

Hon Frank Sartor MP

Minister for Climate Change and the Environment and
Minister Assisting the Minister for Health (Cancer)



MAYORAL

Clr Paul Green
Mayor
Shoalhaven City Council
PO Box 42
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Dear Clr Green

Referred to: m Holmes ①
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On 22 September 2010, the NSW Government introduced a Bill that will better equip councils and communities to plan for and deal with coastal erosion. The Bill will be dealt with by Parliament in the coming weeks.

Approximately 40 houses have been lost due to coastal erosion since the 1940s and some 200 houses at 15 erosion "hot spots" are currently at risk in the event of a significant coastal storm.

Titled *The Coastal Protection and Other Legislation Amendment Bill (2)*, this Bill provides for a number of key improvements in the planning and management of our coasts in the face of erosion. The Bill:

- Increases options available to councils when dealing with coastal erosion and unauthorised coastal protection works;
- Clarifies what landowners can do to protect their own properties, particularly in emergencies;
- Strengthens requirements for the preparation of coastal management plans;
- Creates an expert NSW Coastal Panel to advise on coastal management and approve temporary or permanent coastal protection works in some circumstances; and
- Provides additional protection for councils dealing with coastal erosion issues.

To assist in communities understanding these changes and what they may mean for them, please find enclosed:

- an information sheet clarifying what the Bill does and does not do; and
- some frequently asked questions and answers on the changes.

The NSW Government is committed to supporting coastal councils and communities manage the significant challenges caused by coastal erosion.

Should you have any queries about these changes, please do not hesitate to contact Claire Allen in my office on 02 9228 3245, or Mike Sharpin from the Department of Environment, Climate Change and Water on 02 9995 6068.

Yours sincerely

Frank Sartor MP

Enclosure

Coastal Protection and Other Legislation Amendment Bill (2)

QUESTIONS AND ANSWERS *As at 28 September 2010*

What will the Bill do?

The new legislation will:

- increase the options available to councils when dealing with coastal erosion and unauthorised coastal protection works;
- provide practical options for landowners to protect their own properties, particularly in emergencies, and stricter controls to prevent inappropriate works that would add to erosion or damage beaches or access to beaches;
- strengthen requirements for the preparation of coastal management plans; and
- create an expert NSW Coastal Panel to advise on coastal management and approve applications in some circumstances.

The Bill will achieve these outcomes by changing the Coastal Protection Act, the Local Government Act and three regulations (the Conveyancing (Sale of Land), Environmental Planning and Assessment Regulation and the Local Government (General) Regulations). The changes to these Acts and regulations will commence in approximately 2 months.

The new legislation will be complemented by changes to the Infrastructure SEPP (a planning policy made under the Environmental Planning and Assessment Act) to allow landowners to apply for approval to construct works to protect their property for the long term, provided they maintain the works and manage any erosion impacts.

Why are these changes necessary?

1. These changes are needed to improve planning for coastal protection. Existing arrangements haven't produced adequate or timely coastal management plans. There is a need for greater focus and more expedited finalisation of coastal management plans.
2. There is a need for greater clarity in the protection of our beaches, such as to ensure works to not cause erosion elsewhere, safety problems or unreasonably restricts public access.
3. There is the need for better protection for councils against liabilities and risks as they tackle increasingly difficult coastal erosion issues.
4. Not allowing landowners to protect their properties will lead to losses of homes. Some 40 houses have been lost due to erosion since the 1940s and around 200 houses are at risk from erosion should a major storm occur.

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How does the Act help coastal landholders?

Changes to the Coastal Protection Act help coastal landholders by providing a temporary opportunity to protect homes so they can identify permanent solutions, and get approval for more permanent works.

The related changes to the infrastructure SEPP provide a clear and more accountable process for dealing with non-emergency protection measures (see *longer term coastal protection works* below).

How does the Act protect public beaches?

The Coastal Protection Act changes will protect public beaches by setting out strict controls on the types of coastal erosion protection works, including where and when works may be placed. Authorised officers from councils and some State Government agencies will have the power to order the removal of any emergency works causing erosion, unreasonably limiting beach access, or presenting a safety risk. Long term works by landholders will only be permitted if the landowners who progress the works pay to maintain them and manage any erosion impacts.

Councils, of course, will continue to be able to carry out such works.

How does the Act change what councils do?

When the Act changes commence, Councils will:

- through authorised officers, be able to issue certificates to allow landowners to place emergency coastal protection works and issue orders to modify or remove these works if they are causing erosion or presenting a risk to public safety;
- have increased powers relating to removing illegal material dumped on beaches;
- be able to charge landowners for council's costs of maintaining an approved seawall built by landowners and managing any erosion caused by the seawall;
- need to ensure that their coastal zone management plans appropriately address coastal erosion risks, risks to the health of our estuaries and consider projected climate change impacts; and
- be able to expedite the preparation of and finalisation of coastal zone management plans.

Who will pay?

Landowners who have initiated coastal protection works will need to pay to build and maintain these works. They will also have to pay for the cost of managing any impacts on beaches. Where a public benefit is involved, landowners and councils may agree to fund works jointly, providing that appropriate arrangements are in place to fund the ongoing maintenance and management of these works.

Landowners will not be required to build coastal protection works – participation in any scheme to build works is voluntary. Any charges issued by Councils relating to protection works will only apply to land where current or past landowners have

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voluntarily contributed to the cost of the works which have been constructed since the commencement of the Act.

Councils may decide to undertake works themselves, and may choose to recover all or part of these costs from benefiting owners.

Where do the Act changes apply?

The Coastal Protection Act applies to the entire NSW coastline. Emergency works can only be undertaken in locations where houses are known to be at risk from erosion. These areas will be listed on the Department of Environment, Climate Change and Water's website.

Who will monitor these changes?

Authorised staff from coastal councils and some State Government agencies will monitor emergency coastal protection works placed by landowners and issue orders if the works are causing erosion or impacting on beach access or public safety issue.

When will the Act changes start?

The changes to these Acts are expected to commence by 1 January 2011. This provides time for important supporting documents to be prepared in consultation with coastal councils and other stakeholders.

EMERGENCY COASTAL PROTECTION WORKS

What types of emergency works are provided for?

Emergency coastal protection works to be allowed under the Coastal Protection Act include sand and large sandbags. The use of rocks, concrete or construction waste is not allowed for emergency works by private owners. The Minister's Requirements will detail where, when and how emergency works may be built.

Who pays for emergency works?

Landowners who wish to place emergency works will need to pay for them to be placed, maintained and removed and the beach restored.

When can emergency works be placed?

Emergency works can be placed in advance of periods when erosion is reasonably likely to occur. This is to ensure that it is safe to place these works on a beach.

How long can emergency works be in place for?

The maximum period allowed for emergency works is 12 months, or until any Development Application for longer term works lodged in this period is determined.

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What happens if emergency works start causing erosion?

If emergency works are causing erosion on neighbouring land, an authorised officer may issue an order to the landowner requiring them to remove the works. If the landowner does not comply with this order, an authorised officer can remove the works.

What happens if emergency works are in place for a longer period than allowed?

If a landowner does not remove emergency works when the allowed time has expired, the council or other authorised agency may remove the works and restore the land or order this to occur.

Action may be taken to recover the costs that are incurred in removing emergency works and restoring the land from the landowner. The landowner may also be found guilty of an offence and subject to a penalty.

If a private land owner has undertaken emergency works and has lodged a DA for permanent works before the 12 month approval period has expired, the works can not be ordered to be removed until the DA has been determined.

Where will emergency works be allowed?

Emergency works will only be allowed on the open coast in specific locations detailed in the Minister's Requirements. These specific locations will be areas where houses and other lawful structures are known to be at risk from coastal erosion should a severe storm occur.

LONGER TERM COASTAL PROTECTION WORKS

How do landowners apply to build longer term protection works such as seawalls?

Private landowners who want to build a seawall will need to apply to the relevant local council or the NSW Coastal Panel for approval under the Environmental Planning and Assessment Act. Proposals must meet forthcoming new requirements under the State Environmental Planning Policy (Infrastructure).

Applicants will need to make arrangements to fund the building of the seawall, and will need to satisfy the consent authority that satisfactory arrangements are in place for the ongoing maintenance and management of any off site impacts.

What happens if one landowner out of a group of landowners doesn't want to build a seawall?

No landholder will be compelled to contribute to any proposed work that may be pursued by other landholders. Landowners who wish to build a seawall will need to agree on their individual contributions before works commence. This includes each landowner's required share of future maintenance and erosion control works.

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Landowners may make private contractual arrangements to cross-subsidise landowners unable to fund any works.

Alternatively, land owners may obtain the agreement of the local council to fully or partially undertake and/or fund such works.

How will the Government ensure that seawalls built by landowners will not erode our beaches?

Councils will be able to levy a charge on land whose current or past landowners have legally built a seawall or other long term works since the commencement of the Act. The charge will fully cover council's costs of maintaining the wall and restoring any areas of beach that may be eroded by the seawall. This will ensure that the seawall and its effects on the beach are properly managed into the future, with costs paid by the landowners. The charge can only cover the costs associated with managing erosion impacts caused by the land-owner funded works.

OTHER CHANGES

What is the Coastal Panel?

The NSW Coastal Panel is a group of experts nominated by local councils and State Government departments that will provide advice to the Minister and councils on coastal issues and consider and determine applications for long-term coastal protection works where a local council is not (or chooses not to be) the decision maker.

What are "authorised officers"?

An authorised officer will be a designated employee of a coastal council or some State Government agencies who has suitable knowledge, skills and legal powers to investigate potential breaches of the Coastal Protection Act and issue orders under this Act.

An authorised officer will be required to carry an identification card, and will have powers to enter certain lands, issue orders and ensure compliance with the Act. It will be an offence under this Act to obstruct or intimidate an authorised officer carrying out their functions under the Act.

How does the Act ensure plans are in place for managing coastal erosion risks?

The Minister will now be issuing directions for councils in coastal erosion hot spot areas to prepare coastal erosion emergency plans by 30 June 2011.

The Act and new guidelines set out specific requirements for the development of coastal zone management plans which ensure that plans are prepared in a consistent manner, and appropriately address coastal erosion risks, risks to the health of our estuaries and consider projected climate change impacts.

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How will the State Government support councils to implement these measures?

The State Government will be providing funding to Councils to assist them to prepare emergency plans. The Government will also be providing new guidelines to assist in implementing these changes.

What are the new penalties?

The maximum penalty for an offence under the Coastal Protection Act will increase penalties in line with existing penalties for dumping under the Protection of the Environment Operations Act. This is a significant increase on the current maximum penalty of \$11,000 to \$250,000 for an individual and \$500,000 for a company.

What are the new orders?

The Coastal Protection Act will include order powers to stop the illegal dumping of material on a beach which is causing erosion, presenting a public safety risk or limiting public access. The Act will also provide the ability to remove material if the order is not followed.

What are the "Minister's Requirements"?

The Minister's Requirements will include technical details of emergency coastal protection works, including allowable materials, construction and safety considerations. They also include details of when, where and how emergency works can be placed. They will be available on DECCW's website.

What guidelines, Ministerial requirements and other support policies will be provided to guide councils and affected members of the community, and when will they be finalised and published?

The following companion documents have been placed on the Department of Environment, Climate Change and Water's website for public comment:

1. Draft Minister's Requirements under the Coastal Protection Act 1979;
2. Draft guide to the Statutory Requirements for Emergency Coastal Protection Works;
3. Draft guide for authorised officers under the Coastal Protection Act; and
4. Draft guidelines for preparing coastal zone management plans. These guidelines will replace and update the 1990 Coastline Management Manual, which councils have been using to prepare their coastal plans.

These supporting policies will be finalised and published by the time the changes come into force.

And two additional guidelines will shortly be placed on the website for public comment:

1. Draft Guidelines for Assessing and Managing the impacts of seawalls; and
2. Draft Coastal Protection Service Charge Guidelines.

These supporting policies will be finalised and published by 1 June 2011.

**Changes to the Coastal Protection Act to manage coastal erosion
28 September 2010**

The *Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)* will make changes to the *Coastal Protection Act* and the *Local Government Act* and minor changes to various regulations.

WHAT THE AMENDMENTS DO

<i>Better coastal protection</i>	
<input checked="" type="checkbox"/>	Adds an objective to the Coastal Protection Act to promote adaptation to coastal climate change impacts and beach amenity.
<input checked="" type="checkbox"/>	Improves the Act's coastal management planning requirements so that more councils get long term coastal erosion and emergency response plans in place more quickly, including allowing the Minister to direct a council to prepare a plan (sections 55B, 55C and 55G, Coastal Protection Act).
<input checked="" type="checkbox"/>	Requires coastal zone management plans to include managing risks from coastal hazards, estuary health risks and the potential impacts of climate change on these risks.
<input checked="" type="checkbox"/>	Establishes an expert NSW Coastal Panel with local government and public authority appointees to act as a consent authority for a development application works where council does not have a coastal plan in place and provides advice to the Minister and local councils (section 12, Coastal Protection Act).
<input checked="" type="checkbox"/>	Increases information about land in relation to coastal risks and likely management responses by councils. Details from applicable coastal zone management plans would be included in section 149 planning certificates under the Environmental Planning and Assessment Act (sections 56B, Coastal Protection Act).
<input checked="" type="checkbox"/>	Better protects councils from liabilities so they can carry out essential coastal actions effectively (section 733, Local Government Act).
<input checked="" type="checkbox"/>	Enables coastal zone management plans to be prepared for Sydney Harbour, Botany Bay, and the Hawkesbury River Estuary.
<input checked="" type="checkbox"/>	Eliminates overlap between the coastal erosion emergency section of coastal zone management plans and disaster plans prepared under the State Emergency and Rescue Management Act and removes unnecessary duplication for offshore activities carried out by public authorities.

<i>Balances public interest with private property rights</i>	
<input checked="" type="checkbox"/>	Establishes a practical and fair framework to ensure balance between protecting private property, public assets and beaches from coastal erosion.
<input checked="" type="checkbox"/>	Allows landowners an opportunity to place temporary sandbags or sand on a beach under strict conditions to reduce the impacts of coastal erosion threats to their properties while longer term actions are considered (sections 55O-55Z, Coastal Protection Act).
<input checked="" type="checkbox"/>	Requires that works by private owners must not cause beach erosion, limit public access or risk public safety (section 55M, Coastal Protection Act).
<input checked="" type="checkbox"/>	Requires satisfactory arrangements for ongoing maintenance of permanent protection works (section 55M, Coastal Protection Act).
<input checked="" type="checkbox"/>	Requires that any consent for long-term coastal protection works, such as seawalls, to include conditions requiring maintenance of the works and restoring erosion damage caused by the works.
<input checked="" type="checkbox"/>	Requires a review of the Act after 5 years and a review of the section allowing emergency protection works after 2 years.
<i>Empowers councils to protect our beaches</i>	
<input checked="" type="checkbox"/>	Empowers specialist authorised officers of councils or State agencies to order the removal of temporary work if it is causing erosion or safety risks, or interfering with continued public access to beaches (sections 55ZC, Coastal Protection Act).
<input checked="" type="checkbox"/>	Improves powers of authorised officers (councils and public authorities) to investigate breaches of the Act.
<input checked="" type="checkbox"/>	Improved order powers relating to illegal dumping of material on a beach which is causing erosion, presenting a public safety risk or limiting public access, including “stop work” orders and ability to remove material if order not followed, with costs recovered.
<input checked="" type="checkbox"/>	Allow councils to levy a coastal protection service charge outside rate-pegging on landowners who build seawalls (not retrospective) , to recover the costs of maintaining a wall and managing its erosion impacts on beaches for the life of the works.
<input checked="" type="checkbox"/>	Improves powers to order a person to stop placing or to remove illegal material such as rocks or waste placed on a beach, where this is likely to cause erosion or present a public safety risk.
<input checked="" type="checkbox"/>	Increased penalties for breaches of the Act in line with penalties for illegal dumping under the Protection of the Environment Operations Act.
<input checked="" type="checkbox"/>	Require councils to place a copy of their coastal zone management plan on their website.

WHAT THE AMENDMENTS DO NOT DO:

<input checked="" type="checkbox"/>	Allow works by landowners that would result in beach erosion. Emergency works that start causing erosion can be ordered to be removed, and any long term works such as seawalls will only be approved if any erosion impacts are managed through good design and/or beach nourishment (sections 55M and 55ZC, Coastal Protection Act).
<input checked="" type="checkbox"/>	Stop access to beaches. Any emergency works that obstruct beach access can be ordered to be removed and any long term works such as seawalls will only be approved if they do not unreasonably impede access to a beach (sections 55M and 55ZC, Coastal Protection Act).
<input checked="" type="checkbox"/>	Allow landowners, as part of emergency works, to dump rocks or waste on beaches to protect their property from erosion. Only sand or sandbags can be used for emergency works, and long term works can only be constructed with consent if beaches and safety are protected (sections 55M and 55P, Coastal Protection Act).
<input checked="" type="checkbox"/>	Allow landowners to protect their property from erosion without approvals. For emergency works land owners will need to obtain a certificate from an authorised officer of a council or the Department of Environment. For permanent works, such as building a seawall, , development consent will be required under the Environmental Planning and Assessment Act (sections 55M and 55T, Coastal Protection Act).
<input checked="" type="checkbox"/>	Reduce private property rights. In fact, landowners will have the additional right to carry out emergency works provided it is certified by an authorised officer, as well to make a development application for permanent works as is the case now.. Landowners will be able to apply for works to protect their property. (sections 55M and 55T, Coastal Protection Act).
<input checked="" type="checkbox"/>	Allow unreasonable use of public land to protect private property. These works can only be placed on public land if it is not practical to use private land (sections 55Z, Coastal Protection Act).
<input checked="" type="checkbox"/>	Place an unreasonable burden on local councils. Councils will be able to recover fees and charges associated with their approval and compliance activities (sections 55T and 55ZE, Coastal Protection Act).
<input checked="" type="checkbox"/>	Force landowners to spend money to protect their property from erosion. The emergency and long term property protection arrangements are voluntary.
<input checked="" type="checkbox"/>	Allow new urban development in areas at risk from erosion. Development in coastal areas is managed under the Environmental Planning and Assessment Act through councils' local environmental plans, State Environmental Planning Policy No 71 (Coastal Protection) and the Department of Planning's recently released "NSW Coastal Planning Guideline: Adapting to Sea Level Rise".
<input checked="" type="checkbox"/>	Allow councils to levy a coastal protection service charge for existing seawalls. Councils will only be able to charge landowners who have voluntarily contributed to the cost of building a seawall, where the seawall was constructed after the Act amendments commence (sections 496B and 553B, Local Government Act).