
Australian Coastal Society

Appendix 1

to the Submission

to NSW Department of Planning & Environment

on coastal reforms Stage Two.

List of Recommended Amendments to public exposure draft of proposed *Coastal Management Bill 2015*

February 2016

Prepared by Australian Coastal Society (NSW Branch)

Endorsed by ACS Executive)

Summary

The amendment proposed in this Appendix range from suggestions for minor changes or correction through to substantial reworking and re-ordering of the provisions of the draft Bill 2016. In addition new provisions are suggested to address perceived needs for relevant legislative provisions.

The major amendments proposed are:

- To improve the statements of Objects of the Act, including to recognise the public right of pedestrian access to and along the foreshore; [see s 3]
- To change the names of three of the four new ‘areas’ to create a coastal *conservation* area, coastal vulnerability area, coastal *waterbodies and environs* area, and coastal *development* area [s 5]; and improve the management objectives for these new areas;
- To enlarge the criteria for a coastal *conservation* area to include all high conservation value coastal native vegetation (terrestrial and marine), key Threatened Species habitat, the catchments of the 15 sensitive coastal lakes’ identified by HRC as warranting full protection; and land identified as culturally significant by Aboriginal communities; [See s 6];
- To improve consultation in the preparation of maps identifying coastal management areas for inclusion in a Coastal Management State environmental planning Policy (SEPP) and to create a minimum three year life for the maps before they may be amended; [see s 10]
- To create a functional link between the proposed new Coastal Management Act and any coastal management SEPP made under the *Environmental Planning and Assessment Act 1979*; [see new section 13]
- To state the purpose of Coastal Zone Management Plans (CZMPs) [see proposed s 14] and continue the operation of provisions governing their preparation, certification and gazettal by proposing revised ss 55A – 55 L as new sections 15 – 26; [See Appendix 2]
- To clarify the relationship between, and distinct nature of, existing CZMPs and the proposed new coastal management programs (CMPs); [see new s 27]
- To reorganise the 2015 Bill’s contents to place the State elements of the legislation, the Coastal Management Manual, and proposed Coastal Management State environmental planning policy, at the core of a new Bill in 2016; [see ordered Part 3 in Appendix 3]
- To improve the level of engagement and cooperation between public authorities in implementing a coastal management program, by obliging them to “liaise, negotiate with and assist”; and providing a mechanism for resolution if negotiations become deadlocked [s 23];
- To rename the proposed new body as the Coastal *Management* Council [s 24] (or Coastal *Management Advisory* Council; restate its membership criteria; state its proposed Role, augment its functions and powers and provide for an adequate Secretariat;
- To strengthen and broaden the monitoring and reporting function of the Coastal Management Council; and to clarify the process of preparing and providing a report on its audit [see s 26]
- To declare the law applicable regarding the effect of the ambulatory boundary of mean high water mark, if and when it crosses a real property boundary originally defined by survey, resolving any ambiguity and removing all uncertainty as to its effect; [see proposed s 42]
- To improve and make more independent, the proposed process of Review of the Act five years after its commencement; [see 33]
- To retain consideration of coastal zone management plans and coastal management programs by a consent authority when approving state significant development or infrastructure under the *EP & A Act 1979*;;
- To improve the savings and transitional arrangements for pending CZMPs; [see Sch 3 s 6]
- To prevent the construction of new ‘temporary coastal protection works’ and to require the obtaining of a relevant development consent for permanent coastal protection works, or the removal of the temporary’ or ‘emergency’ works; [see new s 43, and Sched 3 s 7]
- To maintain the exemption from legal liability for a local council in making and implementing its coastal zone management plan in good faith; [see sch 4.4].

Recommended Amendments to the Bill

Note: This list follows the order of the Coastal Management Bill 2015 [NSW] (public consultation draft). After the number of the section in the Bill, the purpose of the amendment proposed by the ACS is stated in **bold** type, followed by one or more amendments for that purpose under unique paragraph numbers eg **A24.1**. These purposes and the recommended amendments (should!) correlate to comments in the body of the submission which use these unique numbers.

[These stated purposes eg **to clarify and improve the Act's Objects** are still subject to revision. If the wording of the proposed amendments which then follow, are not satisfactory in this draft version, please suggest alternative phrases which might better achieve the (agreed) purpose.]

Part 1 Preliminary

Section 1

A1 Amend '2015' to become '2016'.

Apply amended date throughout, where applicable.

Section 2

A2

to provide for the commencement of the Act in stages.

- (1) This Part and Parts X and Y shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), other Parts of this Act shall commence on such day as may be appointed by proclamation published in the Gazette.

Section 3

Section 3 (a): stet.

A3.1

to clarify and improve the Act's Objects

Section 3 (b)

Delete draft subsection 3 (b) and insert instead

- (b) to recognise the public's right of access to and along the foreshore, coastal waters and associated publicly owned lands, and to promote the provision and maintenance of appropriate public pedestrian access across the coastal zone;

A3.2

Section 3 (c)

After 'acknowledge' insert ", respect and accommodate"

After 'coastal zone' insert "in the making of decisions on coastal zone management and planning"

A3.3

Delete draft subsection 3 (d) and insert instead

- (d) to recognise the complex relationships between ecological, social, cultural and economic values, and uses of the coast and reflect this complexity in coastal management planning, actions and activity which acknowledge, respect and foster the persistence of this complexity;

A3.4

Section 3 (e)

Delete 'appropriate' insert instead "appropriately designed and located "
Before 'and use planning' insert "transparent"

A3.5

Section 3 (f)

After 'to' insert "avoid, and where possible,

A3.6

Section 3 (g)

Delete 'manage coastal use and development accordingly,' insert instead "reflect this recognition in the management of coastal lands and resources generally, in future strategic planning and specifically in considerations of consent for development applications on affected land titles;

A3.7

Section 3 (h)

After 'management' insert ", implementation"

A3.8

Section 3 (i)

After 'encourage' insert "realistic assessments of the feasibility of retaining coastal assets and, where warranted, to"

A3.9

Section 3

Insert new object

- (j) 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;

A3.10

To reduce the number of objects

Delete draft Objects 3 (j), 3 (k) and 3 (l)

To relocate useful provisions to a more appropriate location in the Bill

Move draft objects (j) and (k) to become functions of the new coastal council.

Section 4

A4.

To improve the definitions employed in the Bill

A4.1

In current definition of beach after 'beach' insert "system" to provide a definition of 'beach system'.viz:

beach system coastal lands generally composed of sand, pebbles or shell, which lie between a seaward limit of 40 metres depth in the state's coastal waters; and a landward limit which extends beyond the beach, to the foot of the lee slope of any hind-dune, and includes any and all sand dunes in any adjoining dune system".

A4.2

Before 'beach system' insert new definition of 'beach'

beach any coastal lands composed of sand, pebbles or shell, formed into a continuous plane by action of tides or waves, which lie between low water mark and the furthest landward reach of wave action under storm conditions as indicated by the top of the most landward erosion escarpment in any adjoining dune system".

A4.3

Amend 'coastal erosion emergency action subplan'

Delete 'erosion' insert instead hazard"

Delete 'section 15 (3)' insert instead "section 28".

A4.4.1**To clarify the definitions of coastal hazards**

Amend definition of 'coastal hazard'

(d) coastal inundation

After 'coastal inundation,' insert ": the flooding of low elevation land in the coastal zone, after heavy rainfall as a result of local catchment run off and stormwater discharge being slowed, or prevented due to temporary increases in the height of the receiving waters from catchment floodwaters or tidal inundation."

A4.4.2

Amend definition of 'coastal hazard'

(f) tidal inundation

After 'tidal inundation,' insert ": the flooding of land in the coastal zone, by tidal waters elevated above mean high water mark (MHW) by normal spring tides, tidal anomalies and or by storm surge caused by barometric and or metrological conditions."

A4.4.3

Amend definitions of hazard (g) 'erosion of foreshores'

After 'erosion of' insert "estuary" and after 'foreshores' insert "and adjoining riparian land"

A4.5

Insert definition of 'coastal zone management plan'

Coastal zone management plan means a plan prepared by a local council, and certified by the Minister, under this or the former Act, to manage a section of the New South Wales coastal zone (See proposed sections 14 --- 26)

[suggested provisions ss 14 – 26 are given in Appendix 3 of this Submission.]

A4.6

Amend definition of 'estuary'

Delete 'any' insert instead "that"

After 'lagoon' insert ", arm of the sea"

Delete 'affected by coastal tides' insert instead "influenced by tidal movements"

A4.7**To amend the name**

Amend definition of 'NSW Coastal Council'

after 'Council' where it appears twice, insert "Management".

OR

after 'Council' where it appears twice, insert "Management Advisory".

A4.8

To define principles of ESD

Insert before 'public authority'

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

Part 2 – Coastal zone and management objectives for coastal management areas

Model 'A'

Section 5

A5.1

To re-name three of the four proposed 'coastal management areas' and

(a) delete the proposed name 'coastal wetlands and littoral rainforest area', and insert instead 'coastal conservation area';

(c) delete the proposed name 'coastal environment area', and insert instead 'coastal waterbodies and environs area';

(d) delete the proposed name 'coastal use area', and insert instead 'coastal development area';

Model 'AA'

Section 5

AA5.1

To re-group and re-name the four proposed 'coastal management areas'

(a) delete the proposed name 'coastal wetlands and littoral rainforest area', and insert instead 'coastal conservation area';

(c) delete the proposed name 'coastal environment area', and insert instead 'Aboriginal spiritual, social customary and economic use area';
Re-number as (b)

(b) retain the name coastal vulnerability area;
But renumber as (c)

(d) retain the proposed name 'coastal development area';

Section 6

To better define a coastal 'conservation' area

A6.1.1

Delete the proposed name 'coastal wetlands and littoral rainforest area', and insert instead 'coastal conservation area' wherever occurring;

Model A

A6.1.2

Delete 6 (1) insert instead

- (1) The ***coastal conservation area*** means the lands identified and mapped by the State environmental planning policy which satisfy one or more of the following criteria of coastal conservation significance;
 - (a) displays the hydrological and floristic characteristics of coastal wetlands;
 - (b) displays the floristics of littoral rainforest;
 - (c) contains an Endangered Ecological Community listed under either the NSW or federal Act;
 - (d) habitat of Key Threatened Species;
 - (e) over-cleared vegetation communities;
 - (f) mangroves, saltmarshes and seagrass beds;
 - (g) catchments of the fifteen sensitive coastal lakes identified by Healthy Rivers Commission as warranting full protection.
 - (h) places identified as culturally significant by Aboriginal communities.

A6.2

To improve the statements of the management objectives

Section 6 (2)

Delete 'coastal wetlands and littoral rainforest area' and insert instead 'coastal conservation area'

Delete 'are as follows' insert instead "shall be";

A6.2.1

Section 6 (2) (a)

Delete 'coastal wetlands and littoral rainforest area' and insert instead "coastal native vegetation communities of conservation significance, and lands of Aboriginal cultural heritage significance"

A6.2.2

Section 6 (2) (b)

After 'to insert "encourage and "

Delete 'degraded coastal wetlands and littoral rainforests' and insert instead "disturbed coastal native vegetation communities of conservation significance, and or lands of Aboriginal cultural heritage significance"

A6.2.3

Section 6 (2) (c)

Delete 'improve' insert instead "support and enhance "

Delete 'coastal wetlands and littoral rainforest area' and insert instead "coastal native vegetation communities of conservation significance"

A6.2.4

Section 6 (2) (d)

Delete subsection (d) insert instead

- (d) to recognise and protect the social, cultural and economic values of coastal native vegetation communities of conservation significance, and lands of Aboriginal cultural heritage significance”

A6.2.5

Section 6 (2) (e)

Delete subsection (e) insert instead

- (e) to implement the objectives of State policies and programs for managing, protecting and restoring coastal native vegetation communities of conservation significance and lands of Aboriginal cultural heritage significance.”

A6.2.6

After section 6 (2) (e)

Insert additional subsection (f)

- (f) to encourage greater public awareness and appreciation of coastal native vegetation communities of conservation significance, and areas of Aboriginal cultural heritage significance, and their appropriate management, and to provide appropriate facilities for environmental education;

Model AA

AA6.1.2

Delete 6 (1) insert instead

- (1) The Coastal Conservation Area means land identifies by a State Environmental Planning Policy to be for the purposes of this Act, land and coastal waters of the State containing Littoral Rainforests, Coastal Wetlands, coastal estuaries, coastal lakes and lagoons and land adjoining these features including beaches, dune systems, headlands, rock platforms, foreshores, riparian areas and catchments.”

AA6.2

To improve the statements of the management objectives

Section 6 (2)

Delete subsection (2) insert instead

2. The management objectives for the Coastal Conservation Area are as follows:

- (a) to protect and enhance in their natural state, including their biological diversity and ecological integrity, the coastal environmental values and natural processes of coastal waters, Littoral Rainforests and Coastal Wetlands, coastal estuaries, coastal lakes and lagoons and land adjoining these features including beaches, dune systems, headlands, rock platforms, foreshores, riparian areas and catchments.
- (b) to reduce threats to and improve the resilience of coastal waters, beaches, Littoral Rainforests, Coastal Wetlands, coastal estuaries, coastal lakes and lagoons, to the impacts of climate change, including sea level rise and storminess, allowing opportunities for migration.
- (c) to promote the rehabilitation and restoration of degraded Littoral Rainforests, Coastal wetlands.

- (d) to maintain and improve natural water quality and ecosystem health of Littoral Rainforests, Coastal Wetlands, coastal estuaries, coastal lakes and lagoons.
- (e) to progress the listing under the Ramsar Convention of coastal water bodies assessed as meeting criteria for listing as Wetlands of International Importance.
- (f) to maintain and improve the biological diversity and ecological integrity of coastal aquatic and terrestrial vegetation communities, flora and fauna, in particular Endangered Ecological Communities, vegetation protected under the Fisheries Act, Threatened Species and species listed under international treaties including Migratory shorebirds.
- (g) to support the social and cultural values of coastal waters, Littoral Rainforests, Wetlands, Estuaries, Coastal Lakes and Lagoons, recognising the native title rights of Aboriginal people.
- (h) to maintain ecologically sustainable public access, amenity and use of beaches, foreshores, headlands, rock platforms and coastal water bodies.

Section 7**A7.1**

Delete 7 (1) insert instead

- (1) The **coastal vulnerability area** means the lands identified and mapped by the State environmental planning policy for the purposes of this Act as being land”
- (a) already subject to or impacted by coastal hazards;
 - (b) likely to be subject to, or become impacted by coastal hazards in the short to medium term, being the next 5 – 20 years;

To improve the statements of the management objectives**A7.2**

Section 7 (2)

Delete ‘are as follows’ insert instead “shall be”;

A7.2.1

Section 7 (2) (a)

Delete ‘ensure’ insert instead “give priority to “

Delete ‘prevent’ insert instead “to avoid or minimise “

- (a) To give priority to public safety and to avoid or minimise risks to human life;

A7.2.2.1

Section 7 (2) (b)

Delete ‘mitigate’ insert instead “recognise, reduce and otherwise manage “

After ‘risk to’ insert “coastal settlements”

After ‘and climate change’ insert “under extreme conditions”

OR

A7.2.2.2

Section 7 (2) (b)

Delete subsection 7 (2) (b) insert instead

- (b) to mitigate current and future risk from coastal hazards by taking into account the effects of coastal processes and climate change including sea level rise and increased storminess;

A7.2.3

Section 7 (2) (c)

After ‘presence of’ insert “beach systems and protect the amenity of “ delete ‘and foreshores’.

A7.2.4

Section 7 (2) (d)

Before ‘maintain’ insert “provide for and “

After ‘foreshores’ insert “, where it is safe to do so;

A7.2.5

Section 7 (2) (e)

Delete current (e) insert instead

- (e) to discourage new development potentially at risk from coastal hazards;
- (e1) to permit the modification of existing development or the redevelopment of land, if that reduces the exposure of the development to risks from coastal hazards;

(e2) to provide for the condition-limited or time-limited development consent and or the revocation of development consent for development at risk from coastal hazards;

A7.2.6.1

Section 7 (2) (f)

Delete 'adopt coastal management strategies that'
After 'exposure' insert "of coastal communities"

A7.2.6.2

Section 7 (2) (f) (ii)

After 'other action' insert "or triggering the commencement of a sequence of actions "
After 'those coastal hazards' insert "including activating measures to implement 'planned retreat';

A7.2.7.1

Section 7 (2) (g)(i)

After 'biodiversity' insert ", ecosystem services"

A7.2.7.2

Section 7 (2) (g)(ii)

After 'significant' insert "further"

A7.2.7.3

Section 7 (2) (g)(iii)

After 'avoid' insert "the loss of 'beach systems, and or the "
After 'amenity and' insert "or the public's enjoyment of its "

A7.2.8

Section 7 (2) (h)

After 'coastal hazard emergency' insert "as described in the relevant coastal hazard emergency subplan."

A7.2.9

Section 7 (2) (i)

Delete current paragraph (i) insert instead

- (i) To encourage the gradual relocation of development exposed to coastal hazards, away from areas vulnerable to coastal hazards.

Section 8**A8.**

Delete the proposed name 'coastal environment area', and
insert instead 'coastal waterbodies and environs area' wherever occurring;

A8.1

Section 8 (1)

Delete subsection (1) insert instead

- (1) The ***coastal water bodies and environs area*** means lands identified and mapped by the State environmental planning policy for the purposes of this Act as being

- (a) submerged land, as the bed and coastal waters of the State;
- (b) the bed and tidal waters of estuaries, tidal lakes and lagoons;
- (c) the bed and waters of non-tidal coastal lakes; and
- (d) adjoining land including beaches, headlands, rock platforms.

A8.2.1

To improve the statements of the management objectives

Section 8 (2)

Delete 'coastal environment area', and insert instead 'coastal waterbodies and environs area'

Delete 'are as follows' insert instead "shall be";

A8.2.1

Section 8 (2) (a)

Delete 'enhance' where first appearing

Before 'coastal waters' insert "beaches"

Delete 'enhance' where second occurring, insert instead "to ensure the persistence of their"

A8.2.2

Section 8 (2) (b)

Before 'coastal waters' insert "beaches"

A8.2.3

Section 8 (2) (c)

Before 'estuary health' insert "promote measures which safeguard"

A8.2.4

Section 8 (2) (d)

Delete 'support' insert instead "recognise and conserve"

Before 'coastal waters' insert "beaches"

A8.2.5

Section 8 (2) (e)

After 'presence of' insert "beach systems and protect the amenity of " delete 'and foreshores'.

A8.2.6

Section 8 (2) (f)

Before 'maintain' insert "provide for and "

Before 'amenity' insert "and protect public"

After 'foreshores' insert ", where it is safe to do so;"

A8.2.7

After 8 (2) (f) insert new paragraph (g)

(g) to allow for the landward migration of coastal water bodies in response to climate change;

Section 9

A9.

Delete 'coastal use area', and insert instead 'coastal development area' wherever occurring;

A9.1

Section 9 (1)

Delete 'adjacent to coastal waters, estuaries, coastal lakes and lagoons'

A9.2

To clarify statements of management objectives for coastal development areas

Section 9 (2)

Delete 'coastal use area' insert instead "coastal development area"

Delete 'are as follows' insert instead "shall be"

A9.2.1**Section 9 (2) (a)**

Delete 'and enhance'

Delete 'ensuring' insert instead "requiring"

A9.2.2**Section 9 (2) (a) (ii)**

Before 'cultural' insert "existing"

A9.2.3**Section 9 (2) (a) (iii)**

After 'urban design' insert "principles"

Delete 'is supported and' insert instead "are"

A9.2.4**Section 9 (2) (a) (iv)**

Before 'adequate' insert "public pedestrian access is provided across the 'coastal development area' to the foreshore, and "

A9.2.6

After section 9 (2) (a) (iv) insert as new paragraph (b),

- (c) To encourage new development, and the relocation of existing development in vulnerable areas, on to sites which are free from risks from coastal hazards;

Section 10**A10.1.1****Section 10 (1)**

Delete 'For the avoidance of doubt, a local environmental plan',

Insert instead 'A local environment plan, once made by the relevant Minister and gazetted'

A10.1.2**Section 10 (1)**

after 'may' insert ""after the expiry of the three-year period provided by s 10 (6)"

A10.1.3**Section 10 (1)**

To improve the quality and confidence in relevant maps

To minimise the need for multiple amendments to maps

Insert before current draft s 10 (1) the following

- (1) The Department shall liaise and consult with local councils regarding lands in that local council area which satisfy the relevant areas' criteria as defined by this Part, before preparing draft maps identifying coastal management areas;
- (2) The Department shall be authorised to direct councils to provide information held by the Council relevant to the preparation of maps identifying coastal management areas,

- (3) Once draft maps identifying coastal management areas, have been prepared by the Department, copies of the maps covering each local council area shall be provided, in hard copy and digitally, to the relevant local council;
- (4) Local councils shall provide comments on or suggest amendments to the draft maps identifying coastal management areas, within 60 days of receiving the draft maps;
- (5) Revised draft maps identifying coastal management areas, which take into account comments from local councils under (4) above, shall be publicly displayed and subject to public review and comment, when public consultation on a draft coastal management State environmental planning policy is undertaken;
- (6) Maps identifying 'coastal management areas' under a coastal management State environmental planning policy, prepared in accordance with requirements for council and public consultation above, and made under the *Environmental Planning and Assessment Act 1979* may not be amended for a period of three years after their gazettal.

A10.1.4

Section 10 (1)

renumber current draft section 10 (1) as 10 (7)

A10.2.1**To clarify how maps might be amended**

Section 10 (2)

Delete current draft sub-section (2), Insert instead as (8)

- (8) A draft environmental planning instrument prepared under the *Environmental Planning and Assessment Act 1979*, which contains a provision with the intended or ancillary effect of changing the identification of a site, or wider area, as a 'coastal management area', and or of amending the relevant map of a State environmental planning policy identifying the location of a coastal management area defined under this Act, shall not be approved for public exhibition without the recommendation of the Minister administering this Act.

A10.2.2

Section 10

After proposed new as section 10 (8), insert as new subsection (9)

- (9) When seeking the Minister's recommendation under (8) above a local council shall be required to provide to the minister statements explaining:
 - (a) why the existing map(s) identifying coastal management areas need amendment,
 - (b) why the proposed amendment to such a map is now considered appropriate, and in accordance with the Objects of this Act;
 - (c) how consideration has been given to the likely implications flowing from such an amendment.

A10.3.1

Section 10 (3)

Renumber as new subsection 10 (10)

A10.3.2

Section 10 (3)

- (a) delete 'coastal wetland and littoral rainforests areas' insert instead "coastal conservation area"
- (c) delete 'coastal environment area' insert instead "coastal water bodies and environs area"
- (d) delete 'coastal use area' insert instead "coastal development area"

AA10.3.2

Section 10 (3)

Delete subsection (3) (a), (b) and (c) insert instead

- (a) "Coastal Conservation Area." b) "Aboriginal Area" - first priority.
- c) "Coastal Vulnerability Area." -second priority.
- d) "Coastal Development Area." -third priority.

- (a) delete 'coastal wetland and littoral rainforests areas' insert instead "coastal conservation area"
- (c) delete 'coastal environment area' insert instead "coastal water bodies and environs area"
- (d) delete 'coastal use area' insert instead "coastal development area"

Part 3 – Coastal management programs and manual

A11.1

Amend heading of Part 3

Delete existing heading insert instead

Part 3 Coastal management manual, plans and programs

Consequently reorganise and order of sections in the Part 3.

Part 3 Division 1 – Application of Part

Section 11

A11.1

Section 11

Insert as new paragraph (c)

- (d) The Minister administering this Act when exercising functions under this Part.

A11.2

Delete the heading

Part 3 Division 2 - coastal management programs - CMPs

insert instead

Part 3 Division 2 Coastal Management Manual

Section 12

A12

Renumber as new section 27

A12.1

Delete “set” insert instead “implement”

Delete “strategy” insert instead “plan, defined by the adopted Coastal Zone Management Plan,”

A12.2

Insert current provisions of draft section 21 Coastal Management Manual as the new section 12.
(See amendments to draft s 21 below)

Section 13

A13.1

Renumber as section 28 under revised Part 3 Division 5 Coastal management programs.

A13.2

Insert instead new heading

Part 3 Division 3 Coastal Management Planning Policy

A13.3

Insert as new section 13,

13 Coastal Management Planning Policy

The Minister administering this Act may recommend to the Minister administering the *Environmental Planning and Assessment Act 1979* the provision of advice by that Minister to the Governor, requesting the making of a State environmental planning policy under section 37 of that Act for the management of the ‘coastal zone’ as defined by this Act.

(1) A recommendation and advice under this section may refer to the need to:

- (a) provide an overall statement of the State’s policy framework for the ecologically sustainable management of the State’s coastal zone;
- (b) develop, adopt and distribute accurate robust digital maps of coastal management areas defined under this Act;
- (c) define appropriate development controls for coastal management areas defined under this Act; and
- (d) regulate, direct and otherwise assist the community, stakeholders and public authorities in coastal management.

(2) Where the Ministers agree that the promulgation of a State environmental planning policy is appropriate, the Minister administering this Act may seek advice from the Coastal Management Council and may make recommendations to that Minister on the form and content of the State environmental planning policy.

(3) The Minister administering this Act may, following consideration of any advice from the NSW Coastal Management Council, make a recommendation under this section to that Minister to provide advice to the Governor requesting amendment of a State environmental planning policy made under section 37 of that Act.

A13.4

Delete current draft section 14, renumber and relocate as section 29.

A13.5

Insert instead new heading

Part 3 Division 4 Coastal Zone Management Plans

Insert new section 14 Purpose of Coastal Zone Management Plans

- 14 The purpose of a Coastal Zone Management Plan prepared and adopted under the provisions of this Act, shall be to define the overall long-term plan and priorities for the management of the coastal zone in that local council area, in accordance with the Objects of this Act.

A13.6

Insert provisions governing preparation of Coastal Zone Management Plans, the twelve sections 55A – 55L of *CPA Act 1979*.

- 55A. Minister to have regard to objects of Act
- 55B Requirement for coastal zone management plans
- 55C Matters to be dealt with in coastal zone management plans
- 55D Guidelines for preparation of draft coastal zone management plans
- 55E Public consultation
- 55F Submissions
- 55G Certification by Minister
- 55H Gazettal and commencement of coastal zone management plans
- 55I Amendment and repeal of coastal zone management plans
- 55J Availability of coastal zone management plans
- 55K Breach of coastal zone management plan: offence
- 55L Breach of coastal zone management plan: restraint

Adopt, amend, adapt and renumber these provisions ss 55A – 55L as new sections 15 – 26

See details of proposed new sections in **Appendix 2**

- s 15 Minister to have regard to objects of Act
- s 16 Requirement for coastal zone management plans
- s 17 Matters to be dealt with in coastal zone management plans
- s 18 Guidelines for preparation of draft coastal zone management plans
- s 19 Public consultation
- s 20 Submissions
- s 21 Certification by Minister
- s 22 Gazettal and commencement of coastal zone management plans
- s 23 Amendment and repeal of coastal zone management plans
- s 24 Availability of coastal zone management plans
- s 25 Breach of coastal zone management plan: offence
- s 26 Breach of coastal zone management plan: restraint

A13.7

Insert after proposed new section 26, the new heading

Part 3 Division 5 Coastal management programs

A13.8

Insert current draft sections 12 – 20, re CMPs, and renumber as new draft sections 27 – 35.
Note amendments to these current draft sections 12 – 13, above and ss 14 – 20 below

Section 14**A14.1**

Renumber as new section 29.

A14.2.1

Section 14 (2)

Delete “prevails to the extent of any inconsistency between it and” and insert instead “must not be inconsistent with”

A14.3.1

Section 14 (3) (a)

After ‘promote’ insert “the achievement of “

A14.3.2

Section 14 (3) (b)

Delete “give effect to” and insert instead “implement”

A14.3.3

Section 14 (3) (c)

Delete “consider” and insert instead “comply, and otherwise act consistently, with”

Section 15

A15

Renumber as new section 30.

A15.1

To avoid reproducing the work of a Coastal Zone Management Plan

Section 15 (1)

Delete paragraphs (a) and (b)
Reorder following paragraphs

A15.1.1

To clarify the matters to be dealt with in Coastal Management Programs

Section 15 (1) (c)

After ‘those actions’ insert “identified in the adopted Coastal Zone Management Plan as required to address coastal management issues”

Renumber as 28 (1) (a)

A15.1.2

Section 15 (1) (c)

After ‘Act 1979’ delete “and” insert comma

After the last word “and” insert “any actions to be implemented solely or principally by members of the public; non-government organisations or the private sector entities, and”

A15.1.3

Section 15 (1) (d) renumber as section 28 (1) (b)

A15.1.4

To prepare emergency action subplans for all coastal hazards

Section 15 (1) (e)

Delete “beach erosion is occurring” insert instead “coastal hazards are, or are likely to become, active” and delete “coastal erosion emergency action subplan” and insert instead “coastal hazard emergency action subplan”.

Renumber as section 28 (1) (c)

A15.3

Section 15 (3)

Delete current draft sub-section (3)

Insert instead

(3) A ***coastal hazard emergency action subplan*** is a plan that outlines the roles and responsibilities of all public authorities (including the local council) and other relevant community stakeholders, in response to potential emergency situations which may be created by the effect of identified coastal hazards, immediately preceding or during a period of storm activity or an extreme or irregular event.

(a) The contents of coastal hazard emergency action subplans may be prescribed by the *Coastal Management Manual* made under this Part (section 12).

A15.4

OR delete whole of subsections 15 (3) and 15 (4)

Section 16

A16

Renumber as new section 31.

A16.1.1

Section 16 (1) (a)

Delete current paragraph (a) insert instead

(a) a broad cross-section of the local community, including relevant non-government stakeholders and private sector entities active in local coastal management;

A16.1.2

Section 16 (1) (c) (ii)

Delete “emergency actions” insert instead “actions”

Delete “coastal erosion emergency action subplan” insert instead “coastal hazard emergency action subplan”

A16.2

Section 16 (2)

Delete “is to” insert instead “shall”

A16.3

Delete section 16 (3) and 16 (4).

Section 17

A17

Renumber as new section 32.

A17.1

Insert after subsection 17 (1), as a new subsection 30 (2)

- (2) when a local council submits a draft coastal management program to the Minister for certification under this section, it must provide to the Minister a statement warranting its preparation and content are in compliance with the relevant provisions of the Coastal Management Manual; and or a statement identifying and explaining any inconsistency of the draft Coastal Management Program with the requirements of the Manual.

Renumber existing subsection (2) as new subsection 30 (3)

A17.2

Section 17 (2)

After “may certify”, insert, “decline to certify at that time,”

A17.3

Section 17 (3)

Delete “may, after” insert instead “shall, within 28 days”

After “program and” insert “take timely action to”

A17.4

Insert after subsection 17 (2), a new subsection 30 (4)

- (4) where the Minister declines to certify at that time, or refuses to certify a draft coastal management program, under subsection (3) above, the Minister shall provide in writing to the local council reasons for declining at that time, or refusing to certify a draft coastal management program; and a statement of actions required to be undertaken by the local council, before the draft coastal management program will be further considered by the Minister for certification under this section.

A17.5

Renumber existing subsection 17 (3) as new subsection 30 (5)

Renumber existing subsection 17 (4) as new subsection 30 (6)

Section 18

A18

Renumber as new section 33.

A18.1

Section 18 (1)

Delete “is to ensure that” insert instead “shall review”

Delete “is reviewed”

A18.2

Section 18 (2)

Delete “at any time”

After the last words ‘management program’ insert which has been certified and adopted under this Part.”

A18.3

Section 18 (3)

Delete “at any time”

After the last words ‘management program’ insert “which has been certified and adopted under this Part.”

A18.5

Insert after section 18 (4), as a new subsection 31 (5)

- (5) A coastal management program certified under this Part may not be wholly repealed by a local council under subsection (4) above, unless a replacement coastal management program has been certified and adopted under this Part.

Section 19

A19 Renumber as new section 34.

A19.1

Section 19 (1)

After 'program' insert 'certified under this Part'

A19.2

Section 19 (2)

After 'program' insert 'certified under this Part'

A19.3

Insert after section 19 (2), as a new subsection 32 (3)

- (3) A copy of the coastal management program certified under this Part must be published in a hard copy newsletter or other hard copy periodical published by or for the local council, within 3 months of its certification.

Section 20

A20 Renumber as new section 35.

A20.1

Section 20 (1)

Insert as new paragraph (b)

- (b) has failed to take the actions indicated by the Minister under s 30(4) as necessary to achieve the certification of their coastal management program, or

And renumber current paragraph 20 (1) (b) as section 33 (1) (c).

A20.2

Section 20 (2)

Delete current subsection (2) insert instead

- (2) Subject to the Regulations, the provisions of this Part apply to the Minister in the preparation and adoption of a coastal management program.

A20.3

Section 20 (3)

Delete 'is taken to have' insert instead 'shall have effect as if it had'

A20.4

Section 20 (4)

Delete 'is to' insert instead "shall"

After 'Council' insert "before deciding to act, and subsequently"

A20.5

Section 20 (5)

Re number as section 33 (2)

Delete 'is to' insert instead "shall comply with a notice given under this section, and "

A20.6

Section 20 (6)

Delete 'is to' insert instead "shall"

A20.7

Section 20 (7)

Delete subsection (7) and insert instead

- (7) The costs incurred in carrying out the functions under this section, may be recovered by the Minister from a local council on whose behalf the Minister has prepared a coastal management program' under this section, as a debt in any court of competent jurisdiction.

A20.8

Section 20 (8)

Delete subsection and insert instead

- (8) Nothing in this section prevents the Minister administering this Act from reporting to the Minister administering the *Local Government Act 1993*, in accordance with section 30 of this Act, any failure by a local council to comply with a direction under sections 13 (1) or 14 (2) of this Act.

A20.9

Section 20 (9)

Delete subsection (9)

A20.10

Reorder the subsections of proposed new section 35 Minister to prepare CMPs in certain circumstances - as follows:

Subsection (1) → remain (1) see comments in A20.1 above

Subsection (2) → insert current s 20 (4) see comments in A20.4 above

Subsection (3) → insert current s 20 (6) see comments in A20.6 above

Subsection (4) → insert current s 20 (5) and (7) see comments in A20.5 and A20.7 above

Subsection (5) → insert current s 20 (2) see comments in A20.2 above

Subsection (6) → insert current s 20 (3) see comments in A20.3 above

Subsection (7) → insert current s 20 (8) see comments in A20.8 above

Subsection (8) → insert current s 20 (9) see comments in A20.9 above

Delete heading

Part 3 Division 3 - Coastal Management Manual**Section 21**

A21 Renumber as section 12.

Re-order all subsequent section numbers.

A21.1

Section 21 (1)

Delete "is to" insert instead "shall"

A21.2

Section 21 (2)

Delete “is to” insert instead “shall”

A21.3.1

Section 21 (3)

Delete “is to” insert instead “shall”

A21.3.2

Section 21 (3) (b)

After “hazard mapping,” insert “reliable indicators of”

After ‘ecological health’ and before ‘cost benefit analysis’, insert “appropriate methods of “

After ‘cost benefit analysis’, and before ‘implementation, insert “a suite of State Government approved options for coastal management program “

A21.3.3

Section 21 (3) (d)

After ‘consultation’ insert “with a broad cross section of the community, with local stakeholders and other public authorities “

A21.3.4

Section 21 (3) (e)

Delete ‘coastal erosion’ insert instead “coastal hazard”

A21.3.5

Section 21 (3) (g)

Delete ‘guidance regarding’ insert instead “recommended best practice for””

A21.4

Section 21 (4)

After ‘from time to time’ insert “, following consideration of advice from the Coastal Management Council, “

A21.5

Section 21 (5)

Delete current subsection, insert instead

- (5) The Minister shall ensure that the Coastal Management Manual (and any amendment of the manual) is published in the Gazette, and as a web-mounted electronic version; and in an easily updatable hard copy format, which can be purchased.

A21.6

Section 21 (6)

Delete current subsection, insert instead

- (6) An up-to-date copy of the Manual, as amended, must be available for public inspection without charge:
 - (a) as an electronic version, on the websites of the Department and of the Office of Environment and Heritage,
 - (b) as a hard copy, at the office of the Department and of the Office of Environment and Heritage, during ordinary office hours.

A21.7

After Section 21
Re-number heading
Insert before proposed new section 36

Part 3 Division 6 – Obligations of local councils and other public authorities

Section 22

A22

Re-number as new section 36.

A22.1.1

Section 22 (1)

Delete “is to give effect to” insert instead “shall implement” where ‘is to’ appears twice in the Delete “is to have regard to” insert instead “shall act in accordance with”,

A22.2.1

Section 22 (2)

Delete “is to” insert instead “shall”

A22.2.2

Section 22 (2) (a)

Delete “the plans, strategies, programs and reports to which ”

insert instead “the Community strategic plan (s 402), Resourcing strategy (s 403), Delivery program (s 404), Operational plan (s 405), community engagement strategy, annual report and or state of the environment report prepared under the relevant sections of ”

Delete ‘applies’

A22.2.3

Section 22 (2) (b)

After ‘planning proposals’, insert “, draft local environment plans, or amendments to LEPs, “

Section 23

A23

Re-number as new section 37

A23.1

Section 23 (1)

Delete “are to have regard to” insert instead “shall be obliged to liaise, negotiate with and assist councils in implementing a certified ”

A23.2

Delete current section 23 (2) insert instead

(2) In particular, in the preparation, development, adoption and review of, and in the contents of, any plans of management required to be produced under other Acts, those public authorities shall act in accordance with the objects of this Act, the procedures and directions contained in the Manual and not inconsistently with the content of any certified coastal management program relevant to the area the subject of that plan;

A23.3

Insert three additional subsections

- (3) If, or when, a local council consults another public authority under s of this Act and the public authority “liaises, negotiate with” the councils pursuant to s X, but agreement cannot be reached on how what actions the public authority will take, and or what funding it will allocate to assist a local council to implement its certified coastal management program, either the council or the public authority may refer the matter to the Minister administering this Act.
- (4) If, or when, another public authority consults a local council in the preparation, development, adoption and review of a plan of management required to be produced under other Acts, and “liaises, negotiate with” the council, but agreement cannot be reached on what actions the local council will take, and or what funding it will allocate to assist the public authority to implement a plan of management produced under another Acts, consistently with a certified coastal management program, either the council or the public authority may refer the matter to the Minister administering this Act.
- (5) Where a local council or other public authority refers the lack of agreement under subsection (3) or (4) above, the Minister shall consult the relevant minister responsible for the public authority, to determine the actions that the public authority shall take to assist the council to implement its certified coastal management program; and or the actions that the local council shall take to assist another public authority to implement a plan of management consistently with relevant certified coastal management programs.

Part 4 - NSW Coastal Council

Section 24

A24

Renumber as section 38

A24.1.1

Re name the new independent body to become NSW Coastal Management Council

Section 24 91)

After ‘Coastal’ insert ‘Management’ to
rename it as ‘NSW Coastal Management Council’ OR

A24.1.2

After ‘Coastal’ insert ‘Management Advisory’ to
rename it as ‘NSW Coastal Management Advisory Council’

A24.2.1

Section 24 (2)
Delete ‘is to’ insert instead “shall”

A24.2.2

To provide a slightly larger membership for the Coastal Management Council

Delete ‘at least 3 and not more than 7’
Insert instead “at least 7 and not more than 11 “
OR
Insert instead ”not less than 9”

A24.3

To provide a superior membership structure for the Coastal Management Council

Section 24 (3)

After 'Council must have' insert 'relevant experience, a demonstrable association with a stakeholder group involved in coastal management in New South Wales, and'

Delete the phrase 'in one or more of ' and insert after 'expertise' the phrase 'in a discipline relevant to coastal management'.

Delete the fields cited as (a) – (g)

A24.4

Amend section 24 (4)

After the words 'expertise in one or more' delete the phrase 'fields set out in subsection (3)'.

Insert instead 'the following fields': the list in section 24 (3)(a) – (g).

A24.5

Section 24 (5)

Delete subsection (5) insert instead

- (5) in appointing a member, the Minister shall consider the need for gender balance, fair geographic representation and the importance of having a range of stakeholders with expertise and experience in coastal zone management among members of the Council.

A24.6

Section 24 (6)

Delete subsection (6) insert instead

- (6) The Minister, after consulting Local Government NSW, shall appoint an additional person with expertise in a relevant discipline under section 24 (4) and experience in chairing boards or committees of management, as the Chair of the Council.

Section 25

A25 Renumber as section 39

A25.1.

Section 25 Heading

Before Functions' insert "Role and

A25.1.1

Section 25 (1)

Delete 'Council has' insert instead "Management Council shall have"

A25.1.2

Delete current s 25 (1) insert instead:

- (1) The role of the NSW Management Council shall be to
- a) improve the coordination of the coastal management policies and activities of all stakeholders involved in managing the state's coastal zone, relating to the coastal zone and to facilitate the proper integration of their management activities;
 - b) provide active leadership to the state's coastal management community in implementing CZMPs, CMPs and any State environmental planning policy on coastal management;

- c) support and encourage public participation and stakeholder engagement in coastal management and planning, and increase public and stakeholder awareness, and understanding of coastal processes and management actions;
- d) oversee, monitor and report annually to Parliament on progress in, and effectiveness of local councils' and other public authorities' implementation of CZMPs and CMPs, and any measures thought appropriate to improve this rate of progress or level of effectiveness;
- e) develop, in association with coastal management stakeholders, advice to the Minister on the appropriate refinement of the coastal management policy framework; governance structure and funding arrangements for future management of the state's coastal zone;
- f) to provide advice to the Minister on the appropriate administration of the Act, and or the appropriate exercise of Minister's powers under the Act.

A25.1.3**To clarify, improve and extend the Functions of the Coastal Management Council**

Insert after current draft section 25 (1) (b) a new clause:

- (c) to provide advice to a public authority or another stakeholder in the management of the state's coastal zone, on the application and or intended effect of this Act and or associated coastal management planning instruments, where such advice is requested in writing by a public authority or stakeholder;

A25.1.4

Insert after that, three additional functions

- (d) to co-ordinate the policies and activities of government, public authorities and non-government stakeholders, relating to the management of the coastal region and facilitate the proper integration of their management activities;
- (e) to provide to public authorities references to and or information, suggestions or options for, current best practice in addressing coastal management 'issues';
- (f) to encourage and support public participation in coastal management and planning and to promote greater public awareness, education and understanding of coastal processes and coastal management actions;

Renumber s 25 (1) (c) as s 24 (1) (g)

A25.1.5

Section 25 (1)

Renumber subsection (1) as (2)

A25.2.1

Section 25 (2) (a)

Delete is to have regard to' insert instead "shall act in accordance with "

A25.2.2

After section 25 (2) (b) insert two new clauses:

- (c) may form advisory committees or convene working groups, as appropriate;

(d) may draw on the resources of the Department of Planning and Environment to establish, and where appropriate, supplement a standing secretariat of executive and administrative support staff.

A25.2.3

Section 25 (2)

Re-number subsection (2) as (3)

Section 26**A26**

Re-number as section 40.

A26.1.1

Section 26 (1)

insert "Management" before 'Council'; OR

insert "Management Advisory" before 'Council';

A26.1.2

Delete 'is to' insert instead "shall"

A26.1.3

Section 26 (1)

To clarify the role of the Coastal Management Council in conducting performance audits

Delete current subsection (1) insert instead

(1) As part of its monitoring and reporting role, the NSW Coastal Management Council shall provide in its annual report to NSW Parliament an overview of local councils' progress in implementing CMPs in that year, using relevant indicators and or key milestones.

A26.1.4

Section 26 (1)

Re-number current subsection (1) as (2)

A26.2.1

Section 26 (2)

Delete 'is to' insert instead "shall be"

A26.2.2

After subsection 26 (2) (b) insert a new subsection

(c) identify any opportunities available for assistance and or co-operation, by other stakeholders, whether public authorities, non-government organisations and or the private sector, which may aid the local council to implement its certified and adopted coastal management program.

A26.3.

Section 26 (3)

After the words ‘information or records (or both)’ insert “and access to such areas controlled by council”

A26.4

Section 26 (4)

Delete ‘is to’ insert instead “shall”

After ‘this section’ insert “within 28 days and shall co-operate generally with the Coastal Management Council in its audit.”

A26.5

Section 26 (5)

Delete current subsection (5) insert instead

- (5) At the conclusion of a performance audit under this section, the NSW Coastal Management Council shall provide a report to the Minister and the relevant local council.
- (6) The Minister shall table in the NSW Parliament a report by the NSW Coastal Management Council on its performance audit of a local council’s implementation of its coastal management program, within 28 days of receiving the report;
- (7) The Coastal Management Council shall include a summary of its report on any performance audit of a local council in its annual report to NSW Parliament.

A26.6

Section 26 (6)

Delete current subsection (6) insert instead

- (6) In preparing its report the NSW Coastal Management Council shall consider whether the local council
 - (a) has acted in accordance with the Objects of the Act, the procedures of the Manual, the directions of the Minister and or
 - (b) has encountered difficulties largely beyond its control;
 - (c) has faithfully implementing a certified or adopted coastal management program;
 - (d) has taken (any) appropriate steps to implement the coastal management program,
 - (e) has not complied with its coastal management program to a minor extent
 - (f) has not complied and or is not complying with its coastal management program to a significant extent

A26.7.1

Renumber current subsection (7) as subsection (8)

A26.7.2

Delete current subsection (7) insert instead new section (7)

- (7) In its report to the Minister the NSW Coastal Management Council may make recommendations to the Minister on:
 - (a) appropriate remedial actions required of the local council;

(b) relevant actions by other public authorities, local stakeholders and or other bodies which would assist the local council to implement its coastal management program; and or

(c) whether the Minister should refer the matter to the Minister administering the *Local Government Act 1993* for further consideration.

A26.7.3

Delete heading

Part 5 Miscellaneous

Renumber heading as Part 6 Miscellaneous, relocate to before Section 43.

Section 27

A27

Renumber as Section 43

A27.1

Section 27

Delete current unnumbered section, insert instead

(1) Development consent must not be granted under the *Environmental Planning and Assessment Act 1979* to development for the purposes of coastal protection works in a coastal *conservation* area identified by the relevant *SEPP*.

A27.2

Section 27

Insert as a new subsection (2)

(2) Development consent must not be granted under the *Environmental Planning and Assessment Act 1979* to development for the purposes of coastal protection works in any other coastal management area identified by the relevant *SEPP*, unless the consent authority is satisfied that the works will not, over the life of the works:

A27.3

Section 27 (a)

Renumber as subsection 27 (2) (a)

A27.4

Section 27 (b)

Renumber as subsection 27 (2) (b)

A27.5

Section 27

After (b) insert new paragraph (c)

(c) 'adversely affect the long term persistence or amenity of any nearby beach'.

Section 28

A28

Renumber as Section 41

A28.1

Before Section 28

Insert new heading

Part 5 Application of current law re water boundaries**A28.2****To align the Bill with modern legal terminology**

In the heading delete the words 'erosion and'

A28.3**to unambiguously declare the current law**

After Section 28

Insert as a new section 42

42 Codification of common law rules on effect of ambulatory boundary of MHW

To remove all ambiguity the common law rules pertaining to boundaries of real property registered under the *Real Property Act 1900* (NSW), and the effect in law on such real property boundaries of the landward movement of the boundary formed by the line of mean high water mark (MHW), are declared as follows:

- (1) When the ambulatory boundary formed by the line of the mean high water mark (MHW) crosses a land title boundary originally defined by survey, by gradual movement in accordance with established legal principles, that section of the original boundary below MHW is lost to the sea, and the boundary of that part of the land title becomes the ambulatory boundary of MHW.
- (2) Where a segment of a registered land title, forming part of a private property, falls below the line of mean high water, under sub-section (1) above, that part which lies below MHW ceases to be land which is 'real property' and is deemed lost to the sea.
- (3) When a segment of land formerly above the MHW is lost to the sea under sub-section (2) above, its ownership reverts to the Crown as the State of New South Wales.
- (4) No compensation is payable by the State of New South Wales for the loss of any land to sea.

A28.3

Before proposed relocated draft section 27 as new section 43 Granting of development consent for coastal protection works. Insert new heading

Part 6 Miscellaneous**A28.4**

Insert relocated draft s 27 as new section 43

43 Granting of development consent for coastal protection works.

Section 29**A29**

Section 29 - delete the section

A29.1

Section 29 (1) - amend the subsection?

OR ?

A29.2

Section 29 (2) - amend the subsection?

Section 30

A30 Renumber as section 44.

A30.1.1

Section 30 (1)

Before current (a) insert instead

- (a) afford a local council an opportunity to show why it is not failing to effectively implement its coastal management program; and why further action under this section is not required

A30.1.2

Section 30 (1)

Renumber current 30 (1) (a) as paragraph (b)

Renumber current paragraph (b) as paragraph (c)

add a new subsection (d)

- (d) cause an Notice to be published in a newspaper circulating in the local council area, which advises readers of the council's failure to comply and refers them to the report available on the website of the Department;

A30.2

Section 30 (2)

Insert after 'any such report' insert 'or any report on the local council prepared by the NSW Coastal Management Council under section 26 [or new section 40].

Section 31

A31

Renumber as section 45.

Section 32

A32

Renumber as section 46.

Section 33

A33

Renumber as section 47.

A33.1

Section 33 (1)

To improve the process of the Act's review

After 'The Minister is to' insert ""appoint an independent party to "

A33.2.1

Section 33 (2)

After 'The review' insert "of this Act"

Delete 'is to' insert instead "shall"

A33.2.2

Section 33 (2)

Re-number as subsection (3)

A33.2.3

Section 33 (2)

Delete current subsection (2) insert instead as (2)

- (2) The review is to include, via a process of public consultation, the appropriateness of the boundaries defining any coastal management areas, and or the coastal zone generally, as shown in the maps prepared for these purposes under the *Coastal Management SEPP 2016*;

A33.3.1

Section 33 (3)

Delete 'is to' insert instead "shall"

A33.3.2

Section 33 (3)

After 'be tabled' insert "by the Minister administering this Act,

A33.3.3

Section 33 (3)

Delete 'within 12 months' insert instead "within 6 months"

A33.3.4

Section 33 (3)

Re-number current subsection (3) as new subsection (4)

A33.5

After new subsection 33 (4) insert a new subsection (5)

- (5) The Minister will respond to the report of the outcome of the review in the relevant House of Parliament within 6 months of its tabling.

Section 34

A34

Re-number as section 48.

Retain current draft provisions

Section 35

A35 Re-number as section 49.

A35.1

Section 35

Delete current provision insert instead

The *Coastal Protection Act 1979* and the *Coastal Protection Regulation 2011*, or parts thereof, shall be repealed on dates to be proclaimed.

Schedule 1

AS1.1

Delete **Schedule 1** – local government areas and sediment compartments.
(This list should appear in the relevant section of the Manual)

Schedule 2

AS2.1

Insert in the heading, after 'NSW Coastal' insert "Management"

AS2.2

Section 2

Delete 'not exceeding 3 years' insert instead "not exceeding 4 years"

AS2.3

Other recommended changes?

AS2.4

Other recommended changes?

AS2.17

After current Schedule 2 section 16, insert new Part

Part 4 Secretariat

- 17 To assist the NSW Coastal Management Council, the Minister shall direct the Secretary of the Department to create a standing Secretariat for the Council within the Department, comprised of, at a minimum: one executive officer and one administrative support officer;
- 18 The Executive Officer shall be responsible for the implementation of Council decisions and shall report to and be directed generally by the Chair of the Council;
- 19 The Secretary may second existing staff from within the Department or seek new staff to fill the positions of the Secretariat;
- 20 With the Minister's approval, the Secretary may appoint additional project staff to the Secretariat, to assist the Council in the conduct of a performance audit of a local council's implementation of its coastal management program, under section 26 [→ 38].

Schedule 3

AS3.1

Section 4 - delete the section

AS3.2

Section 5 - delete the section

AS3.6.1

Section 6

Delete current subsection (1), (2), (3) and (4) insert instead

- 6** (1) If at the commencement of this Act, a draft coastal zone management plan being prepared under the former Act, is not yet ready for submission to the Minister for certification, the local council shall continue the preparation of the coastal zone management plan, under the provisions of this Act, in accordance with the directions of the Manual, under it is ready for submission to the Minister for certification by the Minister under section 19
- (2) If at the commencement of this Act, a draft coastal zone management plan prepared under the former Act, has been submitted to the Minister for certification, the Minister shall deal with the draft coastal zone management plan under section 19 of this Act;
- (3) A coastal zone management plan certified and made in accordance with subsection (2) may be certified as a coastal management program prepared and adopted under this Act, if the local council's program for implementation is in an appropriate form.

AS3.7

Section 7 - delete the section

Insert instead

- (1) Sections 55O and s 55T Part 4C (Temporary coastal protection works) of the former Act are directly repealed, to extinguish the possibility of any new works being planned or constructed following the commencement of this Act;
- (2) Temporary coastal protection works constructed by private landowners under the provisions of the former Act shall be the subject of a development application to a local council within 12 months of the commencement of this Part of this Act, or
- (3) At the expiry of that 12 month period, such works shall be deemed to be no longer lawful as 'temporary coastal protection works' and a public authority may direct the landowner responsible for their construction to remove such works;
- (4) At the expiry of that 12 month period, a landowner who has constructed temporary coastal protection works shall be liable for their removal within 24 months of the commencement of this Part.
- (5) Where a landowner responsible for construction of 'temporary coastal protection works' has been given a direction to remove the works but has failed to do so within 24 months of the commencement of this Act, a public authority shall remove the works, and shall be capable of recovering the costs of their removal from that landowner, including if necessary in a court of competent jurisdiction.

AS3.8.1

Section 8

Delete 'a coastal management program under section 13 (1)' and insert instead "a coastal zone management plan under section 14 of this Act."

AS3.8.2

Section 7

Delete subsection (2).

Schedule 4

Schedule 4.1

amendments proposed to the *Environmental Planning and Assessment Act 1979*]

AS4.1.1

Section [1]

Delete proposed omission

Retain provision 79C (1)(a)(v) contents of a coastal zone management plan’;

AS4.1.2

Delete ‘2015’ insert instead “2016”.

AS4.1.3

Section [3]

Delete proposed omission

Retain provision 89J (1) (a) ministerial concurrence for state significant development

AS4.1.4

Section [4]

Delete proposed omission

Retain provision 115ZG (1)(a) ministerial concurrence for state significant infrastructure

Schedule 4.2

amendments proposed to the *EP&A Regulation 2000*,

AS4.2

No amendments are proposed.

Schedule 4.3

amendments proposed to the *Land and Environment Court Act 1979*

AS4.3.1

Delete proposed omission of “*Coastal Protection Act 1979*” from section 20 (3) (a).

Retain name of that Act in s 30 (3) (a)

Insert before “*Coastal Protection Act 1979*” in list in section 20 (3) (a), ‘*Coastal Management Act 2016*”.

Schedule 4.4

amendments proposed to the *Local Government Act 1993*

AS4.4.6.1

Section [6]

Delete the proposed omission and insertion

AS4.4.6.2

Section [6] re s 733 (3)(b)

After 'the preparation' delete 'or making' insert instead " , making or implementation"

AS4.4.6.3

Section [6] re s 733 (3)(b)

Renumber proposed paragraph (b) as paragraph (b1)

Insert after (b)

(b1) the preparation, adoption and implementation of a coastal management program under the *Coastal Management Act 2016*, and"

Schedule 4. 5

amendments proposed to the *Rural Fires Act 1997*

AS4.5

No amendments are proposed.

Additional provisions**Dynamic coastlines and property boundaries**

See suggested section **41 Codification of common law rules regarding ambulatory boundary**
In paragraph **A28.2** above.

Relevant provisions are in preparation to define a process for local councils to identify via the CZMP process, land titles of coastal properties affected, or likely to be affected, by the ambulatory MHWB boundary, and to provide formal notice to the Land Titles Office when Council adopts the CMP; and / or when council officers next issue a Planning Certificate under s 149 of the *EP&A Act 1979*.

Other provisions in prep include cognate amendments the *Real Property Act 1900* (NSW) to set out the procedures to be adopted ...

If the Land Titles Office is notified, by a local council that it has identified, via its CZMP process, land titles of real property in the coastal zone which are affected, or likely to be affected, by the landward movement of the ambulatory boundary of MHWB ... The Registrar General of Land Titles shall:

- a) annotate the folios of relevant land titles, to record Council's advice that the original boundaries of the property may be, or are now, affected by the landward movement of the ambulatory boundary of the MHWB;
- b) require a fresh survey at every next dealing, to determine the position of the original boundary and the position at that time of next dealing, of the line of MHWB; and
- c) require that survey to ascertain if, and if so to what extent, the line of MHWB has crossed the original boundary originally defined by survey;
- d) amend, where appropriate, the description of the real property to include any ambulatory boundary acquired since registration; and
- e) amend any map attached to the Certificate of Title to reflect any affected boundary of the property, to correct any error created 'ex post facto', by the ambulatory landward movement of the MHWB;
- f) repeat the requirement for fresh survey and further amendment of the relevant boundary or boundaries at each time of next dealing; and
- g) when the real property is wholly lost to the sea, extinguish the land title.

Assisted relocation a.k.a. planned retreat

Amendments will be proposed to create a voluntary land exchange scheme to assist local councils which have adopted 'planned retreat' strategies in line with NSW Government advice, but no capacity to further assist residents affected by the onset of destructive coastal hazards.

A new statutory scheme is proposed to connect existing state government powers, facilities and programs, under different Acts and coordinate the actions of relevant Ministers.

ENDS.