



Environment,  
Climate Change  
& Water

Draft

Guide for authorised officers under the  
*Coastal Protection Act 1979*

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## Submissions invited

Comments are invited on the specific questions in this draft and on any other concerns with the draft. Where concerns are raised, recommended changes to address these concerns would be valued.

Please send your submissions on this consultation draft by email to:

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## Closing date for submissions

Submissions must be received by **5 pm, Friday 24 September 2010.**

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## Note for consultation draft

This draft document has been prepared to support the *Coastal Protection Act 1979* once amended by the *Coastal Protection and Other Legislation Amendment Bill 2010*, which is currently being considered by the NSW Parliament. The document refers to sections of the *Coastal Protection Act 1979* that this Bill proposes to include and/or amend. The section numbers referred to in this draft are those in the Bill as introduced into Parliament.

This document has no statutory basis. This draft guide refers to the placement of emergency coastal protection works by landowners to reduce the impact of coastal erosion. Until the *Coastal Protection Act 1979* is amended, the current statutory requirements relating to the placement of sand or sandbags on beaches by landowners to reduce coastal erosion impacts should be followed. This may include requirements under the *Environmental Planning and Assessment Act 1979*, the *Crown Lands Act 1989*, the *Roads Act 1993*, the *Coastal Protection Act 1979*, the *Fisheries Management Act 1994* and the *Marine Parks Act 1997*. Details of these Acts can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## Definitions

The following is a list of definitions for terms used in these guidelines.

**Authorised officer, beach, Coastal Authority, emergency coastal protection works, and emergency works authorised officer:** have the same meaning as in the *Coastal Protection Act 1979*

**DECCW:** Department of Environment, Climate Change and Water NSW

**Delegate:** a person appointed as a delegate of a Coastal Authority for the purpose of exercising the Coastal Authority's functions under Part 4D of the Act

**Delegated authorised officer:** an authorised officer that has also been appointed as a delegate of a Coastal Authority for the purpose of exercising the Coastal Authority's functions under Part 4D of the Act

**POEO Act:** the *Protection of the Environment Operations Act 1997*

**The Act:** the *Coastal Protection Act 1979*

**Penalty unit:** as at August 2010, the value of a penalty unit is \$110 – s. 17 of the *Crimes (Sentencing Procedure) Act 1999*

**Section:** a section of the Act or the POEO Act

In the event of any inconsistency between this guide and the Coastal Protection Act or the Protection of the Environment Operations Act, or any regulations under these Acts, the Act or the regulation takes precedence.

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# 1 Introduction

This document has been prepared to provide guidance to council and State Government employees who have been appointed as authorised officers and/or delegates of a Coastal Authority under the *Coastal Protection Act 1979* (the Act).

The Act establishes the following as Coastal Authorities (section 6):

- the Minister administering the Act
- the Minister administering the *Crown Lands Act 1989*
- local councils, roads authorities and public authorities that are land managers in the coastal zone or land adjacent to the waters of Sydney Harbour, Botany Bay and the Hawkesbury River.

Coastal Authorities can appoint **authorised officers** to exercise certain compliance functions under the Act (section 7). Local councils and the Director-General of the Department of Environment, Climate Change and Water (DECCW) can also appoint **emergency works authorised officers** to issue certificates for emergency coastal protection works (section 55T).

The Act also allows for the Coastal Authority to delegate certain functions (section 9) to an authorised officer or other person specified by regulation, including its functions relating to issuing orders under Part 4D of the Act. An authorised officer appointed as a delegate of a Coastal Authority is defined as a **delegated authorised officer** for the purposes of this guide. Coastal Authorities should normally delegate these powers to all authorised officers when they are appointed, to streamline compliance.

Any authorised officer appointed by a council can only exercise their functions under the Act in the council area or on a beach adjacent to a local government area (section 4C) except under the circumstances where emergency coastal protection works are placed outside a council area. In these circumstances, the closest council exercises the regulatory function (section 4).

Authorised officers can also exercise the investigative powers of Chapter 7 of the *Protection of the Environment Operations Act 1997* (POEO Act) for administering the Act and regulations (section 10 of the Act).

A Coastal Authority cannot appoint a person to be an authorised officer unless the person has completed the necessary training or competency standards set by the Minister (section 7(2)).

The appointment of authorised officers and delegated authorised officers may be subject to conditions or restrictions relating to functions that may be exercised or when, where and in what circumstances officers may exercise functions (section 7(3)). It is important that authorised officers are aware of any conditions or restrictions, as exercising powers beyond these is illegal.

This guideline is structured as follows:

- Chapter 1 outlines the statutory basis for the appointment and powers of authorised officers under the Act.
- Chapter 2 details a range of provisions that relate to emergency coastal protection works that authorised officers should be aware of in administering the Act.
- Chapter 3 identifies the key powers of authorised officers, including the investigative powers conferred on officers through the POEO Act.
- Chapter 4 provides guidance on the powers of emergency works authorised officers.
- Chapter 5 provides guidance on the powers of delegated authorised officers.

- Chapter 6 includes guidance on issuing orders and notices under the Act.
- Chapter 7 provides information on appeals against orders and notices under the Act.
- Appendix A – provides a sample application form and certificate for emergency coastal protection works.
- Appendix B – includes guidance material on forming an opinion if materials, structures or works cause or are likely to cause erosion.
- Appendices C, D and E – provide order checklists and templates.
- Appendix F – provides a template notice to provide information and/or records.

## **1.1 Authorised officers and powers of organisations**

The Act and its cross reference to parts of the POEO Act give some powers specifically to individuals referred to in the legislation as a form of authorised officer. However, the legislation also gives general powers to organisations such as Coastal Authorities.

It is important that officers exercising powers under the Act ensure they have the authority to do so. If you wish to exercise a power that may be exercised only by an authorised officer, you should make sure your appointment as an authorised officer includes the exercise of that power. If you wish to exercise a power on behalf of an organisation, you should make sure you have been delegated authority to exercise that power.

## **1.2 Dispute resolution**

Section 55ZG provides for the resolution of disputes between Coastal Authorities.

For example, if a dispute arises between a council and a Coastal Authority that is a Minister in relation to the exercise of a function under Part 4C or 4D of the Act, the Minister can direct the council as to the exercise of the function.

If a dispute arises between two Coastal Authorities in relation to the exercise of a function under Part 4C or 4D (other than a dispute between a council and a Minister), the dispute can be referred to the Premier for resolution by:

- a Coastal Authority in the dispute if that Coastal Authority is a Minister, or
- the Minister responsible for a Coastal Authority in the dispute if that Coastal Authority is not a Minister.

The Premier can then give directions to resolve the dispute that a Coastal Authority must comply with. This section of the Act applies to the Director-General of the Department of Environment, Climate Change and Water in the same way as it applies to a Minister.

# **2 Emergency coastal protection works**

Part 4C of the Act contains a range of provisions relating to emergency coastal protection works that authorised officers should be familiar with in administering the Act. Provisions in the Act require that works may only be certified if erosion, beach access and ongoing maintenance of works are satisfactorily addressed. The following section provides a brief summary and identifies some key points from this part of the Act.

## **Part 4C Division 1**

This part of the Act provides preliminary provisions regarding emergency coastal protection works. In exercising their powers, authorised officers should be familiar with sections 55O to 55S of Part 4C. These provisions relate to, for example:

- the meaning of ‘emergency coastal protection works’
- the conditions under which emergency action can be taken



- the requirement for material being placed in accordance with:
  - the relevant certificate
  - any emergency action subplan
  - any requirements adopted by the Minister and published in the Gazette
  - any requirements specified in the regulations for the purposes of this section
- the maintenance requirements necessary for works to remain classed as emergency coastal protection works, and
- restricting the placement of emergency coastal protection works by a landholder to one opportunity only for a specific landholding.

For example, if a person has a certificate for emergency coastal protection works, section 55O provides that the person does not require regulatory approval for emergency coastal protection works and such works may be placed and maintained despite certain restrictions and limitations contained in the *Environmental Planning and Assessment Act 1979*, the *Fisheries Management Act 1994*, the *Marine Parks Act 1997*, the *Local Government Act 1993*, the *Crown Lands Act 1989* and, where the beach or dune is a road (or road reserve), the *Roads Act 1993* (section 55W).

A landowner may place the emergency works for a period of up to six months (section 55Q), unless a development application is lodged for longer-term works, in which case the works can remain until the application is determined. An authorised officer can issue an order to remove the works if they are causing erosion of neighbouring land, unreasonably limiting beach access, or pose a threat to public safety (see next section).

## **Part 4C Division 2**

### ***Issuing certificates for emergency coastal protection works***

This part of the Act relates to authorising the placement of emergency coastal protection works to allow landowners to place sandbags or sand in specific and limited circumstances as emergency works.

Before placing emergency works landowners need to obtain a certificate from an emergency works authorised officer of the relevant local council or DECCW, authorising placement of emergency coastal protection works on the land. This is to ensure that emergency works comply with gazetted requirements, which describe the localities where works can be placed and acceptable construction techniques. The Minister's Requirements are available on DECCW's website. A certificate is valid for up to 2 years after it is issued (section 55U).

## **Part 4C Division 3**

Section 55X provides that a landowner or occupier of land must, at or about the time the emergency coastal protection works are to be placed on land, notify the relevant local council of the placing of the works and, if the works are or are about to be placed on public land in reliance on section 55Z, notify the public authority that is the owner of, or has the care, control or management of, the land.

Section 55Y provides that a person who has placed emergency coastal protection works (or caused such works to be placed) on land must, before the expiry of the maximum period allowed for emergency coastal protection works, remove the works and restore the land in accordance with:

- any requirements adopted by the Minister and published in the Gazette for the purposes of this provision (known as the 'Minister's Requirements'), and
- any requirements specified in the regulations for the purposes of this provision.

Failure to comply with the provision is an offence carrying a maximum penalty of 4,500 penalty units and 400 penalty units for each day the offence continues (in the case of a corporation) or 2,250 penalty units and 200 penalty units for each day the offence continues (in any other case).

If a person does not comply with the provision (whether that person has been convicted of an offence in respect of the non-compliance or not), the Coastal Authority concerned may remove the works and restore the land. Any costs reasonably incurred by the Coastal Authority under the provision may be recovered in a court as a debt due to the Coastal Authority.

Section 55Z allows the use of public land for emergency coastal protection works. Specifically, the proposed section provides that a certificate under Division 2 that authorises a person to place and maintain emergency coastal protection works on land owned or occupied by the person, extends to authorising the person to use and occupy public land for the placing and maintaining of the works (without obtaining a lease, licence or permit in respect of, or an easement or right-of-way in relation to, the land), but only if the person takes all practical measures to:

- avoid placing those works on the public land
- avoid damage to assets and vegetation on the public land
- minimise risks to the public on the public land
- maintain reasonable public access (including access by local and public authorities) to and through the beach concerned.

### **3 Powers of authorised officers**

#### **3.1 General principles**

Authorised officers investigate possible breaches of the Act and carry out other authorised officer powers. One of the prime responsibilities as an authorised officer under the Act is to gather information so that a Coastal Authority can enforce the terms of the Act.

Any authorised officer must carry out their responsibilities diligently and without exceeding their powers. If exercising a power on behalf of an organisation, an authorised officer must ensure that they have been delegated authority to exercise that power.

All authorised officer powers should be exercised in a fair and reasonable manner so any evidence collected is not obtained unfairly or improperly. Authorised officers can always ask people to answer questions voluntarily regarding matters relevant to the Act, but anything not authorised by legislation or that exceeds the authorised officer's powers is done illegally. Any evidence obtained in this way is potentially inadmissible.

Unlike police officers, authorised officers have only limited powers of arrest. Section 204(3) of the POEO Act allows authorised officers to only arrest people who refuse to state their names or residential addresses, or who provide names and addresses that in the opinion of the authorised officer are false.

#### **3.2 Application of POEO Act authorised officer powers**

Under section 10 of the Act, an authorised officer has and can exercise the functions of an authorised officer under Chapter 7 and section 319A of the POEO Act:

- for determining whether there has been compliance with or a contravention of this Act and the regulations
- for obtaining information or records for purposes connected with the administration of this Act and the regulations
- generally for administering this Act and the regulations.

The provisions of Chapter 7 (other than Part 7.2) and section 319A of the POEO Act apply to and in respect of the Act as if those provisions were part of the Act, subject to the following modifications:

- References in those provisions to an authorised officer are to be read as references to an authorised officer appointed by a Coastal Authority under this Act.
- References in those provisions to 'this Act' are to be read as references to this Act.
- References in those provisions to 'the EPA' are to be read as references to a Coastal Authority.
- A Coastal Authority is taken to be the appropriate regulatory authority for matters concerning this Act.

The functions that an authorised officer has under Chapter 7 of the POEO Act are, for the purposes of any provision of the Act, taken to be functions under the Act.

This section provides guidance on the investigative functions contained in Chapter 7 of the POEO Act conferred on authorised officers for the purposes of exercising functions under the Act. Powers are provided by the POEO Act for an authorised officer to enter, inspect and take samples from premises, and to question people. These powers are useful in determining appropriate action and often result in a solution without the need to issue a legal instrument. People will often take responsible actions when they are informed of the need.

In many cases the question of authorised officer powers may not arise, at least in the initial stages of an investigation, because the occupier or person involved in the activity consents to carrying out an investigation and voluntarily answers questions. By adopting a professional approach and establishing a business-like rapport with an interviewee, authorised officers can carry out much of their investigative work through voluntary cooperation without having to rely on legal powers to enter premises, collect evidence, inspect documents, obtain answers to questions, etc.

### **3.3 Investigative functions under Chapter 7 of the POEO Act**

POEO Act investigative functions can be used by authorised officers under the Act, for the purposes of exercising functions under the Act, including:

- for determining whether there has been compliance with or a contravention of the Act or the regulations
- for obtaining information or records for purposes connected with the administration of the Act and the regulations
- generally for administering the Act and the regulations.

The following sections provide officers with an explanation of what powers may be exercised under Chapter 7 of the POEO Act. As stated in section 10(2)(b) of the Act, any references to 'this Act' in Chapter 7 of the POEO Act are to be read as references to the *Coastal Protection Act 1997*.

#### **3.3.1 Powers to require information and/or records**

Under section 193 of the POEO Act an authorised officer may issue a notice requiring information and/or records to be provided for any matter relating to their responsibilities or functions under the Act, including determining whether the Act has been contravened.

Notices requiring information and/or records must:

- be in writing (POEO Act section 193)
- specify the information and/or records that must be provided

- specify the manner in which the information and/or records must be provided and give a reasonable time by which the request must be met (POEO Act section 194)
- require a person to provide only records that are within their possession or power to obtain lawfully (POEO Act section 195(1))
- unless otherwise specified in the notice, require that any record in electronic, mechanical or other form be provided in written form (POEO Act section 195(3))
- contain the required warnings (see section below on 'Give the required warnings').

The person or regulatory authority to which any record is provided may take copies of it (POEO Act section 195(2)).

Appendix F provides an example of a notice to provide information and/or records that could be used by an authorised officer for the purposes of exercising functions under the Act.

An individual, that is, a person rather than a corporate entity, may object to providing information, but not records, on the grounds that the information might incriminate them or make them liable for a penalty. Section 212 of the POEO Act says that if the person does object, the information they provide in response to the notice may not be used in legal proceedings against them, except in proceedings for an offence against Chapter 7 of the POEO Act (for example, knowingly providing false or misleading information). This is also the case if the individual was not warned before providing the information that they could object on the grounds of self-incrimination.

Note that even when an individual does object, they are still required to provide the information and any records that have been requested. While the information provided may not be used against them, it may be used in proceedings against others, including corporations.

The privilege against self-incrimination in section 212 of the POEO Act is not available to a corporation (POEO Act section 212).

It is important to note that records provided by a person in response to a notice may be used against them in criminal proceedings, whether they are an individual or a corporate entity. Under the POEO Act, the privilege against self-incrimination applies only to answering questions or providing information.

It is an offence to, without a lawful excuse, not comply with a notice to provide information and records (POEO Act section 211(1)), or provide any information required by a notice knowing that it is materially false or misleading (POEO Act section 211(2)). However, a person cannot be guilty of the offence of failing to comply with the notice if they were not warned beforehand that this failure was an offence (POEO Act section 212(1)).

The maximum penalty for these offences is:

- \$1,000,000 for a corporation, with a further \$120,000 each day for a continuing offence
- \$250,000 for an individual, with a further \$60,000 each day for a continuing offence.

Alternatively a penalty notice may be issued for not complying with a notice to provide information and/or records. This imposes a fine of \$500 for individuals and \$1000 for corporations.

The administrative costs of issuing a notice requiring information and records (for example, for the drafting of the notice) are not recoverable.

Officers should also refer to Chapter 6 of this guide for some general points on issuing notices.

### 3.3.2 Powers of entry and search of premises

Authorised officers may enter any non-residential premises, or parts of premises used for non-residential purposes, at any reasonable time. To enter any part of a premises used only for residential purposes, an authorised officer must have the permission of the occupier, or be in possession of a search warrant issued under section 199 of the POEO Act (see also section 196(1) and 197 of the POEO Act).

Note that some beachfront properties may have eroded to the extent that the beach is located on private residential land. This portion of the beach is therefore land used for residential purposes for the purposes of the POEO Act.

In gaining entry to premises, an authorised officer may use reasonable force and enlist the help of other authorised officers or police officers (POEO Act section 196(3)). Any person may accompany an authorised officer and take all reasonable steps to help them exercise their functions under Part 7.4 of the POEO Act, if the authorised officer believes that the person can help them exercise those functions (POEO Act section 199A).

Authorised officers must do as little damage as possible while exercising their powers of entry and search (POEO Act section 201). Regulatory authorities are liable to pay compensation for any damage caused by their authorised officers in exercising a power of entering a premises unless the occupier has obstructed or hindered the authorised officers in gaining entry (POEO Act section 202), but not for any damage caused by the exercise of any other power.

After lawfully entering a premises, an authorised officer may do anything at the premises that they believe is necessary for the following purposes under section 184 of the POEO Act (for which they may exercise powers under Chapter 7 (POEO Act s 198(1)):

- determining whether there has been compliance with or a contravention of the Act or regulations, notice or requirement issued or made under this Act
- obtaining information or records for purposes connected with the administration of the Act
- generally administering the Act and protecting the environment.

Actions may include:

- taking samples
- inspecting and testing any equipment
- taking photographs or recordings
- examining or copying records
- seizing anything connected with an offence or suspected offence.

Wilfully delaying or obstructing authorised officers during the exercise of any of their powers is an offence under section 211(3) of the POEO Act that is subject to a penalty of up to:

- \$1,000,000 for a corporation, with a further \$120,000 for each day the offence continues for continuing offences
- \$250,000 for an individual, with a further \$60,000 for each day the offence continues for continuing offences.

### 3.3.3 Powers to question and identify persons

#### *Questioning individuals*

Part 7.5 of the POEO Act gives authorised officers the power to require anyone they reasonably suspect of knowing about any relevant matters to answer any questions concerning those matters (POEO Act section 203(1)). An authorised officer may, by notice in

writing, require a person to attend a specified place at a specified time to answer questions, if attendance at that place is reasonably required so the questions can be properly put and answered (POEO Act section 203(5)). The place and time should be nominated by the person, or if the place and time they nominate are not reasonable under the circumstances or they do not nominate a place and time, the authorised officer can nominate a place and time that are reasonable under the circumstances (POEO Act section 203(6)).

An authorised officer may record questions and answers on tape, video or by any other method, provided they have informed the person being questioned that the record is being made (POEO Act section 203A). The authorised officer must give a copy of the recording to the person that has been questioned as soon as practicable after it is made (POEO Act section 203A(3)).

Authorised officers have the power to require a person whom they reasonably suspect has committed or is committing an offence to state their full name and residential address (POEO Act section 204(1)). They may also arrest such a person if the person refuses to state their name or residential address, or states a name and address that in the opinion of the authorised officer is false (POEO Act section 204(3)).

Authorised officers may request a person to provide proof of their name and address (POEO Act section 204(2A)). It is not an offence for a person to fail to provide proof of their name and address. An authorised officer does not have the power to arrest a person for failing to provide proof of their name and address.

The required warnings referred to below should also be given when questioning a person or requiring them to state their name and address.

#### ***Questioning representatives of corporations***

When dealing with corporations, which are bodies incorporated under the *Commonwealth Corporations Act 2001*, an authorised officer needs to know that the person they are speaking to is authorised to speak on behalf of the corporation. If the person is not so authorised, the officer needs to ask who is in charge or who can speak for the corporation, and then speak to that person. Even if a person is not authorised to speak on behalf of the corporation, they may provide useful information or be a valuable witness in any legal action.

The POEO Act gives regulatory authorities the power to issue a notice in writing requiring a corporation to nominate in writing, within a specified time period, a director or officer to be the corporation's representative for the purpose of answering questions (POEO Act section 203(2)). Answers given by this representative bind the corporation (POEO Act section 203(3)). The corporation is not protected by the privilege against self-incrimination, so a company representative, director or employee cannot decline to answer questions on the grounds that it might incriminate the corporation (POEO Act section 212(2)). The privilege of self-incrimination applies only to individuals, and must be claimed by the person in question and not by someone else on their behalf. See 'Give the required warnings' below for more information.

#### ***Give the required warnings***

When asking questions, or issuing notices requiring information and/or records to be provided, the authorised officer should warn the person, whether an individual or a corporation, that failure to answer such questions, or to provide information or records, is an offence (POEO Act section 212(1)). If this warning is not given, the individual or corporation cannot be guilty of an offence if they fail to answer the questions or provide information or records (POEO Act s 212(1)).

In the case of an individual, the authorised officer should also warn them that they may object to answering questions or providing information on the grounds that it might incriminate them (POEO Act s 212(3)). Note that the privilege against self-incrimination applies only to individuals (called 'natural persons' in Part 7.7 of the POEO Act), and must be claimed by the person in question and not by someone else on their behalf. A person cannot

object to providing records on the grounds that the records might incriminate them (POEO Act section 212(4)).

Note that even when an individual does object to answering questions or providing information, they are still required to provide the answers or information (POEO Act section 212(2)). Although answers and information may not be used against the individual, they may be used in proceedings against a corporation or other individuals, or used to obtain further information (POEO Act section 212(5)).

If the individual does object to answering questions or providing information, or was not warned that they may object on the ground that the information to be provided or the answers to be given might incriminate them, the answers or information that they provide at that time may not be used in criminal proceedings against them (except for proceedings for an offence under Chapter 7 of the POEO Act section 212(3)).

The warnings relating to non-compliance and the privilege against self-incrimination referred to above also need to be given when an authorised officer requires a person to state their name and address (POEO Act section 212(6)).

### **3.3.4 Collecting evidence**

Collecting and recording evidence at the time of an offence is very important to prove each element of the offence beyond reasonable doubt. Collecting any evidence that could disprove any other explanation for the offence is also helpful.

This publication does not attempt to be a comprehensive guide to collecting evidence. Authorised officers should ensure that their organisation provides appropriate training in collecting and recording evidence. A few basic principles include:

- Always record what is seen or heard as soon as possible by noting it in a field book. Include the time, date and location, and the names and addresses of any other people present.
- Speak with the alleged offender, eyewitnesses and other relevant people, and record in a field book any conversations with them, using the exact words given if possible.
- Especially note if the alleged offender admits the offence. Give the required warnings, and make a written record of the interviews if possible. Read the notes back to the people interviewed and if possible get them to sign the field book.
- If the offence has been committed by a corporation or at the premises of a corporation, determine who is in charge and speak to them in addition to any other relevant employees.
- Take photographs or video evidence and note in the field book the photos taken.

It is not always possible to take all the steps listed above. Authorised officers need to judge whether there is enough evidence to prove the elements of the offence. In the case of penalty notices, it is essential for an officer to be familiar with the wording of the particular offence provision before issuing the notice.

#### ***Evidence obtained unlawfully will probably be inadmissible in court***

It is important that authorised officers act within their powers at all times, for two reasons:

- Coastal Authorities want their staff to operate within the law.
- Coastal Authorities do not want to risk losing important evidence when prosecuting a person or corporation.

Anything an authorised officer does that is not authorised by the legislation, or that exceeds the powers given, is done illegally. Any evidence obtained in this way may be challenged in court. For example, if an authorised officer enters premises without the right to do so, for

example, by entering residential premises without permission or a search warrant, the evidence obtained will probably be excluded if the defendant or their legal representative objects in court that the officer exceeded their powers in obtaining the evidence.

As a matter of law, if illegally or improperly obtained evidence is relevant, it is admissible but the court can still reject it. There are two competing principles involved. The first is the interest of citizens in being protected from illegal or irregular invasion of their liberties by the authorities. The second is the interest of the state in not having evidence concerning an offence withheld from the court on formal or technical grounds.

These principles will be balanced by a court when deciding, in accordance with the rules for admitting evidence set out in the *Evidence Act 1995*, whether it will admit the evidence.

### **3.3.5 Listening Devices Act 1984**

Authorised officers should be aware of the provisions of the *Listening Devices Act 1984*. This Act makes it illegal to use a listening device to secretly record or listen to a private conversation to which the person is not a party, or to secretly record a private conversation to which the person is a party, and makes the evidence obtained by such a device potentially inadmissible in any legal proceedings.

In practical terms, an authorised officer would commit an offence if they were to record an interview with another person on a dictaphone, and the other person was unaware that the recording was taking place. For the purposes of the Listening Devices Act, dictaphones, tape recorders, video cameras and the like are considered to be listening devices. If an authorised officer wants to record a conversation, the safest course is to ask permission first. If a person knows that a tape recorder or video camera is operating and then speaks, it could be suggested that the person has implicitly consented to the conversation being recorded.

Section 203A(1) of the POEO Act allows an authorised officer to record any questions and answers given under Part 7.5 of the POEO Act if the officer has informed the person to be questioned that the record is being made. This record can be made using equipment such as a tape recorder or video camera, or any other method (POEO Act section 203A(2)). The authorised officer must give a copy of any such record to the person who has been questioned as soon as possible after it is made (POEO Act section 203A(3)). A record can be made under section 203A of the POEO Act despite the provisions of any other law, including the *Listening Devices Act 1984*, provided all of the requirements under this section have been met (e.g. notification of person to be questioned).

## **3.4 Identification card**

The Coastal Authority must issue an identification card to an authorised officer (section 8(2)) that must:

- state that it is issued under the Act
- give the name of the person to whom it is issued
- state the date (if any) on which it expires
- describe the kinds of premises to which the powers of the authorised officer extend
- state any limitations on the functions that the authorised officer is authorised to exercise under the Act that are imposed by the authorised officer's instrument of appointment.

An authorised officer must carry the identification card as an authorised officer while exercising functions under the Act. In these circumstances, the officer should produce the card if requested to do so by any person affected by the exercise of any such function. This means, for example, that you should show your identification card to an occupier of premises, if they ask for it, before you enter the premises, or to an individual to whom you are proposing to issue an order, if they ask for it.



### **3.5 Penalty notices**

Section 59B of the Act gives an authorised officer the power to serve a penalty notice for offences under the Act or regulations. Guidance on issuing and enforcing penalty infringement notices will be provided when the regulations are prepared that prescribe what constitutes a penalty notice offence under the Act.

### **3.6 Obstructing or threatening an authorised officer**

It is an offence under section 11 of the Act for a person to:

- wilfully delay, threaten, intimidate or obstruct an authorised officer in the exercise of their powers under the Act
- interfere with, damage or destroy or do any act which may tend to interfere with, damage or destroy any vehicle, vessel, asset or equipment which is used in relation to the exercise of a function by an authorised officer under this Act
- impersonate an authorised officer.

An authorised officer carrying out their powers under the Act may encounter people who threaten or intimidate them. If an authorised officer encounters a threatening situation, the safety of the officer is the primary consideration. Under section 199A of the POEO Act, an authorised officer can take a police officer, another authorised officer or any other person with them to assist in exercising their powers or functions (this section also applies to authorised officers under the Act).

## **4 Powers of emergency works authorised officers**

Under section 55T of the Act, an owner or occupier of land may apply to the relevant local council or to the Director-General of DECCW for a certificate authorising the placement of emergency coastal protection works. The function of issuing a certificate must be delegated to an emergency works authorised officer. An emergency works authorised officer is an authorised officer appointed by a council or the Director-General who has been authorised in writing for the purposes of issuing these certificates.

An emergency works authorised officer has the power to issue a certificate permitting the placement of emergency works (section 55T). This certificate may be conditional or unconditional and must be accompanied by the relevant fee.

The emergency works authorised officer should assess the application for a certificate to ensure that it complies with:

- the requirements under Part 4C of the Act
- the Minister's Requirements
- the relevant provisions of any emergency action subplan applicable to the site.

Under normal circumstances the certificate should not include additional conditions as these requirements should be adequate.

The officer should also inspect the location where the works are to be placed and assess whether the proposed works described in the application are suitable for the location. During the inspection, the officer should take photographs of the site where the works are to be placed and file the photographs with the certificate in the organisation's record management system. This may assist in assessing whether an order needs to be subsequently issued under Part 4D of the Act relating to the works.

A DECCW emergency works authorised officer should consult with the relevant local council prior to issuing a certificate.

If a council emergency works authorised officer issues a certificate under this section, the officer is to send a copy of the certificate to the Director-General. Conversely, if a DECCW emergency works authorised officer issues the certificate, the officer is to send a copy to the relevant local council.

Appendix A provides a sample application form and certificate for emergency coastal protection works.

## **5 Powers of delegated authorised officers**

The power for delegated authorised officers to issue orders is the key regulatory tool under the Act.

### **5.1 Issuing orders**

A particular challenge for erosion protection works on the coast is that if they are not properly implemented they can merely transfer erosion to other locations or reduce areas of beach. On the other hand, prohibiting any action could potentially lead to losses of homes and infrastructure. Orders provide a tool to assist in achieving this balance.

The Act provides for delegated authorised officers to make orders to:

- remove materials or structures from a beach
- stop work
- remove, alter or repair emergency control protection works
- restore any assets or vegetation on public land.

Delegated authorised officers will need to form an opinion regarding a number of factors before issuing orders. Appendix B has been developed to assist officers in forming an opinion as to whether materials, structures or emergency coastal protection works are causing or likely to cause erosion.

As noted earlier in this guide, an authorised officer may be accompanied by another person to assist them in exercising their authorised officer functions. This may include, for example, a coastal specialist to help determine whether emergency coastal protection works are likely to cause increased erosion of a beach or adjacent land. Similarly, an authorised officer could be accompanied by another authorised officer more experienced in the investigative functions of the POEO Act.

Officers should also refer to chapter 6 of this document for some additional guidance regarding the drafting, issuing and enforcement of orders.

Under section 733(3)(b) of the *Local Government Act 1993*, a statutory exemption from liability applies for any erosion damage to private property resulting from an authorised officer issuing an order under the *Coastal Protection Act 1979*, provided they acted in good faith.

#### **Questions for consultation draft**

Orders provide authorised officers with a powerful tool to regulate activities under the Act. Is the guidance provided below, including the associated checklists and templates in the appendices, sufficient for authorised officers to have confidence in issuing orders? If not, what additional information should be provided?

### **5.1.1 Orders to remove certain materials and structures unlawfully placed on beaches**

Section 55ZA gives a Coastal Authority that is a designated authority for a beach the power to make orders to remove certain materials or structures from a beach (including private land that is or fronts a beach) where the Coastal Authority is of the opinion that the material or structure:

- causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or
- unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or
- poses or is likely to pose a threat to public safety.

This does not apply to material deposited on a beach, or a structure erected, in the course of development for which consent has been granted or that is exempt development or development that does not need consent under the *Environmental Planning and Assessment Act 1979* or is an approved project within the meaning of Part 3A of that Act or in relation to emergency coastal protection works (section 55ZA(6) and (7)).

Appendix C provides a checklist of the relevant factors to consider in issuing an order under this section of the Act and provides an example of an order that could be used by an authorised officer.

Appendix B provides some guidance material to assist authorised officers in determining whether materials or structures have caused or are likely to cause increased erosion of a beach or land adjacent to a beach.

### **5.1.2 Stop work orders relating to materials and structures unlawfully being placed on beaches**

Section 55ZB gives a Coastal Authority that is a designated authority for land the power to make stop work orders to prohibit an activity on a beach on the land that, in the opinion of the Coastal Authority:

- causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or
- unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or
- poses or is likely to pose a threat to public safety.

Such an order cannot be made in relation to an activity carried out in the course of development for which consent has been granted or that is exempt development or development that does not need consent under the *Environmental Planning and Assessment Act 1979* or is an approved project within the meaning of Part 3A of that Act or in relation to emergency coastal protection works.

Appendix D provides a checklist of the relevant factors to consider in issuing an order under this section of the Act and provides an example of an order that could be used by a delegated authorised officer. Appendix B provides some guidance material to assist authorised officers in determining whether materials or structures have or are likely to cause increased erosion of a beach or land adjacent to a beach.

### **5.1.3 Orders relating to emergency coastal protection works**

Section 55ZC gives a Coastal Authority that is a designated authority for land the power to make certain orders to remove, alter or repair emergency coastal protection works on the land and to restore the land if the Coastal Authority is of the opinion that the works:

- are causing increased erosion of a beach or land adjacent to a beach, or

- unreasonably limit public access to a beach or headland, or
- pose a threat to public safety, or
- have ceased to be emergency coastal protection works (for example, the works have been in place for longer than the maximum period allowed for emergency coastal protection works or the works are not being maintained as required under the Act).

Appendix E provides a checklist of the relevant factors to consider in issuing an order under this section of the Act and provides an example of an order that could be used by a delegated authorised officer. Appendix B provides some guidance material to assist authorised officers in determining whether emergency coastal protection works are causing increased erosion of a beach or land adjacent to a beach.

#### **5.1.4 Restore any assets or vegetation on public land**

Section 55ZC also provides that a Coastal Authority that is a designated authority for land on which a person has placed (or caused to be placed) emergency coastal protection works (whether public or private land) may order the person to restore any assets or vegetation on public land that have been damaged in the course of the placement of the works. The assets and vegetation are to be rehabilitated to the condition in which they existed prior to the placement of the works.

Appendix E provides an example of an order to restore assets or vegetation on public land that could be used by a delegated authorised officer.

#### **5.1.5 Move, alter or remove works and restore land**

Section 55ZC also allows a Coastal Authority that is a designated authority for public land on which a person has placed (or caused to be placed) emergency coastal protection works to order the person to move, alter or remove the works and restore the land if the Coastal Authority is of the opinion that the person did not take all practical measures to:

- avoid placing those works on the public land, and
- avoid damage to assets and vegetation on the public land, and
- minimise risks to the public on the public land, and
- maintain reasonable public access (including access by local and public authorities) to and through the beach concerned.

Appendix E provides an example of an order to move, alter or remove works and restore the land that could be used by a delegated authorised officer.

#### **5.1.6 General provisions relating to orders**

Section 55ZD contains general provisions regarding the operation of orders that authorised officers should be familiar with. These are provided below and include:

- 1) An order under this Part may be given to a person by notice in writing or orally.
- 2) An order under this Part:
  - a) takes effect immediately (or from a later date specified in the written notice or at the time the order is given orally), and
  - b) is subject to such conditions as the Coastal Authority may specify in the written notice or at the time the order is given orally, and
  - c) may require a person to cease doing, or causing or permitting to be done, the relevant activity for a specified time, and
  - d) may require a person to do, or cause or permit to be done, the relevant activity within a specified time.

- 3) The Coastal Authority concerned may vary or revoke the order or the conditions of the order by further notice in writing or further oral order given to the person subject to the order.
- 4) An order given orally to a person ceases to have effect on the expiration of 72 hours from the time it was given unless confirmed by the Coastal Authority who gave the order by a notice in writing given to the person.
- 5) Subject to subsection (4), an order under this Part remains in force until whichever of the following happens first:
  - a) The order is revoked by the Coastal Authority concerned.
  - b) The activity to which the order relates obtains planning permission and evidence of the planning permission is provided to the Coastal Authority concerned.
- 6) A Coastal Authority is not required, before making an order under this Part, to notify any person who may be affected by the order.
- 7) A Coastal Authority (other than a council) that makes an order under this Part must notify the relevant local council of the making of the order.
- 8) A council must keep record of all orders under the Part made by it or notified to it under subsection (7).
- 9) In this section, evidence of planning permission means evidence that:
  - a) development consent or approval under the *Environmental Planning and Assessment Act 1979* has been granted, or
  - b) the development concerned has become exempt development under that Act.

## 5.2 Fees

Section 55ZE provides for a Coastal Authority to recover the administrative costs of preparing and giving orders. A person who is given an order must within 30 days pay a fee of \$320 (or a higher fee as may be prescribed by the regulations) to the Coastal Authority.

The order should state:

- the amount of the fee payable
- that it is an offence if the fee is not paid
- that the person may apply to the Coastal Authority to extend the payment period or waive the fee
- how the fee should be paid.

## 5.3 Failure to comply with an order

Section 55ZF makes it an offence to fail to comply with an order. The offence carries a maximum penalty of 4,500 penalty units and 400 penalty units for each day the offence continues (for a corporation) or 2,250 penalty units and 200 penalty units for each day the offence continues (in any other case).

If a person does not comply with the requirements of an order within the time specified, the Coastal Authority concerned may, where the order required the doing of any act or thing, do the act or thing, and recover the costs incurred in court.

# 6 Issuing orders and notices

The following section provides some guidance on drafting orders and notices. Attempt to use plain English wherever possible when drafting legal instruments. The obligations on a person

issued with an order or notice must be clear and unambiguous so it is obvious what is required and easy to check what has been done. Any ambiguity in an instrument may result in the inability to pursue non-compliance with the order or notice and may prevent enforcement action being taken.

## **6.1 Practical requirements**

### **Understand the scope of the power being exercised**

Be clear on the purpose for which the power is being exercised. Different Acts may have different requirements regarding the use of powers that may initially seem similar.

### **Who should the legal instrument be issued to?**

Orders may be enforced only if they are issued to a legal entity. The law recognises two legal entities: an individual and an incorporated body (such as a company, statutory authority, incorporated association, cooperative or other body corporate, collectively termed 'corporation' in this guide).

A corporation is usually identified by the abbreviation Inc, Ltd or Pty Ltd and always has an Australian Company Number (ACN). Corporations may operate under a business name or trading name that is different from the name of this corporation. Similarly, a business may be operated by something other than a corporation, that is, by a partnership or sole trader with a business name or trading name. Business or trading names are not legal entities; they are just names under which legal entities do business. If a notice is issued to a registered business name or trading name, for example, to XYZ Australia or XYZ Traders, rather than the corporation or individual that runs them, the notice will have no legal effect.

If the owner of a business or trading name is an individual, the legal entity to which the notice is issued should be written as 'Mr/Ms Z Smith trading as XYZ Australia'. If the owner of the business or trading name is a corporation, the legal entity should be written as 'XYZ Pty Ltd trading as XYZ Australia'.

Authorised officers can obtain basic details about business and company names and Australian Company Numbers (ACNs) free from the National Names Index maintained on the internet by the Australian Securities and Investments Commission ([www.search.asic.gov.au](http://www.search.asic.gov.au)). Notices may be issued to any of the following:

- an individual
- a company, for example, XYZ Pty Ltd or XYZ Ltd
- another type of incorporated body
- a public authority (for example, a government trading enterprise) constituted by an Act as a corporate entity.

Seek organisational legal advice if there is any doubt about the legal status of the person to whom the notice is to be issued.

If the order is to be issued to an individual, use their full name, not their initials, to avoid possible confusion. Even a small spelling mistake in the name may potentially impact on the enforceability of the document.

### **Define all relevant premises and/or locations**

A street address or registered mail bag relates to a street frontage rather than a piece of land. A lot and deposited plan reference is the most accurate reference. If it is necessary to refer to a map or plan (e.g. where a part or, conversely, multiple parcels of land are involved) include the title of the map or plan in the description of the premises and ideally specify where a copy of the map or plan is held.

It is important to specify clearly the exact premises or the area of the premises to which the instrument applies. It will not automatically apply to the address to which the instrument was sent.

### **Serving notices**

Under section 321 of the POEO Act, a notice or any other document may be served on a person by:

- delivering it personally
- leaving it with another person at the place of residence or business of the person receiving the notice
- sending it by post, fax or electronic transmission (including over the internet)
- leaving it addressed to the person at a document exchange or other place indicated by the person through which correspondence may be forwarded to them.

Important notices, especially when issued to corporations, should be sent by registered post so the officer has documentary evidence that they were received. Other appropriate documentary records such as file or diary notes, postal or fax receipts, should also be kept; if required, they can be used as evidence that the order or notice was served and the recipient received it.

### **Issuing a handwritten order**

Although notices have to be in writing, they do not have to be typed. Where necessary, authorised officers may issue handwritten orders or notices on the spot and keep a copy for their records. For example, handwritten notices to produce documents can be issued at the time of the preliminary investigation of an apparent offence. By doing this, an officer can prevent valuable evidence from being lost, misplaced or even destroyed, and, if necessary, keep it for later use.

### **Issuing a verbal order**

A delegated authorised officer may issue an order under Part 4D in writing or orally. An oral order must be confirmed by a written order issued by the person who gave the oral order within 72 hours, or it ceases to have effect (section 55ZD(4)). The written order should accurately reflect the oral order and state that the written order is confirmation of the oral order, specifying the time (e.g. at or about 4.30 pm), date and place the oral order was issued.

## **6.2 General drafting tips**

### **‘Background’ section**

It is very important to carefully draft the ‘Background’ section of an order or notice to explain the basis on which the document is issued, and specifically demonstrate that all the statutory prerequisites to issuing the order or notice exist.

### **Structuring the legal instrument**

If the order or notice requires the recipient to do something it is important to specify clearly what the recipient must do, in what order the works are to be done, and give a timeframe or an exact date for doing each aspect of the works. The following matters should be considered:

#### ***Specify the works in a sequential manner***

The order should specify with particularity and in a sequential manner the works required (e.g. what, where, by when). Include useful headings to group requirements together or show various stages of works.

***Use exact dates***

Due dates should not be expressed in terms of a time period from the issue of the legal instrument, or a particular event. For example, if issuing an order, do not say 'Do X within 14 days of the issue of this notice'. Use an exact date, e.g. by 14 September 2011, to avoid potential confusion.

***Reports***

If the order requires preparation of a report it should require the report to be in writing and to be sent to the relevant Coastal Authority. The order must also clearly specify what the report should contain and to whom, and by what date, it should be submitted.

***If helpful, explain the total picture as a note or in a covering letter***

Future anticipated works forming part of the overall approach, but which are not the subject of the current instrument, can be foreshadowed or outlined as a note at the conclusion of the order or in a covering letter, by way of explanation of the total picture.

For example, an order to restore land may require preparation of a report recommending that certain works be carried out at a location. An authorised officer may intend to consider this report and, if satisfied with the recommended actions, a subsequent order would be issued to require these works to be carried out.

***Check any cross references***

Ensure that all internal cross references used in the order or notice are correct.

***Referring to other documents***

Conditions should not, as a general rule, require compliance with technical reports, letters or other documents separate to the order. It is better to spell out or repeat the requirements in the legal instrument so there is no doubt about what is required.

**Use plain English**

Use clear, concise and plain English when drafting a legal instrument. Express the requirements in a straightforward, logical and unambiguous manner.

***Certainty***

Ensure the condition or requirement is not uncertain. Conditions which require implementation of an important aspect 'in such a manner as approved by the Coastal Authority' or 'in accordance with relevant guidelines' or similar is uncertain. Conditions cannot defer an essential aspect of the works for later direction outside the statutory framework.

If there is uncertainty in a condition of an order or notice, and the person issued with it fails to comply with this condition, it will be difficult to enforce the condition by prosecution.

***Using technical terms***

Avoid using complex technical terms where possible. If it is necessary to use a technical term, this must be defined if the term does not have a clear or consistent meaning across the industry or sector.

***Use consistent terminology and define key terms***

Use consistent terms when referring to structures, locations and defined terms. Where appropriate, adopt definitions from relevant legislation. Definitions can be grouped together in an interpretation clause in the order or notice.

***Use 'must'***

It is recommended conditions express mandatory requirements using 'must' and not 'shall', 'may' or 'should'.

***Do not use 'and/or'***

Avoid using 'and/or' wherever possible as it may be unclear or confusing.



#### ***Specify measurable requirements***

Conditions should be measurable where possible, i.e. include quantitative rather than qualitative requirements, so that it is easy for officers to ascertain whether the requirements of the condition have or are being met or otherwise breached.

#### ***Draft workable conditions***

The requirements of conditions should be practical and able to be readily implemented.

### **6.3 Legal requirements**

There are two key legal principles to consider when drafting orders and notices:

- whether the proposed legal instrument is within the scope of the power, and
- ‘procedural fairness’ (also referred to as ‘natural justice’). The rules of procedural fairness include an obligation to give a fair hearing to the person affected by the decision. This can be as simple as providing a draft of a notice being issued. Note that this does not apply to order powers under Part 4D of the Act (section 55ZD(6)).

#### **Ensure the legal instrument is within power**

##### ***Requirements of relevant legislation must be met***

Ensure the order or notice meets the criteria established in the Act or POEO Act respectively. The conditions or requirements of the order or notice must also be within the power conferred by the section under which you are issuing the legal instrument.

##### ***Requirements must be connected with the subject of the notice***

Conditions or requirements in a legal instrument must be consistent with and sufficiently related to the statutory power which enables the authorised officer to issue the instrument. Authorised officers must exercise a statutory power for the purposes for which it has been conferred. Conditions in instruments must also be reasonable.

##### ***Requirements must be directed to the recipient***

Conditions or requirements apply to the recipient of the order or notice only. Compliance with the requirements should not be dependant on third parties e.g. requiring a report to be prepared in consultation with or approved by another government agency prior to submission to the Coastal Authority, or requiring that a consent authority must grant development consent by a particular date. However, a condition could be included to the effect that the recipient of the order must submit a development application to a consent authority by a certain date (provided that date is reasonable).

##### ***Ensure the requirements are legally as well as practically possible***

The requirements of the order or notice must be legally possible and, for example, not inconsistent with other conditions or a previous legal instrument which is in force.

##### ***Specify reasonable times for completion***

When setting due dates take into account other approvals which might be required, e.g. development consents. Ensure the time for completion of works specified in the legal instrument is reasonably achievable.

##### ***Ensure you have delegated power or authorisation***

Ensure the order or notice is signed by an authorised officer with the appropriate authorisation and delegation.

##### ***Making variations or approving alternatives outside the legislative framework***

As a general rule it is inappropriate to allow for an alternative to a requirement of a legal instrument using a phrase such as ‘as otherwise approved by the Coastal Authority’. The requirement should be directly incorporated into the instrument.

Use statutory variation procedures to accommodate changes in operating times and due dates for compliance.

## **Consider natural justice**

Fairness and natural justice principles apply to all authorised officers. In making decisions affecting the rights or other interests of individuals, all authorised officers need to ensure that a fair procedure is followed and must:

- afford an opportunity to be heard to a person whose interests will be adversely affected by the decision (does not apply to orders under Part 4D), and
- be disinterested or unbiased in the matter to be decided.

## **Other legal requirements**

### ***Conditions do not need to restate the law***

Conditions requiring the recipient to comply with the law, e.g. 'comply with all relevant environment protection legislation' or 'comply with the Environmental Planning and Assessment Act', are unnecessary.

### ***Extending due dates***

Automatically extending a due date may cast doubt on the legal validity of the original notice and should only be done after carefully considering the reasons for the request. Due dates should only be extended by further notice in writing.

## **6.4 Statute of limitations**

In administering the Act and regulations, authorised officers should also be familiar with the concept of the statute limitation period. This is a period during which a civil case or a criminal prosecution may be commenced in court. If a Coastal Authority is considering prosecuting for an offence under the Act, proceedings must be commenced no later than 6 months from when the offence is alleged to have been committed (s. 179 *Criminal Procedure Act 1986*).

## **6.5 Enforcement**

If there is non-compliance with an order or notice there are enforcement options open to authorised officers under section 55ZF of the Act (for an order) and section 211 of the POEO Act (for a notice). Depending on the circumstances a decision may be made to prosecute the person for failing to comply.

### **Collect relevant evidence**

It is essential to have evidence demonstrating the justification for the action required by the order or notice in case the legal instrument is challenged in court. Prepare and keep file notes about site inspections and take relevant photos.

For example, if you issued an order to restore land, it is important that you have evidence concerning the condition of the land that was the basis for issuing the notice.

Also ensure that good file notes are kept of any conversations with the person the order or notice was issued to.

### **Follow up compliance**

Ensure due dates are monitored, followed up and appropriate evidence gathered and enforcement action taken to ensure the requirements of the order or notice are complied with.

### **Take enforcement action if appropriate**

Depending on the circumstances, enforcement action may be appropriate if there has been failure to comply with a legal instrument. In some cases, a penalty notice or prosecution for failing to comply with an order may be warranted. Where necessary, seek further legal and/or technical advice.

## 7 Appeals

There are no statutory appeal rights under the Act or the POEO Act against:

- orders issued under Part 4D
- the refusal to issue a certificate under section 55T or the conditions of such a certificate
- a notice to provide information and/or records under sections 191, 192 or 193 of the POEO Act.

However, a person or corporation on whom the order, certificate or notice is made may seek a judicial review of the order under common law if they consider it is not lawful. Note that under a judicial review, the court will not review the decision (e.g. the order) to determine whether it was the 'right' decision to be made in the circumstances (i.e. a merit review). Judicial review only involves determining whether the decision was lawful, not whether it was appropriate.

A judicial review is usually heard in the NSW Supreme Court. If the court decides that the order, certificate or notice was not lawful, it may set it aside and may send it back to the delegated authorised officer to be made again.

A person seeking a judicial review may claim that the order, notice or certificate:

- involved a breach of natural justice (not applicable to orders under Part 4D of the Act; section 55ZD(6))
- represented an error of law (e.g. the person who issued the order did not have the jurisdiction to do so or it was beyond the provisions of the Act), or
- involved a failure to take into account a relevant consideration.

It is therefore important that any order, certificate or notice is issued by a person with the lawful authority to issue it and that it was issued in accordance with the provisions of the Act.

## 8 Further reading

Department of Environment and Climate Change NSW 2009. *Guide to notices under the Protection of the Environment Operations Act 1997*. [partly applicable]

Department of Environment and Conservation NSW 2004. *Prosecution guidelines*, 2nd edition.

Department of Environment and Climate Change NSW 2006. *Powers of authorised officers: a guide to your powers under environment protection legislation*. [partly applicable]

## Appendix A – Sample application form and certificate for emergency coastal protection works

### Application for emergency coastal protection works Section 55T of the *Coastal Protection Act 1979*

Date received: *[Insert date received]*

Application number: *[Insert a unique application number identifier]*

#### LODGEMENT

This application form is to be completed by an owner or occupier of land who wishes to apply to the relevant local council or the Director-General of the Department of Environment, Climate Change and Water for a certificate authorising the placement of emergency coastal protection works on land under Division 2 of Part 4C of the *Coastal Protection Act 1979*.

Before lodging this application, it is recommended that you consult with the relevant local council or the Department of Environment, Climate Change and Water concerning your application. The application fee must be provided at the time you lodge this application form.

To ensure that your application is accepted, you must:

- complete all relevant parts of this form, and
- submit all relevant information required by this form, and
- provide three (3) copies of this form and attached documentation.

N.B. The Coastal Authority or Director-General may request further information if your application is incomplete or inadequate.

#### A1 APPLICANT FOR THE EMERGENCY COASTAL PROTECTION WORKS

##### NAME

Mr ☐ Ms ☐ Mrs ☐ Dr ☐ Other ☐

First name

Family name

##### STREET ADDRESS

Unit/street no.

Street name

Suburb or town

State

Postcode

POSTAL ADDRESS (or mark 'as above')

Suburb or town

State

Postcode

Daytime telephone

Fax

Mobile

Email

## A2 SITE FOR PROPOSED EMERGENCY COASTAL PROTECTION WORKS

Identify the land on which is located a lawfully erected building which you propose to protect from damage due to coastal erosion by placing emergency coastal protection works for which you seek a certificate.

Unit/street no.

Street or property name

Suburb, town or locality

Postcode

Local government area

Lot/DP or Lot/Section/DP or Lot/Strata no.

Please ensure that you put a slash (/) between lot, section, DP and strata numbers. If you have more than one piece of land, you will need to separate them with a comma.

Note: You can find the lot, section, DP or strata number on a map of the land or on the title documents for the land, if title was provided after 30 October 1983. If you have documents older than this, you will need to contact the Land and Property Management Authority for update details.

Are you the:

☐

Owner of this land

☐

Occupier of this land

[tick one box]

Provide details of any public land (e.g. land owned by council or Crown land) on which you propose to place the works. If works are not to be placed on public land, write NIL.

## A3 DESCRIPTION OF THE EMERGENCY COASTAL PROTECTION WORKS

Emergency coastal protection works means works comprising the placement of the following material on a beach, or a sand dune adjacent to a beach, to mitigate the effects of wave erosion on land:

- a) sand, or fabric bags filled with sand, (other than sand taken from a beach or a sand dune adjacent to a beach)
- b) other objects or material prescribed by the regulations under the *Coastal Protection Act 1979* (other than rocks, concrete, construction waste or other debris).

Describe the proposed emergency coastal protection works and their location relative to the boundary of the property identified in section A2, including all major components. Attach to this form any relevant documents, photos, etc. and relevant information to support your application.

**Location drawing:**

#### A4 APPLICANT'S SIGNATURE

Signature

Date

Please ensure that the information is accurate and advise us of any changes. Note that it is an offence under section 11 of the *Coastal Protection Act 1979* to provide any information in purported compliance with a requirement made under this Act knowing that it is false or misleading in a material respect.

#### A5 PRIVACY POLICY

The information you provide in this application will enable us to assess your application under the *Coastal Protection Act 1979*. If the information is not provided, your application may not be accepted. You have the right to access and have corrected, information provided in your application. This information will only be used for the purposes of administering the *Coastal Protection Act 1979* and other uses permitted by legislation.

[Council or DECCW letterhead]

## Certificate authorising emergency coastal protection works

### Section 55T of the *Coastal Protection Act 1979*

---

Certificate number [Insert Coastal Authority certificate number]

Date of issue [Certificate issue date]

#### Applicant details

Application number: [Insert unique application number identifier from application form]

NAME

Mr ☐ Ms ☐ Mrs ☐ Dr ☐ Other ☐

First name

Family name

#### STREET ADDRESS

Unit/street no.

Street name

Suburb or town

State

Postcode

Authorising emergency coastal protection works:

Issued unconditionally ☐

Issued conditionally ☐ see conditions attached

Refused ☐ see reasons attached

[If certificate issued] This certificate does not authorise the placement of emergency coastal protection works more than 2 years after it was issued.

Local council or DECCW delegate:

In determining this application I am an *emergency works authorised officer* appointed by a local council or the Director-General of the Department of Environment, Climate Change and Water for the purposes of issuing emergency coastal protection works certificates under Division 2 of the *Coastal Protection Act 1979*.

Name:

Position:

Date:

Signature:

---

[If issued conditionally or refused, include additional conditions or reasons for refusal as an attachment to this certificate]



**Additional information**

In issuing a certificate authorising emergency coastal protection works a Coastal Authority should also provide the applicant with a copy of the following information:

- the requirements of a landowner under the *Coastal Protection Act 1979*
- a copy of, or internet address for, the Minister's Requirements under the *Coastal Protection Act 1979*, and
- the relevant provisions of any emergency action subplan applicable to the site.

## **Appendix B – Forming an opinion if material, structures or works cause or are likely to cause increased erosion**

### **Questions for consultation draft**

Identifying circumstances where materials, structures or works cause or are likely to cause increased erosion of a beach or land adjacent to a beach are central to issuing orders under the Act. This draft includes the major factors to consider in forming an opinion as to whether this will occur. Are these sufficient for officers to form an opinion regarding this matter? If not, what changes should be made?

Following sections 55ZA, 55ZB and 55ZC of the Act, a Coastal Authority may issue a removal, stop work, alter or repair order for emergency coastal protection works if the Coastal Authority is of the opinion that the works are likely to cause or are causing increased erosion of a beach or land adjacent to a beach.

In determining the need to issue an order, the Coastal Authority will need to form the opinion as to whether the works are directly responsible for any observed or potential increases in erosion or if this is simply the response of a beach and foreshore to natural coastal processes operating at any one time.

### **Background**

Coastal erosion is the response of a beach to changing wave and water level conditions, resulting in the wearing away of land or the removal of beach, foredunes and sediments. It is important to understand this is both a natural and dynamic process and is often cyclical, characterised by periodic episodes of coastal retreat and rebuilding. Generally, sediment is eroded during periods of storm or large swell wave activity and moves offshore, only to be returned and the beach rebuilt during calmer periods of the cycle.

The nature and rate of erosion along a section of coast is influenced by the nature of the shoreline (i.e. rocky 'hard' or sandy 'soft' shorelines), exposure of the coast to the swell and energy regime (i.e. 'open coast beaches' or 'estuarine beaches') and any topographic influences or coastal processes that may be acting at any point in time. In addition, any adjacent influences such as streams and stormwater drainage or discharge effects may also increase the rate of coastal erosion at any one location. It is important to understand that the cause(s) of coastal erosion are not always obvious due to the complexity of the coastal processes in operation. When determining the effects of any emergency protection works it should be taken into account that any works have been established to try and prevent erosion that is either already occurring or is likely to be occurring in the near future.

### **Identifying erosion**

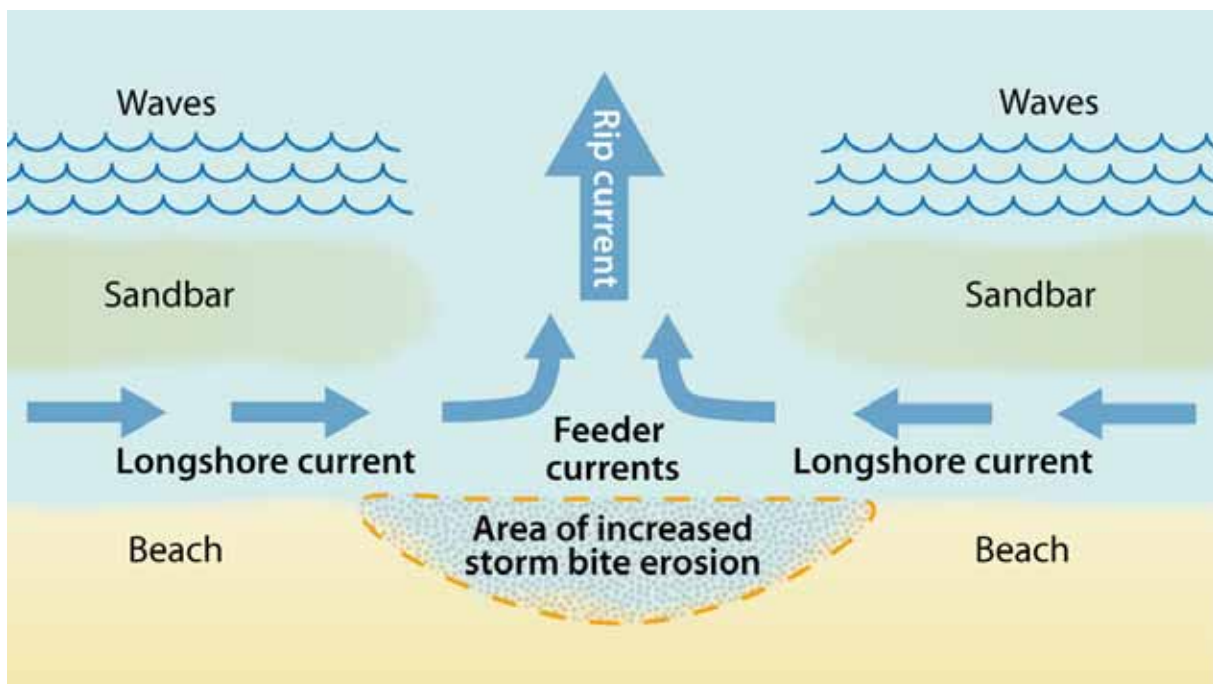
The most effective way to determine erosion on a beach is through systematic measurements of the linear beach width or sand volumetric calculation through time. In relation to the investigation into the erosion effects of emergency coastal protection works, measurements taken pre and post-construction can provide detailed information about changes in rates of erosion, and where available may be used to provide assistance in determining whether protection works are causing an increase in the erosion of a beach or neighbouring land. In the absence of such information an onsite inspection can be used. The following list details a set of factors that may provide assistance to authorised officers when determining whether emergency protection works are having an influence on increased erosion of a beach or land adjacent to a beach:

- an increase in the erosion distance (landward movement of the erosion escarpment) on sections of beach or land immediately adjacent to emergency protection works in

comparison to the erosion distance identified across the rest of the embayment, when the beach is undergoing a period of erosion

- an accretion (sand build-up) on one side of protection works suggesting the structure may be impeding the longshore movement of sediment along the beach
- the presence of a zone of increased wave focus acting on sections of beach or land immediately adjacent to emergency protection works, or
- the failure of a section of beach or land immediately adjacent to emergency protection works to recover (rebuild), in comparison to the rest of the embayment in a period of beach recovery following an erosion period.

When taking into account the above factors consideration should also be given to the coastal processes. For example, currents associated with rip cells can lead to increased erosion of the beach and foreshore located immediately landward of the rip current. Rip cells can be identified by a strong longshore current in the nearshore gutter (feeder current) and a return jet of water seawards through the offshore bar (rip current) as shown in Figure 1. Due to the complexity associated with the identification and presence of rip cell, local topology effects and other processes it may require additional technical expertise to help determine the specific cause of coastal erosion.



**Figure 1:** Rip cell circulation (adapted from Komar, PD (1976). *Beach processes and sedimentation*. Prentice-Hall, New York.).

### Predicting erosion

Where authorised officers must form an opinion as to whether increased erosion is likely to occur, additional factors must be considered, such as the proposed:

- design of the works
- height and extent of the works
- position on the beach or foreshore.

Where the design of the works does not adhere to the four design options, constitutes hard protective works (i.e. concrete structure, boulders and rock material), does not adhere to placement patterns, and exceeds height limits of 1.5 m as outlined in the Minister's Requirements, then it is increasingly likely that the works may cause increased erosion.

Consideration should also be made to the position of both the works and the erosion escarpment. Works are required to be placed against the erosion escarpment and where they have failed to do so may increase the likelihood of erosion. In addition the width of the beach (distance from mean high water mark to the erosion escarpment) may also have an influence on erosion, where beaches of a larger width may provide an increased buffer against erosion effect before becoming influenced by placed works.

Due to the dynamic nature of the processes involved, authorised officers may require additional advice from technical experts to assist in forming an opinion in such matters.

It should be noted that in forming an opinion as to whether material, structures or works cause or are likely to cause increased erosion, authorised officers can be accompanied by another person to assist them in exercising their functions (section 199A POEO Act). This may include, for example, a coastal specialist with the relevant knowledge and experience to confidently form an opinion in this matter.

## **Appendix C – Orders to remove certain materials and structures unlawfully placed on beaches**

Appendix C relates to section 55ZA of the Act, orders to remove certain materials and a structure unlawfully placed on beaches, and includes:

- 1) A Coastal Authority may, in respect of a beach on land for which it is a designated authority, order a person to remove material deposited by or on behalf of the person on the beach that, in the opinion of the Coastal Authority:
  - a) causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or
  - b) unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or
  - c) poses or is likely to pose a threat to public safety.
- 2) A Coastal Authority may order a person who is the owner or occupier of land that is on or has a frontage to a beach for which it is a designated authority:
  - a) to refrain from erecting a structure on the beach or on or near the boundary of the land and the beach, or
  - b) to remove a structure erected by or on behalf of the person on the beach or on or near the boundary of the land and the beach (not being a structure lawfully erected before the commencement of this section)if the structure, in the opinion of the Coastal Authority:
  - c) causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or
  - d) unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or
  - e) poses or is likely to pose a threat to public safety.

Table 1 below provides a checklist that authorised officers can use to assist in determining whether an order can be issued under section 55ZA of the Act.

**Table 1 – Checklist for orders to remove certain materials and structures unlawfully placed on beaches**

	Question	Yes or No	Brief description of evidence and/or investigation method used
<b>STEP 1</b>			
1.1	Has material been deposited or a structure erected on a beach or land for which the Coastal Authority that appointed you is a designated authority?		Visual inspection.
If the answer to 1.1 is <b>YES</b> , proceed to Step 2.			
<b>STEP 2</b>			
2.1	Was the material deposited or structure erected by or on behalf of the person on the beach?		Questioning landholder.
If the answer to 2.1 is <b>YES</b> , proceed to Step 3.			
<b>STEP 3</b>			
3.1	In your opinion, will the deposited material or structure cause or is it likely to cause erosion of a beach or land adjacent to a beach?		Refer to Appendix B.
3.2	In your opinion, does the deposited material or structure unreasonably limit or is it likely to unreasonably limit public access to a beach or headland?  This may include, for example, established walking paths and/or roads being either partially or fully obstructed.		Visual inspection.
3.3	In your opinion, does the deposited material or structure pose or is it likely to pose a threat to public safety?  Public safety involves the prevention of events that could endanger the safety of the general public by causing significant danger, injury/harm or damage.		Visual inspection.
If the answer to any of questions 3.1, 3.2 or 3.3 is <b>YES</b> , proceed to Step 4.			

	Question	Yes or No	Brief description of evidence and/or investigation method used
<b>STEP 4</b>			
4.1	Is the material deposited or structure erected on the beach part of development under the <i>Environmental Planning and Assessment Act 1979</i> : <ul style="list-style-type: none"> <li>• for which consent has been granted</li> <li>• is exempt development</li> <li>• is an existing use</li> <li>• does not require consent, or</li> <li>• is an approved project under Part 3A?</li> </ul>		Check council records for any applicable development consent; check applicable planning instruments.
4.2	Is the material deposited or structure erected emergency coastal protection works?		A valid certificate for emergency coastal protection works.
4.3	If the order is being served by council, is it being issued to a Minister or another public authority?		
If the answers to 4.1, 4.2 and 4.3 are all <b>NO</b> , proceed to Step 5.			
<b>STEP 5</b>			
5.1	If the land is Crown land within the meaning of the <i>Crown Lands Act 1989</i> or land within a reserve as defined in Part 5 of that Act, has the Minister administering that Act been consulted?		
If the answer to 5.1 is <b>YES</b> or the land is not Crown land or within a reserve, an order can be issued.			

The following are examples of orders that could be issued under section 55ZA of the Act. The templates provided below should be used as a guide only. It is still important to take into account the circumstances of each individual case, and if appropriate depart from the standard approach. In all cases, the order should be clear, appropriate, reasonable and enforceable.

**N.B. The actual text of an order needs to be individually worded to meet the situation's requirements and circumstances. Authorised officers should seek their own legal advice on the appropriate wording.**

## Template for an order to remove certain materials and structures unlawfully placed on beaches

---

*[Insert Coastal Authority's name or letterhead]*

*[Accountable party name]*

*[Accountable party address]*

*[Accountable party address]*

Order number            *[Order number]*

File number            *[Insert Coastal Authority file number]*

Date                    *[Notice issue date]*

**BY *[Insert method of service]***

### **ORDER TO REMOVE MATERIALS *[AND/OR]* STRUCTURES *[choose one or both as appropriate]* UNLAWFULLY PLACED ON A BEACH**

#### **Section 55ZA of the Coastal Protection Act 1979**

#### **BACKGROUND**

- A. The *[insert name of Coastal Authority]* has responsibility for the administration and enforcement of the *Coastal Protection Act 1979* ('the Act').
- B. *[Notice authorising officer name]*, holds the position of *[Notice authorising officer title]* within *[insert name of Coastal Authority]*.
- C. *[Notice authorising officer title]* holds delegated authority on behalf of the *[insert name of Coastal Authority]* for the purposes of section 55ZA of the Act.
- D. *[Accountable party name]* is the owner of *[OR]* is in lawful possession of *[OR]* is in lawful occupation of *[delete where not applicable] [insert Lot and DP numbers and address and name]* ('the property').
- E. *[Provide details of the material(s) and/or structure(s) and the beach and/or land adjacent to the beach, including the property.]*

#### **OPINION**

- F. I, *[Notice authorising officer name]*, *[Notice authorising officer title]* am of the opinion that the material deposited on the beach *[AND/OR]* a structure erected on the beach or on or near the boundary of the land and the beach *[choose one or both as appropriate]* by or on behalf of *[Accountable party name]*:
  - a) causes or is likely to cause increased erosion of a beach or land adjacent to the beach, *[AND/OR]*
  - b) unreasonably limits or is likely to unreasonably limit public access to a beach or headland, *[AND/OR]*
  - c) poses or is likely to pose a threat to public safety.



**ORDER TO REMOVE MATERIAL(S) [AND/OR] STRUCTURE(S)** *[choose one or both as appropriate]*

- G. I, *[Notice authorising officer name]*, *[Notice authorising officer title]*, require that *[Accountable party name]* remove the material(s) *[AND/OR]* structure(s) as directed below within the time(s) specified.

*[Insert directions and relevant time frame(s) – see chapter 6 for guidance.]*

**1 Records**

- 1.1 The following records must be kept by the *[Accountable party name]* in respect of any inspections required by this direction:
- a) date(s) on which the inspection was undertaken
  - b) name of the person who undertook the inspection, and
  - c) type of inspection undertaken.
- 1.2 The following records must be kept by the *[Accountable party name]* in respect of any work undertaken as a result of any inspection(s):
- a) details of any required work within the area
  - b) date(s) this work was undertaken, and
  - c) date on which this work was completed.
- 1.3 All records required to be kept by this notice must be:
- a) in a legible form, or in a form that can readily be reduced to a legible form
  - b) kept for at least four (4) years after the inspection or event to which they relate took place
  - c) produced in a legible form to any authorised officer of *[insert name of Coastal Authority]* who asks to see them, and
  - d) be true, accurate and correct.

**2 Reporting**

*[Consider reporting requirements if the order to remove the material(s) and/or structure(s) represents substantial and/or significant work. See chapter 6 for guidance.]*

- 2.1 The landholder must prepare and submit a works report to the *[insert appropriate position title]*, *[insert name of Coastal Authority]*, *[insert address]* by *[insert exact date]*. The works report must include but not be limited to the nature of works completed and date of completion for directions in accordance with section G of this order, and

*[Consider monitoring requirements if the order to remove the material(s) and/or structure(s) represents substantial and/or significant work and/or is to be completed over a substantial time period and the officer believes that progress needs to be monitored. See chapter 6 for guidance.]*

- 2.2 The landholder must prepare and submit a monitoring report to the *[insert appropriate position title]*, *[insert name of Coastal Authority]*, *[insert address]* by *[insert exact date]*, and each *[choose an appropriate length of time, e.g. week/month/year]* thereafter a report for each 'reporting period'.

## DEFINITIONS

In this direction the following definitions apply:

[‘Word’]	[Definition]
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## WARNING AND INFORMATION ABOUT THIS DIRECTION

- It is an offence against section 55ZF of the *Coastal Protection Act 1979* (‘the Act’) to fail to comply with this order. The maximum penalty that a court may impose for this offence is, for a corporation, \$495,000 plus \$44,000 for each day the offence continues and for an individual, \$247,500 plus \$22,000 for each day the offence continues.
- If you fail to comply with the requirements of this order within the time specified the *[insert name of Coastal Authority]* may authorise any other person to carry out the order (section 55ZF (2) the Act). The *[insert name of Coastal Authority]* may then recover the costs incurred from you (section 55ZF (3) of the Act).
- Under section 55ZD (3) an order may be varied or revoked by a further notice.
- The *[insert name of Coastal Authority]* may conduct inspections to determine whether this order is being complied with.
- Words and expressions have the same meaning as words and expressions used in the Act, except where a word is specifically defined in this order.
- This order is issued under section 55ZA of the Act.
- An order will not negate the potential for prosecution. An order is separate to any potential prosecution.

## FEE TO BE PAID

You are required by law to pay a fee of \$320 for the administrative costs of issuing this order.

It is an offence not to pay this fee. However, you may apply for an extension of time to pay the fee, or for the fee to be waived. Attached to this order there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

.....

*[Insert delegated officer name]*

*[Insert delegated title]*

(by delegation)

## Template order to refrain from erecting a structure on a beach

---

*[Insert Coastal Authority's name or letterhead]*

*[Accountable party name]*

*[Accountable party address]*

*[Accountable party address]*

Order number           *[Order number]*

File number           *[Insert Coastal Authority file number]*

Date                   *[Notice issue date]*

**BY** *[Insert method of service]*

### **ORDER TO REFRAIN FROM ERECTING A STRUCTURE ON A BEACH OR ON OR NEAR THE BOUNDARY OF THE LAND AND THE BEACH**

#### **Section 55ZA of the *Coastal Protection Act 1979***

#### **BACKGROUND**

- A. The *[insert name of Coastal Authority]* has responsibility for the administration and enforcement of the *Coastal Protection Act 1979* ('the Act').
- B. *[Notice authorising officer name]*, holds the position of *[Notice authorising officer title]* within *[insert name of Coastal Authority]*.
- C. *[Notice authorising officer title]* holds delegated authority on behalf of the *[insert name of Coastal Authority]* for the purposes of section 55ZA of the Act.
- D. *[Accountable party name]* is the owner of *[OR]* is in lawful possession of *[OR]* is in lawful occupation of *[delete where not applicable] [insert Lot and DP numbers and address and name]* ('the property').
- E. *[Provide details of the proposed structure(s) and location, including the property.]*

#### **OPINION**

- F. I, *[Notice authorising officer name]*, *[Notice authorising officer title]* am of the opinion that if the structure described above were erected on the beach or on or near the boundary of the land and the beach that the structure will:
  - a) cause or is likely to cause increased erosion of a beach *[AND/OR]* land adjacent to the beach, *[AND/OR]*
  - b) unreasonably limit or is likely to unreasonably limit public access to a beach *[AND/OR]* headland, *[AND/OR]*
  - c) pose or is likely to pose a threat to public safety.

#### **ORDER TO REFRAIN FROM ERECTING A STRUCTURE**

- G. I, *[Notice authorising officer name]*, *[Notice authorising officer title]*, require that *[Accountable party name]* refrain from erecting the structure described in section E above on the beach or on or near the boundary of the land and the beach.

## DEFINITIONS

In this direction the following definitions apply:

[‘Word’]	[Definition]
----------	--------------

## WARNING AND INFORMATION ABOUT THIS DIRECTION

- It is an offence against section 55ZF of the *Coastal Protection Act 1979* (‘the Act’) to fail to comply with this order. The maximum penalty that a court may impose for this offence is, for a corporation, \$495,000 plus \$44,000 for each day the offence continues and for an individual, \$247,500 plus \$22,000 for each day the offence continues.
- If you fail to comply with the requirements of this order within the time specified the *[insert name of Coastal Authority]* may authorise any other person to carry out the order (section 55ZF (2) the Act). The *[insert name of Coastal Authority]* may then recover the costs incurred from you (section 55ZF (3) of the Act).
- Under section 55ZD (3) an order may be varied or revoked by a further notice.
- The *[insert name of Coastal Authority]* may conduct inspections to determine whether this order is being complied with.
- Words and expressions have the same meaning as words and expressions used in the Act, except where a word is specifically defined in this order.
- This order is issued under section 55ZA of the Act.
- An order will not negate the potential for prosecution. An order is separate to any potential prosecution.

## FEE TO BE PAID

You are required by law to pay a fee of \$320 for the administrative costs of issuing this order.

It is an offence not to pay this fee. However, you may apply for an extension of time to pay the fee, or for the fee to be waived. Attached to this order there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

.....

*[Insert delegated officer name]*

*[Insert delegated title]*

(by delegation)

## **Appendix D – Stop work orders relating to materials and structures unlawfully being placed on beaches**

Appendix D relates to section 55ZB of the Act, stop work orders relating to materials and structures unlawfully being placed on beaches, and includes:

- 1) A Coastal Authority that is a designated authority for land may order a person not to carry out an activity on a beach on the land that the person is carrying out, or is about to carry out, if the Coastal Authority is of the opinion that the activity:
  - a) causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or
  - b) unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or
  - c) poses or is likely to pose a threat to public safety.
- 2) This section does not apply to an activity in the course of development for which consent has been granted or that is exempt development or development that does not need consent under the *Environmental Planning and Assessment Act 1979* or is an approved project within the meaning of Part 3A of that Act.
- 3) This section does not apply if the activity comprises the placement or maintenance of emergency coastal protection works.
- 4) A council may not give an order under this section to a Minister or another public authority.

Table 2 below provides a checklist that authorised officers can use to assist in determining whether an order can be issued under section 55ZB of the Act.

**Table 2 – Checklist for stop work orders relating to materials and structures unlawfully placed on beaches**

	Question	Yes or No	Brief description of evidence and/or investigation method used
<b>STEP 1</b>			
1.1	Has material been deposited or a structure erected on a beach or land for which the Coastal Authority that appointed you is a designated authority?		Visual inspection.
If the answer to 1.1 is <b>YES</b> , proceed to Step 2.			
<b>STEP 2</b>			
2.1	In your opinion, will the activity cause or is it likely to cause erosion of a beach or land adjacent to a beach?		Refer to Appendix B.
2.2	In your opinion, does the activity unreasonably limit or is it likely to unreasonably limit public access to a beach or headland?  This may include, for example, established walking paths and/or roads being either partially or fully obstructed.		Visual inspection.
2.3	In your opinion, does the activity pose or is it likely to pose a threat to public safety?  Public safety involves the prevention of events that could endanger the safety of the general public by causing significant danger, injury/harm or damage.		Visual inspection.
If the answer to any of questions 2.1, 2.2 or 2.3 is <b>YES</b> , proceed to Step 3.			
<b>STEP 3</b>			
3.1	Is the material deposited or structure erected on the beach part of development under the <i>Environmental Planning and Assessment Act 1979</i> : <ul style="list-style-type: none"> <li>• for which consent has been granted</li> <li>• is exempt development</li> <li>• does not require consent, or</li> <li>• is an approved project under Part 3A?</li> </ul>		Check council records for any applicable development consent; check applicable planning instruments.

	Question	Yes or No	Brief description of evidence and/or investigation method used
3.2	Is the activity the placement or maintenance of emergency coastal protection works?		A valid certificate for emergency coastal protection works.
3.3	If the order is being served by council, is it being issued to a Minister or another public authority?		
If the answers to questions 3.1, 3.2 and 3.3 are all <b>NO</b> , an order can be issued.			

The following is an example of an order that could be issued under section 55ZB of the Act. The template provided below should be used as a guide only. It is still important to take into account the circumstances of each individual case, and if appropriate depart from the standard approach. In all cases, the order should be clear, appropriate, reasonable and enforceable.

**N.B. The actual text of an order needs to be individually worded to meet the situation's requirements and circumstances. Authorised officers should seek their own legal advice on the appropriate wording.**



## Template for a stop work order relating to materials and structures unlawfully being placed on beaches

---

*[Insert Coastal Authority's name or letterhead]*

*[Accountable party name]*

*[Accountable party address]*

*[Accountable party address]*

Order number           *[Order number]*

File number           *[Insert Coastal Authority file number]*

Date                   *[Notice issue date]*

**BY** *[Insert method of service]*

### **STOP WORK ORDER FOR MATERIALS *[AND/OR]* A STRUCTURE *[choose one or both as appropriate]* UNLAWFULLY BEING PLACED ON A BEACH**

#### **Section 55ZB of the Coastal Protection Act 1979**

#### **BACKGROUND**

- A. The *[insert name of Coastal Authority]* has responsibility for the administration and enforcement of the *Coastal Protection Act 1979* ('the Act').
- B. *[Notice authorising officer name]*, holds the position of *[Notice authorising officer title]* within *[insert name of Coastal Authority]*.
- C. *[Notice authorising officer title]* holds delegated authority on behalf of the *[insert name of Coastal Authority]* for the purposes of section 55ZB of the Act.
- D. *[Accountable party name]* is the owner of *[OR]* is in lawful possession of *[OR]* is in lawful occupation of *[delete where not applicable] [insert Lot and DP numbers and address and name]* ('the property').
- E. *[Provide details of the materials and/or structure(s) and location, including the property].*

#### **OPINION**

- F. I, *[Notice authorising officer name]*, *[Notice authorising officer title]* am of the opinion that the activity on the beach on the land that *[Accountable party name]* is carrying out or is about to carry out will:
  - a) cause or is likely to cause increased erosion of a beach or land adjacent to the beach, *[AND/OR]*
  - b) unreasonably limit or is likely to unreasonably limit public access to a beach or headland, *[AND/OR]*
  - c) pose or is likely to pose a threat to public safety.

## ORDER TO STOP THE ACTIVITY

- G. I, *[Notice authorising officer name]*, *[Notice authorising officer title]*, require that *[Accountable party name]* stop carrying out, or not begin to carry out, the activity described above in section E.

## DEFINITIONS

In this order the following definitions apply:

<i>['Word']</i>	<i>[Definition]</i>
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## WARNING AND INFORMATION ABOUT THIS DIRECTION

- It is an offence against section 55ZF of the *Coastal Protection Act 1979* ('the Act') to fail to comply with this order. The maximum penalty that a court may impose for this offence is, for a corporation, \$495,000 plus \$44,000 for each day the offence continues and for an individual, \$247,500 plus \$22,000 for each day the offence continues.
- If you fail to comply with the requirements of this order within the time specified the *[insert name of Coastal Authority]* may authorise any other person to carry out the order (section 55ZF (2) the Act). The *[insert name of Coastal Authority]* may then recover the costs incurred from you (section 55ZF (3) of the Act).
- Under section 55ZD (3) an order may be varied or revoked by a further notice.
- The *[insert name of Coastal Authority]* may conduct inspections to determine whether this order is being complied with.
- Words and expressions have the same meaning as words and expressions used in the Act, except where a word is specifically defined in this order.
- This order is issued under section 55ZB of the Act.
- An order will not negate the potential for prosecution. An order is separate to any potential prosecution.

## FEE TO BE PAID

You are required by law to pay a fee of \$320 for the administrative costs of issuing this order.

It is an offence not to pay this fee. However, you may apply for an extension of time to pay the fee, or for the fee to be waived. Attached to this order there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

.....  
*[Insert delegated officer name]*  
*[Insert delegated title]*  
(by delegation)

## Appendix E – Orders relating to emergency coastal protection works

Appendix E relates to section 55ZC of the Act, orders relating to emergency coastal protection works, and includes:

- 1) A Coastal Authority that is a designated authority for land on which a person has placed (or caused to be placed) emergency coastal protection works may order the person to remove, alter or repair the works and restore the land if the Coastal Authority is of the opinion that:
  - a) the works are causing increased erosion of a beach or land adjacent to a beach, or
  - b) the works unreasonably limit public access to a beach or headland, or
  - c) the works pose a threat to public safety, or
  - d) the works have ceased to be emergency coastal protection works (for example, the works have been in place for longer than the maximum period allowed for emergency coastal protection works or the works are not being maintained as required by the proposed Part).
- 2) A Coastal Authority that is a designated authority for land on which a person has placed (or caused to be placed) emergency coastal protection works (whether public or private land) may order the person to restore any assets or vegetation on public land that have been damaged in the course of the placement of the works.
- 3) A Coastal Authority that is a designated authority for public land on which a person has placed (or caused to be placed) emergency coastal protection works may order the person to move, alter or remove the works and restore the land if the Coastal Authority is of the opinion that the person did not take all practical measures:
  - a) to avoid placing those works on the public land, or
  - b) to avoid damage to assets or vegetation on the public land, or
  - c) to minimise risks to the public on the public land, or
  - d) to maintain reasonable public access (including access for local and public authorities) to and through the beach concerned.
- 4) An order under this section that requires a person to restore land may include a requirement that the person restore land concerned in accordance with:
  - a) any requirements adopted by the Minister and published in the Gazette for the purposes of this subsection, and
  - b) any requirements specified in the regulations for the purposes of this subsection.
- 5) Before giving an order under this section relating to emergency coastal protection works, a Coastal Authority must ensure that the person or body that issued the certificate under Division 2 of Part 4C for the works is aware of the intention to make the order.

**Note:** Certificates under Division 2 of Part 4C for emergency coastal protection works are issued by emergency works authorised officers as delegates of councils or of the Director-General of the Department of Environment, Climate Change and Water.

If an emergency works authorised officer who issued such a certificate was appointed by a council, any other Coastal Authority intending to make an order under this section relating to the works must ensure that the council is aware of the proposal to make the order.

If an emergency works authorised officer who issued such a certificate was appointed by the Director-General, any Coastal Authority intending to make an order under this

section relating to the works must ensure that the Director-General is aware of the proposal to make the order.

See section 55ZG for resolution of disputes between Coastal Authorities.

- 6) Before making an order under this section that relates to Crown land within the meaning of the *Crown Land Act 1989* or land within a reserve as defined in Part 5 of that Act, the Coastal Authority must consult the Minister administering that Act.
- 7) A council may not give an order under this section to a Minister or another public authority.

Table 3 below provides a checklist that authorised officers can use in determining whether an order can be issued under section 55ZC of the Act.

**Table 3 – Checklist for orders relating to emergency coastal protection works**

	Question	Yes or No	Brief description of evidence and/or investigation method used
<b>STEP 1</b>			
1.1	Are the works emergency coastal protection works as defined in the Act?		
1.2	Are the works on a beach or land for which the Coastal Authority that appointed you is a designated authority?		Visual inspection.
If the answers to questions 1.1 and 1.2 are both <b>YES</b> , proceed to Step 2.			
<b>STEP 2</b>			
2.1	In your opinion, are the works causing increased erosion of a beach or land adjacent to a beach?		Refer to Appendix B.
2.2	In your opinion, will the works unreasonably limit public access to a beach or headland?  This may include, for example, established walking paths and/or roads being either partially or fully obstructed.		Visual inspection.
2.3	In your opinion, do the emergency coastal protection works pose a threat to public safety?  Public safety involves the prevention of events that could endanger the safety of the general public by causing significant danger, injury/harm or damage.		Visual inspection.
2.4	Have the works ceased to be emergency coastal protection works?  For example, have the works been in place for longer than the maximum period allowed for emergency coastal protection works or are the works not being maintained as required by the Act?		A valid certificate for emergency coastal protection works.
If the answer to any of questions 2.1, 2.2 or 2.3 is <b>YES</b> , proceed to Step 5.			

	Question	Yes or No	Brief description of evidence and/or investigation method used
<b>STEP 3</b>			
3.1	Were any assets or vegetation damaged on public land in the course of the placement of the emergency coastal protection works?		
If the answer is <b>YES</b> , proceed to Step 5 (also go to step 4).			
<b>STEP 4</b>			
4.1	If the works are on public land, did the person take all practical measures to avoid placing those works on the public land?		
4.2	If the works are on public land, did the person take all practical measures to avoid damage to assets or vegetation on public land?		
4.3	If the works are on public land, did the person take all practical measures to minimise risks to the public on public land?		
4.4	If the works are on public land, did the person take all practical measures to maintain reasonable public access (including access for local and public authorities) to and through the beach concerned?		
If any of questions 4.1, 4.2, 4.3 or 4.4 is answered <b>NO</b> , proceed to Step 5.			
<b>STEP 5</b>			
5.1	Is the person or body that issued the certificate under Division 2 of Part 4C of the Act for the works aware of the intention to make the order?		
5.2	If the land is Crown land within the meaning of the <i>Crown Lands Act 1989</i> or land within a reserve as defined in Part 5 of that Act, has the Minister administering that Act been consulted?		
5.3	If the order is being served by council, is it being issued to a Minister or another public authority?		
If the answers to 5.1 and 5.2 are <b>YES</b> and the answer to 5.3 is <b>NO</b> , an order can be issued.			

The following are examples of orders that could be issued under section 55ZC of the Act. The templates provided below should be used as a guide only. It is still important to take into account the circumstances of each individual case, and if appropriate depart from the standard approach. In all cases, the order should be clear, appropriate, reasonable and enforceable.

**N.B. The actual text of an order needs to be individually worded to meet the situation's requirements and circumstances. Authorised officers should seek their own legal advice on the appropriate wording.**

## Template to order a person to remove, alter or repair works and restore the land

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*[Insert Coastal Authority's name or letterhead]*

*[Accountable party name]*

*[Accountable party address]*

*[Accountable party address]*

Order number           *[Order number]*

File number           *[Insert Coastal Authority file number]*

Date                   *[Notice issue date]*

**BY** *[Insert method of service]*

### **ORDER TO REMOVE/ALTER/REPAIR** *[choose appropriate one or combination]* **EMERGENCY COASTAL PROTECTION WORKS AND RESTORE THE LAND** *[if required]*

#### **Section 55ZC of the Coastal Protection Act 1979**

#### **BACKGROUND**

- A. The *[insert name of Coastal Authority]* has responsibility for the administration and enforcement of the *Coastal Protection Act 1979* ('the Act').
- B. *[Notice authorising officer name]*, holds the position of *[Notice authorising officer title]* within *[insert name of Coastal Authority]*.
- C. *[Notice authorising officer title]* holds delegated authority on behalf of the *[insert name of Coastal Authority]* for the purposes of section 55ZC of the Act.
- D. *[Accountable party name]* is the owner of *[OR]* is in lawful possession of *[OR]* is in lawful occupation of *[delete where not applicable] [insert Lot and DP numbers and address and name]* ('the property').
- E. *[Provide details of the emergency coastal protection works, including the location and relevant property]*.

#### **OPINION**

- F. I, *[Notice authorising officer name]*, *[Notice authorising officer title]* am of the opinion that the emergency coastal protection works:
  - a) are causing increased erosion of a beach or land adjacent to a beach, *[AND/OR]*
  - b) unreasonably limit public access to a beach or headland, *[AND/OR]*
  - c) pose a threat to public safety, *[AND/OR]*
  - d) have ceased to be emergency coastal protection works.



## **ORDER TO REMOVE/ALTER/REPAIR WORKS** *[choose appropriate one or combination]*

G.i. I, *[Notice authorising officer name]*, *[Notice authorising officer title]*, require that *[Accountable party name]* remove/alter/repair *[choose appropriate one or combination]* the emergency coastal protection works as directed below within the time(s) specified.

*[Insert directions and relevant time frames. See chapter 6 for guidance.]*

## **ORDER TO RESTORE THE LAND**

G.ii. I, *[Notice authorising officer name]*, *[Notice authorising officer title]*, in order to restore the land to the condition in which it existed prior to placement of the emergency coastal protection works to the greatest practical extent, require that *[Accountable party name]* perform the following remedial works within the time(s) specified.

*[Insert directions and relevant time frames. See chapter 6 for guidance.]*

*[Consider that an order under this section that requires a person to restore land may include a requirement that the person restore the land concerned in accordance with (following 55ZC (4)):*

- a) any requirements adopted by the Minister and published in the Gazette, and
- b) any requirements specified in the regulations.]

### **1 Records**

1.1 The following records must be kept by the *[Accountable party name]* in respect of any inspections required by this direction:

- a) date(s) on which the inspection was undertaken
- b) name of the person who undertook the inspection, and
- c) type of inspection undertaken.

1.2 The following records must be kept by the *[Accountable party name]* in respect of any work undertaken as a result of any inspection(s):

- a) details of any required work within the area
- b) date(s) this work was undertaken, and
- c) date on which this work was completed.

1.3 All records required to be kept by this notice must be:

- a) in a legible form, or in a form that can readily be reduced to a legible form
- b) kept for at least four (4) years after the inspection or event to which they relate took place
- c) produced in a legible form to any authorised officer of *[insert name of Coastal Authority]* who asks to see them, and
- d) be true, accurate and correct.

### **2 Reporting**

*[Consider reporting requirements if the order to remove the material(s) and/or structure(s) represents substantial and/or significant work. See chapter 6 for guidance.]*

2.1 The landholder must prepare and submit a works report to the *[insert appropriate position title]*, *[insert name of Coastal Authority]*, *[insert address]* by *[insert exact date]*. The works report must include but not be limited to the nature of works completed and date of completion for directions in accordance with section G of this order, and

*[Consider monitoring requirements if the order to remove the material(s) and/or structure(s) represents substantial and/or significant work and/or is to be completed over a substantial time period and the officer believes that progress needs to be monitored. See chapter 6 for guidance.]*

- 2.2 The landholder must prepare and submit a monitoring report to the *[insert appropriate position title]*, *[insert name of Coastal Authority]*, *[insert address]* by *[insert exact date]*, and each *[choose an appropriate length of time, e.g. week/month/year]* thereafter a report for each 'reporting period'.

## DEFINITIONS

In this order the following definitions apply:

<i>['Word']</i>	<i>[Definition]</i>
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## WARNING AND INFORMATION ABOUT THIS DIRECTION

- It is an offence against section 55ZF of the *Coastal Protection Act 1979* ('the Act') to fail to comply with this order. The maximum penalty that a court may impose for this offence is, for a corporation, \$495,000 plus \$44,000 for each day the offence continues and for an individual, \$247,500 plus \$22,000 for each day the offence continues.
- If you fail to comply with the requirements of this order within the time specified the *[insert name of Coastal Authority]* may authorise any other person to carry out the order (section 55ZF (2) the Act). The *[insert name of Coastal Authority]* may then recover the costs incurred from you (section 55ZF (3) of the Act).
- Under section 55ZD (3) an order may be varied or revoked by a further notice.
- The *[insert name of Coastal Authority]* may conduct inspections to determine whether this order is being complied with.
- Words and expressions have the same meaning as words and expressions used in the Act, except where a word is specifically defined in this order.
- This order is issued under section 55ZC of the Act.
- An order will not negate the potential for prosecution. An order is separate to any potential prosecution.

## FEE TO BE PAID

You are required by law to pay a fee of \$320 for the administrative costs of issuing this order.

It is an offence not to pay this fee. However, you may apply for an extension of time to pay the fee, or for the fee to be waived. Attached to this order there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

.....  
*[Insert delegated officer name]*  
*[Insert delegated title]*  
 (by delegation)

## Template to order a person to restore any assets or vegetation on public land

---

*[Insert Coastal Authority's name or letterhead]*

*[Accountable party name]*

*[Accountable party address]*

*[Accountable party address]*

Order number           *[Order number]*

File number           *[Insert Coastal Authority file number]*

Date                   *[Notice issue date]*

**BY** *[Insert method of service]*

### **ORDER TO RESTORE ASSETS [AND/OR] VEGETATION ON PUBLIC LAND**

#### **Section 55ZC of the *Coastal Protection Act 1979***

#### **BACKGROUND**

- A. The *[insert name of Coastal Authority]* has responsibility for the administration and enforcement of the *Coastal Protection Act 1979* ('the Act').
- B. *[Notice authorising officer name]*, holds the position of *[Notice authorising officer title]* within *[insert name of Coastal Authority]*.
- C. *[Notice authorising officer title]* holds delegated authority on behalf of the *[insert name of Coastal Authority]* for the purposes of section 55ZC of the Act.
- D. *[Accountable party name]* is the owner of [OR] is in lawful possession of [OR] is in lawful occupation of *[delete where not applicable] [insert Lot and DP numbers and address and name]* ('the property').
- E. *[Provide details of the emergency protection works, their location and how the public land has been damaged]*.

#### **OPINION**

- F. I, *[Notice authorising officer name]*, *[Notice authorising officer title]* am of the opinion that public land has been damaged in the course of the placement of emergency coastal protection works by *[Accountable party name]*.

#### **ORDER TO RESTORE ASSETS AND/OR VEGETATION**

- G. I, *[Notice authorising officer name]*, *[Notice authorising officer title]*, require that *[Accountable party name]* restore the following asset(s) [AND/OR] vegetation to the condition in which it existed prior to the placement of emergency coastal protection works to the greatest practical extent as directed below within the time(s) specified.

*[Insert directions and relevant time frames. See chapter 6 for guidance.]*

## 1 Records

- 1.1 The following records must be kept by the *[Accountable party name]* in respect of any inspections required by this direction:
- date(s) on which the inspection was undertaken
  - name of the person who undertook the inspection, and
  - type of inspection undertaken.
- 1.2 The following records must be kept by the *[Accountable party name]* in respect of any work undertaken as a result of any inspection(s):
- details of any required work within the area
  - date(s) this work was undertaken, and
  - date on which this work was completed.
- 1.3 All records required to be kept by this notice must be:
- in a legible form, or in a form that can readily be reduced to a legible form
  - kept for at least four (4) years after the inspection or event to which they relate took place
  - produced in a legible form to any authorised officer of *[insert name of Coastal Authority]* who asks to see them, and
  - be true, accurate and correct.

## 2 Reporting

*[Consider reporting requirements if the order to remove the material(s) and/or structure(s) represents substantial and/or significant work. See chapter 6 for guidance.]*

- 2.1 The landholder must prepare and submit a works report to *[insert appropriate position title]*, *[insert name of Coastal Authority]*, *[insert address]* by *[insert exact date]*. The works report must include but not be limited to the nature of works completed and date of completion for directions in accordance with section G of this order, and

*[Consider monitoring requirements if the order to remove the material(s) and/or structure(s) represents substantial and/or significant work and/or is to be completed over a substantial time period and the officer believes that progress needs to be monitored. See chapter 6 for guidance.]*

- 2.2 The landholder must prepare and submit a monitoring report to the *[insert appropriate position title]*, *[insert name of Coastal Authority]*, *[insert address]* by *[insert exact date]*, and each *[choose an appropriate length of time, e.g. week/month/year]* thereafter a report for each 'reporting period'.

## DEFINITIONS

In this order the following definitions apply:

<i>['Word']</i>	<i>Definition</i>
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## WARNING AND INFORMATION ABOUT THIS DIRECTION

- It is an offence against section 55ZF of the *Coastal Protection Act 1979* ('the Act') to fail to comply with this order. The maximum penalty that a court may impose for this offence is, for a corporation, \$495,000 plus \$44,000 for each day the offence continues and for an individual, \$247,500 plus \$22,000 for each day the offence continues.

- If you fail to comply with the requirements of this order within the time specified the *[insert name of Coastal Authority]* may authorise any other person to carry out the order (section 55ZF (2) the Act). The *[insert name of Coastal Authority]* may then recover the costs incurred from you (section 55ZF (3) of the Act).
- Under section 55ZD (3) an order may be varied or revoked by a further notice.
- The *[insert name of Coastal Authority]* may conduct inspections to determine whether this order is being complied with.
- Words and expressions have the same meaning as words and expressions used in the Act, except where a word is specifically defined in this order.
- This order is issued under section 55ZC of the Act.
- An order will not negate the potential for prosecution. An order is separate to any potential prosecution.

### **FEE TO BE PAID**

You are required by law to pay a fee of \$320 for the administrative costs of issuing this order.

It is an offence not to pay this fee. However, you may apply for an extension of time to pay the fee, or for the fee to be waived. Attached to this order there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

.....  
*[Insert delegated officer name]*  
*[Insert delegated title]*  
 (by delegation)

## Template to order the person to move, alter or remove works and restore the land

---

*[Insert Coastal Authority's name or letterhead]*

*[Accountable party name]*

*[Accountable party address]*

*[Accountable party address]*

Order number           *[Order number]*

File number           *[Insert Coastal Authority file number]*

Date                   *[Notice issue date]*

**BY** *[Insert method of service]*

### **ORDER TO MOVE/ALTER/REMOVE** *[choose appropriate one]* **EMERGENCY COASTAL PROTECTION WORKS AND RESTORE THE LAND** *[if appropriate]*

#### **Section 55ZC of the Coastal Protection Act 1979**

#### **BACKGROUND**

- A. The *[insert name of Coastal Authority]* has responsibility for the administration and enforcement of the *Coastal Protection Act 1979* ('the Act').
- B. *[Notice authorising officer name]*, holds the position of *[Notice authorising officer title]* within *[insert name of Coastal Authority]*.
- C. *[Notice authorising officer title]* holds delegated authority on behalf of the *[insert name of Coastal Authority]* for the purposes of section 55ZC of the Act.
- D. *[Accountable party name]* is the owner of *[OR]* is in lawful possession of *[OR]* is in lawful occupation of *[delete where not applicable] [insert Lot and DP numbers and address and name]* ('the property').
- E. *[Provide details of the emergency coastal protection works and their location]*.

#### **OPINION**

- F. I, *[Notice authorising officer name]*, *[Notice authorising officer title]* am of the opinion that all practical measures were not taken to:
  - a) avoid placing emergency coastal protection works on public land, *[AND/OR]*
  - b) avoid damage to assets or vegetation on public land, *[AND/OR]*
  - c) minimise risks to the public on public land, *[AND/OR]*
  - d) maintain reasonable public access (including access for local and public authorities) to and through the beach concerned.

**ORDER TO MOVE/ALTER/REMOVE** *[choose appropriate one or combination]*  
**EMERGENCY COASTAL PROTECTION WORKS**

G.i. I, *[Notice authorising officer name]*, *[Notice authorising officer title]*, require that *[Accountable party name]* move/alter/remove *[choose appropriate one or combination]* the emergency coastal protection works as directed below within the time(s) specified.

*[Insert directions and relevant time frames. See chapter 6 for guidance.]*

**ORDER TO RESTORE THE LAND**

G.ii. I, *[Notice authorising officer name]*, *[Notice authorising officer title]*, in order to restore the land to the condition in which it existed prior to the placement of the emergency coastal protection works to the greatest practical extent, require that *[Accountable party name]* perform the following remedial works within the time(s) specified.

*[Insert directions and relevant time frames. See chapter 6 for guidance.]*

**1 Records**

- 1.1 The following records must be kept by the *[Accountable party name]* in respect of any inspections required by this direction:
  - a) date(s) on which the inspection was undertaken
  - b) name of the person who undertook the inspection, and
  - c) type of inspection undertaken.
- 1.2 The following records must be kept by the *[Accountable party name]* in respect of any work undertaken as a result of any inspection(s):
  - a) details of any required work within the area
  - b) date(s) this work was undertaken, and
  - c) date on which this work was completed.
- 1.3 All records required to be kept by this notice must be:
  - a) in a legible form, or in a form that can readily be reduced to a legible form
  - b) kept for at least four (4) years after the inspection or event to which they relate took place
  - c) produced in a legible form to any authorised officer of *[insert name of Coastal Authority]* who asks to see them, and
  - d) be true, accurate and correct.

**2 Reporting**

*[Consider reporting requirements if the order to remove the material(s) and/or structure(s) represents substantial and/or significant work. See chapter 6 for guidance.]*

- 2.1 The landholder must prepare and submit a works report to the *[insert appropriate position title]*, *[insert name of Coastal Authority]*, *[insert address]* by *[insert exact date]*. The works report must include but not be limited to the nature of works completed and date of completion for directions in accordance with section G of this order, and

*[Consider monitoring requirements if the order to remove the material(s) and/or structure(s) represents substantial and/or significant work and/or is to be completed over a substantial time period and the officer believes that progress needs to be monitored. See chapter 6 for guidance.]*

- 2.2 The landholder must prepare and submit a monitoring report to the *[insert appropriate position title]*, *[insert name of Coastal Authority]*, *[insert address]* by *[insert exact date]*, and each *[choose an appropriate length of time, e.g. week/month/year]* thereafter a report for each 'reporting period'.

## DEFINITIONS

In this order the following definitions apply:

<i>['Word']</i>	<i>[Definition]</i>
-----------------	---------------------

## WARNING AND INFORMATION ABOUT THIS DIRECTION

- It is an offence against section 55ZF of the *Coastal Protection Act 1979* ('the Act') to fail to comply with this order. The maximum penalty that a court may impose for this offence is, for a corporation, \$495,000 plus \$44,000 for each day the offence continues and for an individual, \$247,500 plus \$22,000 for each day the offence continues.
- If you fail to comply with the requirements of this order within the time specified the *[insert name of Coastal Authority]* may authorise any other person to carry out the order (section 55ZF (2) the Act). The *[insert name of Coastal Authority]* may then recover the costs incurred from you (section 55ZF (3) of the Act).
- Under section 55ZD (3) an order may be varied or revoked by a further notice.
- The *[insert name of Coastal Authority]* may conduct inspections to determine whether this order is being complied with.
- Words and expressions have the same meaning as words and expressions used in the Act, except where a word is specifically defined in this order.
- This order is issued under section 55ZC of the Act.
- An order will not negate the potential for prosecution. An order is separate to any potential prosecution.

## FEE TO BE PAID

You are required by law to pay a fee of \$320 for the administrative costs of issuing this order.

It is an offence not to pay this fee. However, you may apply for an extension of time to pay the fee, or for the fee to be waived. Attached to this order there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

.....  
*[Insert delegated officer name]*  
*[Insert delegated title]*  
 (by delegation)



## **Appendix F – Notice to provide information and/or records**

The following is an example of a template for a notice that could be used by a Coastal Authority to require the provision of information or records. The sample is designed for information purposes only and does not constitute legal advice.

**The actual text of a notice requiring information and/or records needs to be individually worded to meet each regulatory authority's own requirements and circumstances. Regulatory authorities should seek their own legal advice on the appropriate wording.**

*[Insert Coastal Authority's name or letterhead]*

**Notice requiring information and/or records to be provided**  
**Section [insert relevant section]<sup>1</sup> *Protection of the Environment***  
***Operations Act 1997***

**Note:** The investigation provisions of Chapter 7 of the *Protection of the Environment Operations Act 1979* apply to the *Coastal Protection Act 1979*.

*[Insert method of service]<sup>2</sup>*

**To:** *[Insert: – name of person or company to whom notice is being addressed<sup>3</sup>*  
– ACN number if notice being addressed to a company<sup>4</sup>  
– ARBN number if relevant<sup>5</sup>  
– if trading under a registered business name, 'trading as <business name>'  
– full address of addressee for service of notice<sup>6</sup>]

**Date:** *[Insert date notice is issued]*

**Background**

*[Here, set out the grounds for issuing the notice]<sup>7</sup>*

**Requirement to provide information and/or records**

*[Insert Coastal Authority's or authorised officer's name]<sup>8</sup> requires [Name of person or company to whom notice is being addressed] to provide [Insert Coastal Authority's or authorised officer's name] with the following information and/or records:*

*[Here, set out details of the information and/or records required]<sup>9</sup>*

You do not have to provide any record specified above unless that record is in your possession or you can lawfully obtain possession of it.

The information and/or records must be provided to *[Insert regulatory authority's or authorised officer's name]* by no later than *[Insert deadline]<sup>10</sup>*

The information and/or records must be provided in the following manner:

*[Insert manner in which information and/or records must be provided]<sup>11</sup>*

**Warning<sup>12</sup>**

It is an offence against the *Protection of the Environment Operations Act 1997* not to comply with this notice unless you have a lawful excuse for not doing so. It is also an offence to provide information under this notice knowing that the information is materially false or misleading.

However, if you are a person (that is, an individual rather than, for example, a company or other incorporated body), you may object to providing **information** that this notice requires you to provide, on the ground that the information might incriminate you.

This warning is given for the purposes of s.212 of the *Protection of the Environment Operations Act 1997*.

**There is important information at the end of this notice that you should read about self-incriminating information and/or records that you provide in compliance with this notice.**

**Signed** *[Insert: name of signatory<sup>13</sup> and position, title and name of regulatory authority]*

## Information about this notice

This notice is issued under s. [Insert relevant section]<sup>14</sup> of the *Protection of the Environment Operations Act 1997*.

## Penalty for not complying with this notice

The maximum penalty that a court may impose on a corporation for not complying is \$250,000, with a further \$120,000 for each day the offence continues. The maximum penalty that a court may impose on an individual for not complying is \$120,000, with a further \$60,000 for each day the offence continues.

## Self-incriminating information and/or records

The fact that the **information and records** that this notice requires you to provide might incriminate you or make you liable to a penalty **does not excuse you from having to comply with the notice**.

The fact that a **record** provided by you in compliance with this notice might incriminate you does not make that record inadmissible against you in criminal proceedings.

## End notes for use by authorised officers in completing this notice template

1. A Coastal Authority has the power to issue a notice such as this under s.191 or s.192 of the POEO Act, and an authorised officer appointed by a Coastal Authority has such power under s.193.
2. For example, 'personal delivery' or 'by fax'. See s.321 of the POEO Act for methods of service of notices.
3. Notices may be given and addressed only to an individual or an incorporated entity (for example, a company).
4. The ACN (Australian Company Number) is the unique nine-digit number assigned to a corporation when it is formed.
5. The ARBN (Australian Registered Body Number) is the unique number identifying a registered foreign company operating in Australia.
6. For example, if the addressee is a company, the address is its registered office; if it is a business trading under a registered business name, the address is its principal place of business. See ss.109X and 601CX of the *Commonwealth Corporations Act 2001* for requirements about serving documents on a corporation.
7. Notices may be issued only under ss.191–193 of the POEO Act for the purposes set out in s.184 of that Act, for example, to determine whether a provision of the Coastal Protection Act or Regulation has been complied with.
8. A notice under s.193 of the POEO Act is issued by the individual authorised officer, not the Coastal Authority.
9. The 'records' may be plans, specifications, maps, reports, books and other documents, whether in writing, in electronic form or otherwise; see POEO Act dictionary.
10. The notice must specify a reasonable time by which the information and/or records are to be provided; see s.194 of the POEO Act.
11. The notice must specify the manner in which the information and/or records are to be provided; see s.194 of the POEO Act. If the notice does not specify otherwise, any record required will have to be provided in written form even if the record is in electronic, mechanical or other form; see s.195(3) of the POEO Act.

12. This warning is very important. If it is not included in the notice:
  - the person to whom the notice is issued cannot be found guilty of the offence for not complying with the notice – see s.212(2) of the POEO Act
  - if the person is an individual rather than a corporation, any **information** provided under the notice will not be admissible in criminal proceedings against the person, other than proceedings for an offence against Chapter 7, s.212(3) of the POEO Act.
13. If the notice is issued under ss.191 or 192 of the POEO Act, the signatory must have written delegated authority from the regulatory authority to issue a notice of this type. If it is issued under s.193, the signatory must be the authorised officer who is requiring the provision of the information and/or records.
14. See note 1 above.