

**Re-incorporation of revised provisions re Coastal Zone Management Plans**

One major recommendation to the Minister in the Australian Coastal Society’s Submission on the Coastal reforms Stage Two and on the draft Coastal Management Bill 2015, is to maintain the legislative effect of provisions which relate to Coastal Zone Management Plans.

ACS recommends the next version of the Bill 2016 incorporate the twelve sections of the *Coastal Protection Act 1979* (ss 55A – 55L) which provide for the preparation, consultation, making, certification, gazettal, commencement, amendment and repeal, availability and enforcement of coastal zone management plans.

Paragraph **A13.5** recommends the use of a new heading

**Part 3 Division 4 Coastal Zone Management Plans**

And a new first 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.

Paragraph **A13.6** recommends the insertion of the twelve former provisions governing preparation of Coastal Zone Management Plans, sections 55A – 55L of *CPA Act 1979*.

These sections are translated into proposed sections 15 – 26 of the new version of the Coastal Management Bill 2016 in the following table.

**Table of provisions’ translation**

<b>CPA Act 1979 -- &gt;</b>	<b>CM Bill 2016</b>
55A. Minister to have regard to objects of Act	s 15 Minister to have regard to objects of Act
55B Requirement for coastal zone management plans	s 16 Requirement for coastal zone management plans
55C Matters to be dealt with in coastal zone management plans	s 17 Matters to be dealt with in coastal zone management plans
55D Guidelines for preparation of draft coastal zone management plans	s 18 Guidelines for preparation of draft coastal zone management plans
55E Public consultation	s 19 Public consultation
55F Submissions	s 20 Submissions
55G Certification by Minister	s 21 Certification by Minister
55H Gazettal and commencement of coastal zone management plans	s 22 Gazettal and commencement of coastal zone management plans
55I Amendment and repeal of coastal zone management plans	s 23 Amendment and repeal of coastal zone management plans
55J Availability of coastal zone management plans	s 24 Availability of coastal zone management plans
55K Breach of coastal zone management plan: offence	s 25 Breach of coastal zone management plan: offence
55L Breach of coastal zone management plan: restraint	s 26 Breach of coastal zone management plan: restraint

*Australian Coastal Society (ACS) Submission Stage Two Coastal reforms – **Appendix 2***  
***Revised CZMP provisions from CPA Act 1979 -- > CM Bill 2016***

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The text recommended for these new sections, ss 15 – 26, based on the former provisions but updated and amended where appropriate, are shown on the following pages.

**Section 15**

Amended s 55A

**Minister to act consistently with objects of Act**

- 15 In exercising his or her functions under this Part, the Minister shall do so consistently with the objects of this Act.

**Section 16**

Unamended s 55B

**16 Requirement for coastal zone management plans**

- (1) A council whose area, or part of whose area, is included within the coastal zone may, and must, if directed to do so by the Minister, make a coastal zone management plan in accordance with this Part.
- (2) Two or more councils whose areas adjoin may decide to join in the making of a coastal zone management plan in accordance with this Part.
- (3) If, under subsection (2), two or more councils decide to join in the making of a coastal zone management plan, a reference in this Part:
- (a) to a council includes a reference to those councils, and
  - (b) to an area includes a reference to the areas of those councils.
- (4) A coastal zone management plan may be made in relation to the whole, or any part, of the area included within the coastal zone.
- (5) A council must, if directed to do so by the Minister, review the council's existing coastal zone management plan and make a new plan in accordance with this Part to replace the existing plan.
- (6) A council required under this section to review its existing coastal zone management plan and make a new plan to replace that existing plan must do so:
- (a) within 12 months after being directed to do so by the Minister, or
  - (b) within such longer period as may be agreed to by the Minister.
- (7) If a council fails to comply with this section, the Minister may:
- (a) review the council's existing plan and make a new plan to replace that existing plan, and
  - (b) recover from the council the costs of doing those things, and
  - (c) publish the new plan in the Gazette.

Such a new plan is taken to have been made by the council in accordance with this Part.

- (8) For the avoidance of doubt, the Minister may give a direction under subsection (1) or (5) in relation to part of an area included within the coastal zone.

(9) In this section,

**"coastal zone"** includes land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries.

**Section 17**

Amended s 55C

**17 Matters to be dealt with in coastal zone management plans**

- (1) A coastal zone management plan must make provision for:
- (a) protecting and preserving beach environments and beach amenity, and
  - (b) ensuring continuing and undiminished public access to beaches, headlands and waterways, particularly where public access is threatened or affected by accretion, and
  - (c) where the plan relates to a part of the coastline, the management of risks arising from coastal hazards, and
  - (d) where the plan relates to an estuary, the management of estuary health and any risks to the estuary arising from coastal hazards, and
  - (e) the impacts from climate change on risks arising from coastal hazards and on estuary health, as appropriate, and
  - (f) the construction of coastal engineering works for the protection of real property affected or likely to be affected by coastal hazards, where this is consistent with paragraphs (a) – (e) above, and
  - (g) where the plan proposes the construction of coastal protection works that are to be funded by the council or a private landowner or both, the proposed arrangements for the adequate maintenance of the works and for managing associated impacts of such works (such as changed or increased beach erosion elsewhere or a restriction of public access to beaches or headlands).
- (2) A coastal zone management plan must note, and refer to, but need not include any relevant matters dealt with in any plan made under the *State Emergency and Rescue Management Act 1989* in relation to the response to emergencies,
- (3) A coastal zone management plan must include as a schedule, a table which records
- (a) actions or activities proposed by any public authority to be carried out by it on or relating to any land or other assets owned or managed by a public authority, which that public authority has agreed would assist council to implement its CMP.
  - (b) actions or activities which other non-government stakeholder(s) in local coastal management have agreed to take, whether or not to be carried out on or relating to any land or other assets owned or managed by a public authority to which that public authority has agreed, which would assist council to implement its CMP.
- (4) A coastal zone management plan must not include any action or activity by 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 plan.

- (5) Despite subsection (1), the Minister may give a direction under section 55B that a council make a coastal zone management plan that makes provision for only one or more of the matters referred to in that subsection as specified in the direction.

**Section 18**

Unamended s 55D

**18 Guidelines for preparation of draft coastal zone management plans**

- (1) A council is to prepare a draft coastal zone management plan in accordance with the Minister's guidelines.
- (2) Without limiting the power of the Minister to determine the guidelines, the Minister may adopt as guidelines a manual referred to in section 733 (5) (b) of the *Local Government Act 1993* .
- (3) The Minister is to ensure that notification of any guidelines is published in the Gazette.
- (4) A copy of the Minister's guidelines must be available for public inspection on the Internet website of the Office.

**Section 19**

Unamended s 55E

**19 Public consultation**

After preparing a draft coastal zone management plan, the council is:

- (a) to give public notice in a newspaper circulating in the locality of the place at which, the dates on which (comprising a period of not less than 21 days), and the times during which, the draft coastal zone management plan may be inspected by the public, and
- (b) to publicly exhibit the draft plan at the place, on the dates and during the times set out in the notice.

**Section 20**

Unamended s 55F

**20 Submissions**

- (1) During the period of public exhibition of a draft coastal zone management plan, any person may make a submission in writing to the council with respect to its provisions.
- (2) The council must consider all submissions so made.
- (3) The council may amend the draft coastal zone management plan as a result of the submissions.

**Section 21**

Amended s 55G

**21 Certification by Minister**

- (1) After considering any submissions, the council is to submit the draft coastal zone management plan to the Minister for certification under this section.
- (2) Before submitting the draft coastal zone management plan to the Minister under subsection (1), the council must consult with other public authorities in the manner specified in the Minister's guidelines.
- (3) Before certifying the draft coastal zone management plan submitted to the Minister under subsection (1), the Minister may refer the plan to the NSW Coastal Management Council for advice.
- (4) The Minister may:
  - (a) certify, or refuse to certify, that a draft coastal zone management plan submitted to the Minister has been prepared in accordance with the requirements of this Act, or
  - (b) if the Minister has referred the plan to the NSW Coastal Management Council for advice under subsection (3) and the NSW Coastal Management Council has recommended changes to the plan-return the plan to the local council and direct that council to amend and resubmit the plan with the recommended changes.
- (5) A local council required to amend and resubmit a plan with recommended changes must do so:
  - (a) within 90 days after being directed to do so by the Minister, or
  - (b) within such longer period as may be agreed to by the Minister.
- (6) If a council fails to amend and resubmit a plan as required by this section, the Minister may:
  - (a) make the plan with the recommended changes instead of the council, and
  - (b) recover the cost of making the plan from the council, and
  - (c) certify that the draft coastal zone management plan has been prepared in accordance with the requirements of this Act and publish it in the Gazette.

Such a plan is taken to have been made by the council in accordance with this Part.



**Section 22**

Unamended s 55H

**22 Gazettal and commencement of coastal zone management plans**

- (1) If the Minister certifies that a draft coastal zone management plan has been prepared in accordance with the requirements of this Act, the council is to make the plan and publish it in the Gazette.
- (2) A coastal zone management plan takes effect on the date on which it is published in the Gazette or, if a later date is specified in the plan for its commencement, on the later date so specified.

**Section 23**

Unamended s 55I

**23 Amendment and repeal of coastal zone management plans**

- (1) A coastal zone management plan may be amended (in whole or in part) or repealed by a coastal zone management plan.
- (2) A coastal zone management plan can be repealed only by a coastal zone management plan that replaces it.

**Section 24**

Unamended s 55J

**24 Availability of coastal zone management plans**

- (1) A copy of a coastal zone management plan must be available for inspection by the public without charge at the office of the council during ordinary office hours.
- (2) A copy of a coastal zone management plan must be available for public inspection on the Internet website of the council within 7 days of its publication in the Gazette.

**Section 25**

Amended s 55K

**25 Breach of coastal zone management plan: offence**

- (1) A person must not carry out work for the purpose, or that has the effect, of preventing or remediating beach erosion, or for protecting property affected or likely to be affected by beach erosion, unless the work is:
- (a) in accordance with the relevant coastal zone management plan, or
  - (b) development for which consent has been granted or exempt development under the *Environmental Planning and Assessment Act 1979* or an approved State significant infrastructure within the meaning of Part 5.1 of that Act,
- (2) However, if a person commits the offence under subsection (1) by placing material on a beach, or a sand dune adjacent to a beach, and the material is comprised of
- (a) sand, or fabric bags filled with sand, the maximum penalty for the offence is 2,000 penalty units (in the case of a corporation) or 1,000 penalty units (in any other case).
  - (b) rocks, concrete, construction waste, debris or other material prescribed by the regulations the maximum penalty for the offence is 2,250 penalty units (in the case of a corporation) or 1,125 penalty units (in any other case).

**Section 26**

Amended s 55L

**26 Breach of coastal zone management plan: restraint**

- (1) The Minister, a council or any person who resides in the relevant local council area may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a coastal zone management plan.
- (2) If the Land and Environment Court is satisfied that a breach of a coastal zone management plan has been committed or that a breach of a coastal zone management plan will, unless restrained by an order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.
- (3) The functions of the Land and Environment Court under this section are in addition to and not in derogation of any other functions of the Court.
- (4) In this section,

**"a breach of a coastal zone management plan"** means:

- (a) a contravention of or failure to comply with a coastal zone management plan, and
  - (b) a threatened or apprehended contravention of or a threatened or apprehended failure to comply with a coastal zone management plan.
  - (c) the construction of 'new' unapproved 'temporary coastal protection works' after the commencement of this Act, and or the failure to remove temporary coastal protection works once the two year period of temporary use has expired.
- (5) This section does not apply to a breach of a coastal zone management plan that is an act or omission that is:
- (a) development for which consent has been granted, exempt development or development that does not need consent under the *Environmental Planning and Assessment Act 1979* or an approved State significant infrastructure within the meaning of Part 5.1 of that Act,
- (6) Despite subsection (1), a council may not bring proceedings under this section to remedy or restrain a breach of a coastal zone management plan by the State or a NSW Government agency.