 January 2011.
- (2) This clause is taken to have commenced on 1 January 2011.

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Schedule 1 Penalty notice offences

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**Schedule 1 Penalty notice offences**

(Clause 17)

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
<b>Offences under the Act</b>	
Section 55X	\$550 for an individual \$1,100 for a corporation
Section 55ZE (5)	\$1,100