

Coastal Management and the *Biodiversity Conservation Act 2016*

The Coastal Management reforms establish a new strategic framework for managing coastal issues in NSW

The *Coastal Management Act 2016* (CM Act) and State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP) commenced on 3 April 2018, replacing the *Coastal Protection Act 1979* and consolidating several planning policies into one. The aim is to provide a coordinated and strategic approach to managing coastal issues, and to specify how development proposals within the coastal zone are to be assessed.

The coastal zone comprises four coastal management areas

The CM Act sets out objectives for each coastal management area. These four areas are mapped by the Coastal Management SEPP, which sets out specific assessment criteria that consent authorities must apply when assessing development proposals within each of these areas.

Land may be mapped as more than one management area. Assessment criteria for all applicable management areas apply according to the hierarchy of controls in clause 18 of the Coastal Management SEPP. The controls only apply to land as mapped, and where a lot is partially covered by a map, only the mapped land is affected.

Most activities within a coastal wetland or littoral rainforest require development consent

Clause 10(1) of the Coastal Management SEPP lists the types of activities that require development consent. They include: clearing of native vegetation, harm to marine vegetation, earthworks, levees, draining the land, environmental protection works and any other development. 'Development' is defined in section 1.5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

These activities (except environmental protection works) are declared to be 'designated development' under Part 4 of the EP&A Act, and therefore require an environmental impact statement (EIS) and public exhibition. Requirements in the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* relating to the form, content and exhibition of the EIS will apply.

A consent authority must not grant development consent unless satisfied that sufficient measures have been taken to protect (or enhance) the biophysical, hydrological and ecological integrity of these areas. Complying development is not permitted within the coastal wetlands and littoral rainforest areas. Exempt development is also generally not permitted.

The four coastal management areas are mapped as:

Coastal wetlands and littoral rainforests area - displays the floristic and hydrological characteristics of coastal wetlands or littoral rainforests.

Coastal vulnerability area - subject to coastal hazards such as coastal erosion and tidal inundation. N.B. This map is not yet available.

Coastal environment area - characterised by natural coastal features such as beaches, rock platforms, coastal lakes and undeveloped headlands. Marine and estuarine waters are also included.

Coastal use area - urban land adjacent to coastal waters, estuaries and coastal lakes and lagoons.

The Coastal Management SEPP maps can be accessed via an address search on the NSW Planning Portal:
<https://www.planningportal.nsw.gov.au/>

Environmental protection works may be carried out under Part 5 of the EP&A Act provided the proposed activities fall under a certified management program or an approved plan of management.

Development in the coastal wetlands and littoral rainforest areas is likely to also trigger a biodiversity assessment

The biodiversity offset scheme triggers apply to designated development in the same way they apply to a development under Part 4 of the EP&A Act. If a proposal is likely to significantly affect threatened species the development application will be required to be accompanied by a biodiversity development assessment report (BDAR) prepared by an accredited assessor.

Coastal Wetlands and Littoral Rainforests are a category of land included in the Biodiversity Values Map. If the proposal involves the clearing of native vegetation or a prescribed biodiversity impact on the Biodiversity Values map, then a BDAR must be prepared.

Suitable biodiversity offset actions may be able to be approved for the proposed development, providing the requirements of the EP&A Act and Coastal Management SEPP are met. As noted above, this includes the requirement that the consent authority is satisfied that sufficient measures have been, or will be made, to protect, and where possible enhance the biophysical, hydrological and ecological integrity of the relevant coastal wetland or littoral rainforest on which development is proposed.

Development adjacent to coastal wetlands and littoral rainforests

The Coastal Management SEPP also maps 100-metre-wide 'proximity areas' around coastal wetlands and littoral rainforests. These areas are not included in the Biodiversity Values Map and development occurring in these areas is not designated development. However, the consent authority must not grant development consent unless satisfied there will not be a significant impact on the biophysical, hydrological or ecological integrity of the adjacent wetland or rainforest, or on the quantity and quality of surface and ground water flows to and from an adjacent wetland or rainforest.

Development consent cannot be granted in other management areas unless development is unlikely to cause adverse impacts

All other coastal management areas identified in the Coastal Management SEPP are not categories of land automatically included on the Biodiversity Values Map. Development consent must not be granted unless the consent authority is satisfied that the proposed development is unlikely to cause an adverse impact on those matters listed under clauses 11-15. Also, as with any development proposal, if the development is likely to significantly affect threatened species, the development application will need to include a BDAR prepared by an accredited assessor.

A development is likely to have a significant impact on threatened species if it involves:

- clearing of native vegetation or prescribed impacts on land included on the Biodiversity values map OR
- clearing native vegetation that exceeds the area clearing threshold OR
- a likely significant impact on threatened species, ecological communities and their habitats as per the test in section 7.3 of the BC Act OR
- impact on an area of outstanding biodiversity value.

More information is available at <https://www.environment.nsw.gov.au/biodiversity/entryrequirements.htm>

Prescribed impacts are identified in the *Biodiversity Conservation Regulation 2017* ([clause 6.1](#)).