

# Coastal Management Act 2016 No 20

[2016-20]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Responsible Minister

- Minister for the Environment
- Minister for Climate Change

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act .....	5
2 Commencement .....	5
3 Objects of this Act .....	5
4 Definitions .....	6
<b>Part 2 Coastal zone and management objectives for coastal management areas</b> .....	9
5 Coastal zone .....	9
6 Coastal wetlands and littoral rainforests area .....	9
7 Coastal vulnerability area .....	10
8 Coastal environment area .....	11
9 Coastal use area .....	11
10 Matters relating to identification of coastal management areas .....	12
<b>Part 3 Coastal management programs and manual</b> .....	13
<b>Division 1 Application of Part</b> .....	13
11 Part applies to local councils with land within coastal zone .....	13
<b>Division 2 Coastal management programs</b> .....	13
12 Purpose of coastal management programs .....	13

13 Requirement for coastal management programs .....	13
14 Preparation of coastal management programs.....	13
15 Matters to be dealt with in coastal management program .....	14
16 Consultation .....	15
17 Adoption, certification and gazettal of coastal management program .....	15
18 Review, amendment and replacement of coastal management programs.....	16
19 Availability of coastal management programs.....	16
20 Minister to prepare coastal management programs in certain circumstances .....	17
<b>Division 3 Coastal management manual .....</b>	<b>17</b>
21 Coastal management manual.....	17
<b>Division 4 Obligations of local councils and other public authorities .....</b>	<b>19</b>
22 Implementation of coastal management program by local councils .....	19
23 Other public authorities to have regard to coastal management program and coastal management manual .....	19
<b>Part 4 NSW Coastal Council.....</b>	<b>19</b>
24 Establishment of NSW Coastal Council .....	19
25 Functions of NSW Coastal Council .....	20
26 Performance audit of implementation of coastal management programs.....	21
<b>Part 5 Miscellaneous .....</b>	<b>21</b>
27 Granting of development consent relating to coastal protection works .....	21
28 Modification of doctrine of erosion and accretion .....	22
29 Protection of exercise of certain functions from invalidity and inconsistency.....	23
30 Minister to report failures to comply with directions to Local Government Minister .....	23
31 Regulations.....	24
32 Delegation .....	24
33 Review of Act.....	24
34 Act to bind Crown .....	24
35 (Repealed) .....	24
<b>Schedule 1 Local government areas, coastal sediment compartments and border estuaries</b>	

.....	24
<b>Schedule 2 Constitution and procedure of NSW Coastal Council</b> .....	28
<b>Schedule 3 Savings, transitional and other provisions</b> .....	32
<b>Schedule 4 (Repealed)</b> .....	34

# Coastal Management Act 2016 No 20



New South Wales

An Act to make provision for the ecologically sustainable management, use and occupation of the New South Wales coast; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Coastal Management Act 2016*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of this Act

The objects of this Act are to manage the coastal environment of New South Wales in a manner consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State, and in particular—

- (a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and
- (b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and
- (c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and
- (d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and
- (e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and
- (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and

- (g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and
- (h) to promote integrated and co-ordinated coastal planning, management and reporting, and
- (i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and
- (j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and
- (k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and
- (l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and
- (m) to support the objects of the [Marine Estate Management Act 2014](#).

#### 4 Definitions

(1) In this Act—

**beach** means an area that is generally composed of sand or pebbles or similar sediment that extends landwards from the lowest astronomical tide to the line of vegetation or bedrock or structure.

**beach fluctuation zone** means the range of natural locations a beach profile occupies from its fully accreted condition to its fully eroded condition, with—

- (a) a landward limit defined by the escarpment resulting from the erosion associated with a 1% storm event or a more extreme event of record, whichever is the greater landward limit, and
- (b) a seaward limit that is the 40m depth seaward of the highest astronomical tide for the open coast and 10m depth seaward of the highest astronomical tide for estuaries or tidal coastal lakes.

**Note—**

The beach fluctuation zone ambulates as the coastline or estuary or coastal lake foreshore experiences net long-term recession or accretion due to changes in their sediment budgets.

**beach system** means the processes that produce the beach fluctuation zone and the incipient foredunes and foredunes landward of the relevant beach.

**coastal hazard** means the following—

- (a) beach erosion,
- (b) shoreline recession,
- (c) coastal lake or watercourse entrance instability,
- (d) coastal inundation,
- (e) coastal cliff or slope instability,
- (f) tidal inundation,
- (g) erosion and inundation of foreshores caused by tidal waters and the action of waves, including the interaction of those waters with catchment floodwaters.

**coastal management area** means an area of the coastal zone identified in Part 2.

**coastal management manual**—see section 21.

**coastal management program** means a coastal management program prepared and adopted under Part 3.

**coastal protection works** means—

- (a) beach nourishment activities or works, and
- (b) activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters, including (but not limited to) seawalls, revetments and groynes.

**coastal sediment compartment** means an area of the coast defined by its sediment flows and landforms.

**coastal zone**—see section 5.

**coastal zone emergency action subplan** means a part of a coastal management program as referred to in section 15 (3).

**Department** means the Department of Climate Change, Energy, the Environment and Water.

**ecologically sustainable development** has the same meaning as in section 6 (2) of the [Protection of the Environment Administration Act 1991](#).

**electricity supply authority** means a person or body engaged in the distribution of electricity to the public or in the generation of electricity for supply, directly or

indirectly, to the public, whether by statute, franchise agreement or otherwise, and includes—

- (a) an energy services corporation within the meaning of the *Energy Services Corporations Act 1995*, and
- (b) a transmission operator or distributor (in each case within the meaning of the *Electricity Supply Act 1995*), and
- (c) (Repealed)
- (d) the Water Administration Ministerial Corporation constituted under the *Water Management Act 2000*.

**essential infrastructure** includes infrastructure for the following purposes—

- (a) electricity generation, transmission and distribution,
- (b) telecommunications,
- (c) rail,
- (d) roads,
- (e) gas,
- (f) sewerage systems, water supply systems or stormwater management systems,
- (g) airports, ports, shipping and harbours.

**estuary** means any part of a river, lake, lagoon or coastal creek whose level is periodically or intermittently affected by coastal tides, up to the highest astronomical tide.

**foreshore** means the area of land between the highest astronomical tide and the lowest astronomical tide.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**management objectives**, for a coastal management area, are the management objectives for the area set out under Part 2.

**NSW Coastal Council** means the NSW Coastal Council established under Part 4.

**public authority** means a Minister of the Crown of the State, a State owned corporation, an electricity supply authority, a Public Service agency, a local council and any other public or local authority constituted by or under any Act, and includes any person or body prescribed by the regulations.



**surf zone** means the area from the line of the outer most breaking waves to the limit of wave run up on the beach.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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

## **Part 2 Coastal zone and management objectives for coastal management areas**

### **5 Coastal zone**

In this Act, the **coastal zone** means the area of land comprised of the following coastal management areas—

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

### **6 Coastal wetlands and littoral rainforests area**

- (1) The **coastal wetlands and littoral rainforests area** means the land identified by a State environmental planning policy to be the coastal wetlands and littoral rainforests area for the purposes of this Act, being land which displays the hydrological and floristic characteristics of coastal wetlands or littoral rainforests and land adjoining those features.
- (2) The management objectives for the coastal wetlands and littoral rainforests area are as follows—
  - (a) to protect coastal wetlands and littoral rainforests in their natural state, including their biological diversity and ecosystem integrity,
  - (b) to promote the rehabilitation and restoration of degraded coastal wetlands and littoral rainforests,
  - (c) to improve the resilience of coastal wetlands and littoral rainforests to the impacts of climate change, including opportunities for migration,
  - (d) to support the social and cultural values of coastal wetlands and littoral rainforests,
  - (e) to promote the objectives of State policies and programs for wetlands or littoral

rainforest management.

## 7 Coastal vulnerability area

- (1) The **coastal vulnerability area** means the land identified by a State environmental planning policy to be the coastal vulnerability area for the purposes of this Act, being land subject to coastal hazards.
- (2) The management objectives for the coastal vulnerability area are as follows—
  - (a) to ensure public safety and prevent risks to human life,
  - (b) to mitigate current and future risk from coastal hazards by taking into account the effects of coastal processes and climate change,
  - (c) to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,
  - (d) to maintain public access, amenity and use of beaches and foreshores,
  - (e) to encourage land use that reduces exposure to risks from coastal hazards, including through siting, design, construction and operational decisions,
  - (f) to adopt coastal management strategies that reduce exposure to coastal hazards—
    - (i) in the first instance and wherever possible, by restoring or enhancing natural defences including coastal dunes, vegetation and wetlands, and
    - (ii) if that is not sufficient, by taking other action to reduce exposure to those coastal hazards,
  - (g) if taking that other action to reduce exposure to coastal hazards—
    - (i) to avoid significant degradation of biological diversity and ecosystem integrity, and
    - (ii) to avoid significant degradation of or disruption to ecological, biophysical, geological and geomorphological coastal processes, and
    - (iii) to avoid significant degradation of or disruption to beach and foreshore amenity and social and cultural values, and
    - (iv) to avoid adverse impacts on adjoining land, resources or assets, and
    - (v) to provide for the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by actions to reduce exposure to coastal hazards,
  - (h) to prioritise actions that support the continued functionality of essential

infrastructure during and immediately after a coastal hazard emergency,

- (i) to improve the resilience of coastal development and communities by improving adaptive capacity and reducing reliance on emergency responses.

## 8 Coastal environment area

- (1) The ***coastal environment area*** means the land identified by a State environmental planning policy to be the coastal environment area for the purposes of this Act, 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.
- (2) The management objectives for the coastal environment area are as follows—
  - (a) to protect and enhance the coastal environmental values and natural processes of coastal waters, estuaries, coastal lakes and coastal lagoons, and enhance natural character, scenic value, biological diversity and ecosystem integrity,
  - (b) to reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, including in response to climate change,
  - (c) to maintain and improve water quality and estuary health,
  - (d) to support the social and cultural values of coastal waters, estuaries, coastal lakes and coastal lagoons,
  - (e) to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,
  - (f) to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.

## 9 Coastal use area

- (1) The ***coastal use area*** means the land identified by a State environmental planning policy to be the coastal use area for the purposes of this Act, 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).
- (2) The management objectives for the coastal use area are as follows—
  - (a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that—
    - (i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and
    - (ii) adverse impacts of development on cultural and built environment heritage

are avoided or mitigated, and

- (iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and
  - (iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and
  - (v) the use of the surf zone is considered,
- (b) to accommodate both urbanised and natural stretches of coastline.

## 10 Matters relating to identification of coastal management areas

- (1) **LEPs may amend SEPPs to identify coastal management areas** For the avoidance of doubt, a local environmental plan under the *Environmental Planning and Assessment Act 1979* may amend a State environmental planning policy under that Act to identify a coastal management area (or part of such an area) for the purposes of this Act.

**Note—**

The *Environmental Planning and Assessment Act 1979*, Division 3.4 deals with the making of local environmental plans, including the preparation and submission of planning proposals for the making of local environmental plans by councils and other relevant planning authorities.

- (2) **Recommendation of Minister required** A provision of an environmental planning instrument under the *Environmental Planning and Assessment Act 1979* that identifies a coastal management area (or part of such an area) for the purposes of this Act must not be made without the recommendation of the Minister administering this Act.
- (3) **Hierarchy of management objectives if overlapping** A single parcel of land may be identified by a State environmental planning policy as being within different coastal management areas. However, in such a case, if the management objectives of the areas are inconsistent, the management objectives of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency—
- (a) the coastal wetlands and littoral rainforests area,
  - (b) the coastal vulnerability area,
  - (c) the coastal environment area,
  - (d) the coastal use area.

## **Part 3 Coastal management programs and manual**

### **Division 1 Application of Part**

#### **11 Part applies to local councils with land within coastal zone**

This 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**

#### **12 Purpose of coastal management programs**

The purpose of a coastal management program is 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 this Act.

#### **13 Requirement for coastal management programs**

- (1) A local council may, and must, if directed to do so by the Minister, prepare a coastal management program in accordance with this Part.

**Note—**

See sections 20 and 30 regarding a failure of the local council to comply with a direction of the Minister.

- (2) A coastal management program may be made in relation to the whole, or any part, of the area included within the coastal zone.
- (3) A direction under this section may specify the time within which the direction must be complied with.

#### **14 Preparation of coastal management programs**

- (1) A local council is to prepare a coastal management program in accordance with the coastal management manual.
- (2) The Minister may, by notice in writing given to a local council, direct the local council in its preparation of a coastal management program. A direction under this subsection prevails to the extent of any inconsistency between it and the coastal management manual.

**Note—**

See sections 20 and 30 regarding a failure of the local council to comply with a direction of the Minister.

- (3) In preparing a coastal management program, a local council must—

- (a) consider and promote the objects of this 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 this section.
- (4) A direction under this section may specify the time within which the direction must be complied with.

### **15 Matters to be dealt with in coastal management program**

- (1) 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 cliff instability is occurring on that land, include a coastal zone emergency action subplan.
- (2) A coastal management program may also include other matters as may be authorised or permitted by the coastal management manual.
- (3) A **coastal zone emergency action subplan** is a plan that outlines the roles and responsibilities of all public authorities (including the local council) in response to emergencies immediately preceding or during periods of beach erosion, coastal inundation or cliff instability, where the beach erosion, coastal inundation or cliff instability occurs through storm activity or an extreme or irregular event. For the purposes of this subsection, those roles and responsibilities include the carrying out of works for the protection of property affected or likely to be affected by beach erosion,

coastal inundation or cliff instability.

- (4) A coastal management program must not include the following—
- (a) matters dealt with in any plan made under the *State Emergency and Rescue Management Act 1989* in relation to the response to emergencies,
  - (b) proposed actions or activities to be carried out by any public authority or relating to any land or other assets owned or managed by a public authority, unless the public authority has agreed to the inclusion of those proposed actions or activities in the program.

## **16 Consultation**

- (1) Before adopting a coastal management program, a local council must consult on the draft program with—
- (a) the community, and
  - (b) if the local council's local government area contains—
    - (i) land within the coastal vulnerability area, any local council whose local government area contains land within the same coastal sediment compartment (as specified in Schedule 1), and
    - (ii) an estuary that is within 2 or more local government areas (as specified in Schedule 1), the other local councils, and
  - (c) other public authorities if the coastal management program—
    - (i) proposes actions or activities to be carried out by that public authority, or
    - (ii) proposes specific emergency actions or activities to be carried out by a public authority under the coastal zone emergency action subplan, or
    - (iii) relates to, affects or impacts on any land or assets owned or managed by that public authority.
- (2) Consultation under this section is to be undertaken in accordance with the relevant provisions of the coastal management manual.
- (3) A failure to comply with this section does not invalidate a coastal management program.
- (4) The regulations may amend Schedule 1.

## **17 Adoption, certification and gazettal of coastal management program**

- (1) A local council may adopt a draft coastal management program and submit it to the Minister for certification under this section.

- (2) The Minister may certify, or refuse to certify, that the draft coastal management program submitted to the Minister has been prepared in accordance with the requirements of this Part and the coastal management manual.
- (3) The local council, after the coastal management program has been certified by the Minister, must publish it in the Gazette.
- (4) 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.

**Note—**

Section 733 (2) of the [Local Government Act 1993](#) provides that a local council does not incur any liability in respect of—

- (a) any advice furnished in good faith by the council relating to the likelihood of any land in the coastal zone being affected by a coastline hazard (as described in the coastal management manual) or the nature or extent of any such hazard, or
- (b) anything done or omitted to be done in good faith by the council in so far as it relates to the likelihood of land being so affected.

Also, section 733 (4) (b) provides that a council is, unless the contrary is proved, taken to have acted in good faith for the purposes of that section if the advice was furnished, or the thing was done or omitted to be done substantially in accordance with the principles and mandatory requirements set out in the coastal management manual.

## **18 Review, amendment and replacement of coastal management programs**

- (1) A local council is to ensure that its coastal management program is reviewed at least once every 10 years. The review is to be undertaken in accordance with the coastal management manual.
- (2) A coastal management program may, at any time, be amended (in whole or in part) by another coastal management program.
- (3) A coastal management program may, at any time, be replaced by another coastal management program.
- (4) Following a review, a local council may, by notice published in the Gazette, repeal a coastal management program.

## **19 Availability of coastal management programs**

- (1) 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.
- (2) A copy of a coastal management program must be available for public inspection on the website of the local council within 7 days of its publication in the Gazette.



## **20 Minister to prepare coastal management programs in certain circumstances**

(1) If—

(a) a local council has failed to comply with a direction under this Part, or

(b) the Minister has refused to certify a draft coastal management program under section 17,

the Minister may prepare and adopt a coastal management program for the local council as if the Minister were the local council.

(2) The provisions of this Part apply, subject to the regulations with all necessary modifications, to the Minister in the preparation and adoption of the coastal management program.

(3) A coastal management program certified by the Minister and adopted under this section is taken to have been adopted by the local council in accordance with this Part.

(4) The Minister is to seek the advice of the NSW Coastal Council in the preparation and adoption of a coastal management program under this section.

(5) The local council is to co-operate with the Minister in the preparation and adoption of the coastal management program.

(6) The Minister may, by notice in writing given to a local council, require the local council to provide the Minister with such information or records (or both) as the notice requires in connection with the preparation and adoption of the coastal management program.

(7) A local council is to comply with a notice given under this section.

(8) The Minister may recover from the local council concerned the costs of the Minister in carrying out functions under this section as a debt in any court of competent jurisdiction.

(9) Nothing in this section prevents the Minister from reporting any failure by a local council to comply with a direction under section 13 (1) or 14 (2) to the Minister administering the [Local Government Act 1993](#) in accordance with section 30.

## **Division 3 Coastal management manual**

### **21 Coastal management manual**

(1) The Minister is to publish a coastal management manual for the purposes of this Act.

(2) 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.

- (3) In particular (but without limiting subsection (2)), the manual is to include the following—
- (a) information to assist local councils addressing the requirements for the preparation of coastal management programs set out in this Part, including addressing the requirement that, in preparing coastal management programs, councils must consider and promote the objects of this 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](#).
- (4) The Minister may review and amend the manual from time to time.
- (5) The Minister is to ensure that the manual (and any amendment of the manual) is published in the Gazette.
- (6) A copy of the manual must be available for public inspection without charge—
- (a) on a NSW Government website used by the Department, and
  - (b) at the offices of the Department during ordinary office hours.
- (7) In this section, **integrated planning and reporting framework obligations** means obligations relating to the preparation, development and review of, and the contents of, community strategic plans, resourcing strategies, delivery programs, operational plans, community engagement strategies, annual reports and environment reports of local councils under Chapter 13 of the [Local Government Act](#)

1993.

## **Division 4 Obligations of local councils and other public authorities**

### **22 Implementation of coastal management program by local councils**

- (1) A local council is to give effect to its coastal management program and, in doing so, is to have regard to the objects of this Act.
- (2) In particular, without limiting subsection (1), a local council is to give effect to its coastal management program in—
  - (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*.

### **23 Other public authorities to have regard to coastal management program and coastal management manual**

- (1) Public authorities (other than local councils) are to have regard to coastal management programs to the extent that those programs are relevant to the exercise of their functions.
- (2) 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 this Act.

## **Part 4 NSW Coastal Council**

### **24 Establishment of NSW Coastal Council**

- (1) There is established a NSW Coastal Council.
- (2) The NSW Coastal Council is to consist of at least 3 and not more than 7 members appointed by the Minister.
- (3) A member of the NSW Coastal Council must have expertise in one or more of the following fields—
  - (a) coastal physical sciences, including geomorphology,
  - (b) coastal engineering,
  - (c) coastal land use planning,

- (d) coastal ecology,
  - (e) social science,
  - (f) economics,
  - (g) local government management,
  - (h) property law,
  - (i) dispute resolution,
  - (j) traditional and contemporary Aboriginal use and management of the coastal zone.
- (4) One member of the NSW Coastal Council is to be appointed by the Minister on the nomination of the Minister administering the *Marine Estate Management Act 2014*. That member is to have expertise in one or more of the fields set out in subsection (3).
- (5) In appointing a member, the Minister is to have regard to the need to have a range of expertise represented among the NSW Coastal Council's members.
- (6) The Minister, after consulting Local Government NSW, is to appoint one of the members of the NSW Coastal Council as the Chairperson of the Council.
- (7) Schedule 2 deals with the constitution and procedure of the NSW Coastal Council.

## **25 Functions of NSW Coastal Council**

- (1) The NSW Coastal Council has the following functions—
- (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 this 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,
  - (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,
  - (c) any other function conferred or imposed on it by or under this Act.
- (2) In exercising its functions, the NSW Coastal Council—
- (a) is to have regard to the objects of this Act, and

- (b) may seek independent expert advice on technical, scientific, legal and policy matters.

## **26 Performance audit of implementation of coastal management programs**

- (1) 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.
- (2) 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.
- (3) The NSW Coastal Council may, by notice in writing given to a local council, require the local council to provide it with such information or records (or both) as the notice requires in connection with a performance audit.
- (4) A local council is to comply with a notice given under this section.
- (5) The NSW Coastal Council is, at the conclusion of the performance audit, to provide the Minister with a report.
- (6) If the NSW Coastal Council is of the opinion that the local council is not complying with its coastal management program to a significant extent, the NSW Coastal Council may make recommendations to the Minister on appropriate remedial actions to be taken, including that the Minister refer the matter to the Minister administering the *Local Government Act 1993* for further consideration.
- (7) The Minister, within 3 months of the end of each calendar year, is to cause the reports provided to the Minister under this section during that year (if any) to be tabled in each House of Parliament.
- (8) The regulations may make provision for or with respect to performance audits under this section.

## **Part 5 Miscellaneous**

### **27 Granting of development consent relating to coastal protection works**

- (1) 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.
- (2) The arrangements referred to in subsection (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*).
- (3) The funding obligations referred to in subsection (2) (a) are to include the percentage share of the total funding of each landowner, council or public authority concerned.

**Note—**

The *Environmental Planning and Assessment Act 1979*, section 4.17(6) provides that a development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of making good any damage caused to any property of the consent authority as a consequence of the doing of anything to which the consent relates.

**28 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 be, 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 Land Management Act 2016* (or a person authorised by that Minister) has no power under Division 5 of Part 2 of the *Surveying and Spatial Information Regulation 2012* (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 be, or is likely to be, restricted or denied.

## **29 Protection of exercise of certain functions from invalidity and inconsistency**

(1) Section 22—

(a) does not render the exercise of a function invalid because—

(i) it did not give effect to a coastal management program or was made without regard to the objects of this Act, or

(ii) it is inconsistent with achieving the outcomes of a coastal management program, and

(b) does not require or authorise action that is inconsistent with any statutory or other legal obligation of a local council.

(2) Section 23—

(a) does not render the exercise of a function invalid because it was made without regard to a coastal management program, the coastal management manual or the objects of this Act, and

(b) does not require or authorise action that is inconsistent with any statutory or other legal obligation of a Minister or a public authority.

## **30 Minister to report failures to comply with directions to Local Government Minister**

(1) The Minister administering this Act may—

(a) report any failure by a local council to comply with a direction under section 13 (1) or 14 (2) to the Minister administering the *Local Government Act 1993*, and

(b) cause a copy of the report to be published on the website of the Department.

(2) The Minister administering the *Local Government Act 1993* may consider any such report in determining whether to take action in relation to the local council, including, but not limited to, action under Part 6 (Performance management) or Part 7 (Temporary suspension of council) of Chapter 13 of that Act.

### **31 Regulations**

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

(2) In particular, regulations may be made for or with respect to the mapping of coastal management areas.

### **32 Delegation**

The Minister may delegate the exercise of any function of the Minister under this Act (other than this power of delegation) to—

(a) any person employed in a Public Service agency responsible to the Minister, or

(b) any person or body, or any class of persons or bodies, authorised for the purposes of this section by the regulations.

### **33 Review of Act**

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **34 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### **35 (Repealed)**

## **Schedule 1 Local government areas, coastal sediment compartments**



## and border estuaries

(Section 16 (1) (b))

### Part 1 Coastal sediment compartments

**Note—**

Some of the coastal sediment compartments in this Table do not extend beyond a single local government area.

<b>Coastal sediment compartment</b>	<b>Local government areas</b>
Anna Bay	Port Stephens
Batemans Bay	Eurobodalla
Beecroft Peninsula	City of Shoalhaven
Bendalong-Ulladulla	City of Shoalhaven
Bingie Bingie–Cape Dromedary	Eurobodalla
Black Head–Cape Hawke	Mid-Coast
Botany Bay, Bate Bay & Port Hacking	City of Randwick, Bayside, Sutherland Shire
Broadwater	Ballina, Richmond Valley
Broken Bay	Central Coast, City of Hawkesbury, Hornsby, Northern Beaches, The Hills Shire
Bundjalung	Richmond Valley, Clarence Valley
Cape Byron–Richmond River	Byron, Ballina
Cape Dromedary–Goalen Head	Eurobodalla, Bega Valley
Cape Hawke–Seal Rocks	Mid-Coast
Cape To Cape	Bega Valley
Central Coast	Central Coast
Coffs Harbour Coast	City of Coffs Harbour
Coffs–Nambucca	City of Coffs Harbour, Bellingen, Nambucca
Crowdy–Black Heads	Mid-Coast
Disaster Bay	Bega Valley
Goalen Head To Tathra	Bega Valley
Illawarra Coast (North)	Sutherland Shire, City of Wollongong
Illawarra Coast (South)	City of Wollongong, City of Shellharbour
Jervis Bay	City of Shoalhaven
Kiama Coast	City of Shellharbour, Kiama

Mosquito Bay–Bingie Bingie Point	Eurobodalla
Myall Lakes Coast	Mid-Coast
Nadgee Coast	Bega Valley
Nambucca–South West Rocks	Nambucca, Kempsey
Newcastle Coast	City of Newcastle, City of Lake Macquarie, Central Coast
Point Danger–Cape Byron	Tweed, Byron
Port Stephens	Mid-Coast, Port Stephens
Shoalhaven River	Kiama, City of Shoalhaven
South West Rocks–Port Macquarie	Kempsey, Port Macquarie-Hastings
Stockton Bight	Port Stephens, City of Newcastle
Sydney Eastern Beaches	Woollahra, Waverley, City of Randwick
Sydney Harbour	City of Blacktown, Canada Bay, Cumberland, Hunters Hill, Inner West, Ku-ring-gai, Lane Cove, North Sydney, Northern Beaches, City of Parramatta, City of Ryde, City of Sydney, City of Willoughby, Woollahra
Sydney Northern Beaches	Northern Beaches
Tacking Point–Crowdy Head	Port Macquarie-Hastings, Mid-Coast
Tathra–Worang Point	Bega Valley
Twofold Bay	Bega Valley
Warden Head To Beagle Bay	City of Shoalhaven, Eurobodalla
Wasp Head To Three Islet Point	Eurobodalla
Wollongong	City of Wollongong
Wooli–Coffs Coast	Clarence Valley, City of Coffs Harbour
Wreck Bay	City of Shoalhaven
Yuraygir	Clarence Valley

## Part 2 Estuaries

### Estuary

Botany Bay

Camden Haven River

Clyde River

### Local government areas

Bayside, Randwick, Sutherland Shire

Mid-Coast, Port Macquarie-Hastings

Eurobodalla, City of Shoalhaven

Cooks River	Bayside, Burwood, Canterbury-Bankstown, Inner West, City of Sydney
Durras Lake	Eurobodalla, City of Shoalhaven
Georges River	Bayside, Canterbury-Bankstown, City of Fairfield, Georges River, Liverpool, Sutherland Shire
Glenrock Lagoon	City of Lake Macquarie, City of Newcastle
Hastings River	Port Macquarie-Hastings, Kempsey
Hawkesbury River	City of Blacktown, Central Coast, City of Hawkesbury, Hornsby, Ku-ring-gai, Northern Beaches, City of Penrith, The Hills Shire
Hunter River	Dungog, City of Maitland, City of Newcastle, Port Stephens
Karuah River	Mid-Coast, Port Stephens
Lake Illawarra	City of Shellharbour, City of Wollongong
Lake Macquarie	City of Lake Macquarie, Central Coast
Lane Cove River	Hunters Hill, Ku-ring-gai, Lane Cove, City of Ryde, Willoughby
Manly Lagoon	Northern Beaches
Middle Harbour Creek	Ku-ring-gai, Mosman, North Sydney, Northern Beaches, Willoughby
Minnamurra River	Kiama, City of Shellharbour
Myall River	Mid-Coast, Port Stephens
Narrabeen Lagoon	Northern Beaches
Oyster Creek	Bellingen, Nambucca
Parramatta River	Canada Bay, Cumberland, Hunters Hill, Inner West, Lane Cove, City of Parramatta, City of Ryde, Strathfield
Port Hacking	Sutherland, City of Wollongong
Port Jackson	Inner West, Mosman, North Sydney, City of Sydney, Woollahra
Port Stephens	Mid-Coast, Port Stephens
Richmond River	Ballina, Byron, City of Lismore, Richmond Valley
Wallaga Lake	Bega Valley, Eurobodalla
Wallis Lake	Mid-Coast

## Schedule 2 Constitution and procedure of NSW Coastal Council

(Section 24 (7))

### Part 1 General

#### 1 Definitions

In this Schedule—

**Chairperson** means the Chairperson of the Council.

**Council** means the NSW Coastal Council.

**member** means a member of the Council.

### Part 2 Constitution

#### 2 Terms of office of members

Subject to this Schedule and the regulations, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### 3 Part-time appointments

Members hold office as part-time members.

#### 4 Remuneration

A 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.

#### 5 Vacancy in office of member

(1) The office of a member becomes vacant if the member—

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause, or
- (e) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt

or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

## **6 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

## **7 Chairperson**

(1) The Chairperson vacates office as Chairperson if he or she—

(a) is removed from that office by the Minister under this clause, or

(b) resigns that office by instrument in writing addressed to the Minister, or

(c) ceases to be a member of the Council.

(2) The Minister may at any time remove the Chairperson from office as Chairperson.

## **8 Disclosure of pecuniary interests**

(1) If—

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by a member at a meeting of the Council that the member—

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that

company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Council.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines—
  - (a) be present during any deliberation of the Council with respect to the matter, or
  - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
  - (a) be present during any deliberation of the Council for the purpose of making the determination, or
  - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.

## **9 Effect of certain other Acts**

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a member.
- (2) If by or under any Act provision is made—
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the 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 payable to the person under this Act as a member.

## **10 Personal liability**

A matter or thing done or omitted to be done by the Council, a member of the Council or a person acting under the direction of the Council does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

## **Part 3 Procedure**

### **11 General procedure**

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

### **12 Quorum**

The quorum for a meeting of the Council is a majority of its members for the time being.

### **13 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Council who are present at a meeting of the Council) is to preside at a meeting of the Council.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **14 Voting**

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

### **15 Transaction of business outside meetings or by telephone etc**

- (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Council made at a meeting of the Council.
- (2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Council.

- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic means.

## **16 First meeting**

The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.

## **Schedule 3 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) Any such provision of the regulations has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Definitions**

In this Part—

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

**repeal date** means the date on which the former Act is repealed by this Act.



### **3 (Repealed)**

#### **4 Saving of coastal zone management plans**

- (1) A coastal zone management plan (including any emergency action subplan in that plan) in force under the former Act before the repeal date continues to have effect in respect of the local council to which it applied immediately before the repeal date until replaced by a coastal management program prepared and adopted under this Act.
- (2) This clause ceases to have effect at the end of 31 December 2023.

#### **5 General saving**

Subject to this Schedule and the regulations—

- (a) anything begun before the repeal date under a provision of the former Act for which there is a corresponding provision in this Act may be continued and completed under the former Act as if this Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the former Act for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act.

#### **6 Certification of pending coastal zone management plans**

- (1) If, before the repeal date, a draft coastal zone management plan has been submitted to the Minister for certification under section 55G of the former Act, but has not by that date been certified, the Minister and council may continue to deal with that plan as if Division 1 of Part 4A of that Act had not been repealed.
- (2) Subclause (1) ceases to have effect 6 months after the repeal date.
- (3) A coastal zone management plan certified and made in accordance with subclause (1) is taken to be a coastal management program prepared and adopted under this Act.
- (4) Subclause (3) ceases to have effect at the end of 31 December 2023.

#### **7 Transitional Coastal Panel**

- (1) The aim of this clause is to constitute a panel to carry out certain functions of the abolished Coastal Panel for a specified transitional period.
- (2) The persons who were members of the Coastal Panel immediately before its abolition are taken to form a Transitional Coastal Panel.
- (3) Part 2A (NSW Coastal Panel) of, and Schedule 2 (Constitution and procedure of Coastal Panel) to, the former Act apply to the Transitional Coastal Panel as if it were the Coastal Panel.

(4) References to the Coastal Panel in Division 1 of Part 4A of the former Act (as referred to in clause 6 (1)) and clauses 129 and 129A of *State Environmental Planning Policy (Infrastructure) 2007* are taken to be references to the Transitional Coastal Panel.

(5) This clause ceases to have effect 12 months after the repeal date.

#### **8 Temporary coastal protection works**

Part 4C (Temporary coastal protection works) of the former Act and the regulations made under that Part continue to have effect as if that Part and those regulations were not repealed in relation to temporary coastal protection works if—

- (a) the works were placed on private land in accordance with that Part before the repeal date, and
- (b) the owner of the land complied with section 55X (Notice to council and others of placement of temporary coastal protection works) of the former Act in respect of the placement of those works.

#### **9 Saving of certain directions**

- (1) A direction to make a coastal zone management plan under section 55B (1) of the former Act is taken to be a direction to make a coastal management program under section 13 (1) of this Act.
- (2) This clause does not apply in relation to a draft coastal zone management plan referred to in clause 6 (1) of this Schedule.

#### **Schedule 4 (Repealed)**