

Coastal Protection Act 1979 No 13

[1979-13]



New South Wales

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Coastal Protection Act 1979 No 13



New South Wales

An Act to constitute the Coastal Council of New South Wales and to specify its functions; to make provisions relating to the use and occupation of the coastal region; and to facilitate the carrying out of certain coastal protection works.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Coastal Protection Act 1979*.

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

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.

4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

coastal region includes the coastal zone.

coastal zone means:

- (a) the area within the coastal waters of the State as defined in Part 10 of the [Interpretation Act 1987](#) (including any land within those waters), and
- (b) the area of land and the waters that lie between the western boundary of the coastal zone (as shown on the maps outlining the coastal zone) and the landward boundary of the coastal waters of the State, and
- (c) the seabed (if any) and the subsoil beneath, and the airspace above, the areas referred to in paragraphs (a) and (b).

Note—

The coastal zone consists of the area between the western boundary of the coastal zone shown on the maps outlining the coastal zone and the outermost boundary of the coastal waters of the State. The coastal waters of the State extend, generally, to 3 nautical miles from the coastline of the State.

council means a council or a county council within the meaning of the [Local Government Act 1993](#).

functions includes powers, authorities and duties.

principles of ecologically sustainable development means the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

public authority means a Minister of the Crown of the State, a department or instrumentality of the State, a council and any other public or local authority constituted by or under any Act, and includes any prescribed body.

regulation means a regulation made under this Act.

- (2) A reference in this Act to the exercise of a function includes, where the function is a duty, the performance of that duty.

4A Meaning of maps outlining coastal zone

- (1) A reference to maps outlining the coastal zone is a reference to:
- (a) the maps approved for the purposes of this Act by the Minister administering Part 2, and
 - (b) if those maps are amended or replaced by further maps so approved by the Minister administering Part 2, the maps as so amended or replaced.
- (2) The Minister is to ensure, when approving of maps for the purposes of this Act, that the western boundary of the coastal zone is determined in accordance with the principles set out in subsection (3).
- (3) The following principles apply to the determination of the western boundary of the area to be included in the coastal zone as referred to in subsection (2):
- (a) the boundary is to be generally one kilometre landward of the western boundary of the coastal waters of the State,
 - (b) the boundary is to be generally one kilometre landward around any bay, estuary, coastal lake or lagoon,
 - (c) the boundary is to follow the length of any coastal river inland generally at a distance of one kilometre from each bank of the river:
 - (i) to one kilometre beyond the limit of any recognised mangroves on or associated with the river, or
 - (ii) if there are no such recognised mangroves—to one kilometre beyond the tidal limit of the river,
 - (d) the boundary is to be shown to the nearest cadastral boundary or easily recognisable physical boundary (determined in consultation with relevant

councils),

(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.

(4) In this section, **recognised mangroves** means mangroves shown on maps prepared in 1985 by the Department having the responsibility for the administration of fisheries, as updated by that Department from time to time.

4B Inspection of maps outlining coastal zone

- (1) The Director-General of the Department of Urban Affairs and Planning must ensure that:
 - (a) the maps outlining the coastal zone are available for inspection during normal office hours at the principal office of the Department, and
 - (b) at each of the relevant regional offices of the Department, such of the maps outlining the coastal zone that relate to the region are available for inspection during normal office hours.
- (2) The Director-General of the Department of Land and Water Conservation must ensure that, at each of the relevant regional offices of the Department, such of the maps outlining the coastal zone that relate to the region are available for inspection during normal office hours.
- (3) The council of a local government area that is within, or partly within, the coastal zone must ensure that such of the maps outlining the coastal zone that relate to that area or a part of that area are available for inspection during normal office hours at the principal office of the council.

5 Act binds Crown

This Act, section 57 excepted, binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Part 2 The Coastal Council of New South Wales

Division 1 Preliminary

6 (Repealed)

7 Definitions

In this Part:

Chairperson means the Chairperson of the Coastal Council appointed under section 9 (2) (a).

Coastal Council means the Coastal Council of New South Wales constituted under this Act.

member means a member of the Coastal Council, and includes, where an alternate member is acting during the absence or illness of an appointed member, that alternate member.

Division 2 Constitution of the Coastal Council

8 The Coastal Council

There is hereby constituted a Coastal Council of New South Wales.

9 Members

- (1) The Coastal Council is to consist of 20 members appointed by the Minister.
- (2) The members of the Coastal Council are to consist of the following:
 - (a) an expert in coastal protection who is to be the Chairperson of the Coastal Council,
 - (b) a member of Parliament,
 - (c) a person nominated by the Minister administering the *Environmental Planning and Assessment Act 1979*,
 - (d) a person nominated by the Minister for Land and Water Conservation,
 - (e) a person nominated by the Minister administering the *National Parks and Wildlife Act 1974*,
 - (f) a person nominated by the Minister administering the *Mining Act 1992*,
 - (g) a person nominated by the Minister administering the *Fisheries Management Act 1994*,
 - (h) a person nominated by the Minister administering the *Local Government Act 1993*,
 - (i) a person nominated by the Minister administering the *Protection of the Environment Administration Act 1991*,

- (j) a person nominated by the Minister for Aboriginal Affairs,
 - (k) a person nominated by the Minister for State and Regional Development,
 - (l) a person nominated by the Minister for Tourism,
 - (m) a person nominated by the Minister for Sport and Recreation,
 - (n) a person nominated by the Minister administering the *Ports Corporatisation and Waterways Management Act 1995*,
 - (o) a person approved by the Minister and selected by the Minister from a panel of 3 persons nominated by the Nature Conservation Council,
 - (p) a person selected by the Minister from a panel of 3 persons nominated by an industry group with an interest in coastal matters, approved by the Minister,
 - (q) a person selected by the Minister from a panel of 3 persons nominated by a professional organisation with an interest in coastal matters, approved by the Minister,
 - (r) 3 persons, each being a member of a council for a local government area within or partly within the coastal zone, nominated by the Local Government and Shires Associations and approved by the Minister.
- (3) Where, for the purposes of subsection (2) (o), (p), (q) or (r), a nomination of a person for appointment as a member is not made within the time or in the manner specified by the Minister in a notice in writing given to the body entitled to make the nomination, the Minister may appoint any person to be a member instead of the person required to be appointed on that nomination.
- (4) Where, by or under any Act, provision is made requiring the holder of an office specified therein to devote the whole of his or her time to the duties of office, that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration, travelling or subsistence allowance payable to a member under section 12 or the regulations.
- (5) The office of a member shall not, for the purposes of any Act, be deemed to be an office or place of profit under the Crown.

10 (Repealed)

11 Term of office of member

A member shall, subject to this Act, hold office for a period of 3 years and shall, if otherwise qualified, be eligible for reappointment as a member.

12 Remuneration of and allowances for members

Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

13 Alternate members

- (1) The Minister may at any time appoint, as an alternate member to act during the absence or illness of a member, a person who holds the same qualifications and is nominated in the same manner, if any, as the person for whom the person so appointed is the alternate member.
- (2) An alternate member, other than an alternate member for the Chairperson, shall have and may exercise, while acting as a member, the functions, as such a member, of the person for whom the person so appointed is the alternate member.
- (3) An alternate member for the Chairperson, unless the alternate member is nominated by the Chairperson as referred to in section 18 (1), shall have and may exercise, while acting as a member, the functions, as such a member, of a member other than the Chairperson.

14 Removal from office

The Minister may, for any cause which to the Minister seems sufficient, remove any member from office.

15 Vacation of office

A member shall be deemed to have vacated the member's office if:

- (a) the member dies,
- (b) the member resigns the office of member by writing under the member's hand addressed to the Minister and the Minister accepts the member's resignation,
- (c) the member is absent from 4 consecutive ordinary meetings of the Coastal Council of which reasonable notice has been given to the member, unless on leave granted to the member by the Coastal Council,
- (d) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit,
- (e) the member becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#) or a person under detention under Part 7 of that Act,
- (f) the member is convicted in New South Wales of an indictable offence punishable by

imprisonment for 12 months or upwards, or if the member is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an indictable offence so punishable,

- (g) the member, being a member appointed under section 9 (2) (b) or (r), ceases to hold the qualification by virtue of which the member was nominated for appointment, or
- (h) the member is removed from office by the Minister.

16 Filling of casual vacancy

- (1) On the occurrence of a vacancy in the office of a member, the Minister may appoint a person to the vacant office for the balance of the person's predecessor's term of office.
- (2) A person appointed under subsection (1) shall be a person who holds the same qualifications, and is nominated in the same manner, if any, as the member whose office has become vacant was qualified and nominated.

17 Chairperson to preside

The Chairperson shall preside at all meetings of the Coastal Council at which the Chairperson is present.

18 Absence of Chairperson

- (1) In the absence of the Chairperson at any meeting of the Coastal Council, a member nominated by the Chairperson or the alternate member for the Chairperson, if so nominated, shall preside as Chairperson at that meeting.
- (2) Where both the Chairperson and any member nominated by the Chairperson are absent from any meeting of the Coastal Council or where no member has been nominated to preside at that meeting, the members present shall appoint one of their number to preside at that meeting.

19 Presiding member's vote

The member presiding at a meeting of the Coastal Council shall have a deliberative vote and, in the event of an equality of votes, shall also have a second or casting vote.

20 Quorum

Eleven members shall constitute a quorum at any meeting of the Coastal Council.

21 Meetings

- (1) Any duly convened meeting of the Coastal Council at which a quorum is present shall be competent to transact any business of the Coastal Council.

- (2) Questions arising at a meeting of the Coastal Council shall be determined by a majority of votes of the members present and voting.

22 General procedure

The procedure for the calling of, and for the conduct of business at, meetings of the Coastal Council shall, subject to any procedure that is specified in this Act or is prescribed, be as determined by the Coastal Council.

23 Minutes of meetings

The Coastal Council shall cause full and accurate minutes to be kept of its proceedings at meetings.

24 Ministers to be furnished with agenda and minutes

The Coastal Council shall cause each Minister to be furnished with:

- (a) a copy of the agenda of each meeting of the Coastal Council when copies of the agenda are furnished to the members, and
- (b) a copy of the minutes of a meeting of the Coastal Council as soon as practicable after the meeting.

25 Minutes to be available for public inspection

A copy of those minutes which have been furnished to each Minister in accordance with section 24 shall be available for public inspection at the office of the Coastal Council during ordinary office hours.

26 Presumptions

In proceedings by or against the Coastal Council, no proof shall be required (until evidence is given to the contrary) of:

- (a) the constitution of the Coastal Council,
- (b) any resolution of the Coastal Council,
- (c) the appointment of any member, or
- (d) the presence of a quorum at any meeting of the Coastal Council.

Division 3 Functions of the Coastal Council

27 General

- (1) The Coastal Council shall have and may exercise the functions conferred on it by or under this or any other Act.

- (2) The Coastal Council shall, in the exercise of its functions (except in relation to the contents of any advice, report or recommendation made by it), be subject to the control and direction of the Minister.
- (3) The Coastal Council, in the exercise of its functions, and the Minister in the exercise of the Minister's functions under this Division, are to have regard to the principles of ecologically sustainable development.

28 Functions of the Coastal Council

- (1) The principal functions of the Coastal Council are to give advice and make reports and recommendations to the Minister for the purpose of encouraging, promoting or securing:
 - (a) the protection and maintenance and, where practicable, the enhancement and restoration of the environment of the coastal region and its natural and man-made resources, and
 - (b) the orderly and balanced utilisation and conservation of the coastal region and its resources, having regard to the financial resources of the State and the social and economic needs of the people of the State.
- (2) Without affecting the generality of subsection (1), the principal functions of the Coastal Council include the giving of advice and the making of reports and recommendations to the Minister with respect to:
 - (a) policies that may or should be adopted by the Government and public authorities concerning the planning and management of the coastal region,
 - (b) the co-ordination of the policies and activities of the Government and public authorities relating to the coastal region, and
 - (c) the lands that should be acquired in the coastal region by or on behalf of the State or any public authority, whether for the purpose of coastal protection, access or enjoyment or for other purposes.
- (3) For the purpose of exercising its principal functions, the Coastal Council may:
 - (a) enter into an arrangement or agreement with any person on such terms and conditions as may be agreed upon between the Coastal Council and the person with respect to the conduct of any investigation, study, research or inquiry relating to the coastal region,
 - (b) carry out such investigations, studies, research and inquiries as it considers relevant, and
 - (c) record and evaluate such information respecting the natural and man-made resources of the environment of the coastal region as it considers relevant.

(4) The Coastal Council may also:

- (a) arrange and co-ordinate consultations, discussions, seminars and conferences relating to the matters referred to in any of the foregoing provisions of this section, and
- (b) provide information and publicity concerning its functions and activities.

29 Committees

- (1) The Coastal Council may establish standing or special committees for the purpose of advising the Coastal Council in the exercise of its functions under this Act and may appoint as a member of any such committee any person who, in its opinion, appears to be qualified to be a member of that committee, whether or not the person so appointed is a member of the Coastal Council.
- (2) The Coastal Council shall appoint one of the members of a committee established under subsection (1) to be chairperson of the committee and any such committee may, subject to subsection (3) and to any directions of the Coastal Council, regulate its procedure in such manner as it thinks fit.
- (3) The Coastal Council may specify the number of persons who shall constitute a quorum of a committee established under this section.

Division 4 Finance

30 Coastal Protection Fund

There shall be established in the Special Deposits Account in the Treasury an account to be called the "Coastal Protection Fund".

31 Payment into the Fund

There shall be paid into the Coastal Protection Fund:

- (a) any money appropriated by Parliament for the purposes of the Fund, and
- (b) any other money received in connection with the administration of this Part, other than money received in such circumstances as may be prescribed.

32 Payments out of the Fund

There may be paid out of the Coastal Protection Fund:

- (a) all charges, costs and expenses incurred in the administration of this Part, and
- (b) the remuneration payable to any member of the Coastal Council or of a committee under this Part.

Division 5 Miscellaneous

33 Annual report

- (1) The Coastal Council shall, as soon as practicable after 30 June in each year, prepare and forward to the Minister a report of its work and activities for the year ending on that date.
- (2) The report shall, in respect of the year for which it is prepared, include:
 - (a) a summary of all recommendations made by the Coastal Council to the Minister during that year, and
 - (b) particulars of payments made out of the Coastal Protection Fund during that year.
- (3) The Minister shall lay the report, or cause it to be laid, before each House of Parliament as soon as practicable after the receipt by the Minister of the report.

34 Information from public authorities

A public authority:

- (a) shall, if requested to do so by the Coastal Council, furnish such information and provide such assistance as may reasonably be required by the Coastal Council in the exercise of its functions, and
- (b) shall notify the Coastal Council of any information or any actual or proposed activity or work that, in the opinion of the public authority, is relevant to the exercise by the Coastal Council of its functions.

35 Regulations

The Governor may make regulations, not inconsistent with this Part, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part and, in particular, for or with respect to:

- (a) the procedure for the calling of, and for the conduct of business at, meetings of the Coastal Council, and
- (b) the remuneration (including travelling and subsistence allowances) to be paid to members, not being members of the Coastal Council, of a committee established under section 29.

Part 3 Use of the coastal zone

36 (Repealed)

37 Definitions

(1) In this Part:

building includes a structure.

consent includes approval or permission.

development, in relation to the coastal zone, means:

- (a) the erection of a building within or the removal of a building from the coastal zone,
- (b) the carrying out of a work within the coastal zone,
- (c) a change of the purpose for which any part of the coastal zone or any building or work within any such part is used,
- (d) the subdivision of land within the coastal zone,
- (e) the clearing or propagation of vegetation including marine vegetation, or
- (f) any prescribed activity or any activity of a prescribed class or description.

dune includes a sandhill.

(2) A reference in this Part to:

- (a) the erection of a building includes a reference to the rebuilding of, the making of structural alterations to, and the enlargement or extension of, a building and the placing or relocating of a building within the coastal zone,
- (b) the carrying out of a work includes a reference to the rebuilding of, the making of alterations to, and the enlargement or extension of, a work,
- (c) the subdivision of land is a reference to the subdivision of land as defined by section 4B of the *Environmental Planning and Assessment Act 1979*, but does not include a reference to the subdivision of land under Division 1 of Part 2 of the *Strata Schemes (Freehold Development) Act 1973* or Division 1 of Part 2 of the *Strata Schemes (Leasehold Development) Act 1986*, and
- (d) the sea, an arm of the sea, or a bay, inlet, lagoon, lake, body of water, river, stream, watercourse, beach, dune, bed, bank, shoreline, margin or flood plain includes a reference to any part thereof.

37A Implementation of principles of ecologically sustainable development

In exercising functions under this Part, the Minister is to promote the principles of ecologically sustainable development.

38 General supervision of coastal zone

(1) A public authority shall not, without the concurrence of the Minister:

- (a) carry out any development in the coastal zone, or
- (b) grant any right or consent to a person:
 - (i) to use or occupy any part of the coastal zone, or
 - (ii) to carry out any development in the coastal zone,

if, in the opinion of the Minister, as advised from time to time by the Minister to the public authority, the development or the use or occupation may, in any way:

- (b1) be inconsistent with the principles of ecologically sustainable development, or
 - (c) adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or
 - (d) adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.
- (2) The Governor may, by order published in the Gazette, declare that subsection (1) does not, to the extent specified in the order, apply to such area within the coastal zone as is specified or described in the order, and subsection (1) ceases to apply accordingly.

39 Special provisions respecting coastal development

(1) The Governor, on the recommendation of the Minister, may, by order published in the Gazette, in respect of such area within the coastal zone as is specified or described in the order, provide that a public authority so specified shall not, without the concurrence of the Minister:

- (a) carry out in the area development or development of such class or description as is so specified or described, or
- (b) grant any right or consent to a person to use or occupy the whole or any part of the area or to carry out in the area any development or development of such class or description as is so specified or described.

(2) The Governor, on the recommendation of the Minister, may, by regulation, in respect of such area within the coastal zone as is specified or described in the regulation, make provisions (whether by reference to the functions of a public authority or otherwise) regulating, controlling or prohibiting the use or occupation of the area or the carrying out of development in the area.

- (3) The provisions of a regulation made pursuant to subsection (2) do not apply to or in respect of an area that is subject to an environmental planning instrument within the meaning of the *Environmental Planning and Assessment Act 1979* other than a State environmental planning policy.
- (4) The Minister shall not make a recommendation for the purposes of this section unless the Minister certifies to the Governor that the Minister is satisfied that the order or regulation relates only to development, or the use or occupation of an area that may, in any way:
 - (a1) be inconsistent with the principles of ecologically sustainable development, or
 - (a) adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or
 - (b) adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.

40 Seeking concurrence of Minister

- (1) Where provision is made by or under this or any other Act that a public authority shall not, without the concurrence of the Minister, carry out development in the coastal zone and the public authority proposes to carry out the development, it shall, unless the concurrence of the Minister may be assumed under section 43, notify the Minister, in writing, of the proposal.
- (2) Where provision is made by or under this or any other Act that a public authority shall not, without the concurrence of the Minister, grant any right or consent to a person to use or occupy any part of the coastal zone or to carry out any development in the coastal zone, the public authority shall, unless the concurrence of the Minister may be assumed under section 43:
 - (a) forward a copy of any application made for the grant of the right or consent to the Minister, and
 - (b) notify the applicant of the action taken by it under paragraph (a).

41 Granting or refusal of concurrence

The Minister may, in respect of a proposal of which the Minister has been notified under section 40 (1) or an application of which a copy has been forwarded to the Minister under section 40 (2):

- (a) give concurrence, either unconditionally or subject to conditions, or
- (b) refuse concurrence.

42 Period for consideration by Minister of proposal or application

- (1) The Minister shall inform a public authority which has, under section 40 (1), notified the Minister of a proposal or which has, under section 40 (2), forwarded to the Minister a copy of an application of the Minister's decision with respect to the proposal or application:
 - (a) except as provided by paragraph (b)—within a period of 40 days after being notified of the proposal or receiving a copy of the application, or
 - (b) where, within the period referred to in paragraph (a), the Minister sends by post to the public authority and, in the case of an application, to the applicant, a notice informing it or them, as the case may be, that the Minister is unable to deal with the proposal or application within that period and specifies in that notice a longer period within which the Minister will deal with the proposal or application—within the longer period.
- (2) Where the Minister does not inform a public authority referred to in subsection (1) of the Minister's decision with respect to a proposal or application within the period referred to in subsection (1) (a), or the longer period referred to in subsection (1) (b), as the case may be, the public authority may carry out the development or grant the right or consent the subject of the proposal or application, as the case may be, without the concurrence of the Minister.

43 Circumstances in which concurrence may be assumed

- (1) Where provision is made by or under this or any other Act that a public authority shall not, without the concurrence of the Minister, carry out development in the coastal zone or grant any right or consent to a person to use or occupy any part of the coastal zone or to carry out any development in the coastal zone, the Minister may inform the public authority, by notification in writing, that the Minister's concurrence may be assumed subject to the conditions, if any, specified in the notification with respect to the use or occupation, the class or description of use or occupation to which the use or occupation belongs, the development or the class or description of development to which the development belongs, as the case may be.
- (2) The Minister may, by notification in writing given to a public authority, amend or revoke a notification given by the Minister to the public authority under subsection (1).
- (3) Where, in accordance with a notification given to it under this section, a public authority carries out development or grants any right or consent, the carrying out of the development or the granting of the right or consent is as valid and effective as if the public authority had obtained the concurrence of the Minister in accordance with sections 40, 41 and 42.

44 Matters for consideration in relation to concurrence

In determining any matter relating to the granting or refusal of a concurrence required by or under this or any other Act, the Minister shall have regard only to whether or not the development or the use or occupation of the coastal zone in respect of which the concurrence is required may, in any way:

- (a1) be inconsistent with the principles of ecologically sustainable development, or
- (a) adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or
- (b) adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.

45 Implementation of concurrence

- (1) Where a public authority grants, with the concurrence of the Minister, any right or consent to a person to use or occupy any part of the coastal zone or to carry out any development in the coastal zone, the grant of the right or consent shall be:
 - (a) in respect of a concurrence given under section 41 (a)—subject to the conditions, if any, of the concurrence, and
 - (b) in respect of a concurrence given pursuant to a notification under section 43—subject to the conditions, if any, specified pursuant to section 43 (1) in the notification.
- (2) Nothing in subsection (1) affects the right of a public authority to impose conditions, not inconsistent with the conditions referred to in that subsection, in granting a right or consent so referred to.

46 Reasons

Except where the concurrence of the Minister in accordance with this Part is given unconditionally, the Minister shall inform a public authority of the reasons for the Minister's decision with respect to:

- (a) a proposal of which the Minister has been notified by the public authority under section 40 (1),
- (b) an application a copy of which has been forwarded to the Minister by the public authority under section 40 (2), or
- (c) a notification given to the public authority under section 43,

and the public authority shall inform any applicant for a grant of a right or consent in

respect of which the reasons are given of those reasons.

47 Rights of Minister on appeal

- (1) In this section, **appeal** includes objection, reference or review.
- (2) Where, under any law, a right of appeal is exercised by any person with respect to the determination by a public authority of an application for the grant of any right or consent to use or occupy any part of the coastal zone or to carry out any development in the coastal zone in respect of which the concurrence of the Minister is required by or under this Part, the Minister may appear and be heard on the hearing of the appeal as if the Minister were a party to the appeal.

48 Entry, inspection, testing etc

- (1) The Minister may authorise a person, in writing, to carry out inspections, for the purposes of this Act, of the whole or any part of the coastal zone or any development within the coastal zone.
- (2) A person authorised under subsection (1) may enter any part of or development within the coastal zone and may carry out thereon (whether or not with the assistance of vehicles, vessels or equipment) such inspections, tests, investigations, surveys, experiments, boring, drilling and exploration and take such samples and measurements and record such information and do all such other things as the person considers necessary in connection with the administration of this Act.
- (3) A person authorised under subsection (1) shall not, in relation to any part of or development within the coastal zone, exercise any of the functions conferred by subsection (2) unless reasonable notice has been given to the owner or occupier of the part, or the part on which the development is situated or is being carried out, as the case may be, of the intention to exercise those functions.
- (4) In the exercise of a function conferred by subsection (2), the Minister shall ensure that no more damage than may be necessary in the circumstances is inflicted and shall fully compensate any person who sustains damage in the course of the exercise of that function.
- (5) A person authorised under subsection (1), in exercising a function conferred by subsection (2) in relation to any part of or development within the coastal zone, shall, if so required by a person apparently in charge of the part or development, produce the instrument of his or her authority to that person.

49 Obstruction of authorised person

A person shall not obstruct, hinder or interfere with a person authorised under section 48 (1) in the exercise of the person's functions under section 48.

50 Interference etc with vehicle, vessel or equipment

A person shall not interfere with, damage or destroy or do any act which may tend to interfere with, damage or destroy any vehicle, vessel or equipment which is used in relation to the exercise of a function under section 48.

51 Enforcement by notice

- (1) Without derogating from the rights of the Minister under any other law, where a person does any thing without or otherwise than in accordance with a concurrence of the Minister required by or under this or any other Act, the Minister may serve a notice on that person requiring the person:
 - (a) to refrain from doing that thing,
 - (b) to do that thing in such manner specified in the notice as, in the opinion of the Minister, is necessary to ensure that the coastal zone or any part of the coastal zone is not adversely affected thereby, or
 - (c) to do such other things specified in the notice in such manner and within such time, if any, as may be so specified as, in the opinion of the Minister, is necessary to ensure that the coastal zone or any part of the coastal zone is restored to the condition it was in before that thing was done.
- (2) A notice under subsection (1) may require the demolition or removal of a building or work in whole or part.
- (3) A person shall comply with a notice served on the person under subsection (1).
- (4) If a person on whom a notice under subsection (1) is served fails to comply with the notice, the Minister may do all such things as are required by the notice and may recover the costs and expenses of so doing from the person as a debt in any court of competent jurisdiction.
- (5) A notice under subsection (1) may be served:
 - (a) in the case of an individual:
 - (i) by delivering it to the individual, or
 - (ii) by sending it by prepaid post addressed to the individual at his or her usual or last known place of abode or his or her last known place of business, or
 - (b) in the case of a person not being an individual:
 - (i) by leaving it at the person's place of business, or, if the person is a corporation, at the registered office of the corporation, with a person apparently in the service of the person on whom the notice is to be served and apparently not less than 16 years of age, or

(ii) by sending it by prepaid post to the person at the person's last known place of business.

(6) Notice shall, in respect of a notice sent by prepaid post in accordance with subsection (5) (a) (ii) or (b) (ii), be deemed to have been given at the time at which the notice would be delivered in the ordinary course of post.

52 Enforcement by direction to public authority

(1) Without affecting or derogating from any function of the Minister under any law, the Minister may direct a public authority having functions under any Act in respect of the implementation or enforcement of any law relating to the use or occupation or the carrying out of development in the coastal zone to exercise those functions at such time and in such manner (not inconsistent with any provision made by or under the Act by which the function is conferred or imposed) as may be specified in the direction where any part of the coastal zone is used or occupied or development in any part of the coastal zone is carried out without or otherwise than in accordance with a concurrence of the Minister required by or under this or any other Act.

(2) The Minister shall not give a direction to a public authority under subsection (1) to exercise a function conferred or imposed under a provision of an Act without first having obtained the consent of the Minister administering that provision.

(3) A public authority shall comply with a direction given to it under subsection (1) in accordance with the terms of the direction.

53 Regulations

The Governor may make regulations, not inconsistent with this Part, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

Part 4 Carrying out of works in the coastal zone by the Minister

54 (Repealed)

54A Implementation of principles of ecologically sustainable development

In exercising functions under this Part, the Minister is to promote the principles of ecologically sustainable development.

55 Carrying out of certain works

(1) Where the Minister is of the opinion that a work for the preservation, protection, maintenance, restoration or improvement of the coastal zone or any part of the coastal zone should be carried out:

(a) the Minister in respect of a work the estimated cost of which does not exceed

\$1,000,000, or

(b) the Governor in respect of a work the estimated cost of which exceeds \$1,000,000,

may direct that the work be carried out under the *Public Works Act 1912*.

- (2) A work in respect of which a direction has been given under subsection (1) shall be deemed to be an authorised work within the meaning of the *Public Works Act 1912*.
- (3) For the purpose of a work in respect of which a direction has been given under subsection (1), the Minister shall be the Constructing Authority within the meaning of the *Public Works Act 1912*.
- (4) The provisions of the *Public Works Act 1912*, other than section 34, 35, 36 and 37, shall apply to and in respect of a work in respect of which a direction has been given under subsection (1).
- (5) Without prejudice to the generality of the other provisions of this section, the provisions of section 38 of the *Public Works Act 1912*, shall apply to or in respect of a contract for the carrying out of a work in respect of which a direction has been given under subsection (1).
- (6) In applying the provisions of section 98 of the *Public Works Act 1912*, the Minister shall not be required, notwithstanding those provisions, to obtain the approval of the Governor to lease lands referred to in that section and which are within the coastal zone where the lease of those lands is for a term not exceeding 3 years without option of renewal.

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.

Part 5 General

56 (Repealed)

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](#).

57 Offences against this Act and the regulations

- (1) Where any matter or thing is by or under this Act, other than by or under the regulations, directed or forbidden to be done, or where a Minister or other person or body is authorised by or under this Act, other than by or under the regulations, to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against this Act.
- (2) Where any matter or thing is by or under the regulations directed or forbidden to be done, or where a Minister or any other person or body is authorised by the regulations to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty

of an offence against the regulations.

58 Penalties

- (1) A person guilty of an offence against this Act for which a specific penalty is not provided shall be liable to a penalty not exceeding 100 penalty units.
- (2) A person guilty of an offence against the regulations shall be liable to a penalty not exceeding 10 penalty units.

59 Proceedings for offences

Proceedings for an offence against this Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone.

60 Regulations: Parts 1, 4 and 5

The Governor may make regulations, not inconsistent with Part 1 or 4 or this Part, for or with respect to any matter that by Part 1 or 4 or this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to Part 1 or 4 or this Part.

61 Regulations—generally

A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

62 Savings, transitional and other provisions

Schedule 1 has effect.

Schedule 1 Savings, transitional and other provisions

(Section 62)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Coastal Protection Amendment Act 1998

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Definition of coastal zone

Any order, concurrence, condition, authorisation or notice made or given under this Act as in force immediately before the commencement of Schedule 1 [3] to the *Coastal Protection Amendment Act 1998* has effect after that commencement, but only in relation to land or waters within the coastal zone (within the meaning of Part 3) after that commencement.

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

3 Preparation of 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.