

Environment Minister Rob Stokes Address to the NSW Coastal Conference 2014

Announcement of Stage 2 Coastal Reforms

13 November 2014

The Government promised to deliver a modern, coherent coastal management framework that is responsive to current needs and future challenges.

These reforms deliver on that promise.

These reforms offer a way through the conflict and tension that is increasing in many coastal communities. They will:

- deliver a modern legislative framework that minimises our exposure to future risk and liability
- allow communities to better manage the significant legacy of risk from past settlement patterns by providing better support for local decision making
- establish a more sustainable approach to funding coastal management actions
- enshrine public access to beaches and foreshores
- provide for the protection and conservation of our unique coastal environments for future generations.

These reforms usher in a new, collaborative and integrated approach to coastal management that will equip us to meet the challenges of the 21st century.

Stage 2 Coastal Reforms

Today I am announcing a comprehensive reform agenda for coastal management.

At the outset, I want to acknowledge that these reforms have been a long time in the making. And I know this has been the source of considerable frustration for coastal councils and communities alike.

But we needed to take the time to get it right, because it's clear we have a significant challenge on our hands.

We are now responding to that challenge with a reform package that delivers a new, integrated approach to coastal management in this state.

When I talk about an integrated approach, I don't just mean closer integration of the various activities and regulatory regimes of different government agencies and local councils – although this is of course a critical component.

I also mean better integrating the way we live with the natural process and cycles of the coast: managing our interactions with coastal processes more sustainably and with a view to the long term outcomes that will be our legacy to future generations.

The coastal reforms I am announcing tonight will deliver an integrated coastal management framework for the 21st century.

These reforms are essential. Our current legislative and policy settings weren't designed for the pressures and challenges facing our coast and coastal communities today.

Perhaps the most fundamental challenge is the inherently dynamic character of the coastline, which is subject to the effects of erosion, accretion and inundation. Climate change is expected to increase this variability.

Past settlement patterns failed to acknowledge this. The coastline was developed as if it was fixed and relatively stable. The possibility of sea level rise was not on the radar. We built on back dunes and fore dunes. We disrupted sediment movements along the coast. And we created a legacy of risk that is currently fuelling community distress and conflict in a number of coastal communities.

Our knowledge of coastal processes and hazards is light years ahead of where it was in 1979, but our legislative architecture is still of that time, various amendments over recent decades notwithstanding.

We need a new approach, one that allows us to respond effectively to coastal processes and hazards, and allows us to manage the unique environmental, social and economic values of the coast in a planned and strategic way.

These reforms will:

- provide certainty for local communities and councils about coastal management priorities, and put in place the tools and support services they need
- enable vulnerable communities to better manage current risks from coastal hazards like erosion, minimise exposure to future risks, and make informed infrastructure decisions
- reinforce and promote public access, use and enjoyment of the coast
- support the continued prosperity of our saltwater economy.

There are three key elements to the reform package:

- new legislation to replace the Coastal Protection Act with a new Coastal Management Act
- new arrangements to better support council decision making. This will include a new decision support framework, a new coastal management manual and improved technical advice
- more sustainable arrangements for funding and financing coastal management activities.

The three elements are inter-dependent and operate collectively to deliver a new coastal management framework.

Importantly, the policy objectives of these coastal reforms are consistent with the objectives of the marine estate management reforms. Both underscore the importance of maintaining public use and enjoyment of the coast and marine estate.

1. NEW LEGISLATION

Deficiencies in the current legislative framework

The Coastal Protection Act was enacted in 1979, as companion legislation to the Environmental Planning and Assessment Act (EP&A Act).

Since then, numerous amendments have been made to the Act as the broader legislative and policy context has evolved. The Act has been joined by a number of other statutory instruments for regulating land use planning in the coastal zone, including SEPP 71 (Coastal Protection), SEPP 14 (Coastal Wetlands) and SEPP 50 (Canal Estate Development), to name just a few.

Inevitably, and over time, the Act's interactions with land use planning legislation and local government legislation has become increasingly complex as attempts have been made to keep it relevant and effective.

Thirty five years on, the Coastal Protection Act is no longer fit for purpose:

- it has multiple interactions with the EP&A Act, the Local Government Act, numerous SEPPs, Ministerial Directions, statutory guidelines and codes of practice
- its emphasis on regulating impacts at the local or development assessment scale isn't consistent with emerging strategic approaches to land use planning and local government planning
- there is a growing disconnect between coastal zone management planning and the planning and financing of all other council priorities and services

- and we continue to have unresolved legal ambiguities about land tenure when property boundaries are subject to coastal erosion or accretion.

In short, the Coastal Protection Act is no longer helping us to deliver the regionally integrated and balanced coastal management outcomes we need to meet the challenges of today and the future.

It's time for a new approach that better responds to the coastal management challenges we are facing in the 21st century.

We need new legislation that is less complex and a better fit with land use planning and local government legislation in particular.

It needs to set a clear vision for coastal management, one that promotes sustainable development and use while preserving our unique coastal environments for future generations, and helps us find a way through the conflict and tension that is increasing in many coastal communities.

The new Coastal Management Act - overview

The Government will deliver a new Coastal Management Act that will put coastal management on a sustainable footing for the future.

The Coastal Management Act will have a strategic focus, and will sit at the nexus of land use planning and local government strategic planning in the coastal zone.

It will set clear state-wide objectives for coastal management, and establish the statutory mechanisms needed to deliver those objectives through the regulatory frameworks for land use planning and local government community and strategic planning.

The Act will put in place a framework that promotes greater collaboration between coastal communities and councils in deciding how their coastlines are managed, and gives clearer guidance to state and regional planning authorities.

New statutory objectives

Since the Coastal Protection Act commenced in 1979 there has been a proliferation of goals, objectives and principles for coastal management in NSW.

Various iterations have appeared in subsequent environmental planning instruments, policy statements, and a suite of guidelines and manuals.

Coastal management authorities can be excused for being confused.

It's time we set a clear vision for the NSW coast that reflects our collective aspirations for the future and responds to the challenges we are facing today.

The new Act will articulate that vision through a modernised set of statutory objectives that promote:

- recognition of the important social values of the coast, the preservation of its natural character and processes and the maintenance of public access, use and enjoyment
- the protection, conservation and enhancement of coastal environmental values, including landscape function, biodiversity and ecosystem integrity
- recognition of the coast as a vital economic asset to the people of NSW
- management of the diverse economic, social and environmental values of the coast in a planned and strategic way
- the sustainable management of existing and emerging risks from coastal hazards, taking into account climate change
- avoiding future growth in unacceptable exposure to risks from coastal hazards.

These will be the objectives for our present and our future.

Integrating coastal considerations into strategic land use planning – telling a cohesive story

We are not telling a cohesive story about land use planning along our coastline. There is no clear line of sight from state-wide coastal management objectives to regional planning requirements and local planning provisions.

As a result, planning decisions can be made within one local government area that disrupt coastal processes and generate negative outcomes for adjacent local government areas.

We also need to acknowledge that planning at the local scale is not necessarily the best way to accommodate coastal processes, which can operate at broader scales and across local government boundaries.

The new Coastal Management Act will provide the storyline that is missing from the current legislative framework for coastal land use planning.

At the state-wide level, new coastal land use planning objectives will be developed to align with the statutory objectives in the Coastal Management Act. These will be incorporated into relevant state planning instruments, and will establish clear state-wide direction for regional and local planning instruments.

For the first time, the Act will provide for regional-scale coastal hazard mapping to be developed and incorporated into regional planning instruments. This will provide a clear context for strategic planning decisions at the regional and subregional scales. It will assist with priority setting and support the finer scale mapping that will continue to inform local level planning and decision making.

In addition to regional hazard mapping, the Act will set clear statutory requirements for regional planning instruments that apply to the coastal zone. This will redress a key deficiency in the current legislative framework.

By establishing a clear line of sight from state and regional planning instruments to Local Environment Plans, the Coastal Management Act will send strategic signals through the land use planning system and improve the degree to which LEPs and land use zones establish and accommodate appropriate measures to address identified risks, preserve public access and maintain and improve the visual amenity of the coast.

This strategic approach will also mitigate against ad hoc, temporary responses to coastal management issues.

Changes to coastal zone management planning – incorporation into the local government Integrated Planning and Reporting framework

The majority of coastal councils have dedicated extensive resources to the development of coastal zone management plans under the current Act.

That work is difficult and complex, but incredibly important.

It's too important to sit at the periphery of local government's main community, financial and asset management planning processes – the Integrated Planning and Reporting (IPR) framework

Unfortunately that is the effect of the current legislative arrangements. The current Act provides for stand-alone Coastal Zone Management Plans, but provides no signal these plans should inform, and be informed by, the planning councils undertake for all other asset management and community service delivery functions.

The new Coastal Management Act will change this. It will situate coastal management planning firmly within the IP&R framework, to deliver a more cohesive and integrated approach to coastal zone management planning.

For the first time, coastal management needs will be mainstreamed into, and able to inform, councils' overall service delivery and asset management planning responsibilities.

At the same time, coastal zone management planning will more effectively incorporate the broader financial and service delivery pressures that councils must balance. This will enable conversation at the community level about the best use of local resources for coastal management, and the feasibility and practicality of different options.

This approach dovetails into the Government's recently announced "Fit for the Future" reforms for local government.

New coastal management manual

At the centre of the new arrangements for coastal zone management planning will be a new statutory manual for coastal management.

The new coastal management manual will be made by the Minister for the Environment, and called up by the IPR guidelines.

The manual will address the requirements for coastal zone management planning to be established by the new Act. This will include information on managing coastal hazards, as well as the ecological and social values of our coastal areas.

Councils will be required to undertake coastal management planning within the IPR framework and in accordance with the manual.

Importantly, councils who undertake their coastal zone management planning within the IPR framework, and in accordance with the new manual, will satisfy the "good faith" provisions of the Local Government Act. This will provide those councils with exemption from prosecution for actions taken in good faith.

The manual will consolidate a number of current guidelines and fill critical gaps that have been identified through consultations with coastal councils. In relation to coastal hazards, this includes:

- clearly articulated, practical objectives for coastal management to guide council decision making
- a standardised process for undertaking risk assessment of coastal hazards
- advice on evaluating hazard management responses against social, economic and environmental criteria
- guidance on how to evaluate the economics of different management strategies and the spectrum of beneficiaries of those strategies
- mechanisms councils can use to fund and finance coastal management activities.

I will talk more about these components of the manual shortly. But for now I want to keep explaining the new legislative arrangements for coastal zone management planning and how they will be implemented.

Transitioning to the new arrangements for coastal zone management planning

We will not be asking councils to throw out the good work they have already done in order to implement the new arrangements for coastal zone management planning. That would be an enormous waste of effort, resources and good-will. We want councils to be able to move forward into the new framework, rather than backtrack and start over.

To start that process of moving forward, I have begun the process of certifying Coastal Zone Management Plans that have been prepared by councils under Ministerial direction, where those plans have been prepared in accordance with current guidelines.

My expectation is that councils will also move forward and submit these coastal zone management plans to me as soon as possible and by 30 June 2015.

All certified plans will be incorporated over time into councils Integrated Planning and Reporting Strategies.

Although some work will be needed to harmonise existing plans with the Integrated Planning and Reporting framework, the core content will continue to be relevant.

In order to minimise any disruption to councils, we have built in a staged transition process that uses natural transition points within the IPR framework

These transition points are 2016/17 and 2020/21.

After that time the preparation of new plans – or updates to existing plans – will occur within the Integrated Planning and Reporting framework, and in accordance with our new guidance.

Councils that wish to update their plans with the new guidance ahead of the suggested transition points will of course be encouraged and supported to do so. The Office of Environment and Heritage and Office of Local Government in particular will work closely to support councils through these processes.

Because we are establishing this strategic approach to coastal zone management planning, from 1 July 2015 we will no longer be providing piecemeal grants for ad-hoc works outside of a certified plan, where council is subject to Ministerial direction.

The identification of more sustainable, long term funding and financing arrangements is another key element of this reform package, and I will talk more about that shortly.

Establishing a new independent statutory advisory body

The Coastal Management Act will establish a new coastal advisory body to replace the existing statutory Coastal Panel, as well as the Coastal Expert Panel that was established to provide input on the reforms specifically.

The new body's role will be to provide independent expert advice to the Minister for the Environment on matters relevant to the operation of the Act.

The membership will be restricted to individuals external to Government to ensure independence, and will be appointed on the basis of relevant skills and expertise.

The new body will have the power to commission advice or reviews from external sources – for example, on sea level rise. This will enable it to access the most relevant expertise. The Minister can then make that advice available, together with any accompanying operational guidance.

Our proposal is that, unlike the Coastal Panel, the new body won't have a development consent role for coastal protection works. This role will sit with councils.

However, consent authorities will be able to seek advice from the new body when dealing with complex coastal development applications.

New statutory mechanisms to support the implementation of coastal management responses

Councils have told us that their ability to implement coastal hazard management strategies is hampered by a lack of clear statutory powers and pathways.

As a result, councils rely on a complex array of pathways and powers to implement actions under legislation such as the EP&A Act, the Conveyancing Act and the Real Property Act.

Councils need greater support and certainty around the use of planning measures such as time-limited consents and associated development controls.

The development of a new Coastal Management Act gives us the opportunity to provide statutory guidance for implementing coastal hazard management strategies under other Acts.

2. IMPROVING SUPPORT FOR COUNCILS

The second element of the coastal reform package is focussed on improving the way state government agencies, and particularly OEHL, support council decision making.

Councils have primary responsibility for coastal zone management and planning – everything from land use planning, local public land and asset management, coastal hazard mapping and management, and environmental protection. They also have a role in regulating activities in the coastal zone.

There are around 50 NSW councils directly involved in managing the challenging biophysical and socio-economic interactions that occur on the coast and around estuaries.

This includes managing the potentially competing demands to protect valuable natural assets and access to important public land, and to protect public built assets and private residential, commercial and industrial property.

It's a big and complex job, and councils rely heavily on guidelines and other assistance provided by the State, including fundamental data, technical resources and advice.

While the current guidance on coastal zone management provides a reasonable foundation, we need to strengthen the way we support councils, so they can better manage existing and emerging coastal hazards in consultation with their communities.

We're going to do this through two key initiatives.

- The first of these is a new decision support framework that equips councils to develop locally tailored responses to coastal hazards that are feasible and proportionate to the actual risk. This will be included in the new coastal management manual.
- The second initiative involves improving the delivery of technical advice to councils, through the new independent advisory body to be established under the legislation.

These initiatives will be underpinned by the technical input and operational guidance that will continue to be provided to councils by State agencies, in particular coastal and estuary management staff in the Office of Environment and Heritage.

Decision support framework (part of the new coastal management manual)

Councils have to develop coastal management strategies that are appropriate for the local circumstances and reflect the concerns and priorities of their communities.

The challenge for councils is to manage competing demands and find the appropriate balance that benefits the community as a whole.

A new coastal decision support framework will be developed that provides a more transparent and defensible process for councils to assess the relative suitability of proposed coastal management responses, in consultation with their communities.

It will allow councils the flexibility to make decisions that reflect local circumstances and community objectives, within clear parameters set by the NSW Government.

The framework will build on the guidance currently available and standardise sound approaches already adopted by some councils.

The new framework will

- provide clear direction about the State Government's priorities, through operational coastal management objectives that are based on the statutory objectives
- outline a standardised, best-practice risk assessment approach for councils to use when identifying analysing and evaluating coastal risks
- provide steps for councils to follow in scoping, assessing and selecting coastal management responses. This will include the social, environmental and economic criteria that should be considered
- require councils to consider the availability of financing, against other council and community priorities, when assessing the suitability of management responses

- identify specific points in the process where the community should be consulted
- outline the types of management responses that may suit different circumstances, and the mechanisms available to implement them.

By applying the improved decision support framework, councils will be able to identify coastal management actions that are achievable, proportionate, financially viable and can be communicated and justified to their communities.

Guidance on how to implement the framework will be captured in the new coastal management manual which, as I have already indicated, will consolidate, update and replace a range of disparate and outdated guidelines currently available to councils.

The new manual will provide a single, consolidated source of Government endorsed guidance on the full suite of tools that councils need for coastal management and how to use different combinations of those tools to meet local circumstances.

Over the coming months, the Office of Environment and Heritage will work collaboratively with coastal councils, the Office of Local Government and other relevant State Government agencies to co-design the new decision support framework and supporting guidance material. This process will ensure that the new manual is practical and fit-for-purpose, and that there is a shared understanding of, and commitment to, the new arrangements.

Improved arrangements for technical advice

During consultations with councils in 2012 and 2013, many councils indicated that access to specialist expertise is essential for them to undertake their coastal zone planning and management activities.

State Government entities such as the Office of Environment and Heritage and the Manly Hydraulics Laboratory currently provide a range of data and technical advice to councils for this purpose. This covers areas such as wave data and data on

historical coastline changes, information on coastal and estuarine processes, and habitat mapping and geo-technical advice. This support will continue under our new arrangements.

However, councils also told us that they need better support in interpreting scientific findings and deriving relevant projections and scenarios for sea level rise. We've heard from councils that many lack the specialist capacity and resources needed to derive local sea level rise projections from global data.

New arrangements will be put in place for commissioning periodic advice or reviews from relevant independent experts to meet this collective need of councils. Such reviews will include consideration of emerging international, national, regional and local studies to identify new information and determine its applicability in a NSW context.

This advice will form part of the 'best available scientific information' councils should use to determine sea level rise scenarios for their areas, as recommended by the NSW Chief Scientist and Engineer. It will not prescribe scenarios.

Together with existing information, this advice will support councils to transparently identify relative levels of risk in coastal areas, and communicate this to their communities and affected landholders.

As part of this process, I can announce today that the Government has completed and published the planning circular on coastal hazard notations, which was a commitment under stage 1 of the coastal reforms.

3. IMPROVED FUNDING AND FINANCING FOR COASTAL MANAGEMENT ACTIONS

The third element of the stage 2 reform package is focused on improving funding and financing arrangements for coastal management actions.

All of us recognise that this represents one of the most significant challenges.

Part of this challenge is in identifying effective *and* affordable options that deliver net benefits to the community. Our new manual will provide support in this regard.

The other part of the challenge is that the costs of coastal management actions often exceed councils' capacity to pay, and currently there is no clearly agreed approach for councils to identify who should be expected to contribute to those costs.

These difficulties can significantly compromise councils' ability to deliver effective and sustainable coastal management strategies.

We need to take a new approach. An approach that recognises there are a range of public and private beneficiaries from coastal management actions, and sets in place a process for identifying those beneficiaries, quantifying the benefits that accrue to each, and appropriately sharing the costs between them.

For the first time we will develop and adopt a set of agreed, cost sharing principles that will enable councils to fairly and transparently apportion the costs of management actions.

These principles will ensure that cost sharing arrangements:

- fairly apportion the costs of coastal management actions between the beneficiaries of those actions
- include the full capital and recurrent expenditure associated with coastal management actions
- encourage the most efficient and effective way to deliver actions, whether these are to protect, accommodate or relocate
- are simple to administer
- are decided in consultation with relevant parties
- are transparent and reviewed regularly
- are aligned with local and strategic objectives.

The cost sharing principles will support councils to work out who benefits from different coastal management options, and on that basis, which options are the most effective and affordable overall.

Indeed, some preliminary work on how to identify options with net community benefits has been undertaken at Old Bar, and includes the use of cost benefit analysis.

We are also going to take a detailed look at the various funding and financing mechanisms that exist, to see if they can be better utilised by councils and whether arrangements need to be put in place to make them more appropriate for councils' needs.

We will deliver a funding and financing 'tool kit' to councils as part of the new coastal management manual, which makes sure they have the information and guidance they need to deploy the mechanisms that are right for their circumstances, and, if necessary, the regulatory backing to use them effectively.

This will form part of our discussions with councils over coming months.

4. THE PROCESS FROM HERE

It takes time to work out the best way to tackle difficult challenges with complex and long standing roots – or 'wicked problems' as they are sometimes called.

This reform package is being initiated by the Government, but it needs to be developed in collaboration with local government and owned by communities and councils alike. This approach will produce arrangements that are rigorous, practical, effective and enduring in the face of our current and future coastal management challenges.

As I have already indicated, we will be working closely with councils to develop new guidance material over coming months. Councils can expect to receive further information about this from the Office of Environment and Heritage over the next couple of weeks.

We will also begin having discussions with councils and key stakeholders about the new legislation.

We are not going to rush this through, but take the time to get it right.

The legislation doesn't only need to work for regulators and coastal managers: it needs to give effect to the aspirations of those communities whose lives will, in part, be affected by it.

For this reason, we will release an exposure draft Bill for broad public comment in the middle of next year, with a view to having legislation before Parliament by the end of 2015.