

[Act 2002 No 85]



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.

* Amended in committee—see table at end of volume.

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.