

Circular	PS 10-032
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Related	

Legislative changes relating to coastal planning matters

The purpose of this circular is to advise councils, other public authorities, practitioners and the community on legislative changes relating to coastal planning matters introduced by and to support the *Coastal Protection and Other Legislation Amendment Act 2010*.

Introduction

The following amendments commence on 1 January 2011:

- an amendment to section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act) relating to the consideration of coastal zone management plans
- an amendment to clause 228 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) relating to assessing the impact of an activity on the coastal environment; and
- amendments to State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP), related to coastal protection works by public authorities (clause 129(2A) and (2B)) and by or on behalf of private land owners (clause 129A).

These changes will ensure greater consideration is given to coastal matters in assessment of relevant development proposals and activities by public authorities.

Coastal matters in development assessment under Part 4

Section 79C of the EP&A Act is amended to specify an additional matter to be considered by a consent authority in determining a development application, namely the provisions of any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*) that applies to the land.

Coastal matters in activity assessment under Part 5

Clause 228 of the EP&A Regulation is amended to include an additional factor to be taken into account when consideration is being given to the likely impact of an activity on the environment, namely any impact on coastal processes and coastal hazards, including those under projected climate change conditions.

Planning provisions for coastal protection works

Clauses in the Infrastructure SEPP relating to coastal protection works have been amended to:

- require consideration of relevant coastal zone management plans
- allow coastal protection works by private landowners with consent
- identify the NSW Coastal Panel as the consent authority where no coastal zone management plan applies to the land; and
- specify matters for consideration by the consent authority when assessing coastal protection works.

Works by public authorities

Clause 129(2A) and (2B) applies in relation to the carrying out of new coastal protection works (within the meaning of the *Coastal Protection Act 1979*) by public authorities on the open coast or entrance to a coastal lake.

The clause provides that public authorities are to consider the provisions of a coastal zone management plan in force in relation to the land before carrying out proposed development or must seek the views of the NSW Coastal Panel where no coastal zone management plan applies to the land.

Works other than by public authorities

In relation to coastal protection works other than by public authorities, clause 129(A) permits development for the purpose of a sea wall or beach nourishment to be carried out by any person, with consent, on the open coast or entrance to a coastal lake.

The clause provides that if a coastal zone management plan does not apply to the land, the NSW Coastal Panel has the function of determining the development application. If a coastal zone management plan applies to the land, the existing consent authority provisions apply.

Furthermore, before determining a development application, the consent authority must take the following matters into consideration:

- the provisions of any coastal zone management plan applying to the land
- the matters set out in clause 8 of State Environmental Planning Policy No 71—Coastal Protection
- any guidelines for assessing and managing the impacts of coastal protection works that are issued by the Director-General for the purposes of this clause and published in the Gazette.

The Infrastructure SEPP also notes that section 55M of the *Coastal Protection Act 1979* sets out preconditions to the granting of development consent relating to coastal protection works.

Submission of applications

Where a coastal zone management plan, within the meaning of the *Coastal Protection Act 1979*, does not exist over the land, development applications for sea walls or beach nourishment should be submitted to the NSW Coastal Panel.

Such applications should be sent c/o the Department of Environment, Climate Change and Water at PO Box A290, Sydney South NSW 1232.

However, where a coastal zone management plan does exist, development applications for sea walls or beach nourishment should be submitted to the relevant council.

Part 4 of the EP&A Act specifies development assessment provisions that are to be followed. These relate to matters including notification, consultation, evaluation, determination, imposition of conditions and circumstances in which consent is taken to be refused.

Consideration of sea level rise

Guidance on considering sea level rise under Part 4 and Part 5 of the EP&A Act can be found in the *NSW Coastal Planning Guideline: Adapting to Sea Level Rise* available on the Department's website.

Further information

Copies of the EP&A Act, the EP&A Regulation, the Infrastructure SEPP and the *Coastal Protection and Other Legislation Amendment Act 2010* are available online at <http://www.legislation.nsw.gov.au/>.

Information about coastal protection works is available from the Department of Environment, Climate Change and Water website, at www.environment.nsw.gov.au

Note: This and other Department of Planning circulars are published on the web at <http://www.planning.nsw.gov.au/PlanningSystem/Circularsandguidelines/PlanningSystemCirculars/tabid/81/language/en-US/Default.aspx>

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