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Dear Madam Chair

Climate Change Readiness (Coastal Planning and Protection) Bill 2012

During the hearings in Perth of the Senate Inquiry into extreme weather you may recall that my bill on coastal planning and protection was raised by Prof Laura Stocker during her verbal submission. Following the hearing I spoke with you regarding whether the Committee might like to consider it during its inquiry.

I have great pleasure in attaching the Bill, the explanatory memorandum and my second reading speech for your information. I would be delighted to receive feedback or to answer questions in relation to the Bill.

Kind regards

Hon Lynn MacLaren MLC
Member for South Metropolitan Region

12 March 2013



Climate Change Readiness Coastal Planning and Protection Bill 2012

Second reading speech

I move that the Bill now be read a second time.

Firstly Mr President, pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

The coastal region of Western Australia is home to approximately 80% of the State's population, and much of it is highly vulnerable to the impacts of climate change. The Bill provides for the regulation of planning, development and management in the coastal zone in readiness for the impacts of climate change.

The question of what may be the most effective method of regulating state coastal planning in readiness for the impacts of climate change has been on the Greens' agenda for many years. My own experience as an activist campaigning for better planning outcomes following the sale of the railway marshalling yards for urban development at Leighton Beach in 2001 taught me firsthand of the shortcomings of our planning system at that time. Subsequently, I have keenly observed the legislative responses to climate change of the other states in Australia and realised that Western Australia is lagging behind.

As GreensWA planning spokesperson, about 18 months ago I released a discussion paper on this matter to a diverse group of stakeholders – geomorphologists, consultants, academics, NGO groups, planners, local governments and even lawyers – who have an interest in the forward planning and management of the coastal zone. On the basis of the invaluable feedback provided in response to the discussion paper a draft bill was produced that was subjected to further consultation. Further amendments were made and finally on 29 March 2012 in this House I moved that the *Climate Change Readiness (Coastal Planning and Protection) Bill 2012*, being a Bill for an Act to provide for planning and development in the coastal zone, the management of the coastal zone, and for related purposes, be introduced and read a first time.

That was the Green Bill, a draft for a third round of consultation that was even more rigorous than the first two. I am pleased to say that most of the stakeholders with whom I consulted were generally supportive of the Bill, and made numerous constructive suggestions. A substantial amount of the feedback we received has been incorporated into the Bill.

I note that while it was suggested that we might pursue these changes by amending the Planning and Development Act 2005, time constraints have dictated that we introduce the Bill in this standalone form.

The time to act is now. Scientific evidence is telling us clearly that the climate is changing, and the impacts of climate change at a local level are well documented. Scientific predictions for Australia over the coming decades indicate that our most populous regions will be affected by fluctuating temperatures, rising sea levels, more frequent and intense

storms, increased aridity and flooding. We can pretend it's not happening or that it's not our problem, or we can act now to mitigate and adapt to these impacts. This Bill is the Greens' response to that pressing call to act now.

The Bill seeks to codify 4 important principles:

- planning decisions should be based on the most up-to-date climate science to protect vulnerable biodiversity hotspots, natural environments and recreational values of the coast;
- planning decisions should be able to accommodate the effects of the changing coastal environment on our urban infrastructure and the impacts of our urban infrastructure on the coastal environment, in order to protect both;
- local governments are fundamental to the implementation of good planning decisions. They need to have in place proactive adaptation and management strategies that adopt principles of adaptive management to be flexible enough to accommodate updated climate projections;
- planning decisions must reflect the precautionary principle, that the avoidance of future risk is the most cost effective adaptation response, particularly where development has not yet occurred.

The Bill is intended to work in conjunction with an updated *State Coastal Planning Policy 2.6 and Guidelines*, drafts of which were recently released for public comment. The Bill provides the contemporary planning law that is needed to address climate change, and SPP2.6 will provide the policy foundation and framework that will support the Bill. In line with SPP 2.6, a projected rise in global mean sea level of 0.9m by 2110 has been adopted for the purposes of the Bill. The Environmental Protection Authority has the responsibility for keeping climate science up to date and to notify relevant public authorities of changes. There are regular reviews embedded in the Bill to accommodate updated climate science projections.

SPP 2.6 and the associated policy guidelines are largely consistent with the Bill's requirements to provide guidelines for the development of the WA coastal plan and local coastal plans. The fundamental difference is that the Bill's provisions would have legislative effect, while most of the policy measures in SPP 2.6 promote good practice but are not mandatory. In many respects the Bill also goes further than SPP 2.6, in guiding coastal climate change adaptation and management by local governments, and giving clear legislative direction to important planning decisions that protect human settlements and ecological communities from coastal hazards that are being exacerbated by climate change.

There is a planning gap in the existing planning regime as it applies to WA's coastal zone. The Metropolitan Region Scheme is the predominant planning scheme for land use in Perth and sets the framework for land use and development in the metropolitan area. The Peel Region Scheme is the key planning scheme that guides land use in the Peel Region, including the local government boundaries of the City of Mandurah and the shires of Murray and Waroona. The Greater Bunbury Region Scheme covers the City of Bunbury and the shires of Harvey, Dardanup and Capel. Neither the region schemes, nor the statutes mentioned, specifically contemplate the vulnerability of the Western Australian coast to the impacts of climate change.

The Bill plugs that gap by providing that over a specified period, a vulnerability assessment must be carried out, firstly for developed areas of the coast, but ultimately for the whole

coast. Based on the vulnerability assessment, a WA coastal plan will be prepared. The plan will identify the coastal zone and include a map showing the coastal compartments and sediment cells comprising the coastal zone. It will also identify the “transition zone”, which is the area of the coastal zone most likely to be vulnerable to adverse impacts of a coastal hazard, either current or future.

Under the Bill, each local government (or other controlling body) of land in the coastal zone must prepare an adaptation plan and a management plan (each a “local coastal plan”) to ensure integrated management for the protection of the environmental, social, cultural and economic values of the coast. The WA coastal plan sets out adaptation and management principles, guidelines and measures for the coastal zone which give direction to the local coastal plans that must be prepared by local governments.

The WA coastal plan must be developed in consultation with the public and have regard to Aboriginal Traditional Owners’ distinct cultures, identities and connections to land and sea. The Bill regulates development in the transition zone. The only development permitted in the transition zone is:

- **exempt development**, which is essentially minor changes to existing developments or essential services infrastructure; and
- **short term development**, which is essentially development for public use that by its nature needs to be close to the coast and is capable of being abandoned, if necessary, without significant impact on the transition zone.

Under the Bill it may be possible to obtain development approval for marinas but significant canal developments such as that proposed at Point Peron would be prohibited.

The remainder of the Bill includes the following provisions:

- Memorials on title must be placed on land within the transition zone;
- Where development in the transition zone is damaged by the impact of a coastal hazard, the WAPC may cause a coastal protection notice to be given requiring the owner, occupier or other person to remove the development and restore the land to its previous condition;
- A land surrender condition for coastal management purposes may be applied to approvals for subdivision or amalgamation of lots within the transition zone;
- The Bill affords protection to **protected persons** (as defined) for anything done in good faith in the performance or purported performance of a function under the Bill;
- no compensation is payable in respect of land that is injuriously affected by the making or amendment of the WA coastal plan or a local coastal plan; and
- the Coastal Planning and Coordination Council will be reactivated to advise the WAPC on matters relating to coastal planning and coordination throughout the State and to fulfil certain functions as set out in the Bill.

In conclusion I would like very briefly to refer to the World Bank report released earlier this month entitled *Turn Down the Heat: why a 4° warmer world must be avoided*. The report reminds us that scientists are nearly unanimous in predicting a 4° warmer world by the end of the century, without serious policy changes. I can do no better than to quote a few cautionary words from the report:

“The 4°C scenarios are devastating: the inundation of coastal cities; increasing risks for food production potentially leading to higher malnutrition rates; many dry regions becoming dryer, wet regions wetter; unprecedented heat waves in many regions, especially in the tropics; substantially exacerbated water scarcity in many regions; increased frequency of high-intensity tropical cyclones; and irreversible loss of biodiversity, including coral reef systems.

And most importantly, a 4°C world is so different from the current one that it comes with high uncertainty and new risks that threaten our ability to anticipate and plan for future adaptation needs.

The lack of action on climate change not only risks putting prosperity out of reach of millions of people in the developing world, it threatens to roll back decades of sustainable development.”

I commend to you this small contribution that we can make, here in Western Australia, to the serious policy changes needed to avoid the consequences of doing nothing, so clearly outlined in the World Bank report.

In closing, I want to express my appreciation to those who assisted in preparing this Bill: to my research officer Dinny Laurence whose complete dedication to this task has brought it to this point, and for their research and assistance with consultation, thanks to Cameron Poustie, Carolyn Hoffmeester and Professor Laura Stocker. There are many others who participated and I thank them, too.

I commend the Bill to the House.

Climate Change Readiness (Coastal Planning and Protection) Bill 2012

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Defined Terms

Western Australia

LEGISLATIVE COUNCIL

(Introduced by the Hon. Lynn MacLaren MLC)

**Climate Change Readiness (Coastal Planning
and Protection) Bill 2012**

A Bill for

**An Act about planning and development in the coastal zone, the
management of the coastal zone, and for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Climate Change Readiness (Coastal Planning and Protection) Act 2012*.

2. Commencement

This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) section 19 — on the day on which the WA coastal plan first comes into operation under section 16(4);
- (c) the rest of the Act — on the day after the day on which this Act receives the Royal Assent.

3. Objects of Act

(1) The main object of this Act is to provide for the regulation of —

- (a) planning and development in the coastal zone; and
- (b) the management of the coastal zone,

taking into account the current and projected impact of climate change.

(2) The other objects of this Act are, so far as is consistent with its main object, as follows —

- (a) to make decisions and take actions that will promote sustainability in the coastal zone;
- (b) to ensure that planning decisions take account of —
 - (i) the effect of the changing coastal environment on built infrastructure; and
 - (ii) the impact of built infrastructure on the coastal environment;

- 1 (c) to ensure that planning decisions take account of the
2 following —
3 (i) the vulnerable parts of the coastal zone and its
4 associated ecosystems, ecological processes and
5 biological diversity;
6 (ii) the integrity of coastal land systems;
7 (iii) beach amenity and public access to beaches;
8 (iv) recreation, tourism and commercial activities
9 which are consistent with sustainability;
10 (v) coastal values and a sense of place;
11 (d) to ensure that the State’s planning systems and strategies
12 are based on up-to-date climate science and projections;
13 (e) to apply the precautionary principle in planning
14 decisions that affect the coastal zone;
15 (f) to ensure the highest standards of environmentally
16 sensitive design are applied in coastal engineering and
17 infrastructure works;
18 (g) to involve Aboriginal traditional owners and the broader
19 community in decision-making at all stages of the
20 planning and development process;
21 (h) to protect and preserve historical and cultural sites on
22 the coast that are of Aboriginal or non-Aboriginal
23 significance.
24 (3) Any action, decision or exercise of discretion under this Act
25 must be consistent with the objects of this Act and taken or
26 made as expeditiously as is practicable.

27 **4. Terms used**

- 28 (1) In this Act, unless the contrary intention appears —
29 *approval*, in relation to development, means approval of
30 development under a scheme or interim development order or in
31 a planning control area;

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- 1 **coastal compartment** means a component of the geological
2 framework of the coast that is —
- 3 (a) bounded alongshore by large geologic structures,
4 changes in geology or geomorphic features exerting
5 structural control on the platform of the coast, and
6 containing a particular land system; and
- 7 (b) identified in the WA coastal plan as a coastal
8 compartment;
- 9 **coastal hazard** means a coastal process that will, or is likely to,
10 significantly affect the environment or safety of people (for
11 example, erosion, accretion and inundation);
- 12 **Coastal Planning and Coordination Council** means the body
13 established under the PAD Act Schedule 2 clause 7;
- 14 **coastal processes** means the natural processes of the coast
15 including the following —
- 16 (a) sediment transport including erosion and accretion;
17 (b) inundation;
18 (c) fluctuations in the location and form of the foreshore;
19 (d) dune systems;
20 (e) tides;
21 (f) change in mean sea level;
22 (g) ecological processes (for example, migration of plant
23 and animal species);
24 (h) applicable geomorphological processes;
25 (i) the natural water cycle (for example, the role of coastal
26 wetlands in nutrient filtration and flood mitigation);
- 27 **coastal protection notice** has the meaning given by
28 section 66(2);
- 29 **coastal zone** means the area identified in the coastal plan as the
30 coastal zone;
- 31 **controlling body** has the meaning given in section 32;

- 1 **development** means —
- 2 (a) development for which approval under a scheme is
- 3 required; and
- 4 (b) the subdivision of a lot or the amalgamation of a lot with
- 5 any other lot;
- 6 **EP Act** means the *Environmental Protection Act 1986*;
- 7 **EPA** means the Environmental Protection Authority continued
- 8 in existence under the EP Act;
- 9 **exempt development** has the meaning given in section 51(5);
- 10 **geomorphic** means of or pertaining to the forms of the surface
- 11 of the earth;
- 12 **geomorphological processes** means the natural mechanisms of
- 13 weathering, erosion and deposition that result in the
- 14 modification of the surficial materials and landforms at the
- 15 earth's surface;
- 16 **land surrender condition** has the meaning given in
- 17 section 60(1);
- 18 **land system** means an area of characteristic landform patterns
- 19 suitable for mapping at regional scales of 1:50 000 to
- 20 1:1 000 000;
- 21 **landform** means a natural feature of the earth's surface;
- 22 **landform pattern** means several recurring landforms;
- 23 **local coastal adaptation plan** means a local coastal adaptation
- 24 plan, as amended from time to time, in operation under
- 25 section 43;
- 26 **local coastal management plan** means a local coastal
- 27 management plan, as amended from time to time, in operation
- 28 under section 43;
- 29 **maritime infrastructure** means —
- 30 (a) a jetty; or
- 31 (b) a breakwater, groyne or seawall; or
- 32 (c) a dredged channel; or

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- 1 (d) a boat pen or vessel mooring,
2 that is necessary in relation to port activities or the
3 administration of a port;
4 **owner** has the meaning given in section 5;
5 **PAD Act** means the *Planning and Development Act 2005*;
6 **precautionary principle** means the principle that lack of full
7 scientific certainty should not be used as a reason for
8 postponing a measure to prevent degradation of the environment
9 where there are threats of serious or irreversible environmental
10 damage;
11 **prescribed** means prescribed by regulation;
12 **public authority** means any of the following —
13 (a) a Minister of the State;
14 (b) a department of the Public Service, a State
15 instrumentality or a State public utility;
16 (c) any other person or body, whether corporate or not, who
17 or which, under the authority of a written law,
18 administers or carries on for the benefit of the State a
19 social service or public utility;
20 (d) a local government;
21 **register**, in relation to a memorial, means to register under the
22 *Registration of Deeds Act 1856* or the *Transfer of Land*
23 *Act 1893*, as the case requires;
24 **Registrar** means the Registrar of Titles under the *Transfer of*
25 *Land Act 1893* or the Registrar of Deeds and Transfers under
26 the *Registration of Deeds Act 1856*, as the case requires;
27 **responsible authority** means —
28 (a) in relation to a local planning scheme or local interim
29 development order, or the approval of development
30 under the scheme or order, the local government
31 responsible for the enforcement of the observance of the
32 scheme or order, or the execution of any works which

-
- 1 under the scheme or order, or this Act, are to be
2 executed by a local government;
- 3 (b) in relation to a region planning scheme, regional interim
4 development order or planning control area, or the
5 approval of development under the scheme or order or
6 in the control area, the WAPC or a local government
7 exercising the powers of the WAPC;
- 8 (c) in relation to an improvement scheme or the approval of
9 development under the scheme, the WAPC;
- 10 (d) in relation to a scheme prepared under the *Metropolitan*
11 *Redevelopment Authority Act 2011* or the approval of
12 development under the scheme, the Metropolitan
13 Redevelopment Authority established under section 4 of
14 that Act;
- 15 (e) in relation to development to which the *Swan and*
16 *Canning Rivers Management Act 2006* Part 5 applies,
17 the Swan River Trust established under section 16 of
18 that Act;
- 19 (f) in relation to an approval under the PAD Act
20 section 135 or 136, the WAPC;
- 21 **scheme** has the meaning given in the EP Act section 3(1);
- 22 **sediment cell** means a section of coast and its associated
23 nearshore area within which the movement of sediment is
24 apparent through identification of areas which function as
25 sediment sources, transport pathways and sediment sinks;
- 26 **short-term development** has the meaning given in section 51(4);
- 27 **sustainability** means meeting the needs of current and future
28 generations through an integration of environmental protection,
29 social advancement and economic prosperity;
- 30 **transition zone** means the transition zone identified in the
31 WA coastal plan;
- 32 **vulnerability assessment** means an assessment of the
33 vulnerability of land systems to climate and other environmental

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1 change prepared or adopted under section 18 and included in the
2 WA coastal plan;

3 *WA coastal plan* means the WA coastal plan, as amended from
4 time to time, in operation under section 16;

5 *WAPC* means the Western Australian Planning Commission
6 established under the PAD Act section 7.

7 (2) In this Act, each of the following terms have the same meaning
8 as in the PAD Act —

9 *artificial waterway*

10 *improvement scheme*

11 *interim development order*

12 *local interim development order*

13 *local planning scheme*

14 *lot*

15 *planning control area*

16 *region planning scheme*

17 *regional interim development order*

18 *State planning policy*

19 **5. Term used: owner**

20 (1) In this Act —

21 *owner* means —

22 (a) in relation to freehold land —

23 (i) a holder of the freehold; and

24 (ii) a mortgagee in possession;

25 (b) in relation to Crown land —

26 (i) the care, control and management of which has
27 been placed in a management body, that
28 management body; and

29 (ii) which is reserved, set apart or vested for, or
30 dedicated to, the purposes of another written law,

1 the person who is responsible for the
2 administration of that Crown land while it is so
3 reserved, set apart, vested or dedicated; and
4 (iii) other than land referred to in paragraph (b)(i)
5 or (ii), the Minister for Lands, as referred to in
6 the *Land Administration Act 1997* section 7(1).

7 (2) In this section each of the following terms have the same
8 meaning as in the *Land Administration Act 1997* —

9 ***Crown land***
10 ***management body***

11 **6. Crown bound**

12 This Act binds the State and, so far as the legislative power of
13 the State permits, the Crown in all its other capacities.

14 **7. Inconsistency with other Acts**

15 If a provision of this Act is in conflict or inconsistent with a
16 provision of another Act, the provision of this Act prevails to
17 the extent to which it is in conflict or inconsistent.

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Part 2 — WA coastal plan

Division 1 — Making of WA coastal plan

8. Draft WA coastal plan

- (1) The WAPC must, not later than 3 years after this section comes into operation, prepare a draft WA coastal plan.
- (2) The draft WA coastal plan must —
 - (a) identify the coastal zone; and
 - (b) identify the natural management framework of the coast including —
 - (i) the coastal compartments; and
 - (ii) the sediment cells, comprising the coastal zone; and
 - (c) include a vulnerability assessment of the coastal zone prepared in accordance with section 18; and
 - (d) identify the transition zone in accordance with Division 3; and
 - (e) include adaptation principles, guidelines and measures for the coastal zone which give direction to the following —
 - (i) the hierarchy of planning measures for coastal hazard risk management, giving preference to the sequence of avoidance, planned or managed retreat, accommodation and protection;
 - (ii) the protection and expansion of coastal foreshore reserves;
 - (iii) disaster and emergency management;
 - (iv) the protection of coastal processes from marina or artificial waterway developments other than maritime infrastructure;

- 1 (v) the protection of areas of ecological significance
2 and the creation of ecological corridors for
3 biodiversity preservation;
- 4 (vi) the protection and preservation of areas of
5 Aboriginal or non-Aboriginal historical or
6 cultural significance;
- 7 (vii) the regular monitoring, reporting and review of
8 adaptation strategies and measures;
- 9 and
- 10 (f) include management principles, guidelines and measures
11 for the coastal zone which give direction to the
12 following —
- 13 (i) management and use of land within the coastal
14 zone;
- 15 (ii) allowing natural current and likely future coastal
16 processes to occur without interruption;
- 17 (iii) the design, location and management of
18 buildings, infrastructure and other structures in
19 the transition zone;
- 20 (iv) avoiding or minimising the impact on the current
21 or likely future coastal processes by giving
22 preference to the sequence of avoidance, planned
23 or managed retreat, accommodation and
24 protection;
- 25 (v) the protection and maintenance of dunes and
26 dune vegetation;
- 27 (vi) the protection and conservation of areas with
28 high natural value and ecological significance;
- 29 (vii) maintaining the living culture of Aboriginal
30 traditional owners and their connection with
31 cultural resources within the coastal zone;
- 32 (viii) maintaining public access to and use of the
33 coastal zone for current and future generations;

- 1 (ix) buildings, infrastructure and other structures
2 being established on public land within the
3 coastal zone only where they are essential,
4 provide a public service and cannot be feasibly
5 located elsewhere;
- 6 (x) the restriction of driving on beaches except for
7 essential access or in an emergency or where low
8 impact controlled access exists;
- 9 (xi) keeping the community, including Aboriginal
10 traditional owners, informed and provided with
11 opportunities to participate in decision making
12 related to the management of the coastal zone;
- 13 (xii) building resilience and adaptive management
14 into the planning and management of the coastal
15 zone;
- 16 (xiii) the integration and coordination of policies and
17 activities of the various levels of government and
18 public authorities relating to the coastal zone.
- 19 (3) In preparing the draft WA coastal plan the WAPC —
- 20 (a) must —
- 21 (i) work with relevant public authorities and federal
22 agencies on relevant aspects of the development
23 of the plan and incorporate their advice to the
24 maximum extent practicable; and
- 25 (ii) work with, and provide feedback to, relevant
26 Aboriginal traditional owners, natural resource
27 management groups, environmental advocacy
28 groups and local coastcare community groups on
29 relevant aspects of the development of the plan;
30 and
- 31 (iii) seek comments from, and provide feedback to,
32 any other person that the WAPC considers would
33 be likely to be affected by the plan if it were
34 approved;

1 and
2 (b) may seek comments from, and provide feedback to, any
3 other public authority or person that the WAPC
4 considers appropriate.

5 (4) In preparing the draft WA coastal plan the WAPC must have
6 regard to the views of any public authority or person consulted
7 under subsection (3)(a).

8 **9. Draft WA coastal plan must be referred to EPA**

9 (1) The WAPC must refer any draft WA coastal plan to the EPA,
10 together with any written information about it as is sufficient to
11 enable the EPA to comply with the EP Act section 48A in
12 relation to it.

13 (2) If, under the EP Act section 48A(1)(b)(i), the EPA informs the
14 WAPC that the draft should be assessed by the EPA under the
15 EP Act Part IV Division 3, the WAPC must —

16 (a) within 7 days after the last day on which submissions
17 may be made to the WAPC under section 12, send the
18 EPA a copy of each submission made under section 12
19 that relates wholly or in part to any environmental issue
20 raised by the draft; and

21 (b) within 42 days after that last day, or such longer period
22 as the Minister allows, advise the EPA of the WAPC's
23 views on and response to each environmental issue to
24 which any such submission relates.

25 (3) If, under the EP Act section 48C(1)(a), the EPA requires the
26 WAPC to undertake an environmental review of the draft, the
27 WAPC must —

28 (a) undertake the review in accordance with the instructions
29 issued under that section; and

30 (b) report to the EPA on the review.

- 1 (4) If the EPA advises the WAPC that the environmental review
2 has not been undertaken in accordance with the instructions
3 issued under the EP Act section 48C(1)(a), the WAPC may —
- 4 (a) ask the Minister to consult with the Environment
5 Minister and, if possible, agree with him or her on
6 whether or not the review has been undertaken in
7 accordance with those instructions; or
- 8 (b) comply with subsection (3).
- 9 (5) If pursuant to a request made under subsection (4)(a) the
10 Minister and the Environment Minister consult then —
- 11 (a) if they agree whether or not the review has been
12 undertaken in accordance with the instructions issued
13 under the EP Act section 48C(1)(a), their decision is
14 final and cannot be appealed;
- 15 (b) if they cannot agree, the EP Act section 48J applies.
- 16 (6) If the Minister and the Environment Minister agree that the
17 review has not been undertaken in accordance with the
18 instructions issued under the EP Act section 48C(1)(a), the
19 WAPC must undertake a further review in accordance with
20 those instructions.
- 21 **10. Draft WA coastal plan to be submitted to Minister for**
22 **publication approval**
- 23 (1) After the WAPC prepares a draft WA coastal plan, the WAPC
24 must submit the draft to the Minister.
- 25 (2) If under section 9(3) the WAPC is required to undertake an
26 environmental review, the draft redevelopment scheme must not
27 be submitted to the Minister before the WAPC has sent the
28 review to the EPA and —
- 29 (a) either —
- 30 (i) the EPA has advised the WAPC; or
- 31 (ii) under section 9(5)(a) it is agreed; or

- 1 (iii) under the EP Act section 48J it is decided,
2 that the review has been undertaken in accordance with
3 the instructions issued under the EP Act
4 section 48C(1)(a); or
5 (b) 30 days have elapsed since the day on which the review
6 was sent to the EPA and the EPA has not advised
7 whether or not the review has been undertaken in
8 accordance with those instructions,
9 whichever occurs first.
- 10 (3) Having considered the draft WA coastal plan the Minister —
11 (a) may consent to the public notification of the draft; or
12 (b) may refuse to consent and may require the WAPC to
13 prepare another or an amended draft in accordance with
14 the instructions given by the Minister.
- 15 (4) The Minister must act under subsection (3)(a) if the Minister is
16 of the opinion that the draft WA coastal plan complies with the
17 objects and provisions of this Act.
- 18 (5) If the Minister does not act under subsection (3) within 60 days
19 after receiving the draft WA coastal plan, the Minister is taken
20 to have consented to the public notification of the draft.

21 **11. Public notification of draft WA coastal plan**

- 22 (1) If under section 10(3)(a) the Minister consents to the public
23 notification of the draft WA coastal plan, the WAPC must
24 publish a notice stating the following —
25 (a) where and when a copy of the draft can be inspected;
26 (b) where and when a copy of the draft can be obtained;
27 (c) the effect of section 12;
28 (d) the period within which submissions about the draft can
29 be made, set under subsection (3).

- 1 (2) The notice must be published —
2 (a) in the *Gazette*; and
3 (b) in 2 issues of a newspaper circulating throughout the
4 State; and
5 (c) in 2 issues of any local or regional newspaper the
6 WAPC considers appropriate; and
7 (d) on the public comment section of the WAPC website.
- 8 (3) The period within which submissions about the draft can be
9 made must be set by the WAPC, and must not be less than
10 60 days after the day on which the notice is published in the
11 *Gazette*.
- 12 (4) The draft WA coastal plan must be made available by the
13 WAPC for inspection by the public during office hours free of
14 charge.
- 15 (5) The draft WA coastal plan must be made available for
16 inspection by the public on a website maintained by the WAPC.
- 17 (6) Regulations made under this Act may prescribe a fee for
18 obtaining a copy of the draft WA coastal plan.
- 19 **12. Public submissions on draft WA coastal plan**
- 20 (1) Any person may, within the period set under section 11(3),
21 make a written submission to the WAPC about the draft
22 WA coastal plan.
- 23 (2) The WAPC must publish any submission made under
24 subsection (1) —
25 (a) on its website; and
26 (b) by making it available to the public during office hours
27 at the WAPC's office.

- 1 **13. Draft WA coastal plan to be submitted to Minister for final**
2 **approval**
- 3 (1) After section 11 has been complied with and the period within
4 which submissions about the draft WA coastal plan can be made
5 has elapsed, the WAPC must submit the draft to the Minister.
- 6 (2) The draft may include amendments that take account of any
7 submission made under section 12.
- 8 (3) The draft must be accompanied by —
- 9 (a) a summary of all the submissions made under
10 section 12; and
- 11 (b) a report by the WAPC on the merits of those
12 submissions.
- 13 **14. Minister’s functions in deciding final approval**
- 14 (1) After considering a draft WA coastal plan submitted to him or
15 her under section 13, the Minister must —
- 16 (a) approve the plan; or
- 17 (b) refuse to approve the plan; or
- 18 (c) approve the plan subject to amendments being made to
19 it, as directed by the Minister.
- 20 (2) The Minister must not act under subsection (1) —
- 21 (a) until —
- 22 (i) under the EP Act section 48A(1)(a), the EPA has
23 informed the WAPC that the EPA considers that
24 the draft should not be assessed by the EPA
25 under the EP Act Part IV Division 3; or
- 26 (ii) the 28 day period referred to in the EP Act
27 section 48A(1)(b)(i) has expired without the EPA
28 having, under that section, informed the WAPC;
29 or
- 30 (iii) if a statement has been delivered under the
31 EP Act section 48F(2) setting out the conditions,
32 if any, to which the draft should be subject — the

- 1 Minister is satisfied the submitted draft meets
2 those conditions; or
3 (iv) if a decision has been made under the EP Act
4 section 48J on the conditions, if any, to which
5 the draft should be subject — the Minister is
6 satisfied the submitted draft meets those
7 conditions,
8 whichever occurs first; or
9 (b) if, under the EP Act section 48A(2)(b), the Minister and
10 the Environment Minister have made an agreement.
11 (3) The Minister must act under subsection (1)(a) if the Minister is
12 of the opinion that the draft WA coastal plan complies with the
13 objects and provisions of this Act.
14 (4) If the Minister refuses to approve a draft WA coastal plan, the
15 Minister may give directions to the WAPC as to the preparation
16 of a further plan and as to the submission of the plan under
17 section 10 or 13 as the Minister may specify.

18 **15. Gazettal of WA coastal plan**

19 If under section 14 the Minister approves the WA draft coastal
20 plan the WAPC must publish in the *Gazette* a notice of —

- 21 (a) the approval; and
22 (b) where and when a copy of the approved WA coastal
23 plan can be inspected; and
24 (c) where and when a copy of the plan can be obtained.

25 **16. Parliament may disallow WA coastal plan**

- 26 (1) A copy of the WA coastal plan approved under section 14 must
27 be laid before each House of Parliament within 6 sitting days of
28 that House next following the date on which the plan is
29 published in the *Gazette*.
30 (2) Either House of Parliament, by resolution of which notice has
31 been given within 12 sitting days of that House after the

- 1 WA coastal plan has been laid before it under subsection (1),
2 may pass a resolution disallowing the plan.
- 3 (3) Notice of the disallowance must be published in the *Gazette*
4 within 21 days of the passing of the resolution.
- 5 (4) If neither House of Parliament passes a resolution in accordance
6 with subsection (2) disallowing the WA coastal plan laid before
7 it, the plan comes into operation immediately following the last
8 day upon which a resolution disallowing it could have been
9 passed or on such later day as is specified or provided for in the
10 plan.
- 11 (5) If before the expiration of 12 sitting days of a House of
12 Parliament after the WA coastal plan has been laid before that
13 House —
- 14 (a) that House, being the Legislative Assembly, is dissolved
15 or expires, or the Parliament is prorogued; and
- 16 (b) a resolution for the disallowance of the plan has not
17 been passed by that House,
- 18 the WA coastal plan is, for the purposes of this section, taken to
19 have been laid before that House on the first sitting day of that
20 House after the dissolution, expiry or prorogation, as the case
21 may be.

22 **17. Availability of WA coastal plan**

- 23 (1) The WA coastal plan must be made available by the WAPC for
24 inspection by the public during office hours free of charge.
- 25 (2) Regulations made under this Act may prescribe a fee for
26 obtaining a copy of the WA coastal plan.
- 27 (3) The WA coastal plan must be made available for inspection by
28 the public on a website maintained by the WAPC.

Division 2 — Vulnerability assessment

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18. Vulnerability assessment of Western Australian coast

- (1) The WAPC must —
 - (a) cause a vulnerability assessment of any part of the Western Australian coast that has been developed before the coming into operation of this section or that, in the opinion of the WAPC, is likely to be developed within 5 years of the coming into operation of this section to be prepared; or
 - (b) adopt an assessment of that part of the Western Australian coast that, in the opinion of the WAPC, conforms with the guidelines prepared under subsection (5).
- (2) The first WA coastal plan must include the vulnerability assessment prepared or adopted under subsection (1).
- (3) The WAPC must cause a vulnerability assessment of the whole of the Western Australian coast to be completed and included in the WA coastal plan not later than 3 years after the coming into operation of this section.
- (4) Any vulnerability assessment must be prepared having regard to the vulnerability assessment guidelines prepared under subsection (5).
- (5) The WAPC must prepare vulnerability assessment guidelines that address the following —
 - (a) the identification of risk factors associated with social, cultural and ecological values;
 - (b) the identification of risk factors associated with development;
 - (c) the consideration of climate change impacts and projections including —
 - (i) projected mean sea level rise; and

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- 1 (ii) projected increases in storm high tides resulting
2 from increased mean sea level; and
- 3 (iii) projected changes in severity and frequency of
4 storm events and cyclones; and
- 5 (iv) projected increases in estuarine flooding;
- 6 (d) the consideration of likely future coastal hazards based
7 on the matters set out in paragraph (c) and on —
- 8 (i) the geomorphology of the Western Australian
9 coast, identifying coastal land systems and the
10 current and likely future coastal processes that
11 affect them; and
- 12 (ii) existing coastal infrastructure and facilities (both
13 how current or likely future coastal processes
14 may impact on them, and how they may impact
15 on current or likely future coastal processes); and
- 16 (iii) coastal infrastructure and facilities that have been
17 approved but are not yet constructed (both how
18 current and likely future coastal processes may
19 impact them, and how they may impact on
20 current or likely future coastal processes);
- 21 (e) the determination of appropriate mechanisms for
22 managing coastal hazards, for example determining
23 setbacks or actively managing sediment transport, based
24 on the matters set out in paragraphs (c) and (d);
- 25 (f) the identification of coastal buffers, including whether a
26 buffer zone needs to be established on the landward side
27 of the transition zone for ecological processes,
28 connectivity of habitat and public access to beach
29 amenity, or any of those matters;
- 30 (g) the monitoring and review of the vulnerability
31 assessment;
- 32 (h) any other matter the WAPC considers relevant.
- 33 (6) The precautionary principle must be applied in preparing the
34 vulnerability assessment.

1 (7) In preparing the vulnerability assessment the WAPC is to have
2 regard to the latest scientific projections available as at the date
3 of preparation as advised by the EPA under section 73(b).

4 (8) The vulnerability assessment may be amended from time to
5 time in accordance with Division 5 and this section applies to
6 the amendment as if it were a vulnerability assessment.

7 **19. Restrictions on development in areas without vulnerability**
8 **assessment**

9 A person must not commence or carry out development on land
10 within the coastal zone unless —

- 11 (a) a vulnerability assessment of the land has been included
12 in the WA coastal plan; or
13 (b) the development is short-term development or exempt
14 development and is authorised under this Act and any
15 relevant scheme.

16 **Division 3 — Transition zone**

17 **20. Identification of transition zone**

18 (1) The transition zone is the area of the coastal zone which, in the
19 opinion of the WAPC, is likely to be vulnerable to adverse
20 impacts of a coastal hazard, either current or future under the
21 latest scientific projections available as advised by the EPA
22 under section 73(b).

23 (2) The WAPC must have regard to the vulnerability assessment
24 when identifying any part of the coastal zone as the transition
25 zone in the WA coastal plan.

26 **21. Memorial must be lodged if land included in transition zone**

27 (1) The WAPC must cause a memorial to be lodged with the
28 Registrar in respect of land that is included in the transition zone
29 as soon as practicable after the land is included.

1 (2) On the lodging of a memorial under subsection (1), the
2 Registrar must register the memorial against the relevant land.

3 (3) If the land is removed from the transition zone, the WAPC must
4 give notice to the Registrar that the memorial is to be withdrawn
5 and the Registrar must register the withdrawal of the memorial
6 in the appropriate manner.

7 **22. Notice of memorial to be given**

8 As soon as practicable after a memorial is registered or
9 withdrawn under section 21, written notice that the memorial is
10 registered or withdrawn, with a copy of the memorial or notice
11 to withdraw the memorial attached, as is relevant, must be given
12 by the WAPC to —

- 13 (a) each owner of the relevant land; and
14 (b) each local government which has located within its
15 district all, or part, of the relevant land; and
16 (c) each responsible authority a scheme of which applies to
17 all, or part, of the relevant land.

18 **23. Amendment of transition zone on request of responsible
19 authority or owner**

20 (1) In this section —
21 *change criteria* has the meaning given in section 28;
22 *responsible authority* means a responsible authority a scheme
23 of which applies to land in the transition zone.

24 (2) A responsible authority for, or an owner of land in, the
25 transition zone may request the WAPC to prepare an
26 amendment to the transition zone if the responsible authority or
27 owner is of the opinion that —

- 28 (a) one or more of the change criteria has occurred in
29 relation to land in the transition zone; or
30 (b) more recent, detailed or up-to-date geomorphological
31 work on the land has become available that leads to

- 1 different conclusions regarding vulnerability from those
2 projected in the vulnerability assessment included in the
3 WA coastal plan in relation to the transition zone.
- 4 (3) The WAPC —
- 5 (a) may refuse the request and give notice in writing of its
6 decision and the reasons for the decision to the
7 responsible authority or owner who requested the
8 amendment; or
- 9 (b) may act under section 30 as if the amendment were
10 recommended in the report of a review under section 27.
- 11 (4) Nothing in this section prevents the transition zone from being
12 amended under Division 5.

13 **Division 4 — Effect of WA coastal plan**

14 **24. Responsible authority must comply with WA coastal plan**

15 A responsible authority must comply with the WA coastal plan
16 when making a decision about the approval of development in
17 the coastal zone.

18 **25. Inconsistency with schemes and local laws**

19 If the WA coastal plan is in conflict or inconsistent with a
20 scheme or local law, the WA coastal plan prevails to the extent
21 to which it is in conflict or inconsistent.

22 **26. WA coastal plan has legislative effect**

- 23 (1) The WA coastal plan has legislative effect.
- 24 (2) For the purposes of the *Interpretation Act 1984*, the WA coastal
25 plan is subsidiary legislation made under this Act.
- 26 (3) The *Interpretation Act 1984* section 41 does not apply to the
27 WA coastal plan.

Division 5 — Review and amendment

27. General review

- (1) The WAPC must carry out a review of the WA coastal plan as soon as is practicable after —
- (a) the 5th anniversary of the plan coming into operation; and
 - (b) the expiry of each 5 yearly interval after the plan was last reviewed.
- (2) The purpose of the review is to reassess the suitability of the provisions of the WA coastal plan to achieve the objects of this Act.

28. Change criteria review

- (1) In this section —
- change criteria*, in relation to the WA coastal plan, means any of the following —
- (a) the actual rise in sea level has occurred sooner than, or varies significantly from, the rise projected in the vulnerability assessment;
 - (b) the actual frequency and severity of extreme weather events are significantly different from those projected in the vulnerability assessment;
 - (c) more recent coastal climate change science has become available in which there are projections that are significantly different to projections in the vulnerability assessment;
 - (d) more recent, detailed or up-to-date geomorphological work on a part of the Western Australian coast has become available that leads to significantly different conclusions regarding vulnerability from those projected in the vulnerability assessment;
 - (e) unforeseen events or consequences of the impact of coastal processes have arisen;

- 1 (f) the harm from human settlements to hydrological,
2 ecological and coastal processes, or to biodiversity in
3 the coastal zone, is greater than projected in the
4 vulnerability assessment;
- 5 (g) any other factor which in the opinion of the Coastal
6 Planning and Coordination Council warrants a review of
7 the WA coastal plan.
- 8 (2) The WAPC must carry out a review of the WA coastal plan as
9 soon as is practicable after being advised by the Coastal
10 Planning and Coordination Council that changes are necessary
11 as the result of the occurrence of one of more of the change
12 criteria.
- 13 (3) In carrying out the review, and in any amendment prepared as a
14 consequence of the review, the WAPC is to have regard to the
15 latest scientific projections available as at the date of the review
16 or amendment as advised by the EPA under section 73(b).

17 **29. Review report**

- 18 (1) The WAPC must —
- 19 (a) prepare a report based on a review carried out under
20 section 27 or 28; and
- 21 (b) submit the report to the Minister.
- 22 (2) The Minister must cause a copy of the report to be laid before
23 each House of Parliament within 7 days after receiving a copy
24 of the report.
- 25 (3) If —
- 26 (a) at the time the report is submitted to the Minister a
27 House of Parliament is not sitting; and
- 28 (b) the Minister is of the opinion the House will not sit
29 before the end of the period referred to in subsection (2),
- 30 the Minister must transmit a copy of the report to the Clerk of
31 that House and make the report available to the public.

1 (4) A copy of a report transmitted to the Clerk of a House is to be
2 regarded as having been laid before that House.

3 (5) The laying of a copy of a report that is regarded as having
4 occurred under subsection (4) must be recorded in the Minutes,
5 or Votes and Proceedings, of the House on the first sitting day
6 of the House after the Clerk received the copy.

7 **30. Amendment following review**

8 (1) If a review report under section 29 recommends amendments to
9 the WA coastal plan, the WAPC must prepare draft
10 amendments in accordance with the recommendations.

11 (2) Sections 8 to 16, with necessary changes, apply to a draft
12 amendment or an amendment as if —

13 (a) any references in those sections to the draft WA coastal
14 plan were references to the draft amendment; and

15 (b) in section 10(3)(b) the words “and may require” were
16 substituted for “and require”; and

17 (c) the reference in section 14(4) to a further plan were a
18 reference to a further draft amendment; and

19 (d) any reference in section 15 or 16 to the WA coastal plan
20 were a reference to an approved amendment.

21 **31. Replacement of WA coastal plan**

22 (1) If a review report under section 29 recommends the making of a
23 new WA coastal plan, the WAPC must prepare a new draft
24 WA coastal plan in accordance with the recommendation.

25 (2) Sections 8 to 16 apply to the making of a new WA coastal plan.

26 (3) The new plan replaces the existing plan on and from the day the
27 new plan comes into operation under section 16.

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Part 3 — Adaptation and management plans

32. Terms used

In this Part —
controlling body means —

- (a) in relation to land that is in a coastal compartment within the district of a local government, the local government;
- (b) in relation to any other land that is in a coastal compartment, the person that has the care, control and management of the land or, if there is no such person, the WAPC;

local coastal plan means —

- (a) a local coastal adaptation plan; or
- (b) a local coastal management plan.

33. Draft local coastal adaptation plans and draft local coastal management plans

- (1) A local government of a district in which is land in a coastal compartment must prepare in accordance with this Part —
 - (a) a draft local coastal adaptation plan for the land; and
 - (b) a draft local coastal management plan for the land.
- (2) If the land in a coastal compartment is in 2 or more local government districts, the local governments for those districts must jointly prepare in accordance with this Part —
 - (a) a draft local coastal adaptation plan for the land; and
 - (b) a draft local coastal management plan for the land.
- (3) If, under subsection (2), 2 or more local governments are required to prepare a draft local coastal adaptation plan or draft local coastal management plan jointly, a reference in this Part to a local government includes a reference to those local governments.

- 1 (4) If land in a coastal compartment is not in a local government
2 district, the controlling body in relation to the land must prepare
3 in accordance with this Part —
- 4 (a) a draft local coastal adaptation plan for the land; and
5 (b) a draft local coastal management plan for the land.
- 6 (5) In preparing a draft local coastal plan the controlling body —
- 7 (a) must —
- 8 (i) work with relevant public authorities and federal
9 agencies on relevant aspects of the development
10 of the plan and incorporate their advice to the
11 maximum extent practicable; and
- 12 (ii) work with, and provide feedback to, relevant
13 Aboriginal traditional owners, natural resource
14 management groups, environmental advocacy
15 groups and local coastcare community groups on
16 relevant aspects of the development of the plan;
17 and
- 18 (iii) seek comments from, and provide feedback to,
19 any other person that the controlling body
20 considers would be likely to be affected by the
21 plan if it were approved;
- 22 and
- 23 (b) may consult any other public authority or person that the
24 controlling body considers appropriate.
- 25 (6) In preparing a draft local coastal plan the controlling body must
26 have regard to the views of any public authority or person
27 consulted under subsection (5)(a).

28 **34. Principles, guidelines and measures for preparation**

29 A controlling body must prepare a draft local coastal plan in
30 accordance with the principles, guidelines and measures
31 referred to in section 8(2)(e) and (f) and included in the
32 WA coastal plan.

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1 **35. Matters to be provided for in draft local coastal adaptation**
2 **plan**

- 3 (1) A draft local coastal adaptation plan must provide for the
4 following matters in relation to the coastal compartment to
5 which it applies —
6 (a) land use planning that will supplement development
7 controls;
8 (b) dune management and revegetation to contain or reverse
9 erosion;
10 (c) planned retreat and buffers;
11 (d) a statement of performance indicators, monitoring and
12 reporting arrangements.
- 13 (2) Regulations may prescribe other matters that are to be provided
14 for in a draft local coastal adaptation plan.
- 15 (3) The projection used for a draft local coastal adaptation plan
16 must be 30 years from the date of preparation.

17 **36. Matters to be provided for in draft local coastal**
18 **management plan**

- 19 (1) A draft local coastal management plan must provide for the
20 following matters in relation to the coastal compartment to
21 which it applies —
22 (a) a description of the physical natural processes of the
23 area and a statement of integrated management practices
24 and actions required to maintain these processes;
25 (b) an integrated management strategy detailing how the
26 hierarchy of planning measures set out in
27 section 8(2)(e)(i) must be applied if coastal erosion is
28 posing a threat to structures and infrastructure that
29 cannot be relocated or removed or where a public beach
30 may be lost;

- 1 (c) a description of the natural coastal resources of the area
2 and a statement of integrated management practices and
3 actions for their conservation or rehabilitation;
- 4 (d) a description of the recreation, public access and scenic
5 values of the area and a statement of the integrated
6 management practices and actions required to manage
7 those values;
- 8 (e) a management plan in relation to driving on beaches;
- 9 (f) a statement of performance indicators, monitoring and
10 reporting arrangements;
- 11 (g) a programme of annual works and maintenance.
- 12 (2) Regulations may prescribe other matters that are to be provided
13 for in a draft local coastal management plan.
- 14 (3) The projection used for a draft local coastal management plan
15 must be 30 years from the date of preparation.

16 **37. Draft local coastal plan may adopt codes or other documents**

- 17 (1) A draft local coastal plan may adopt the text of —
- 18 (a) an approved local coastal plan of any other controlling
19 body; or
- 20 (b) any code, rules, specifications or standard issued by
21 Standards Australia or by another body specified in the
22 plan.
- 23 (2) The text may be adopted —
- 24 (a) wholly or in part or as modified by the draft plan; and
25 (b) as it exists at a particular date or as amended from time
26 to time.

27 **38. Consultation with other controlling bodies**

- 28 (1) Before submitting a draft local coastal plan in respect of a
29 coastal compartment to the Minister under section 40, the
30 controlling body which prepared the draft (the *responsible*

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- 1 *body*) must submit it to the controlling body of any land
2 adjoining the coastal compartment.
- 3 (2) At any time before a draft local coastal plan is submitted to the
4 Minister under section 40 —
- 5 (a) a controlling body to which the draft was submitted
6 under subsection (1) may give the responsible body
7 written submissions about the draft; and
- 8 (b) the responsible body may amend the draft to take
9 account of those submissions.
- 10 **39. Draft local coastal plan must be referred to EPA**
- 11 (1) After a controlling body prepares a draft local coastal plan, it
12 must refer the draft to the EPA, together with any written
13 information about it as is sufficient to enable the EPA to comply
14 with the EP Act section 48A in relation to it.
- 15 (2) If, under the EP Act section 48A(1)(b)(i), the EPA informs the
16 controlling body that the draft should be assessed by the EPA
17 under the EP Act Part IV Division 3, the controlling body
18 must —
- 19 (a) within 7 days after the last day on which submissions
20 may be made to the controlling body under
21 section 40(3), send the EPA a copy of each submission
22 made under section 38 that relates wholly or in part to
23 any environmental issue raised by the draft; and
- 24 (b) within 42 days after that last day, or such longer period
25 as the Minister allows, advise the EPA of the controlling
26 body's views on and response to each environmental
27 issue to which any such submission relates.
- 28 (3) If, under the EP Act section 48C(1)(a), the EPA requires the
29 controlling body to undertake an environmental review of the
30 draft, the controlling body must —
- 31 (a) undertake the review in accordance with the instructions
32 issued under that section; and

- 1 (b) report to the EPA on the review.
- 2 (4) If the EPA advises the controlling body that the environmental
3 review has not been undertaken in accordance with the
4 instructions issued under the EP Act section 48C(1)(a), the
5 controlling body may —
- 6 (a) ask the Minister to consult with the Environment
7 Minister and, if possible, agree with him or her on
8 whether or not the review has been undertaken in
9 accordance with those instructions; or
- 10 (b) comply with subsection (3).
- 11 (5) If pursuant to a request made under subsection (4)(a) the
12 Minister and the Environment Minister consult then —
- 13 (a) if they agree whether or not the review has been
14 undertaken in accordance with the instructions issued
15 under the EP Act section 48C(1)(a), their decision is
16 final and cannot be appealed;
- 17 (b) if they cannot agree, the EP Act section 48J applies.
- 18 (6) If the Minister and the Environment Minister agree that the
19 review has not been undertaken in accordance with the
20 instructions issued under the EP Act section 48C(1)(a), the
21 WAPC must undertake a further review in accordance with
22 those instructions.
- 23 **40. Draft local coastal plan must be submitted to Minister for**
24 **approval**
- 25 (1) After a controlling body prepares a draft local coastal plan, the
26 controlling body must submit to the Minister —
- 27 (a) the draft; and
28 (b) any submissions made under section 38(2).
- 29 (2) The draft must be accompanied by a report of the controlling
30 body on the merits of submissions made under section 38(2).

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- 1 (3) The draft must not be submitted to the Minister before —
- 2 (a) each controlling body to which the draft was submitted
- 3 under section 38(1) has made final submissions under
- 4 section 38(2) in respect of the draft; or
- 5 (b) 42 days have elapsed since the controlling body which
- 6 prepared the draft complied with section 38(1) in respect
- 7 of the draft,
- 8 whichever occurs first.
- 9 (4) If under section 39(3) the controlling body is required to
- 10 undertake an environmental review, the draft must not be
- 11 submitted to the Minister before the controlling body has sent
- 12 the review to the EPA and —
- 13 (a) either —
- 14 (i) the EPA has advised the controlling body; or
- 15 (ii) under section 39(5)(a) it is agreed; or
- 16 (iii) under the EP Act section 48J it is decided,
- 17 that the review has been undertaken in accordance with
- 18 the instructions issued under the EP Act
- 19 section 48C(1)(a); or
- 20 (b) 30 days have elapsed since the day on which the review
- 21 was sent to the EPA and the EPA has not advised
- 22 whether or not the review has been undertaken in
- 23 accordance with those instructions,
- 24 whichever occurs first.
- 25 (5) Each controlling body that, at the time this section comes into
- 26 operation, is required to prepare a draft local coastal adaptation
- 27 plan and a draft local coastal management plan must submit the
- 28 draft plans to the Minister within 5 years of the coming into
- 29 operation of this Act.

1 **41. Minister's functions as to draft local coastal plan**

2 (1) After considering a draft local coastal plan submitted under
3 section 40, the Minister must —

- 4 (a) approve the draft local coastal plan; or
5 (b) refuse to approve the draft local coastal plan; or
6 (c) approve the plan subject to amendments being made to
7 it, as directed by the Minister.

8 (2) The Minister must not act under subsection (1) —

- 9 (a) until —
- 10 (i) under the EP Act section 48A(1)(a), the EPA has
11 informed the controlling body that the EPA
12 considers that the draft should not be assessed by
13 the EPA under the EP Act Part IV Division 3; or
14 (ii) the 28 day period referred to in the EP Act
15 section 48A(1)(b)(i) has expired without the EPA
16 having, under that section, informed the
17 controlling body; or
18 (iii) if a statement has been delivered under the
19 EP Act section 48F(2) setting out the conditions,
20 if any, to which the draft should be subject — the
21 Minister is satisfied the submitted draft meets
22 those conditions; or
23 (iv) if a decision has been made under the EP Act
24 section 48J on the conditions, if any, to which
25 the draft should be subject — the Minister is
26 satisfied the submitted draft meets those
27 conditions,
28 whichever occurs first; or
29 (b) if, under the EP Act section 48A(2)(b), the Minister and
30 the Environment Minister have made an agreement.

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1 (3) The Minister must act under subsection (1)(a) if the Minister is
2 of the opinion that the draft complies with the objects and
3 provisions of this Act and the WA coastal plan.

4 **42. Gazettal and operation of local coastal plan**

5 (1) If under section 41 the Minister approves a draft local coastal
6 plan prepared by a controlling body, the controlling body must
7 publish in the *Gazette* a notice of —

- 8 (a) the approval; and
9 (b) where and when a copy of the plan can be inspected;
10 and
11 (c) where and when a copy of the plan can be obtained.

12 (2) A local coastal plan must be made available by the controlling
13 body that prepared the plan during office hours free of charge.

14 (3) Regulations made under this Act may prescribe a fee for
15 obtaining a copy of the local coastal plan.

16 **43. Parliament may disallow local coastal plan**

17 (1) A copy of a local coastal plan approved under section 41 must
18 be laid before each House of Parliament within 6 sitting days of
19 that House next following the date on which the plan is
20 published in the *Gazette*.

21 (2) Either House of Parliament, by resolution of which notice has
22 been given within 12 sitting days of that House after the
23 WA coastal plan has been laid before it under subsection (1),
24 may pass a resolution disallowing the plan.

25 (3) Notice of the disallowance must be published in the *Gazette*
26 within 21 days of the passing of the resolution.

27 (4) If neither House of Parliament passes a resolution in accordance
28 with subsection (2) disallowing the local coastal plan laid before
29 it, the plan comes into operation immediately following the last
30 day upon which a resolution disallowing it could have been

1 passed or on such later day as is specified or provided for in the
2 plan.

3 (5) If before the expiration of 12 sitting days of a House of
4 Parliament after the local coastal plan has been laid before that
5 House —

6 (a) that House, being the Legislative Assembly, is dissolved
7 or expires, or the Parliament is prorogued; and

8 (b) a resolution for the disallowance of the plan has not
9 been passed by that House,

10 the local coastal plan is, for the purposes of this section, taken to
11 have been laid before that House on the first sitting day of that
12 House after the dissolution, expiry or prorogation, as the case
13 may be.

14 **44. Review and revision of local coastal plans**

15 (1) A controlling body must —

16 (a) review any local coastal plan prepared by it and
17 approved by the Minister —

18 (i) not later than 10 years after the local coastal plan
19 comes into operation; and

20 (ii) not later than 10 years after the last review under
21 this section;

22 and

23 (b) if it considers that circumstances so require, prepare
24 amendments to that plan or a revised plan.

25 (2) The projection used for a review must be 30 years from the date
26 of the review.

27 **45. Amendment of local coastal plan**

28 (1) A controlling body which prepared a local coastal plan may
29 prepare a draft amendment to the plan.

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- 1 (2) Sections 38 to 43, with necessary changes, apply to a draft
2 amendment or amendment as if —
- 3 (a) any reference in those sections to a draft plan were a
4 reference to the draft amendment; and
- 5 (b) any reference in section 42 or 43 to a local coastal plan
6 were a reference to an approved amendment.

7 **46. Repeal of local coastal plan**

8 A local coastal plan may be repealed by a subsequent local
9 coastal plan.

10 **47. Inconsistency with other instruments**

- 11 (1) A local coastal plan is inoperative to the extent that it is
12 inconsistent with —
- 13 (a) this Act; or
- 14 (b) subject to subsection (2), any other written law; or
- 15 (c) the WA coastal plan.
- 16 (2) If a local coastal plan is inconsistent with a local law or a
17 scheme, the plan prevails to the extent of the inconsistency.

18 **48. Functions to be carried out in accordance with local coastal
19 plans**

20 A controlling body carrying out functions in relation to a coastal
21 compartment must comply with any local coastal plan that
22 applies to the carrying out of those functions.

23 **49. Offences and penalties**

- 24 (1) A local coastal plan may provide that contravention of a
25 provision of the plan is an offence, and may provide for the
26 offence to be punishable on conviction by a penalty not
27 exceeding \$200 000.
- 28 (2) If the offence is of a continuing nature, the local coastal plan
29 may make the person liable to a further penalty not exceeding a

- 1 fine of \$25 000 in respect of each day or part of a day during
2 which the offence has continued.
- 3 (3) The local coastal plan may provide for the imposition of a
4 minimum penalty for the offence.
- 5 (4) The regulations may specify the method and the means by
6 which any fines imposed under a local coastal plan are to be
7 paid and collected, or recovered.

1 **Part 4 — Development control in transition zone**

2 **Division 1 — Development in transition zone**

3 **50. Development principles in transition zone**

4 (1) A responsible authority —

5 (a) must comply with this Division when making a decision
6 about the approval of development in the transition
7 zone; and

8 (b) must not grant an approval that conflicts with the
9 provisions of this Division.

10 (2) Subsection (1) applies in relation to approval of development
11 whether subdivision approval for the land on which
12 development is proposed was given before or after the coming
13 into operation of this section.

14 **51. What development can be carried out in transition zone**

15 (1) A responsible authority must not grant approval for
16 development in the transition zone unless —

17 (a) the development is —

18 (i) short-term development other than short-term
19 development to which section 53 applies; or

20 (ii) exempt development;

21 and

22 (b) the responsible authority has complied with section 55.

23 (2) Nothing in subsection (1) affects the power of a responsible
24 authority to refuse to grant approval for development.

25 (3) A public authority must not carry out development in the
26 transition zone unless the development is —

27 (a) short-term development other than short-term
28 development to which section 53 applies; or

29 (b) exempt development.

- 1 (4) Short-term development is development that —
2 (a) is for public use or public enjoyment; and
3 (b) by its nature, must be carried out in the transition zone
4 despite the risk of impact from a present or likely future
5 coastal hazard; and
6 (c) is capable of being abandoned, if necessary, without
7 significant adverse impact on the transition zone,
8 but does not include an artificial waterway or a canal
9 development.
- 10 (5) Exempt development is development that is —
11 (a) a minor renovation or change to an existing
12 development that does not have an adverse impact on
13 present or likely future coastal processes; or
14 (b) essential services infrastructure —
15 (i) prescribed to be exempt development; or
16 (ii) in an area prescribed as a cyclone prone area.
- 17 (6) Regulations made for the purposes of subsection (5) must not
18 prescribe a marina or artificial waterway development, other
19 than maritime infrastructure, as exempt development.

20 **52. Accommodating sea level rises**

- 21 (1) If development in the transition zone is exempt development,
22 the responsible authority must prioritise the accommodation of
23 sea level rise rather than protecting against sea level rise with
24 hard defences that may have an adverse effect on adjacent areas.
- 25 (2) Development approval for hard defences must not be granted
26 unless there is no reasonable alternative available.

27 **53. Certain short-term development must not be approved**

28 A responsible authority must not grant approval for short-term
29 development in the transition zone if the development poses a
30 significant risk to coastal processes unless the responsible

1 authority is satisfied that the impact of the development will not
2 endure beyond the useful life of the development.

3 **54. Certain exempt development must not be approved**

4 A responsible authority must not grant approval for exempt
5 development in the transition zone if —

- 6 (a) the development is at significant risk of being harmed
7 by a coastal hazard; or
8 (b) the development poses a significant risk to coastal
9 processes,

10 unless the responsible authority is satisfied that the development
11 will meet the prescribed standards for reasonable resistance to
12 damage from coastal hazards for the duration of its expected
13 useful life.

14 **55. Responsible authority must advise of effect of Act**

15 Before a responsible authority grants approval for short-term
16 development or exempt development in the transition zone, the
17 responsible authority must give the applicant for approval notice
18 of the provisions of this Act that will apply to the development,
19 including that the development may have to be removed or
20 abandoned under regulations made under section 56(1)(d) or in
21 accordance with a coastal protection notice.

22 **56. Regulations about development in transition zone**

23 (1) The Governor may make regulations for the following
24 purposes —

- 25 (a) to prescribe criteria to be applied by responsible
26 authorities when determining whether development is
27 short-term development or exempt development;
28 (b) to regulate, restrict or prohibit any specified class of
29 development in the transition zone;
30 (c) to prescribe conditions that apply to approval of
31 development in the transition zone;

- 1 (d) to prescribe circumstances in which a responsible
2 authority may order, or is required to order, the removal
3 or abandonment of a short-term development or exempt
4 development from the transition zone and make
5 provision in relation to the following —
6 (i) the making of the order;
7 (ii) requirements for compliance with the order;
8 (iii) remediation requirements that may be imposed
9 under the order;
10 (iv) the enforcement of the order;
11 (v) the recovery of any costs incurred by the
12 responsible authority in enforcing the order.
- 13 (2) No compensation is payable in relation to the removal or
14 abandonment of short-term development or exempt
15 development from the transition zone pursuant to an order made
16 under regulations referred to in subsection (1)(d).
- 17 (3) A regulation may impose a penalty not exceeding a fine of
18 \$200 000 and, in the case of a continuing offence, a further fine
19 of \$25 000 for each day during which the breach continues, for
20 a breach of the regulation.
- 21 (4) If the regulations are in conflict or inconsistent with a scheme or
22 local law, the regulations prevail to the extent to which they are
23 in conflict or inconsistent.
- 24 (5) Before regulations are made under this section, the Minister
25 must, as far as is appropriate and reasonably practicable, consult
26 with the following —
27 (a) the WAPC;
28 (b) local governments;
29 (c) communities which appear to the Minister to be likely to
30 be affected by, or interested in, the regulations.

1 **Division 2 — Transactions relating to short-term development**

2 **57. Maximum term for lease or licence**

3 (1) In this section —

4 *licence to use or occupy* does not include an easement.

5 (2) A person must not —

6 (a) lease to any person land on which a short-term
7 development has been carried out; or

8 (b) grant a licence to use or occupy land on which a
9 short-term development has been carried out,

10 for a term or period exceeding 5 years.

11 (3) A lease or licence referred to in subsection (2) may include an
12 option to renew or extend the term or period of the lease or
13 licence for a term or period, or successive terms or periods, not
14 exceeding 5 years but must provide that the option is not
15 exercisable if the lessor or grantor gives the lessee or grantee
16 written notice that the option is not to be exercised because the
17 land or premises on the land are at risk from coastal hazards.

18 (4) A person who contravenes subsection (2) commits an offence.
19 Penalty: a fine of \$200 000 and, in the case of a continuing
20 offence, a further fine of \$25 000 for each day during
21 which the offence continues.

22 (5) The Registrar must not register a lease if the lessor has
23 contravened subsection (2) in respect of the lease.

24 **58. Acknowledgment in lease or licence**

25 (1) This section applies to a lease or licence to use or occupy land
26 in the transition zone on which short-term development has
27 been carried out if the lease or licence is entered into after the
28 coming into operation of this section.

29 (2) Every lease or licence to which this section applies must
30 contain, and is subject to, an acknowledgment by the parties to

1 the lease or licence that any short-term development on the land
2 may be required by a responsible authority to be removed or
3 abandoned.

4 **Division 3 — Land surrender**

5 **59. Application**

6 This Division applies to an approval under the PAD Act
7 section 135 to —

- 8 (a) subdivide a lot situated completely or partly within the
9 transition zone; or
10 (b) amalgamate a lot with any other lot if any of the lots are
11 situated completely or partly within the transition zone.

12 **60. Minister may approve inclusion of land surrender condition**

- 13 (1) Subject to subsection (2) and section 64, the WAPC may
14 include in an approval to which this Division applies a condition
15 (***land surrender condition***) that a part of the lot (the ***land***) in the
16 transition zone must be surrendered to the State for coastal
17 management.
18 (2) The land must not be required to be surrendered under
19 subsection (1) unless the Minister approves the inclusion of the
20 land surrender condition.

21 **61. Notice of condition about land surrender**

- 22 (1) Before including a land surrender condition under section 60,
23 the WAPC must give written notice to the applicant.
24 (2) The notice must —
25 (a) state that the WAPC is considering including a land
26 surrender condition; and
27 (b) include details of the land to be surrendered.
28 (3) The period within which the WAPC must make a decision
29 under the PAD Act section 143 stops on the day the notice is

1 given to the applicant and starts again on the day the WAPC
2 gives the applicant a notice under section 63.

3 **62. Criteria for decision**

4 In deciding whether to include a land surrender condition, and
5 the land to be surrendered, the WAPC must consider how the
6 surrender of the land would avoid or minimise detrimental
7 impact on coastal management and coastal processes.

8 **63. Notice of decision about land surrender**

9 (1) After making a decision about whether or not to include a land
10 surrender condition, the WAPC must give written notice to the
11 applicant.

12 (2) The notice must —

13 (a) state the decision and the date it was made; and

14 (b) if the decision is to include a land surrender condition —

15 (i) state the day the Minister approved the inclusion
16 of the land surrender condition; and

17 (ii) include details of the land to be surrendered.

18 **64. When land surrender condition may not be included**

19 The WAPC must not include a land surrender condition on the
20 approval if —

21 (a) a lot relating to the application for approval was part of
22 another lot that has been the subject of an application
23 under the PAD Act section 135; and

24 (b) a part of the other lot was surrendered to the State under
25 a land surrender condition.

26 **65. Surrendered land to be dedicated for coastal management
27 purposes**

28 (1) If the WAPC has approved the subdivision or amalgamation of
29 a lot subject to a land surrender condition in relation to one or
30 more portions of land shown on a diagram or plan of survey

1 relating to the subdivision or amalgamation, then the land
2 subject to the condition vests in the State by force of this section
3 without any conveyance, transfer or assignment or the payment
4 of any fee.

5 (2) Land vested under subsection (1) is vested at the time the new
6 certificate, or if more than one, all the new certificates for the
7 land the subject of the diagram or plan of survey has or have
8 been registered under the *Transfer of Land Act 1893*.

9 (3) Land vested under subsection (1) —

10 (a) is Crown land; and

11 (b) is to be taken to be reserved under the *Land*
12 *Administration Act 1997* for the purpose of coastal
13 management; and

14 (c) may be dealt with in accordance with the *Land*
15 *Administration Act 1997*; and

16 (d) is to be reserved under any applicable local planning
17 scheme for the public purpose of coastal management.

18 (4) The Registrar must do all things necessary to give effect to this
19 section.

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Part 5 — Coastal protection notices

66. Coastal protection notice

- (1) In this section —
- specified* means specified by the WAPC in the coastal protection notice concerned.
- (2) If short-term development on land in the transition zone is damaged by the impact of a coastal hazard, the WAPC may cause a notice (a *coastal protection notice*) to be given requiring a person to —
- (a) remove the development; and
 - (b) restore that land to a condition as near as possible to the condition of the land before the development occurred,
- within a specified period.
- (3) A coastal protection notice may be given to one or more of the following —
- (a) the owner of the land;
 - (b) the occupier of the land;
 - (c) a person other than the owner or occupier of the land, if the WAPC considers that it is practicable for that person to comply with and give effect to the coastal protection notice.
- (4) A coastal protection notice is to specify the following —
- (a) the name and address of the person to whom it is given;
 - (b) the reason for which it is given;
 - (c) a description of the relevant development and the location of the development sufficient to identify both.
- (5) A coastal protection notice —
- (a) while it subsists, binds each person to whom it is given; and

1 (b) if it is, and while it remains, registered under section 69,
2 binds each successive owner or occupier of the land to
3 which it relates.

4 (6) A person who is bound by a coastal protection notice and who
5 does not comply with a requirement contained in the notice
6 commits an offence.

7 Penalty: a fine of \$200 000 and, in the case of a continuing
8 offence, a further fine of \$25 000 for each day during
9 which the offence continues.

10 **67. Amendment of coastal protection notice**

11 The WAPC may by notice in writing served on every person
12 bound by a coastal protection notice revoke the notice or amend
13 it —

14 (a) by extending the period within which a requirement
15 contained in the notice must be complied with if the
16 WAPC is satisfied that the circumstances of the case
17 justify the extension; or

18 (b) by revoking or amending any requirement contained in
19 the notice.

20 **68. Review of coastal protection notice or amendment to, or**
21 **revocation of, coastal protection notice**

22 (1) A person to whom a coastal protection notice has been given
23 may apply to the State Administrative Tribunal for a review of
24 the decision of the WAPC.

25 (2) A person to whom a notice revoking or amending a coastal
26 protection notice has been given may apply to the State
27 Administrative Tribunal for a review of the decision of the
28 WAPC.

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- 1 **69. Registration of coastal protection notice on land title**
- 2 (1) When a coastal protection notice is given under section 66, the
3 WAPC must give a copy of the notice —
- 4 (a) in the case of a notice relating to land which is under the
5 operation of the *Transfer of Land Act 1893* or *Land*
6 *Administration Act 1997*, to the Registrar of Titles; or
- 7 (b) in the case of a notice relating to land which is alienated
8 from the Crown but which is not under the operation of
9 the *Transfer of Land Act 1893*, to the Registrar of Deeds
10 and Transfers.
- 11 (2) On receiving a copy of a coastal protection notice given under
12 subsection (1), the Registrar must, without payment of a fee,
13 register the notice and endorse or note accordingly the
14 appropriate register or record in respect of the land to which that
15 notice relates.
- 16 (3) If a coastal protection notice is revoked under section 67, the
17 WAPC must give the Registrar a certificate signed by the
18 WAPC and certifying that revocation took place on a date
19 specified in the certificate.
- 20 (4) On receiving a certificate given under subsection (3), the
21 Registrar must cancel the registration of the relevant coastal
22 protection notice and endorse or note accordingly the
23 appropriate register or record in respect of the land to which that
24 certificate relates.
- 25 **70. Duties of person ceasing to be owner etc. of land subject to**
26 **registered notice**
- 27 (1) This section applies if the person, or at least one of the persons,
28 to whom a coastal protection notice is given is the owner or
29 occupier of the land.
- 30 (2) While a coastal protection notice remains registered under
31 section 69, each owner or occupier of the land to which the

- 1 coastal protection notice relates must, when that person ceases
2 to be the owner or occupier of the land, notify in writing —
- 3 (a) the WAPC of that fact and of the name and address of
4 each person who succeeds in the ownership or
5 occupation or both, as the case requires, of the land; and
- 6 (b) each person who succeeds in the ownership or
7 occupation, or both, as the case requires, of that land of
8 the content of the coastal protection notice and of the
9 fact that the coastal protection notice is binding on that
10 person.

11 Penalty: a fine of \$5 000.

12 **71. WAPC to keep and publish record of orders**

- 13 (1) The WAPC must keep a record of the prescribed particulars of a
14 coastal protection notice.
- 15 (2) The WAPC must publish from time to time in a prescribed
16 manner prescribed particulars of the record.

17 **72. Action by WAPC**

- 18 (1) If action required by a coastal protection notice to be taken has
19 not been taken, the WAPC may —
- 20 (a) cause that action to be taken; and
21 (b) recover the cost of the taking of that action from any
22 person bound by the notice in a court of competent
23 jurisdiction as a debt due to the Crown.
- 24 (2) Any cost recovered under subsection (1)(b) must be paid into
25 the Consolidated Account.

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Part 6 — Miscellaneous

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73. Role of EPA

The EPA must —

- (a) keep itself informed of changes to coastal climate science and the impact of those changes on projections in relation to the transition zone, having regard to the most up-to-date research by relevant State, national and international scientific bodies; and
- (b) advise relevant public authorities of those changes.

74. Protection from liability

(1) In this section —

coastal management works includes the placement and management of emergency coastal protection works;

protected person means any of the following —

- (a) a public authority;
- (b) a member or employee of a public authority;
- (c) a public service officer;
- (d) a person acting under the direction of a public authority or the State;
- (e) a member of the council, or of a committee of the council, of a local government.

(2) In this section a reference to the doing of anything includes a reference to the omission to do anything.

(3) A civil action does not lie against a protected person for —

- (a) anything that the protected person has done, in good faith, in the performance or purported performance of a function under this Act; or
- (b) any advice furnished in good faith by the protected person relating to the likelihood of any land in the

- 1 coastal zone being adversely affected by a coastal
2 hazard or the nature or extent of a coastal hazard; or
- 3 (c) anything that the protected person has done, in good
4 faith, insofar as it relates to the likelihood of land in the
5 coastal zone being adversely affected by coastal
6 processes.
- 7 (4) The State and the Minister are also relieved of any liability that
8 either of them might otherwise have had for another person
9 having done anything as described in subsection (3).
- 10 (5) Without limiting subsection (3), that subsection applies to the
11 following —
- 12 (a) the preparation or making of a scheme;
13 (b) the grant or refusal of approval of development;
14 (c) the imposition of a condition in relation to an approval
15 of development;
16 (d) the preparation or making of the WA coastal plan;
17 (e) the giving of a coastal protection notice;
18 (f) the carrying out of coastal management works in the
19 coastal zone;
20 (g) the failure to upgrade coastal management works in the
21 coastal zone in response to projected or apparent actual
22 impact of climate change;
23 (h) anything done regarding beach erosion or shoreline
24 recession;
25 (i) the failure to take action to enforce the removal of
26 illegal or unauthorised structures in the coastal zone that
27 results in erosion of a beach or land adjacent to a beach;
28 (j) the provision of information relating to projected
29 impacts of climate change, including mean sea level
30 rise.
- 31 (6) Without limiting any other circumstances in which a protected
32 person may have acted in good faith, a protected person is,

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1 unless the contrary is proved, taken to have acted in good faith
2 for the purposes of this section if the advice was furnished, or
3 the thing was done, substantially in accordance with the
4 WA coastal plan and any local coastal adaptation plan or local
5 coastal management plan for the relevant area.

6 (7) The protection given by this section applies even though the
7 thing done as described in subsection (3) may have been
8 capable of being done whether or not this Act had been enacted.

9 **75. No compensation for injurious affection**

10 (1) Compensation is not payable in respect of land that is
11 injuriously affected by the making or amendment of the
12 WA coastal plan or a local coastal plan.

13 (2) Compensation is not payable under the PAD Act Part 11
14 Division 2, or under any Act that applies to that Division, in
15 respect of land that is injuriously affected by the making or
16 amendment of a scheme that applies to any part of the coastal
17 zone if the relevant provisions of the scheme are consistent with
18 the WA coastal plan.

19 **76. Regulations**

20 The Governor may make regulations prescribing all matters that
21 are required or permitted by this Act to be prescribed, or are
22 necessary or convenient to be prescribed, for giving effect to the
23 purposes of this Act.

24 **77. Review of Act**

25 (1) The Minister must cause a review of the operation and
26 effectiveness of this Act, and the need for its continuation, to be
27 carried out as soon as is practicable after the 5th anniversary of
28 the day on which this section comes into operation.

29 (2) The Minister must cause a report based on that review to be
30 prepared and, as soon as is practicable after the report is
31 prepared, cause it to be laid before each House of Parliament.

1 **Part 7 — Consequential amendments to *Environmental***
2 ***Protection Act 1986***

3 **78. Act amended**

4 This Part amends the *Environmental Protection Act 1986*.

5 **79. Section 3 amended**

6 (1) In section 3(1) in the definition of ***final approval***:

7 (a) in paragraph (g) delete “section;” and insert:

8

9 section; or

10

11 (b) after paragraph (g) insert:

12

13 (h) the WA coastal plan, or an amendment to the
14 WA coastal plan, prepared under the *Climate*
15 *Change Readiness (Coastal Planning and*
16 *Protection) Act 2012*, means an approval given
17 under section 14 of that Act, or under
18 section 30 of that Act as read with section 14 of
19 that Act; or

20 (i) a local coastal adaptation plan or a local coastal
21 management plan prepared under the *Climate*
22 *Change Readiness (Coastal Planning and*
23 *Protection) Act 2012*, or an amendment to such
24 a plan, means an approval given under
25 section 41 of that Act, or under section 45 of
26 that Act as read with section 41 of that Act;

27

s. 79

- 1 (2) In section 3(1) in the definition of *period of public review*:
2 (a) in paragraph (g) delete “section;” and insert:
3
4 section; or
5
6 (b) after paragraph (g) insert:
7
8 (h) the WA coastal plan, or an amendment to the
9 WA coastal plan, prepared under the *Climate*
10 *Change Readiness (Coastal Planning and*
11 *Protection) Act 2012*, means the period set and
12 notified under section 11 of that Act, or under
13 section 30 of that Act as read with section 11 of
14 that Act; or
15 (i) a local coastal adaptation plan or a local coastal
16 management plan prepared under the *Climate*
17 *Change Readiness (Coastal Planning and*
18 *Protection) Act 2012*, or an amendment to such
19 a plan, means the period referred to in
20 section 40(3);
21
- 22 (3) In section 3(1) in the definition of *responsible authority*:
23 (a) in paragraph (a)(x) delete “Act;” and insert:
24
25 Act; or
26
27 (b) after paragraph (a)(x) insert:
28
29 (xi) the WA coastal plan, or an amendment
30 to the WA coastal plan, prepared under
31 the *Climate Change Readiness (Coastal*
32 *Planning and Protection) Act 2012*,
33 means the Western Australian Planning
34 Commission; or

- 1 (xii) a local coastal adaptation plan or a local
2 coastal management plan prepared
3 under the *Climate Change Readiness*
4 *(Coastal Planning and Protection)*
5 *Act 2012*, or an amendment to such a
6 plan, means the controlling body that is
7 responsible for the plan or amendment;
8
- 9 (4) In section 3(1) in the definition of *scheme*:
- 10 (a) in paragraph (j) delete “scheme;” and insert:
11
12 scheme; or
13
- 14 (b) after paragraph (j) insert:
- 15
- 16 (k) the WA coastal plan, or an amendment to
17 the WA coastal plan, prepared under the
18 *Climate Change Readiness (Coastal*
19 *Planning and Protection) Act 2012*; or
- 20 (l) a local coastal adaptation plan or a local coastal
21 management plan prepared under the *Climate*
22 *Change Readiness (Coastal Planning and*
23 *Protection) Act 2012*, or an amendment to such
24 a plan;
25
- 26 (5) In section 3(1) in the definition of *scheme Act* after
27 paragraph (c) insert:
- 28
- 29 (d) the *Climate Change Readiness (Coastal*
30 *Planning and Protection) Act 2012*;
31

s. 80

1 **80. Section 48A amended**

2 (1) In section 48A(1)(b)(ii) delete “scheme;” and insert:

3

4 scheme or the matters referred to in subsection (2A), as the case
5 requires;

6

7 (2) After section 48A(1) insert:

8

9 (2A) In the case of the assessment of the WA coastal plan, a
10 local coastal adaptation plan or a local coastal
11 management plan, prepared under the *Climate Change*
12 *Readiness (Coastal Planning and Protection) Act 2012*
13 or an amendment to such a plan, the Authority must
14 assess under this Division —

15 (a) any provisions of the plan that will affect
16 development in the coastal zone or reservation
17 or zoning under any scheme; and

18 (b) the climate assumptions and modelling used in
19 the plan.

20

21 **81. Section 48C amended**

22 In section 48C(7) in the definition of *public review*:

23 (a) in paragraph (g) delete “sections.” and insert:

24

25 sections; or

26

27 (b) after paragraph (g) insert:

28

29 (h) the WA coastal plan, or an amendment to the
30 WA coastal plan, prepared under the *Climate*
31 *Change Readiness (Coastal Planning and*
32 *Protection) Act 2012*, means the procedure

- 1 referred to in sections 11 and 12 of that Act, or
2 in section 30 of that Act as read with those
3 sections; or
4 (i) a local coastal adaptation plan or local coastal
5 management plan, prepared under the *Climate*
6 *Change Readiness (Coastal Planning and*
7 *Protection) Act 2012*, means the procedure
8 referred to in sections 38 and 40 of that Act, or
9 in section 45 of that Act as read with those
10 sections.
11

s. 82

1 **Part 8 — Consequential amendments to *Planning and***
2 ***Development Act 2005***

3 **82. Act amended**

4 This Part amends the *Planning and Development Act 2005*.

5 **83. Schedule 2 amended**

6 Delete Schedule 2 clause 7(3) and insert:

- 7
- 8 (3) The Coastal Planning and Coordination Council is to —
- 9 (a) advise the Commission on matters relating to
10 coastal planning and coordination throughout the
11 State; and
- 12 (b) for the purposes of the *Climate Change Readiness*
13 *(Coastal Planning and Protection) Act 2012*
14 section 28, monitor change criteria and advise the
15 Commission when changes are required to the
16 WA coastal plan under that Act; and
- 17 (c) perform such of the functions of the Commission
18 under this Act, or any other written law, as are
19 delegated to the Coastal Planning and Coordination
20 Council under section 16.
21
-
-

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
approval	4(1)
artificial waterway	4(2)
change criteria	23(1), 28(1)
coastal compartment	4(1)
coastal hazard	4(1)
coastal management works	74(1)
Coastal Planning and Coordination Council	4(1)
coastal processes	4(1)
coastal protection notice	4(1), 66(2)
coastal zone	4(1)
controlling body	4(1), 32
Crown land	5(2)
development	4(1)
EP Act	4(1)
EPA	4(1)
exempt development	4(1)
geomorphic	4(1)
geomorphological processes	4(1)
improvement scheme	4(2)
interim development order	4(2)
land	60(1)
land surrender condition	4(1), 60(1)
land system	4(1)
landform	4(1)
landform pattern	4(1)
licence to use or occupy	57(1)
local coastal adaptation plan	4(1)
local coastal management plan	4(1)
local coastal plan	32
local interim development order	4(2)
local planning scheme	4(2)
lot	4(2)
management body	5(2)
maritime infrastructure	4(1)
owner	4(1), 5(1)
PAD Act	4(1)
planning control area	4(2)
precautionary principle	4(1)
prescribed	4(1)

Defined Terms

protected person.....	74(1)
public authority.....	4(1)
region planning scheme.....	4(2)
regional interim development order.....	4(2)
register.....	4(1)
Registrar.....	4(1)
responsible authority.....	4(1), 23(1)
responsible body.....	38(1)
scheme.....	4(1)
sediment cell.....	4(1)
short-term development.....	4(1)
specified.....	66(1)
State planning policy.....	4(2)
sustainability.....	4(1)
transition zone.....	4(1)
vulnerability assessment.....	4(1)
WA coastal plan.....	4(1)
WAPC.....	4(1)

Climate Change Readiness (Coastal Planning and Protection) Bill 2012

Explanatory Memorandum

1. Overview of Bill

The Bill is divided into 8 Parts, which in turn may have two or more divisions. The Part headings are: Preliminary; WA coastal plan; Adaptation and management plans; Development control in the transition zone; Coastal protection notices; Miscellaneous; Consequential amendments to the *Environmental Protection Act 1986* and Consequential amendments to the *Planning and Development Act 2005 (PAD Act)*. The content of each part is set out in more detail below.

The main object of the Bill is to provide for the regulation of planning, development and management in the coastal zone, taking into account the current and projected impacts of climate change. Important subsidiary objects include the requirement that the precautionary principle must apply to planning decisions that affect the coastal zone.

The objects of this Act are to be achieved by coordinated and integrated planning and decision-making, involving, among other things:

The preparation of a state wide coastal plan, which:

- identifies the coastal zone and the natural management framework of the coast (including coastal compartments and sediment cells) comprising the coastal zone;
- includes a vulnerability assessment which is used to identify the transition zone, being the area of the coastal zone most vulnerable to adverse impacts of coastal hazards and subject to specific development controls;
- sets out adaptation and management principles, guidelines and measures for the coastal zone which give direction to the local coastal plans that must be prepared by local governments;
- is developed in consultation with the public; and
- has regard to Aboriginal Traditional Owners' distinct cultures, identities and connections to land and sea.

Where land is included in the transition zone, a memorial to this effect must be lodged with the Registrar of Titles and the owner notified accordingly.

The WA coastal plan has legislative effect and overrides any scheme or local law to the extent of any conflict or inconsistency.

There are provisions in the Act for the review and amendment of the WA coastal plan and the local plans. Reviews may be periodic or triggered in specified circumstances.

Each local government (or other controlling body) of land in the coastal zone must prepare an adaptation plan and a management plan (each a "local coastal plan") to ensure integrated management for the protection of the environmental, social, cultural and economic values of the coast.

The Act regulates development within the transition zone. Only certain exempt and short term development is permitted, subject to conditions. There is no compensation for injurious affection caused by the making of the WA coastal plan or a local coastal plan. If short term development in

the transition zone is damaged by the impact of a coastal hazard, the WAPC may serve a coastal protection notice requiring the development to be removed and the land remediated.

The EPA is required under the Act to keep climate science up to date and to notify relevant public authorities of changes. Under the Act public authorities that act in good faith and in accordance with the Act are protected from liability. There are penalties prescribed for certain breaches of the Act.

It is the intention of the Act to reactivate the Coastal Planning and Coordination Council to advise the WAPC on matters relating to coastal planning and coordination throughout the State and to fulfil certain functions as set out in the Act.

2. Summary of substantive provisions

Part 1 – Preliminary

Clause 1 Short Title

This clause provides the short title of the *Climate Change Readiness (Coastal Planning and Protection) Act 2012*.

Clause 2 Commencement

This clause specifies the dates on which various clauses of the Act will come into operation.

Clause 3 Objects of the Act

The main object of the Act is to provide for the regulation of planning, development and management in the coastal zone.

Important subsidiary objects are set out in s. 3(2).

Clause 3(3) provides that “any action, decision or exercise of discretion under this Act must be consistent with the objects of this Act and taken or made as expeditiously as is practicable”. This is intended to ensure that the process does not stall at any stage.

Clause 4 Terms Used

This clause sets out the definitions of the terms used in the Act. These definitions have been drafted, so far as possible, to be consistent with the definitions in the draft revised State Planning Policy 2.6, and to reflect the invaluable work already done in relation to preparing vulnerability assessments and mapping the coastal compartments and sediment cells of the WA coastal zone.

Development is defined as “development for which approval under a scheme is required”. This is not as wide as the definition in the PAD Act 2005, which would have vastly expanded the operation of the Bill. The definition of **public authority** includes “local government”.

Clause 5 Terms used: owner

This clause provides a separate definition for the term **owner**, because the definition is lengthy and incorporates terms defined in the Land Administration Act 1997.

Clause 6 Crown bound

This clause provides that the Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

Clause 7 Inconsistency with other Acts

Clause 7 provides that if a provision of this Act is in conflict or inconsistent with a provision of another act, this Act prevails to the extent of the conflict or inconsistency.

Part 2 – WA coastal plan

Division 1 – Making of WA coastal plan (clauses 8 – 17)

Essentially this division sets out the steps that must be followed by the WAPC in taking the WA coastal plan from draft to gazettal.

Clause 8 Draft WA coastal plan

Clause 8(1) provides that a draft plan must be prepared for the coastal zone by no later than 3 years after the date on which this clause of the Act comes into operation. It was not possible to set a date by which the approved plan must be gazetted, since the time involved in some of the steps in the process cannot be determined (for instance the steps involved in obtaining EPA approval as set out in clause 9).

As outlined in the overview, clause 8(2) sets out what the draft plan must include, namely:

- Identification of the coastal zone and of the coastal compartments and sediment cells comprising the coastal zone;
- A vulnerability assessment of the coastal zone prepared in accordance with clause 19 (see Division 2);
- Identification of the transition zone in accordance with Division 3 (clause 20);
- Climate change adaptation principles, guidelines and measures, which give direction to the matters referred to in 8(2)(e). These have been drafted to exclude canal developments such as the development proposed at Point Peron but not necessarily to exclude marinas and maritime infrastructure;
Amongst other things a local coastal adaptation plan must set out the hierarchy of planning measures for hazard risk management, being avoidance, planned or managed retreat, accommodation or protection (clause 8(2)(e)(i)); and
- Climate change management principles, guidelines and measures, which give direction to the matters referred to in 8(2)(f). Amongst other things a management plan may allow “essential” buildings and infrastructure that “provide a public service and cannot feasibly be located elsewhere”.

Clause 8(3) sets out the collaboration and consultation that the WAPC must undertake in preparing the draft coastal plan.

Clauses 9 – 17 WA coastal plan approval process

Clauses 9 – 17 set out the detailed approval process in relation to the WA coastal plan.

Clause 9 Draft WA coastal plan must be referred to the EPA

Clause 9 provides that the WAPC must refer any draft WA coastal plan to the Environmental Protection Authority (EPA) under clause 48A of the *Environmental Protection Act 1986*. For the purposes of EPA assessment and review the plan is treated as a 'scheme'.

Clause 10 Draft WA coastal plan to be submitted to Minister for publication approval

Once the process under clause 48A has been complied with (including a review if this is required by the EPA), under clause 10 the draft plan must be submitted to the Minister to consent to public notification of the draft. Under clause 10(4), the Minister must consent to public notification if the Minister is of the opinion that the draft plan complies with the objects and provisions of the Act. Under clause 10(5), consent is implied if the Minister does not either consent or refuse consent within 60 days.

Clauses 11 – 14 Public notification, public submissions and final approval of WA coastal plan

Clauses 11 – 14 deal with the process for public notification of the draft plan, public submissions, and submission of the plan to the Minister for final approval. Under clause 14 the Minister has the right to approve the plan, refuse to approve it, or approve it "subject to amendments being made to it, as directed by the Minister". Under clause 14(3) the Minister must give final approval "if the Minister is of the opinion that the draft WA coastal plan complies with the objects and provisions of the Act".

Clause 15 Gazettal of WA coastal plan

Under clause 15, the WAPC must publish a notice in the Gazette that the WA coastal plan has been approved, where it can be inspected, and where a copy of the plan can be obtained.

Clause 16 Parliament may disallow WA coastal plan

If there is no disallowance motion within the stipulated time periods or a disallowance motion is defeated, the final WA coastal plan comes into operation.

Clause 17 Availability of WA coastal plan

Clause 17 specifies that the WA coastal plan must be available for inspection during office hours free of charge and on a public website maintained by the WAPC. Regulations may prescribe a fee for obtaining a copy of the plan.

Division 2 – Vulnerability Assessment (clauses 18 – 19)

Clause 18 Vulnerability assessment of coastal zone

Clause 18 provides that the WAPC must cause a vulnerability assessment to be carried out on all parts of the Western Australian coast that are already developed and any other parts that are likely to be developed within 5 years from the day after Royal Assent. Under clause 18(4), a vulnerability assessment must be prepared having regard to the guidelines prepared by the WAPC that address the matters set out in clause 18(5).

A number of vulnerability assessments have already been carried out globally, nationally and at state, regional and local levels. Under clause 18(1)(b), the WAPC must adopt such an assessment provided it conforms with the guidelines in clause 18(5).

Under clause 18(2), the initial WA coastal plan must include the vulnerability assessment prepared or adopted under clause 18(1). A map drawn from this vulnerability assessment will be included as part of the WA coastal plan.

Clause 18(6) requires the precautionary principle to be applied in preparing the vulnerability assessment. Clause 18(7) requires the WAPC to have regard to the latest scientific projections available as at the date of preparation as advised by the EPA under clause 73(b). Clause 18(8) makes provision for the amendment of a vulnerability assessment from time to time.

Clause 19 Restrictions on development in areas without vulnerability assessment

Clause 19 provides that development may not be carried out on land within the coastal zone unless a vulnerability assessment of that land has been included in the WA coastal plan or the development is short term or exempt and is authorised under the Act or any relevant scheme. Short term and exempt development are defined in clauses 51(4) and 59(5).

Division 3 – Transition Zone (clauses 20 – 23)

Clause 20 Identification of the transition zone

Clause 20(1) provides that the transition zone is “the area of the coastal zone which, in the opinion of the WAPC, is likely to be vulnerable to adverse impacts of a coastal hazard, either current or future under the latest scientific projections available as at the date of preparation as advised by the EPA under clause 73(b)”. Under clause 20(2), the WAPC must have regard to the relevant vulnerability assessment when identifying any part of the coastal zone as the transition zone in the WA coastal plan.

Clauses 21 and 22 Memorial must be lodged and notice given if land included in transition zone

Under clause 21, the WAPC must cause a memorial to be lodged in respect of land that is included in the transition zone and that memorial must be registered against the relevant land. Under clause 22 notice of the memorial must be given to the parties specified in the clause as soon as practicable.

Clause 23 Amendment of transition zone on request of responsible authority or owner

An amendment to the transition zone may be requested by the responsible authority or owner in accordance with clause 23 or under division 5 (see below).

Division 4 – Effect of WA coastal plan (clauses 24 – 26)

Under clause 24, the responsible authority must comply with the coastal plan when making a decision about the approval of development in the coastal zone. Under clause 25, the plan will prevail to the extent that it is in conflict or inconsistent with a scheme or local law. Under clause 26, the WA coastal plan has legislative effect.

Division 5 – Review and amendment (clauses 27 – 31)

Under clause 27, there is a general review of the WA coastal plan every 5 years. In addition the WAPC must carry out a review as soon as practicable after the occurrence of one or more of the **change criteria** set out in clause 28. The procedure for amendment pursuant to a general review or change criterion review is set out in clauses 29 - 31.

Part 3 – Adaptation and management plans

Clause 32 Terms used

The terms *controlling body* and *local coastal plan* are defined in clause 32.

Clause 33 Draft local coastal adaptation plans and draft local coastal management plans

Under clause 33, the *controlling body* of land in a coastal compartment must prepare a local coastal adaptation plan and a local coastal management plan for that land. Where the land the subject of a local coastal plan is within the district of a local government, the *controlling body* will be that local government; where it is not within such a district, the *controlling body* will be the person with the “care, control and management” of the land, or where there is no such person, the WAPC.

Under clauses 33 (2) and (3), where the land that is the subject of a local coastal plan crosses a boundary, the relevant controlling bodies for those districts must prepare the plan together.

The controlling body that prepares the local coastal plans must work with and consult the various bodies, groups and people mentioned in clause 33(5) and have regard to their views.

Clause 34 Principles, guidelines and measures for preparation

The controlling body must prepare a draft local coastal plan in accordance with the principles, guidelines and measures set out in clauses 8(2)(e) and (f).

Clauses 35 and 36 Matters to be provided for in local coastal plans

The matters that must be covered in the local coastal plans are in clauses 35 and 36. Such matters include integrated management for coastal erosion and conservation or rehabilitation, coastal buffers, beach driving management, monitoring and reporting.

Clause 37 Local coastal plan may adopt codes or other documents

Under clause 37, where an approved local plan already exists this may be adopted or incorporated into a local coastal plan. Since the content of the local coastal plans will depend on the final WA coastal plan it is unlikely that any existing plan will be adopted without modification but this provision means that valuable work in this regard will not be lost.

Clause 38 Consultation with other controlling bodies

Under clause 38, before submitting a draft local coastal plan to the Minister for approval, the controlling body that prepared the draft must submit it to the controlling body of any adjoining land, and may amend the draft to take account of any submissions made by that controlling body.

Clauses 39 - 42 Approval procedure for draft local coastal plans

Draft local coastal plans must go through an approval procedure similar to that in relation to the WA coastal plan, with submission to the EPA and Ministerial approval prior to being gazetted (clauses 39 – 42). Draft plans must be submitted to the Minister within 5 years from the day after Royal Assent (clause 40(5)).

Clause 43 Parliament may disallow local coastal plan

If there is no disallowance motion within the stipulated time periods or a disallowance motion is defeated, the final local coastal plan comes into operation.

Clauses 44 - 46 Review, amendment and repeal of local coastal plans

Under clause 44, the controlling body must review any local coastal plan prepared by it and approved by the Minister every 10 years, using 30 year projections from the date of the review.

Under clause 45, the controlling body that prepared a local coastal plan may amend that plan and clauses 38 to 42 apply to that amendment, with relevant changes.

Under clause 46, a local coastal plan is repealed by a subsequent local coastal plan.

Clause 47 Inconsistency with other instruments

This clause sets out what happens in the event of a conflict or inconsistency between a local coastal plan and other instruments.

Clause 48 Functions to be carried out in accordance with local coastal plans

Compliance with local coastal plans is mandatory.

Clause 49 Offences and penalties

Clause 49 sets out the penalties for contravention of a local coastal plan.

Part 4 – Development control in the transition zone

Division 1 – Development in the transition zone.

Clause 50 Development principles in the transition zone

Clause 50 provides that a responsible authority must comply with the principles in this division when making a decision about the approval of development in the transition zone.

Clause 51 What development can be carried out in the transition zone

The only development that is permitted in the transition zone is *exempt development* (defined in 51(5)) and *short term development* (defined in 51(4)), which are themselves further subject to the provisions of clauses 53 and 54 (see below). Infill development is only permitted if it is short term development or exempt development permitted under the Act.

Clause 52 Accommodating sea level rise

Under clause 52, the responsible authority must try to accommodate sea level rise in relation to exempt development, rather than protecting against it with hard defences. Hard defences must only be approved if there is no reasonable alternative available.

Clause 53 Certain short-term development must not be approved

Under clause 53, short term development must not be approved if it poses a significant risk to coastal processes unless the responsible authority is satisfied that the impact will not endure beyond the useful life of the development.

Clause 54 Certain exempt development must not be approved

Under clause 54, exempt development must not be approved if it is at significant risk of harming or being harmed by coastal processes unless the responsible authority is satisfied that it meets

prescribed standards for reasonable resistance to damage from coastal hazards for the duration of its expected life.

Clause 55 Responsible authority must advise of effect of the Act

Under clause 55, before a responsible authority grants approval for any development in the transition zone, it must give the applicant for development approval notice of the relevant provisions of the Act, including that the development may have to be removed or abandoned under the regulations or in accordance with a coastal protection notice (see below Part 5).

Clause 56 Regulations about development in the transition zone

Clause 56 provides that the Governor may make regulations about development in the transition zone. Clause 56(2) provides that no compensation is payable in relation to the removal or abandonment of short-term or exempt development in the transition zone.

Division 2 – Transactions relating to short-term development

Clause 57 Maximum term for lease or licence

Clause 57 sets out the maximum length of lease or licence that may be granted in relation to short term development

Clause 58 Acknowledgment in lease of licence

Clause 58 requires an acknowledgment from the parties to any lease or licence in relation to land in the transition zone (where that lease or licence is entered into after the coming into operation of this clause) that any short-term development on the land may have to be removed or abandoned.

Division 3 – Land surrender (clauses 59 – 65)

This division relates to a land surrender condition (for coastal management purposes) that may be applied to approvals for subdivision or amalgamation of lots within the transition zone.

Clause 60 Minister may approve inclusion of land surrender condition

Clause 60 provides that where an application for approval to subdivide or amalgamation of a lot in the transition zone is made under clause 135 of the PAD Act, the WAPC may include a condition (***land surrender condition***) that part or the lot must be surrendered to the State for coastal management purposes. The inclusion of a land surrender condition must be approved by the Minister.

Clause 61 Notice of condition about land surrender

Clause 61 provides that notice of a proposed land surrender condition must be given to the applicant before a decision is made.

Clause 62 Criteria for decision

Clause 62 provides that in deciding whether to include a land surrender decision, the WAPC must consider how the surrender of the land would avoid or minimise detrimental impact on coastal management and coastal processes.

Clause 63 Notice of decision about land surrender

Clause 63 provides that notice of a decision about whether or not a land surrender condition will be imposed must be given to the applicant with all relevant details relating to the decision.

Clause 64 When land surrender condition may not be included

Clause 64 sets out the circumstances in which a land surrender condition may not be made.

Clause 65 Surrendered land to be dedicated for coastal management purposes

Under clause 65, land subject to a land surrender condition vests in the State and must be reserved under any applicable local planning scheme for the public purpose of coastal management.

Part 5 – Coastal protection notices (clauses 66 – 72)

This part provides that if short term development on land in the transition zone is damaged by the impact of a coastal hazard, the WAPC may cause a coastal protection notice to be given requiring the owner, occupier or other person to remove the development and restore the land to its previous condition. Clause 66(6) provides that any person who does not comply with a coastal protection notice is subject to a fine.

Under clauses 67 and 68 a coastal protection notice may be amended or reviewed.

Under clause 69, a coastal protection notice must be registered on the title of the land to which it relates.

Clause 70 sets out the duties of a person who ceases to be the owner or occupier of land to which a coastal protection notice relates.

Under clause 71, the WAPC must keep a record of the prescribed particulars of a coastal protection notice, and from time to time must publish particulars of that record.

Clause 72 provides that if action that is required to be taken under a coastal protection notice is not taken, the WAPC may cause that action to be taken and recover the cost of taking that action from any person bound by the notice.

Part 6 – Miscellaneous (clauses 73 – 77)

There are 3 important provisions in this part.

Clause 73 Role of EPA

Clause 73 provides that the EPA must keep itself informed and advise relevant public authorities of changes to coastal climate science and the impact of those changes on projections in relation to the transition zone.

Clause 74 Protection from liability

Clause 74 affords protection to **protected persons** (as defined in clause 74(1)) for anything done in good faith in the performance or purported performance of a function under the Act, and the other matters set out in clause 74(3).

At present there is a possibility that a public authority (including a State instrumentality or local government) could face legal action for refusing planning approval in the coastal zone on the basis of projected sea level rise. Similarly an authority could face legal action for granting planning approval for a development that is subsequently affected by an impact of climate change. The rationale for including the “protection from liability” provision is to enable public authorities to act in accordance with the Act without fear of liability either way.

Clause 75 No compensation for injurious affection

Western Australia is the only state that still retains a provision in the PAD Act for compensation to be paid to owners for “injurious affection” arising as a result of rezoning of their land. Clause 75 provides that no compensation is payable in respect of land that is injuriously affected by the making or amendment of the WA coastal plan or a local coastal plan.

It is recognised that striking a balance between achieving essential adaptation outcomes, respecting property rights and avoiding the creation of compensable rights under new regulatory schemes is difficult. It is also recognised that the impacts of climate change are not equally borne. The state cannot be legally liable for compensation every time loss occurs as a result of a natural disaster. By this rationale under this Act the state is not liable for compensation where loss arises as a result of taking necessary steps to protect Western Australians from the impacts of coastal climate change.

Excluding compensation for injurious affection arising from compliance with this Act also brings Western Australia into line with other states.

The other provisions in this Part relate to the making of regulations (clause 76) and the review of the Act (clause 77) which is required every 5 years.

Part 7 sets out consequential amendments to the *Environmental Protection Act 1986*.

Part 8 sets out consequential amendments to the *Planning and Development Act 2005*.