

Coastal, Marine & Fisheries Management

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Coastal Protection

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Sydney: 02 9262 6989

Northern Rivers: 1800 626 239

Rest of NSW: 1800 626 239

EDO NSW has published a book on coastal protection law in NSW. For a more comprehensive guide, read [Caring for the Coast: A Guide to Environmental Law for Coastal Communities in NSW](#).

Overview

The NSW coast is an environmentally fragile area which is under increasing pressure from new residents, development, and more recently, climate change. This Fact Sheet describes the legal framework regulating development in coastal areas in NSW.

Division of responsibilities

Responsibility for coastal protection is split between State and local governments. The Environment Minister and the Planning Minister have a general responsibility for coastal areas, and may have a consent role with regards to proposed developments. The NSW Coastal Panel has consultative and approval functions for proposed developments in the coastal zone and coastal protection works.²

¹ http://www.edonsw.org.au/legal_advice

² *Coastal Protection Act 1979* (NSW), s. 13.

Local councils also play a role in zoning coastal areas (when drafting local environmental plans) and assessing and approving developments in the coastal zone as well as coastal protection works on public land.³

Under national environmental laws, there may also be an approval role for the Federal Minister for the Environment if a proposed activity is likely to have a significant impact on a matter of national environmental significance such as a nationally listed threatened species, a Ramsar wetland, or a nationally listed migratory species. For more information on national environmental laws, see our [Fact Sheet on the EPBC Act](#).

Like development in the rest of NSW, coastal development is mainly controlled under the *Environmental Planning and Assessment Act 1979* (EPA Act). However, developments in the coastal zone are subject to additional laws and policies.

- For more information about environmental planning and assessment, see our [Fact Sheets on DAs and Consents](#).
- For more information on marine protected areas, see our [Fact Sheet on Protected Areas](#).
- For more information on water pollution, see our [Fact Sheet on Air, Water and Noise pollution](#).

What is the coastal zone?

The coastal zone determines whether coastal-specific planning laws and policies will apply to a development.

Where is the coastal zone?

The coastal zone is shown on a series of maps. Generally, these maps show the coastal zone to extend:⁴

- one kilometre inland from the coast;
- one kilometre landward around any bay, estuary, coastal lake or lagoon; and
- one kilometre inland from either bank of a coastal river.

The coastal zone also includes coastal waters which generally extend up to three nautical miles from the NSW coastline.⁵

³ *Coastal Protection Act 1979* (NSW), s. 55T.

⁴ *Coastal Protection Act 1979* (NSW), s. 4A.

⁵ *Coastal Waters (State Powers) Act 1980* (Cth), s. 4(2); *Coastal Protection Act 1979* (NSW), s. 4 note.

The coastal zone maps can be viewed during office hours at the relevant local council chambers or at the Department of Planning and Environment's head and regional offices.⁶ Maps of the metropolitan region between Newcastle City Council and Shellharbour Council (including Sydney) are available on the [Department of Planning and Environment's website](#).

What does it mean if my land is in the coastal zone?

If your land is within the coastal zone then additional laws and policies will apply to the site, including:

- The [Coastal Protection Act 1979 \(NSW\)](#);
- The [Coastal Protection Regulation 2011 \(NSW\)](#); and
- [State Environmental Planning Policy 71 – Coastal Protection](#).

Coastal protection laws

Coastal Protection Act 1979 (NSW)

The *Coastal Protection Act 1979 (NSW)* defines the boundaries of the coastal zone and provides for the preparation of Coastal Zone Management Plans by local councils. It places additional checks on local councils when determining development applications in the coastal zone. It also provides a means of restraining or remedying damage to the coast.

Concurrence of Environment Minister

In some circumstances, the Coastal Protection Act prohibits a public authority from carrying out development, or from granting consent to another person to develop or use land in the coastal zone without the agreement of the Environment Minister.⁷

The Environment Minister's concurrence is required where the Environment Minister believes that:⁸

- the development may be inconsistent with the principles of ecologically sustainable development;

⁶ *Coastal Protection Act 1979 (NSW)*, s. 4B; See: <http://www.planning.nsw.gov.au/coastal-protection>

⁷ The Environment Minister's concurrence is not required where the development requires development consent or is classified as exempt development under the EPA Act, or where the development is carried out in accordance with a coastal zone management plan. The Environment Minister's concurrence is also not required for temporary coastal protection works. See: *Coastal Protection Act 1979 (NSW)*, ss. 37B, 38(4), 39(6)

⁸ *Coastal Protection Act 1979 (NSW)*, s. 38(1).

- the development may adversely affect the behaviour or be adversely affected by the behaviour of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse; or
- the development may adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.

In deciding whether or not to grant concurrence, the Environment Minister not only considers whether a proposed development, use or occupation of coastal land will have impacts on a foreshore area, they must also consider whether the proposed development is consistent with the principles of ecologically sustainable development.⁹ For example, if the Minister grants concurrence, he or she may apply ecologically sustainable development principles by imposing conditions on the development. Such conditions may include requiring increased set-backs from foreshore areas and measures to conserve biodiversity.

A decision on concurrence must be made within 21 days,¹⁰ and the Environment Minister must give the public authority reasons for the decision.¹¹ The Environment Minister may order the demolition of buildings or other work which have been carried out without concurrence.¹²

Coastal zone management plans

The purpose of a coastal zone management plan is to put in place a structured plan for the protection of the beach or foreshore. The plan sets out actions that can be taken to avoid or mitigate damage that can occur to the coast during storm events that may lead to severe erosion or beach damage. The plan must address seven things:¹³

- how the beach environment and amenity will be protected;
- what emergency actions are permitted during periods of beach erosion, such as an extreme storm event;
- how to ensure continued public access to beaches, headlands and waterways;
- the management of risks arising from coastal hazards;
- the management of estuary health;
- the impacts from climate change on risks arising from coastal hazards and estuary health; and
- the maintenance and management of risks arising from coastal protections works such as increased erosion elsewhere.

⁹ *Coastal Protection Act 1979* (NSW), s. 44.

¹⁰ *Coastal Protection Act 1979* (NSW), s. 42.

¹¹ *Coastal Protection Act 1979* (NSW), s. 46.

¹² *Coastal Protection Act 1979* (NSW), s. 51.

¹³ *Coastal Protection Act 1979* (NSW), s. 55C.

A coastal zone management plan is prepared by the local council in partnership with the NSW Office of Environment and Heritage (OEH).¹⁴ A local council must make a plan, or review their plan, if directed to do so by the Environment Minister.¹⁵

Draft coastal zone management plans must be placed on public exhibition for at least 21 days once they have been prepared by local councils, and during this time any person can make a submission about the draft plan.¹⁶ Although they are prepared by local councils, all coastal zone management plans must be approved by the Environment Minister.¹⁷ Before the local council submits the draft plan to the Minister, it must consult with any public authorities that the Minister requires.¹⁸ The Minister may also refer the draft plan to the Coastal Panel for advice.¹⁹

Coastal zone management plans are legally enforceable. Undertaking development to protect or remediate beach erosion²⁰ in contravention of a coastal zone management plan carries a maximum penalty of \$495,000 for a corporation and \$247,500 for an individual.²¹

The Environment Minister or local council may apply to the Land and Environment Court for an order to restrain a breach of a coastal zone management plan.²²

Removal, restoration and stop work orders

A number of public authorities²³ may order a person to remove material placed unlawfully on the beach²⁴ or stop work on an activity,²⁵ if it thinks that the material is, or is likely to:

¹⁴ A council may choose to prepare a coastal zone management plan or it may be directed to do so by the Minister for the Environment. See: *Coastal Protection Act 1979* (NSW), s. 55B.

¹⁵ *Coastal Protection Act 1979* (NSW), s. 55B (5).

¹⁶ *Coastal Protection Act 1979* (NSW), ss. 55E, 55F.

¹⁷ *Coastal Protection Act 1979* (NSW), s. 55G.

¹⁸ The manner of consultation is to be specified in guidelines prepared by the Minister: *Coastal Protection Act 1979*, s. 55G(2). The purpose of this requirement is so that there is consistency and agreement between authorities in undertaking coastal management and protection. For example, the Minister may require consultation with the authority responsible for Crown land- the Land and Property Management Authority.

¹⁹ *Coastal Protection Act 1979*, s. 55G(3).

²⁰ This does not include development which has been granted consent or an approval under the *Environmental Planning and Assessment Act 1979* (NSW) or 'temporary coastal protection work' under Part 4C of the *Coastal Protection Act 1979* (NSW).

²¹ *Coastal Protection Act 1979* (NSW), s. 55K.

²² *Coastal Protection Act 1979* (NSW), s. 55L. Note that a council cannot bring proceedings to remedy or restrain a breach of a coastal zone management plan by the State or a NSW Government agency: *Coastal Protection Act 1979* (NSW), s. 55L(6).

²³ Including the Environment Minister, the Minister for Primary Industries where Crown land is concerned, a local council where the land or beach is within, or adjacent to the local government area, or the Roads and Traffic Authority where the RTA has the care, control and management of the land: *Coastal Protection Act 1979* (NSW), ss. 4C, 6.

- cause increased erosion to the beach or land next to the beach;
- unreasonably limit public access to the beach or headland; or
- pose a threat to public safety.

An order to remove the material may also require a person to restore any erosion caused by the material.²⁶

Removal and stop work orders do not apply to measures taken to protect the beach where development consent has been granted²⁷ or they are ‘temporary coastal protection works’.²⁸

Separate orders can be made by a Coastal Authority²⁹ in relation to temporary coastal protection works. The Coastal Authority can order a person to remove, alter or repair emergency coastal protection works and restore the land, if it is of the opinion that the works are:³⁰

- causing increased erosion to the beach or to land next to the beach;
- unreasonably limiting public access to the beach or a headland;
- posing a threat to public safety; or
- they are no longer able to be classified as ‘temporary coastal protection works’ e.g. they have been in place for longer than the maximum period allowed on public land.

It is unlawful not to comply with an order made under the Coastal Protection Act.³¹ The maximum penalty for non-compliance with an order is \$495,000 and

²⁴ *Coastal Protection Act 1979* (NSW), s. 55ZA(1).

²⁵ *Coastal Protection Act 1979* (NSW), s. 55ZB.

²⁶ *Coastal Protection Act 1979* (NSW), s. 55ZA(3).

²⁷ Under the *Environmental Planning and Assessment Act 1979* (NSW). Removal and Stop Work Orders also do not apply to developments that do not need consent or that are exempt under the EPA Act: *Coastal Protection Act 1979* (NSW), ss. 55ZA(6), 55ZB(2).

²⁸ Which are undertaken in accordance with Part 4C of the *Coastal Protection Act 1979* (NSW), ss. 55ZA(7), 55ZB(3).

²⁹ A Coastal Authority is the Environment Minister, the Minister for Primary Industries, a council whose area is included within the coastal zone or whose area includes land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries, a roads authority (within the meaning of the *Roads Act 1993*) for a road within the coastal zone or on land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries, a public authority that is the owner of, or has the care, control or management of, land within the coastal zone or land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries (other than a State owned corporation or a reserve trust within the meaning of Part 5 of the *Crown Lands Act 1989*). See: *Coastal Protection Act 1979* (NSW), s. 6.

³⁰ *Coastal Protection Act 1979* (NSW), s. 55ZC.

³¹ *Coastal Protection Act 1979* (NSW), s. 57(1).

\$44,000 for each day that the offence continues for a corporation, and \$247,500 and \$22,000 for each day that the offence continues for an individual.³²

The Coastal Protection Act also gives the Land and Environment Court the power to make orders for the protection of beaches and the coastal environment. The Court may order a person to:³³

- make good any environmental damage;
- clean up material dumped during or following a beach erosion event; or
- prevent the recurrence of harm to the beach.

Temporary coastal protection works on private land

In order to mitigate the effects of wave erosion on land, some forms of temporary coastal protection works are allowed on private land without the need for an approval.³⁴ This includes placing sand and sand bags or other objects.³⁵

Sand from the beach where works are being placed cannot be used without the appropriate approvals, nor can rocks, concrete, construction waste or other debris.³⁶ It may be necessary to source sand from a supplier. For further information on the sand requirements for temporary works, refer to the [Code of Practice](#).³⁷

A landholder who places temporary coastal protection works on private land must notify the local council at, or about the time, the works are placed.³⁸ There are penalties for failing to notify.

Temporary coastal protection works on public land

In order to mitigate the effects of wave erosion on private land, some forms of temporary coastal protection works are allowed on public land.³⁹ Temporary coastal protection works on public land must be authorised by a Division 2 certificate from either the local council or the Office of Environment and Heritage (OEH).⁴⁰ If the council issues the certificate, it must notify OEH as soon as

³² *Coastal Protection Act 1979* (NSW), s. 55XF.

³³ *Coastal Protection Act 1979* (NSW), s. 56A.

³⁴ *Coastal Protection Act 1979* (NSW), ss. 55O 55P

³⁵ *Coastal Protection Act 1979* (NSW), s. 55O.

³⁶ *Coastal Protection Act 1979* (NSW), s. 55P(1). Landholders intending to use sand from the beach or adjoining land should contact their local council for more information on what approvals are needed. For example, a development consent under the EPA Act, and where the beach is Crown land, an agreement from the Land and Property Management Authority.

³⁷ The Code of Practice is available at:

<http://www.environment.nsw.gov.au/resources/coasts/130637copcoast.pdf>

³⁸ *Coastal Protection Act 1979* (NSW), s. 55X(1).

³⁹ *Coastal Protection Act 1979* (NSW), ss. 55T.

⁴⁰ *Coastal Protection Act 1979* (NSW), s. 55T. The authorities that can issue a Division 2 certificate include the local council and the Chief Executive of the Office of Environment and Heritage.

practicable after doing so, and vice versa.⁴¹ If the land involved is Crown land, the Chief Executive of Land and Property Information must also be notified.⁴²

Once a certificate has been issued, it is valid for up to two years.⁴³ Landholders need to fill in the form, and pay an application fee of \$110.

The Division 2 certificate may allow temporary coastal protection works to be carried out unconditionally, or it may impose conditions on the types of work, or way the work can be carried out.⁴⁴

Division 2 certificates for temporary coastal protection works on public land attach to the private land belonging to the landholder who holds the certificate.⁴⁵ This means that if the private land is sold with a valid Division 2 certificate, and emergency works have not been previously placed, the new owners of the private land are entitled to undertake temporary works on the public land to which the certificate applies.

A person placing temporary coastal protection works on public land must take all reasonable measures to:⁴⁶

- avoid using or occupying the public land for the placing and maintaining of the works;
- avoid damage to assets and vegetation on the public land;
- minimise risks to the public on the public land;
- maintain reasonable public access to and through the beach; and
- minimise disruption of the public use of the beach.

A landholder who is about to place temporary coastal protection works on public land must notify the council, and any other public authority who owns or controls the land before placing the works. There are penalties for failing to notify.

Temporary coastal protection works can only be placed on private adjoining land if the landholder has obtained a lease, easement, right-of-way or other interest in land from the owner of the adjacent land to use and occupy the land for that purpose.⁴⁷

⁴¹ *Coastal Protection Act 1979* (NSW), ss. 55V.

⁴² *Coastal Protection Act 1979* (NSW), ss. 55V, 55X.

⁴³ *Coastal Protection Act 1979* (NSW), s. 55U.

⁴⁴ *Coastal Protection Act 1979* (NSW), s. 55T(3).

⁴⁵ *Coastal Protection Act 1979* (NSW), ss. 55T(5), 55ZH.

⁴⁶ *Coastal Protection Act 1979* (NSW), s. 55T(2A), 55T(3A).

⁴⁷ *Coastal Protection Act 1979* (NSW), s. 55Z.

Limits on the use of temporary coastal protection works

The maximum period allowed for temporary coastal protection works on public land is 2 years from the date of their placement.⁴⁸ There is no maximum time prescribed for temporary coastal protection works on private land.

Before the 2-year period expires, the owner has to remove the works and restore the land,⁴⁹ or be granted development consent under the EPA Act for the works to remain.

Temporary coastal protection works must be placed in accordance with any emergency action sub-plans,⁵⁰ and any works placed before 1 September 2011 must be in accordance with any requirements outlined by the Minister and published in the Gazette before 1 January 2011.⁵¹

Works will cease to be 'temporary coastal protection works' if they are not maintained appropriately.⁵²

A Coastal Authority⁵³ may make an order for the temporary works to be removed, altered, or repaired and to restore the land if the Coastal Authority thinks that the works:⁵⁴

- are causing increased erosion;
- unreasonably limit public access to a beach or headland;
- pose a threat to public safety; or
- have ceased to be temporary coastal protection works (for example, the works have been in place on public land for longer than the maximum period allowed, or they have not been maintained in accordance with conditions in the Division 2 certificate).

The [Office of Environment and Heritage website](#) provides further guidance and practical advice on how temporary coastal protection works can be placed.⁵⁵

⁴⁸ *Coastal Protection Act 197* (NSW)9, s. 55VA.

⁴⁹ *Coastal Protection Act 1979*, s. 55Y.

⁵⁰ An 'emergency action subplan' is the part of the coastal zone management plan that deals with what actions may be carried out during emergency periods of beach erosion: *Coastal Protection Act 1979*, s. 4. They should be prepared by councils for coastal areas where developments and infrastructure could be at risk from an extreme storm event. They should be prepared in conjunction with representatives of the State Emergency Service and NSW Police and be consistent with the local NSW Statewide Disaster Management Plan (DISPLAN).

⁵¹ *Coastal Protection Act 1979* (NSW), s. 55P

⁵² *Coastal Protection Act 1979* (NSW), s. 55R(2).

⁵³ 'Coastal Authority' is either the Environment Minister, the Minister for Lands, a council or roads authority (within the meaning of the *Roads Act 1993*) located within the coastal zone or having land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay and their tributaries.

⁵⁴ *Coastal Protection Act 1979* (NSW), s. 55ZC.

⁵⁵ <http://www.environment.nsw.gov.au/coasts/emrgncycoastalprotworks.htm>

Long term coastal protection works

Long term coastal protection works include: seawalls, revetments (a protective wall or facing), groynes (a breakwater or structure to trap sediment) and beach nourishment (which means introducing replacement sand).⁵⁶

A landowner, local council or public authority may undertake these works independently, or a landowner may undertake these works jointly with their council or a public authority.

While these kinds of developments may be provided for under a coastal zone management plan, they will require development consent⁵⁷ before they can be commenced. However, development consent is not required if the development is being undertaken by a public authority⁵⁸ as a 'waterway or foreshore management activity'.⁵⁹

The consent authority must not grant development consent for long term coastal protection works if they:⁶⁰

- unreasonably limit public access to the beach or headland;
- pose a threat to public safety;
- do not have satisfactory arrangements (including financial arrangements) for the restoration of the beach or headland, if they cause increased erosion; or
- do not have satisfactory arrangements (including financial arrangements) for their maintenance.

If long term works start to cause increased erosion, unreasonably limit access or pose a threat to public safety, Coastal Authorities have the power to issue stop work orders or have the works removed.⁶¹

⁵⁶ *Coastal Protection Act 1979* (NSW), s. 4: Definition of 'coastal protection works'.

⁵⁷ Under the *Environmental Planning and Assessment Act 1979*. For more information on development applications under this Act, see our [DAs and Consents](#) Fact Sheet.

⁵⁸ *State Environmental Planning Policy (Infrastructure) 2007*, cl. 129. 'Public authorities' include local councils, government departments and statutory bodies representing the Crown. *Environmental Planning and Assessment Act 1979* (NSW), s. 4; *State Environmental Planning Policy (Infrastructure) 2007*, cl. 5. If the development is for 'new coastal protection works' the public authority will have to take into consideration any relevant provisions of a coastal zone management plan before carrying out the works. If there is no coastal zone management plan in force, the public authority must notify the Coastal Panel of the works and consider any response received from the Coastal Panel within 21 days of the notification: *State Environmental Planning Policy (Infrastructure) 2007*, cl. 129 (2A) and 129(2B).

⁵⁹ *Environmental Planning Policy (Infrastructure) 2007*, cl. 128.

⁶⁰ *Coastal Protection Act 1979* (NSW), s. 55M.

⁶¹ *Coastal Protection Act 1979* (NSW), ss. 55ZA(1), 55ZB.

If coastal protection works are undertaken by your council, the council may charge you annually for the coastal protection services that they provide.⁶² In making and levying this charge, your council is to have regard to the guidelines that the Environment Minister prepares in relation to charging for coastal protection services.⁶³

Coastal Panel

The NSW Coastal Panel was established in 2011 under the Coastal Protection Act. The Coastal Panel's functions are to:⁶⁴

- advise the Environment Minister on any matter referred to it by the Environment Minister relating to the coastal zone or connected to the operation of the Coastal Protection Act;
- advise local councils on matters that the Environment Minister determines and notifies the Coastal Panel of;
- carry out functions conferred or imposed on it by the EPA Act relating to the granting of development consent; and
- carry out any other functions imposed on it by any other statute.

For example, the Coastal Panel may be required to comment on a public authority's proposal to carry out development for erosion control where a council does not have a coastal zone management plan in place.⁶⁵

The Coastal Panel is made up of the 7 members, who are appointed by the Environment Minister:⁶⁶

- one is to be nominated by the Chief Executive of OEH;
- one is to be nominated by the Director-General of the Department of Planning and Environment;
- three are to be nominated by Local Government NSW;
- one is to be nominated by the Chief Executive of Land and Property Information; and
- one is to be appointed by the Environment Minister with the concurrence of Local Government NSW.

⁶² *Coastal Protection Act 1979* (NSW), s. 55M(2)(b); *Local Government Act 1993*, s. 496B. To see whether it is likely that this charge will be imposed, see the 'Draft Coastal Protection Service Guidelines' p. 5, available on the Department of Environment's website:

<http://www.environment.nsw.gov.au/coasts/101020coastprotservcharge.htm>.

⁶³ *Local Government Act 1993* (NSW), s. 496B(9).

⁶⁴ *Coastal Protection Act 1979* (NSW), s. 13(1).

⁶⁵ See *State Environmental Planning Policy (Infrastructure) 2007*, cl. 129A(2B).

⁶⁶ *Coastal Protection Act 1979* (NSW), s. 12(2).

Each member⁶⁷ is to have qualifications and experience relevant to coastal planning, coastal engineering, coastal geomorphology, coastal management or estuary management.⁶⁸ When making an appointment, the Environment Minister must have regard to the need to have a range of expertise represented across the Coastal Panel.⁶⁹

Coastal protection under SEPPs

There are a number of State Environmental Planning Policies (SEPPs) which regulate development in coastal areas. Their provisions are to be considered by authorities in conjunction with the relevant sections of the Coastal Protection Act and the EPA Act when an application for development in the coastal zone is being assessed.

SEPP 71 - Coastal Protection

This is the main SEPP controlling development in the coastal zone.⁷⁰ As with all other SEPPs, it is legally enforceable.

Additional matters for LEPs and development applications

SEPP 71 sets out a number of additional matters that a consent authority must take into account when preparing a local environmental plan or determining a development application.⁷¹

These include:

- retaining public access to and along the coastal foreshore for pedestrians;
- providing opportunities for new public access on the foreshore;
- any detrimental impact that development may have on the amenity of the coastal foreshore, including overshadowing and significant loss of views from a public place;
- the scenic qualities of the NSW coast;
- measures to conserve threatened animals, plants and fish;
- protecting existing wildlife corridors; and

⁶⁷ Except for the last-listed member.

⁶⁸ *Coastal Protection Act 1979* (NSW), s. 12(4).

⁶⁹ *Coastal Protection Act 1979* (NSW), s. 12(6).

⁷⁰ SEPP 71, cl. 4. But the Policy does not apply to Lord Howe Island, or if SEPP 62 – Sustainable Aquaculture applies.

⁷¹ SEPP 71, cl. 7 and 8.

- the likely impact of coastal processes and coastal hazards on development.

Certain developments must not be approved

A consent authority must reject development applications that will:

- impede or diminish access to coastal foreshores;⁷²
- result in effluent discharge that negatively affects water quality;⁷³ or
- involve a discharge of untreated storm water into the sea, a beach, an estuary, or coastal lake or creek.⁷⁴

Master plans for subdivisions

A consent authority cannot grant development consent to certain subdivisions unless the Planning Minister has adopted a master plan.⁷⁵

Master plans are required for:⁷⁶

- subdivision of land with a residential or rural/residential zone in a 'sensitive coastal location';⁷⁷
- subdivision not within a 'sensitive coastal location', but which is:
 - for more than 25 lots; or
 - within a rural/residential zone into more than 5 lots.

Master plans are prepared by the owner or lessee of land and must be placed on public exhibition before they are either accepted or rejected by the Planning Minister.⁷⁸

Significant coastal development

Development applications for significant coastal development must be referred by the local council to the Director-General of the Department of Planning and

⁷² SEPP 71, cl. 14.

⁷³ SEPP 71, cl. 15.

⁷⁴ SEPP 71, cl. 16.

⁷⁵ SEPP 71, Part 5, cll. 17 – 24.

⁷⁶ SEPP 71, cl. 18.

⁷⁷ SEPP 71, cl. 3 Definition of sensitive coastal location. Sensitive coastal location means: land within 100m above mean high water mark of the sea, a bay or an estuary; a coastal lake; a Ramsar wetland; a World Heritage property; an aquatic reserve; a marine park; land within 100m of any of the water's edge of a coastal lake, a Ramsar wetland, a World Heritage property, an aquatic reserve, a marine park, land reserved under the *National Parks and Wildlife Act 1974* or a SEPP 14 coastal wetland; residential land (within the meaning of *State Environmental Planning Policy No 26—Littoral Rainforests*) that is within a distance of 100m from the outer edge of a SEPP 26 littoral rainforest.

⁷⁸ SEPP 71, cll. 20, 21 and 22.

Environment for comment, unless the Planning Minister is already the consent authority.⁷⁹ The Director-General has 28 days within which to specify any additional matters that the council must take into consideration when deciding whether or not to approve the development.

Challenge to a coastal subdivision⁸⁰

EDO NSW successfully represented Friends of South West Rocks in challenging a consent granted by Kempsey Shire Council to three development applications at South West Rocks on the mid north coast of NSW.

The proposed development was for 82 housing lots on 8.5 hectares of native forest. The Land and Environment Court found that the council had breached the provisions of SEPP 71 and had no power to grant consent to the development applications because the Planning Minister was the proper decision maker for one of the DAs. The Court also found that the council could not grant consent to the development applications in the absence of a master plan for the land.

Accordingly, the Court found that the consents were invalid.

SEPP (State and Regional Development) 2011

The State and Regional Development SEPP identifies the types of developments that are classified as State significant development (SSD) or State significant infrastructure (SSI) and therefore require the approval of the Planning Minister under the EPA Act. See our [Fact Sheets on SSD and SSI](#) for more information.

The SEPP lists categories of developments that will be assessed as SSD or SSI. Some of the categories include certain.⁸¹

- intensive livestock industries and aquaculture developments;
- mining, petroleum and extractive industries;
- landfill facilities;
- marinas;
- recreational or tourist facilities;
- developments in a 'sensitive coastal location'; and
- subdivisions.

The Planning Minister can also 'call in' developments for assessment as SSD or SSI.⁸²

⁷⁹ SEPP 71, Part 3, cl. 11.

⁸⁰ *Friends of South West Rocks v Machro Pty Ltd* [2004] NSWLEC 721

⁸¹ SEPP (State and Regional Development), Schedules 1-4.

Infrastructure SEPP 2007

The Infrastructure SEPP deals with a wide range of infrastructure projects, such as telecommunications facilities, sewerage works and stormwater management works. It specifies when development consent is (and is not) required for development to be carried out for certain types of development in certain zones.

Development for the purpose of waterway or foreshore management activities may be carried out by or on behalf of a public authority⁸³ without development consent.⁸⁴ However, the public authority must consider the relevant provisions of the area's coastal zone management plan before carrying out any 'new coastal protection works'.⁸⁵

If there is no coastal zone management plan in force, the public authority must notify the Coastal Panel before carrying out any new coastal protection works. The public authority must take into consideration any response received from the Coastal Panel within 21 days of the notification.⁸⁶

Development for the purposes of a sea wall or beach nourishment may be carried out by any person, but consent is required.⁸⁷ If there is no coastal zone management plan for the area, the Coastal Panel is the consent authority for these developments.⁸⁸

SEPP 14 – Coastal Wetlands

The Coastal Wetlands SEPP aims to protect and preserve coastal wetlands.⁸⁹

The areas covered by the SEPP are shown on a series of maps held by the Department of Planning and Environment.⁹⁰ Over 1,300 coastal wetlands have been mapped under SEPP 14, representing 7% of all coastal wetlands in NSW.

⁸² *Environmental Planning and Assessment Act 1979* (NSW), ss. 89C, 115U.

⁸³ The definition of 'public authority' is found in the EPA Act, s.4 and includes: a public or local authority constituted by or under an Act; a government Department; a statutory body representing the Crown; a chief executive officer (including the Director-General); a statutory State owned corporation (and its subsidiaries) or a CEO of such a corporation; or a person prescribed by the regulations for the purposes of this definition. Infrastructure SEPP, cl. 5.

⁸⁴ This clause does not apply to 'emergency coastal protection works' as defined in the Coastal Protection Act (see above at 3.5); see Infrastructure SEPP, cl. 129(2)(c).

⁸⁵ Infrastructure SEPP, cl. 129(2A). Waterways or foreshore management activities include: erosion control; beach nourishment; dune or foreshore stabilisation activities; headland management; ensuring foreshore access ways; coastal protection works; and salt interception schemes. 'New coastal protection works' means coastal protection works other than the placement of sand (including for beach nourishment), sand bags or the replacement, repair or maintenance of any such works: Infrastructure SEPP, cl. 129(2B).

⁸⁶ Infrastructure SEPP, cl. 129(2A)(b).

⁸⁷ Infrastructure SEPP, cl. 129A(1).

⁸⁸ Infrastructure SEPP, cl. 129A(2).

⁸⁹ SEPP 14, cl. 2.

⁹⁰ SEPP 14, cll. 3 and 4.

A person must not clear land, construct a levee, drain land or fill land which is covered by the SEPP except with the consent of the local council and agreement of the Director-General of Planning and Environment.⁹¹ A copy of all development applications for such activities must also be forwarded by the local council to the Chief Executive of the Office of Environment and Heritage within 7 days.⁹²

Activities on SEPP 14 wetlands which require development consent are deemed to be designated development, which means the development application must be accompanied by an environmental impact statement and be placed on public exhibition for public comment.⁹³

Works to restore SEPP 14 wetlands must not be carried out except with the consent of the local council and the agreement of the Director-General of Planning and Environment.⁹⁴

SEPP 26 – Littoral Rainforests

A littoral rainforest is a particular type of forest which is adapted to withstand coastal conditions involving harsh, salt-laden, drying winds. The aim of the Littoral Rainforests SEPP is to preserve those forests.

The rainforests covered by the SEPP are shown on a series of maps held by the Department of Planning and Environment. The SEPP also applies to land within 100 metres of the boundary of a SEPP 14 wetland.⁹⁵

Development consent is required for the following activities in littoral rainforests:⁹⁶

- erecting a building or carrying out a work;
- disturbing, altering or changing any landform;
- dumping rubbish or chemicals;
- using a littoral rainforest for any purpose; or
- disturbing native flora (clearing).

These activities are deemed to be designated development, which means the development application must be accompanied by an environmental impact statement and be placed on public exhibition for public comment.⁹⁷ The local council remains the consent authority for developments applying to SEPP 26

⁹¹ SEPP 14, cl. 7.

⁹² SEPP 14, cl. 8.

⁹³ SEPP 14, cl. 7(3), *Environmental Planning and Assessment Act 1979* (NSW), s. 29.

⁹⁴ SEPP 14, cl. 7A.

⁹⁵ SEPP 26, cl. 4.

⁹⁶ SEPP 26, cl. 7.

⁹⁷ SEPP 26, cl. 6.

littoral rainforests and the concurrence of the Director-General of Planning and Environment is also required.⁹⁸

SEPP 50 – Canal Estate Development

Canal estate developments are prohibited under SEPP 50.

A ‘canal estate development’ is a development (which includes dwellings or tourist accommodation) incorporating a canal that is interconnected with a natural waterway or groundwater.⁹⁹ The SEPP applies to the whole State.¹⁰⁰

SEPP 62 – Sustainable Aquaculture

SEPP 62 regulates aquaculture activities in NSW.

The SEPP defines ‘aquaculture’ as cultivating fish or marine vegetation for the purposes of harvesting and selling them, and keeping fish in a confined area for a commercial purpose (such as a fish-out pond).¹⁰¹

The SEPP applies to the following classes of aquaculture:

- tank-based aquaculture (e.g. barramundi or abalone);
- pond-based aquaculture (e.g. prawns and yabbies); and
- natural water-based aquaculture (e.g. oysters and caged fin fish).

The SEPP sets out areas where aquaculture activities must not be carried out.¹⁰² Even if aquaculture activities appear to be permitted it is important to also check the relevant local environmental plan¹⁰³ to see whether aquaculture activities require consent.

The SEPP establishes minimum performance criteria for aquaculture activities.¹⁰⁴ Any type of aquaculture proposal that is not permissible under the SEPP is prohibited.¹⁰⁵ Proposals that meet the minimum criteria can be undertaken, but only once development consent has been obtained.

⁹⁸ SEPP 26, cl. 7(3). Where the development is classed as ‘integrated development’ (see s. 91 of the EPA Act and our [DAs and Consents Fact Sheet](#)), concurrence is required from the *Minister for Planning*: SEPP 26, cl.7(4).

⁹⁹ SEPP 50, cl. 3.

¹⁰⁰ SEPP 50, cl. 4, except for the land to which *Penrith Local Environmental Plan 1998 (Lakes Environs)* applies and the land to which *State Environmental Planning Policy (Penrith Lakes Scheme) 1989* applies.

¹⁰¹ SEPP 62, cl. 4.

¹⁰² SEPP 62, Schedules 1 and 1A

¹⁰³ For more information on local environmental plans, see our [LEPs and SEPPs Fact Sheets](#).

¹⁰⁴ SEPP 62, cl. 7(2) and 8(2).

¹⁰⁵ SEPP 62, cl 11.

Some aquaculture developments may qualify as State significant development which will make the Planning Minister the consent authority.¹⁰⁶

Aquaculture also requires a permit from NSW Fisheries' Aquaculture Administration.¹⁰⁷

Coastal protection under LEPs and s. 117 Directions

Local Environmental Plans

Local Environmental Plans (LEPs)¹⁰⁸ are planning instruments that set out what types of development are (or are not) permitted in different zones in a local government area.

New LEPs are required to use the relevant clauses of the *Standard Instrument – Principal Local Environment Plan* (Standard LEP) as a template. The Standard LEP includes two clauses specifically dealing with coastal issues.

Clause 5.5 applies to 'development within the coastal zone'. Its objectives include:¹⁰⁹

- to protect the coastal environment through promoting the principles of ecologically sustainable development; and
- to implement the principles in the [NSW Coastal Policy](#).

Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:¹¹⁰

- existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to maintaining and improving public access;
- the suitability of the proposed development given the type of development, the location and the bulk, scale, size and overall design of any building or work involved;
- the impact of the proposed development on the amenity of the coastal foreshore;
- how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected;

¹⁰⁶ SEPP (Major Development), Schedule 2(2).

¹⁰⁷ *Fisheries Management Act 1994* (NSW), s. 144: (02) 4982 1232, <http://www.dpi.nsw.gov.au/fisheries/aquaculture/starting-up>

¹⁰⁸ For more information on LEPs see our [LEPs and SEPPs Fact Sheet](#).

¹⁰⁹ *Standard Instrument- Principal Local Environment Plan* (NSW), cl. 5.5.

¹¹⁰ *Standard Instrument- Principal Local Environment Plan* (NSW), cl. 5.5(2).

- how biodiversity and ecosystems can be conserved, including native vegetation, wildlife corridors, rock platforms, the water quality of coastal waterbodies and native fauna and native flora, and their habitats;
- the effect of coastal processes and coastal hazards and potential impacts, including sea level rise, on the proposed development and arising from the proposed development; and
- the cumulative impacts of the proposed development and other development on the coastal catchment.

Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:¹¹¹

- the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore;
- if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform; and
- the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform.

Clause 5.7 applies to developments on land containing tidal waters. Proposed developments on tidal land below the mean high water mark require consent from council.¹¹²

Section 117 Directions

Section 117 of the EPA Act empowers the Planning Minister to [give directions](#) (known as s. 117 Directions or Local Planning Directions) to a particular council, or to all councils generally, as to what they must include when drafting their LEPs.¹¹³ Three s. 117 Directions are particularly applicable to draft LEPs for areas within the coastal zone.¹¹⁴

Direction 1.4 – Oyster Aquaculture

This direction applies when a draft LEP proposes a change in land use that could result in adverse impacts on, or an incompatible use of land with, a Priority

¹¹¹ *Standard Instrument- Principal Local Environment Plan (NSW)*, cl. 5.5(3).

¹¹² *Standard Instrument- Principal Local Environment Plan (NSW)*, cl. 5.7(2).

¹¹³ *Environmental Planning and Assessment Act 1979 (NSW)*, s. 117(2A).

¹¹⁴ <http://www.planning.nsw.gov.au/en-au/planningyourlocalarea/localplanningdirections.aspx>

Oyster Aquaculture Area¹¹⁵ or a current oyster aquaculture lease in the national parks estate (oyster aquaculture areas).¹¹⁶

Where this direction applies, the planning authority (usually the council) must identify oyster aquaculture areas and consult with the Director-General of the Department of Primary Industries Division of the Department of Trade & Investment. The consultation must consider whether the proposed changes are likely to affect or be incompatible with the oyster aquaculture areas.

Direction 2.2- Coastal Protection

This direction applies to any draft LEP for land within the 'coastal zone'. It aims to implement the principles of the Coastal Policy. Where this direction applies, the planning authority drafting the LEP must consider:

- the [NSW Coastal Policy](#);¹¹⁷ and
- the [Coastal Design Guidelines 2003](#).¹¹⁸

Direction 4.3 – Flood Prone Land

Many low-lying coastal areas are also flood prone areas. If a planning authority prepares a draft LEP that creates, removes or alters a zone or a provision affecting flood prone land, it must ensure that the draft LEP includes provisions to give effect to, and be consistent with:

- the [Floodplain Development Manual 2005](#); and
- the [Guideline on Development Controls on Low Flood Risk Areas](#).

NSW Coastal Planning Guideline

The [NSW Planning Guideline: Adapting to Sea Level Rise](#), (Planning Guideline) released in August 2010, was designed to provide guidance on how sea level rise is to be considered in land use planning and development assessment in coastal NSW.

¹¹⁵ An area identified in the *NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS)*, Department of Primary Industries Division of the Department of Trade & Investment, available here http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0009/114939/NSW-Oyster-Industry-Sustainable-Aquaculture-Strategy.pdf.

¹¹⁶ 'National park estate' means land declared a wilderness area under, land dedicated or reserved under the *National Parks and Wildlife Act 1974*(NSW), *Forestry Act 1916* (NSW) or the *Crown Lands Act 1989* (NSW): *Forestry and National Park Estate Act 1998* (NSW), s. 3.

¹¹⁷ <http://www.planning.nsw.gov.au/en-us/planningyourregion/coastalprotection/nswcoastalpolicy.aspx>

¹¹⁸ <http://www.planning.nsw.gov.au/PlansforAction/Coastalprotection/CoastalDesignGuidelines/tabid/174/Default.aspx>

The Planning Guideline applies to all of NSW and is to be used by councils and other consent authorities when making land use and development assessment decisions for coastal areas.

The Planning Guideline adopts six coastal planning principles, which are to be applied by councils and consent authorities in their decision-making processes. These principles are:¹¹⁹

- assess and evaluate coastal risks taking into account the NSW sea level rise planning benchmarks;
- advise the public of coastal risks to ensure that informed land use planning and development decision-making can occur;
- avoid intensifying land use in coastal risk areas through appropriate strategic and land use planning;
- consider options to reduce land use intensity in coastal risk areas where feasible;
- minimise the exposure of development to coastal risks; and
- implement appropriate management responses and adaptation strategies, with consideration for the environmental, social and economic impacts of each option.

How is the Planning Guideline enforced?

While the Planning Guideline is a policy document, its consideration and adoption will ensure that the following coastal laws are implemented more consistently:¹²⁰

- SEPP 71 - Coastal Protection;
- Section 117 Direction 2.2- Coastal Protection;
- Section 117 Direction 4.3- Flood Prone Land; and
- Standard Instrument: Principal Local Environment Plan, clause 5.5.

¹¹⁹ 'NSW Coastal Planning Guideline: Adapting to Sea Level Rise', Department of Environment, DECCW's website available here: <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=VYjmQirQIAk%3d&tabid=177&language=en-US> , page 2.

¹²⁰ 'NSW Coastal Planning Guideline: Adapting to Sea Level Rise', Department of Environment, DECCW's website available here: <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=VYjmQirQIAk%3d&tabid=177&language=en-US>.

Coastal protection under national environmental law

Environment Protection and Biodiversity Conservation Act 1999

The main national environmental law is the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). It lists seven matters of national environmental significance (triggers) which activate the power of the Australian Environment Minister to regulate new developments or proposed activities. Although there is no direct 'coastal' trigger, many of the other triggers may be applicable to proposed coastal development.

For example, a new development or activity in a coastal area may need to be referred to the Australian Environment Minister, and be assessed, if it is likely to have a significant impact upon one or more of the following matters:

- a World Heritage site;
- a National Heritage place;
- a nationally protected wetland (Ramsar wetland);
- a nationally listed threatened species or ecological community;
- a listed migratory species; or
- a Commonwealth marine area.

In addition, activities which are to take place on land owned by the Commonwealth, and activities by Commonwealth agencies, which are likely to have a significant impact on the environment also require referral and assessment. Coal seam gas or large coal mining developments that are likely to have a significant impact on a water resource are also required to be assessed.

The EPBC Act allows for the Commonwealth to enter into bilateral (assessment) agreements with each State. This allows the Commonwealth to accept an environmental assessment done by the State if the assessment was done in accordance with the agreement.¹²¹ Where this occurs, the assessment under State law replaces the need for assessment under the EPBC Act. After assessment, the proposed action still requires approval from the Federal Minister for Environment. The purpose of bilateral agreements is to reduce duplication of environmental assessment between the Commonwealth and States.

NSW Bilateral Agreement relating to environmental impact assessment

The Australian and NSW governments have signed a [bilateral assessment agreement](#) which means that the NSW Government is responsible for assessing

¹²¹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 45 – 65A.

projects that will impact on nationally listed threatened species and migratory species, and is therefore not required to refer the action to the Australian Government for assessment.¹²² The final decision remains with the Australian Minister for Environment who will make a decision based on the assessment by the NSW Government.¹²³ [Read EDO NSW's law reform submission on the draft bilateral agreement for more information.](#)¹²⁴

For more information on the EPBC Act, see our [EPBC Act](#) Fact Sheet.

How can I find out if the EPBC Act applies in a coastal area?

The Federal Department of the Environment's website contains a [search function](#) which allows you to easily find out whether the EPBC Act might apply to your area. You can search a particular area by browsing maps, entering coordinates, or by Local Government Area. The EPBC Act website will then generate a Report showing all of the Matters of National Environmental Significance in your area which are protected under the EPBC Act (e.g. the Report will show any World Heritage sites, National Heritage places, Ramsar wetlands or endangered species, etc in your area).

Coastal protection and climate change

Climate change is likely to bring with it new threats to the NSW coast.

Potential coastal impacts

The potential impacts of climate change on the coast include:¹²⁵

- sea level rise and increasing flood levels in tidal reaches of estuaries which will be particularly significant around coastal lakes and lagoons;
- an increased frequency and intensity of storms;
- loss of sandy beaches, especially where they are backed by seawalls;
- changed estuarine tidal regimes;

¹²² <http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements/nsw>

¹²³ <http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements/nsw>

¹²⁴ http://d3n8a8pro7vhm.cloudfront.net/edonsw/pages/1229/attachments/original/1387505167/131218_ANEDO_submission_on_the_Cth-NSW_Assessment_Bilateral_Agreement_WEB.pdf?1387505167

¹²⁵ 'High resolution terrain mapping of the NSW Central and Hunter coasts for assessments of potential climate change impacts, Final project report' (May 2008), NSW Department of Planning's website, available here: http://www.planning.nsw.gov.au/plansforaction/pdf/terrainmapping_central_hunter_coasts_report.pdf, page 9.

- problems with local drainage in lower estuaries;
- reduction in under bridge clearances; and
- landward migration of mangroves and salt marshes, and potential loss of threatened species.

A mapping report on low-lying coastal areas published by the NSW Department of Planning (as it was then), notes that although the potential for destruction caused by extreme weather events is of concern to coastal communities, the increased frequency of flooding probably represents a more significant concern for coastal communities as this will require increased maintenance of important infrastructure such as roads, storm water and sewerage systems.¹²⁶

Climate change and development applications

It is clear that a consent authority should factor in the risk of climate change when determining a development application.

Local councils are required to consider climate change under the following plans and policies:

- [NSW Planning Guideline: Adapting to Sea Level Rise](#);¹²⁷
- [NSW Coastal Policy](#) – the Coastal Policy is listed in the Regulations as a specific matter which a consent authority must take into account when determining a development application in the coastal zone,¹²⁸ and
- [SEPP 71 – Coastal Protection](#).¹²⁹

The Land and Environment Court has also made it clear that a consent authority must take the principles of ecologically sustainable development into account when determining a development application, and this could include the impacts of climate change.¹³⁰

¹²⁶ 'High resolution terrain mapping of the NSW Central and Hunter coasts for assessments of potential climate change impacts, Final project report' (May 2008), NSW Department of Planning's website, http://www.planning.nsw.gov.au/plansforaction/pdf/terrainmapping_central_hunter_coasts_report.pdf, page 9.

¹²⁷ <http://www.planning.nsw.gov.au/PlansforAction/Coastalprotection/SeaLevelRisePolicy/tabid/177/Default.aspx>

¹²⁸ *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 92;

<http://www.planning.nsw.gov.au/nsw-coastal-policy>

¹²⁹ SEPP 71, cl. 8(j).

¹³⁰ *Telstra Corporation Ltd v Hornsby Shire Council* (2006) 146 LGERA 10 in which the Court held that a consent authority must take the principles of ESD into account under section 79C(1)(e) of the EPA Act which requires that a consent authority take the "public interest" into account.

Climate change and State significant development/infrastructure

It is not clear whether the Planning Minister is bound to consider the impacts of climate change when deciding whether to approve major developments under the *Environmental Planning and Assessment Act 1979*. The below case study relates to Part 3A of the EPA Act, which has been repealed and replaced with SSD and SSI.

Challenging a development due to potential future impacts of climate change¹³¹

EDO NSW assisted Jill Walker, a local resident, in a successful Land and Environment Court challenge to a concept plan approval of a development at Sandon Point.

The proposed development was for up to 285 homes and an aged care facility to be built on flood-prone coastal land.

It was argued that the Planning Minister failed to apply the principles of ecologically sustainable development (ESD) when deciding to approve the proposal.

In a detailed judgment, Justice Biscoe reviewed the principles of ESD as well as US and Australian case law on climate change. He found that the Minister for Planning had failed to consider ESD by failing to consider whether the impacts of the proposed development would be compounded by climate change; in particular, by failing to consider whether changed weather patterns would lead to an increased flood risk in connection with the proposed development in circumstances where flooding was identified as a major constraint on development of the site.

The Minister for Planning successfully appealed to the NSW Court of Appeal. In [*Minister for Planning v Walker \[2008\] NSWCA 224*](#) the Court of Appeal found that, although the Planning Minister must make decisions in the public interest, not having regard to ESD principles does not necessarily constitute a breach of that obligation.

Ms Walker sought special leave to appeal to the High Court. The High Court did not grant leave on the basis that while there were valid arguments in her favour, they did not think those arguments would succeed if the appeal was heard by the High Court.

Mapping project for NSW Central and Hunter coasts

The NSW Department of Planning has produced a [report](#) which identifies the low-lying areas of the Central and Hunter coasts which are at risk of sea level rise resulting from climate change.

¹³¹ *Walker v Minister for Planning & Ors* [2007] NSWLEC 741

The Report covers the local council areas of Wyong, Lake Macquarie, Newcastle City and Port Stephens. The purpose of the Report is to assist those local councils, their communities, and the NSW Government to make informed decisions about the likely impacts of sea level rise on low-lying coastal areas for existing and future developments.

National Mapping project – OzCoasts

The Australian Government has produced a [series of maps](#) covering several NSW coastal regions, including the Sydney metropolitan region, the Central Coast and the Hunter.¹³²

The maps have been prepared by the Commonwealth Scientific and Research Organisation (CSIRO) and they illustrate a flooding event that could be expected to occur at least once a year and possibly more frequently, around the year 2100.

The maps cover three sea level rise scenarios based on CSIRO predictions for the year 2100: low (0.5 m) rise, medium (0.8m) rise and high (1.1m rise). The maps are approximate and do not take into account local factors such as existing and future coastal protection works (such as seawalls), erosion events and storm surges.

The OzCoasts maps provide an additional tool for government authorities, businesses and communities to consider when they are making long-term coastal planning and development decisions.

The maps are available for viewing on the [OzCoasts website](#).

Glossary

Key to terms used in this Fact sheet

Coastal Authority means either the NSW Minister for the Environment, the NSW Minister for Primary Industries where Crown Land is concerned, a council, roads authority or other public authority responsible for land or a road within the coastal zone or land adjoining the tidal waters of the Hawkesbury River, Sydney Harbour or Botany Bay and their tributaries.

Coastal Protection Act means the *Coastal Protection Act 1979* (NSW)

Consent Authority means the local council, Minister for Planning, Coastal Panel or other public authority that makes a determination whether to grant consent for a development

¹³² <http://www.ozcoasts.gov.au/index.jsp>

Designated Authority means the Coastal Authority that is responsible for a particular piece of coastal land or road e.g. the Environment Minister or certain local councils (see Coastal Authority above)

Environment Minister means the NSW Minister for Environment

EPA Act means the *Environmental Planning and Assessment Act 1979* (NSW)

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

LEP means a Local Environmental Plan

Planning Minister means the NSW Minister for Planning

SEPP means a State Environmental Planning Policy

Useful websites

- [Coastcare](#)
- [Office of Environment and Heritage](#)
- Department of Planning and Environment
- [Department of Trade & Investment, Department of Primary Industries Division – Catchments and Lands](#)
- [Sydney Coastal Councils Group](#)

Useful legal texts

- *Environmental and Planning Law in NSW*, Lyster, et al (3rd ed, 2012), pp 385-398.
- *The Environmental Law Handbook*, Farrier and Stein (eds), (5th ed, 2011), Redfern Legal Centre Publishing, Chapter 14, *Coastal and riverside land*.