Coastal Protection Regulation 2011
under the
Coastal Protection Act 1979

[The following enacting formula will be included if the Regulation is made:] Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the Coastal Protection Act 1979.

Minister for Climate Change and the Environment

Explanatory note
The object of this Regulation is to make provision for certain matters under the Coastal Protection Act 1979.

The Regulation remakes (with only minor changes in substance) certain provisions of the Coastal Protection Regulation 2004 which was repealed on 1 September 2010 by section 10 (2) of the Subordinate Legislation Act 1989.

Specifically, the Regulation:
(a) prohibits the carrying out of certain development on any part of the coastal zone below the mean high water mark (excluding any estuary, lake or artificial harbour), except with the concurrence of the Minister for Climate Change and the Environment, and
(b) provides that requirements specified in a Code of Practice published by the Department of Environment, Climate Change and Water in February 2011 must be complied with in relation to:
   (i) the placement, maintenance and removal of emergency coastal protection works, and
   (ii) orders to remove material, structures and emergency coastal protection works on beaches, and
   (iii) the restoration of land after the removal of material, structures and emergency coastal protection works, and
Coastal Protection Regulation 2011

Explanatory note

(c) provides for a scheme of categorisation of land within the coastal zone into risk categories according to the level of the risk that particular land will be adversely affected by coastal hazards, including providing for the following:

(i) the determination by the Minister, by certification of a council’s coastal zone management plan, of the risk category to which particular land is to be allocated and the likely response of public authorities to the risks posed by coastal hazards to the land,

(ii) the inclusion in planning certificates issued under section 149 of the Environmental Planning and Assessment Act 1979 of information regarding such determinations, and

(d) authorises persons to whom a Coastal Authority may delegate the exercise of its functions, and

(e) prescribes certain offences under the Coastal Protection Act 1979 as penalty notice offences and prescribes penalty notice amounts for those offences, and

(f) provides for transitional arrangements for draft coastal zone management plans submitted to the Minister for approval before the commencement of the Coastal Protection and Other Legislation Amendment Act 2010.

This Regulation is made under the Coastal Protection Act 1979, including sections 39 (2), 55P (2) (f), 55R (1) (d), 55Y (1) (b), 55ZA (3) (b), 55ZC (5) (b), 59B and 60 (the general regulation-making power) of, and clause 1 (1) of Schedule 1 to, that Act.
Coastal Protection Regulation 2011

Contents

Part 1 Preliminary

1 Name of Regulation 5
2 Commencement 5
3 Definitions 5

Part 2 Regulation of coastal development

4 Application of Part 6
5 Regulation of development generally 6
6 Exemption of certain development from this Part 6

Part 3 Requirements relating to emergency coastal protection works

7 Requirements for placement of material as emergency coastal protection works 8
8 Requirements for maintenance of emergency coastal protection works 8
9 Requirements for removal of emergency coastal protection works and restoration of land 8
10 Requirements for restoration of land in compliance with order to remove certain materials and structures unlawfully placed on beaches 8
11 Requirements for restoration of land in compliance with order relating to emergency coastal protection works 8
12 Failure to comply with any requirements not an offence 8

Part 4 Categorisation of coastal risks to land

13 Coastal hazard risk categories 9
14 Determination by the Minister of the likely response of public authorities to the risks posed by coastal hazards 9
15 Determination by the Minister of the risk category of particular land and likely response of public authorities to coastal hazard risks 9
16 Information regarding coastal hazard risk category and likely responses to be included on planning certificates 10

Part 5 Miscellaneous

17 Delegation of functions of Coastal Authorities 11
18 Penalty notice offences and penalties 11
Coastal Protection Regulation 2011

Contents

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
</tr>
<tr>
<td>12</td>
</tr>
</tbody>
</table>

Page 4
Coastal Protection Regulation 2011
under the
Coastal Protection Act 1979

Part 1 Preliminary

1 Name of Regulation

This Regulation is the Coastal Protection Regulation 2011.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

   Code of Practice means the document entitled Code of Practice under the Coastal Protection Act 1979 published by the Department in February 2011.

   Note. A copy of the draft Code of Practice is available for inspection at the same places and in the same manner as this public consultation draft Regulation.

   the Act means the Coastal Protection Act 1979.

(2) Notes included in this Regulation do not form part of this Regulation.
Part 2 Regulation of coastal development

4 Application of Part

(1) This Part applies to such part of the coastal zone as is below the mean high water mark, excluding any estuary, lake or artificial harbour.

(2) In this clause, estuary includes:

(a) any part of a river whose level is affected (including intermittently affected) by coastal tides, or

(b) any partially enclosed body of water that is intermittently open to the sea.

5 Regulation of development generally

A person (including a public authority) must not, without the concurrence of the Minister, carry out development on any part of the coastal zone to which this Part applies.

Note. Contravention of this clause (otherwise than by the Crown) constitutes an offence for which the maximum penalty under section 58 of the Act is 400 penalty units (in the case of a corporation) or 200 penalty units (in any other case).

Section 37B of the Act provides that concurrence of the Minister under Part 3 of the Act is not required in relation to the carrying out in the coastal zone of any development (within the meaning of the Environmental Planning and Assessment Act 1979) that:

(a) requires development consent under that Act, or

(b) is exempt development under that Act, or

(c) is carried out in accordance with a coastal zone management plan under Part 4A of the Act.

Section 39 (3) of the Act provides that this Part does not apply to or in respect of an area that is subject to an environmental planning instrument (other than a State environmental planning policy).

Section 75U (1) (a) of the Environmental Planning and Assessment Act 1979 provides that concurrence under this Part is not required for an approved project within the meaning of Part 3A of that Act.

6 Exemption of certain development from this Part

Clause 5 does not apply to the following:

(a) the dredging of sediment from the seabed, where the dredging occurs in water of a depth greater than 30 metres below mean sea level and the volume of sediment removed is less than 100 cubic metres per year,

(b) the placement of sediment on the seabed where the depth of water following the placement will be greater than 30 metres below mean sea level and the volume of sediment placed is less than 10,000 cubic metres per year,
Coastal Protection Regulation 2011
Regulation of coastal development

Clause 6
Part 2

(c) the placement of any solid object on the seabed where the top of the object after placement is to be greater than 30 metres below mean sea level,

(d) the temporary disturbance of the seabed (less than 30 days in any location) associated with the carrying out of development under the seabed such as the laying of pipes and cables.
Part 3 Requirements relating to emergency coastal protection works

7 Requirements for placement of material as emergency coastal protection works

For the purposes of section 55P of the Act, the requirements set out in Parts 1 and 2 of the Code of Practice relating to the placement of material as emergency coastal protection works are specified.

8 Requirements for maintenance of emergency coastal protection works

For the purposes of section 55R of the Act, the requirements set out in Parts 1 and 3 of the Code of Practice relating to the maintenance of emergency coastal protection works are specified.

9 Requirements for removal of emergency coastal protection works and restoration of land

For the purposes of section 55Y (1) of the Act, the requirements set out in Parts 1 and 4 of the Code of Practice are specified.

10 Requirements for restoration of land in compliance with order to remove certain materials and structures unlawfully placed on beaches

For the purposes of section 55ZA (3) (b) of the Act, the requirements set out in Part 5 of the Code of Practice are specified.

11 Requirements for restoration of land in compliance with order relating to emergency coastal protection works

For the purposes of section 55ZC (5) (b) of the Act, the requirements set out in Part 4 of the Code of Practice are specified.

12 Failure to comply with any requirements not an offence

For the avoidance of doubt, requirements set out in the Code of Practice are specified for the purposes of sections 55P, 55R, 55Y, 55ZA and 55ZC of the Act only and are not directions or prohibitions by or under this Regulation. Therefore, a failure to comply with any such requirement is not an offence under section 57 (2) of the Act.

Note. If works have been placed or maintained contrary to a requirement set out in the Code of Practice, the works are not “emergency coastal protection works” for the purposes of the Act. Such works therefore cannot benefit from the operation of section 55O. That section provides that a person who places emergency coastal protection works that are authorised by a certificate under Division 2 of Part 4C of the Act is not required to obtain regulatory approval under the Act or any other law.
Part 4  Categorisation of coastal risks to land

13 Coastal hazard risk categories

Land within the coastal zone that is, or is likely to be, adversely affected by a coastal hazard may be categorised under this Part according to the following risk categories:

(a) Risk Category 1—that the land is, or is likely to be, adversely affected by the coastal hazard at the present time (a current coastal hazard),

(b) Risk Category 2—that the land is not, and is not likely to be, adversely affected by the coastal hazard at the present time, but is likely to be adversely affected by the coastal hazard in the year 2050 (a 2050 coastal hazard),

(c) Risk Category 3—that the land is not, and is not likely to be, adversely affected by the coastal hazard at the present time or in the year 2050, but is likely to be adversely affected by the coastal hazard in the year 2100 (a 2100 coastal hazard).

14 Determination by the Minister of the likely response of public authorities to the risks posed by coastal hazards

The Minister may determine under this Part that the likely response of public authorities to a risk posed by a coastal hazard to land is as follows:

(a) Response Category A—that coastal protection works to deal with the risk concerned are considered technically feasible and cost effective and that the public authority is likely to undertake the works when funding is available,

(b) Response Category B—that coastal protection works to deal with the risk concerned are considered technically feasible, but not cost effective for public funding, so that the public authority is not likely to undertake the works,

(c) Response Category C—that coastal protection works to deal with the risk concerned are not considered technically feasible, so that the public authority is not likely to undertake any works.

15 Determination by the Minister of the risk category of particular land and likely response of public authorities to coastal hazard risks

(1) For the purposes of section 56B (b) of the Act, the Minister may, in relation to a coastal hazard that adversely affects or is likely to adversely affect particular land within the coastal zone, determine that the land is allocated to a risk category for the coastal hazard.
(2) For the purposes of section 56B (c) of the Act, the Minister may determine under this Part the likely response of public authorities to the risks posed by a coastal hazard that adversely affects or is likely to adversely affect particular land.

(3) A determination under subclause (1) or (2) may be made by certifying, under section 55G of the Act, a draft coastal zone management plan for a council that (respectively):
   (a) allocates particular land to a risk category for a coastal hazard, or
   (b) specifies the likely response of public authorities to the risks posed by the coastal hazard.

(4) Any such determination takes effect 45 days after the date on which the coastal zone management plan takes effect.

16 Information regarding coastal hazard risk category and likely responses to be included on planning certificates

If a determination of the Minister under this Part in relation to particular land has taken effect, a certificate under section 149 of the Environmental Planning and Assessment Act 1979 issued in respect of the land must include a statement of the following (as relevant):

(a) the risk category to which the determination has allocated the land in relation to each coastal hazard that adversely affects, or is likely to adversely affect, the land, and

(b) the likely response, as specified by the determination, of public authorities to the risks posed by those coastal hazards to the land.
Part 5  Miscellaneous

17  Delegation of functions of Coastal Authorities

For the purposes of section 9 of the Act, the following persons and classes of persons are authorised:

(a) in relation to the functions of the Minister as a Coastal Authority—any member of staff of the Department,

(b) in relation to the functions of a council as a Coastal Authority—the general manager of the council.

18  Penalty notice offences and penalties

(1) For the purposes of section 59B of the Act:

(a) each offence created by a provision specified in Column 1 of Schedule 1 is an offence for which a penalty notice may be served, and

(b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule.

(2) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

19  Transitional provision—draft coastal zone management plans submitted to Minister for certification before 1 January 2011

Section 55C (1) (d)–(g) of the Act, as inserted by the Coastal Protection and Other Legislation Amendment Act 2010, do not apply in relation to a draft coastal zone management plan submitted to the Minister for approval under section 55G of the Act before 1 January 2011.
## Schedule 1  Penalty notice offences

(Clauses 18)

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Provision</strong></td>
<td><strong>Penalty</strong></td>
</tr>
<tr>
<td><strong>Offences under the Act</strong></td>
<td></td>
</tr>
<tr>
<td>Section 55X</td>
<td>$550 for an individual</td>
</tr>
<tr>
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<td>$1,100 for a corporation</td>
</tr>
<tr>
<td>Section 55ZE (5)</td>
<td>$1,100</td>
</tr>
</tbody>
</table>