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**Coastal Management in NSW:
An Update**

by

Stewart Smith

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EXECUTIVE SUMMARY

The coast remains the focus of economic development and growth for the State. Over 80 percent of the State's population lives in a local government area adjacent to the coast. The coast is a finite resource. We cannot extend it or create more of it. There are many competing interests for coastal resources, including tourism, mining, ports, environment protection, agriculture, mariculture and population growth. How to manage these competing and often conflicting interests has troubled governments for some considerable time (page 1).

Coastal development is controlled by provisions of the *Environmental Planning and Assessment Act 1979* (page 3). The NSW Government Coastal Policy, released in November 1997, also guides what development is permissible in the coastal zone (page 4).

An important consideration in coastal zone management is how to define the coast. The NSW Coastal Policy defines the coast as the following (page 5):

- three nautical miles seaward of the mainland and offshore islands;
- one kilometre landward of the open coast high water mark;
- a distance of one kilometre around: all bays, estuaries, coastal lakes, lagoons and islands; and tidal waters of coastal rivers to the limit of mangroves, as defined by NSW Fisheries (1985) maps, or the tidal limit whichever is closer to the sea;
- with the line on the maps being taken to the nearest cadastral boundary and/or easily recognisable physical boundary, in consultation with local councils.

With the above definition, the 1997 Coastal Policy is more comprehensive than the previous policy, which did not include coastal lakes and estuaries unless nominated by local councils.

This paper canvasses two main issues: Commonwealth involvement in the coastal zone and the coordination of planning in the coastal zone. A significant new Commonwealth program is the Natural Heritage Trust, with \$1.25 billion available from the part sale of Telstra. From this Trust, \$125 million has been allocated to the Coast and Clean Seas program, which will provide for the conservation, sustainable use and repair of Australia's coastal and marine environments (page 10).

However, the role of the Commonwealth in regards to environmental protection and participation in environmental issues is under review. It is proposed that the Commonwealth government will only become involved in environmental assessment if a proposal may have a significant impact on a matter of national environmental significance. In regards to the management and protection of the marine and coastal environment, it is proposed that the 'trigger' will be tightly defined to cover all activities that may have a significant impact on the environment in Commonwealth waters. It will not cover activities impacting solely on waters under State jurisdiction (page 11).

The management of the coast is fraught with difficulty. Recommendations from three reports are discussed (pages 11-14). The 1997 NSW Coastal Policy recognises that no single government organisation is responsible for the management of the coast. The Policy document states that the Policy is an attempt by Government to better coordinate the management of the coast by identifying, in a single document, the State's various management policies, programs and standards as they apply to a defined coastal zone. The various policies and programs have as their basis legislation from several government departments, and are often implemented by local councils or the community either in partnership with the State Government or independently (page 15).

The newly established Coastal Council will monitor and review the implementation of the Coastal Policy and report on this through its annual report. The Policy notes that the Committee will not be a 'policeman', but it will have a role in ensuring that all parties responsible for the implementation of the policy perform this role effectively. The Committee will have a review role in ensuring that major rezonings and major new developments in the coastal zone are consistent with the ecological sustainable development principles on which the Policy is based.

1.0 Introduction

The NSW coastal zone is characterised by a wide range of geographical features, including ocean beaches, dunes, cliffs, estuaries, wetlands and lagoons. Ten percent of the coastline is developed, 14 percent is in private ownership, 32 percent is classified as National Park, Nature Reserve, Historic Site or Aboriginal area, while another third is Crown land. There are 130 estuaries and 721 ocean beaches.¹

The coast remains the focus of economic development and growth for the State. Over 80 percent of the State's population lives in a local government area adjacent to the coast. Between 1981 and 1991, the State's population grew from 4.7 million to 5.9 million, a 25 percent increase. In the same period, the population living in the non-metropolitan coastal local government areas grew from 1 million to 1.47 million, a 45 percent increase.²

The coast is a finite resource. We cannot extend it or create more of it. There are many competing interests for coastal resources, including tourism, mining, ports, environment protection, agriculture, mariculture and population growth. How to manage these competing, and often conflicting interests has troubled governments for some considerable time.

In March 1995 the current NSW Labor government was elected. The new Minister for Urban Affairs and Planning, the Hon Craig Knowles MP, made the following statements in regard to coastal protection:³

- Canal estate developments to be banned
- definition of the coast will be altered to include coastal lakes, rivers and estuaries, hinterland and significant areas of Sydney, Newcastle and Wollongong
- the area covered by SEPP 14, coastal wetlands will be increased
- acid sulphate soils along the coastline are to be mapped
- alternatives for sewage treatment and disposal are to be examined

The Minister foreshadowed a much greater State government role in the management of the coastal zone. In late 1997 the NSW Government released its Coastal Policy.

¹ Coastal Committee of NSW, 1994, *Draft Revised Coastal Policy for NSW. As Proposed by the Coastal Committee of New South Wales*, at 15.

² Coastal Committee of NSW, 1994, *Draft Revised Coastal Policy for NSW. As Proposed by the Coastal Committee of New South Wales*, at 16.

³ NSWPD (LA), 25 May 1995, p. 270.

A feature of coastal zone management across Australia is the numerous inquiries and reports commissioned by governments to advise on coastal management. This paper covers the recommendations from three main coastal management reports, including the Resource Assessment Commission, the NSW Legislative Council Standing Committee on State Development and the proposals of the Coastal Committee of NSW, released in 1994. The recommendations of these inquiries are then compared to the actions listed in the 1997 Coastal Policy.

1.1 Who has what administrative control over the coastline?

The three tiers of government have different coastal zone administrative responsibilities. In 1973 the *Seas and Submerged Lands Act* (Cth) was passed. This established Commonwealth sovereignty over the territorial sea, sea bed and air space. The control of all territorial waters is vested in the Commonwealth and the States may only exercise such powers in this area as granted to them by the Commonwealth.⁴ In 1977 it was agreed that the territorial sea should revert back to State responsibility up to the three mile limit, except for matters relating to the Commonwealth's international responsibilities. In 1980 the Commonwealth passed the *Coastal Waters (State Powers) Act* bringing this agreement into effect.

This means that there are now three different administrative levels that have management rights over the coastal zone. From land to low water mark, the States (and therefore local government) have administrative control. Land use decision making is predominantly vested in these levels of government. From the low water mark to the three nautical mile limit, the States have territorial control. From three to 200 nautical miles the Commonwealth has control in the proclaimed Exclusive Economic Zone. The Commonwealth also owns some coastal land, and has management control of these areas.

The Commonwealth may also influence marine and coastal zone activities by use of its powers under S51 of the Australian Constitution.⁵ The power to grant financial assistance to the States

⁴ Suter, K., 1983, *Marine and Estuarine Reserves in Australia. Towards a National Policy*. Funds for Animals Australia

⁵ Section 51 of the Constitution includes what is known as the 'Corporations Power', which enables the Commonwealth to make laws with respect to foreign corporations, and trading or financial corporations formed within the Commonwealth. The Commonwealth government can regulate any of these corporations, which may include environmental regulation. Similarly, the 'Trade and Commerce Power' enables the Commonwealth to make laws with respect to trade and commerce with other countries and among the States. This power has proved to be of considerable importance in respect of Commonwealth intervention to protect the environment, as most manufacturing and resource development is undertaken for the purpose of interstate or overseas trade. The Commonwealth government can also make laws under the 'External Affairs Power', which has largely been confined to the context of conservation and heritage legislation.

is made through S96. Section 96 grants are used to make payments to the States for natural resource management programs such as the Ocean Rescue 2000 Program and the National Landcare Program.

2.0 The Present Coastal Planning System

Coastal development is controlled by provisions of the *Environmental Planning and Assessment Act 1979*. Planning instruments under this Act include;

- State Environmental Planning Policies (SEPPs),
- Regional Environmental Plans (REPs)
- Local Environmental Plans (LEPs)

SEPPs and REPs are initiated by State Government instrumentalities, with their content ultimately determined by the Minister for Planning. These two planning instruments provide a framework for local councils to prepare plans that are consistent with these and make decisions on development.⁶ The two planning instruments most applicable to the coastal zone includes SEPP 14 - Coastal Wetlands and SEPP 26 - Littoral Rainforests. Both of these SEPPs seek to protect the respective habitat areas.

Regional Environmental Plans (REPs) deal with matters important to a specific region and so provide a broad planning and development framework. Once approved by the Minister for Planning, REPs come into force and directly influence but do not bind local environmental plans. A REP can cover a large geographical area or a small area. Before a REP is prepared, there must be an environmental study and consultation with government agencies and affected local government authorities.

A local environmental plan (LEP) is made by a Local Council, covering a part or whole of a local government area. The LEP outlines the zoning boundaries for different types of land use. A LEP does not require a mandatory environmental study, but must be approved by the Minister for Planning. Local government is therefore in the forefront of environmental management, and is the main land use decision making body. To be able to fulfil this role, local councils need to have a strong environmental presence within their organisation. Several commentators have noted that some local councils choose not to be very rigorous in enforcing the provisions of environmental planning instruments by pleading lack of resources.⁷ Ocean Watch considers that many local councils are too under resourced to employ environmental

⁶ Murrell, J., 1991, "Coastal planning and management and the government's coastal policy" in *Coastal Development: Policy and Management*, Geographical Society of NSW Inc, Conference Papers No. 9.

⁷ Taylor, L. & Kelly, A. 1993, "Land use planning, development and building control" in *Local Government Planning and Environment NSW*, Volume C Commentary. Butterworths Loose Leaf Services

officers or a town planner. Instead the chief engineer fills this role, sometimes resulting in conservative and narrow solutions to land use problems. Further, often local development interests dominate decision making and the fund raising structure (ie rates) strongly favours the built environment.⁸

State environmental planning policies are designed to protect or plan for areas deemed to be important to the state. However, there is no general presumption that SEPPs and REPs will take precedence over LEPs. The *Environmental Planning and Assessment Act* makes it clear that the most recent planning instrument prevails over earlier ones unless one of the instruments states that this is not the intention (Section 36(b)). Both SEPP 14 Coastal Wetlands and SEPP 26 Littoral Rainforests state that to the extent of any inconsistency with other planning instruments, the SEPP shall prevail.

Whilst the above planning system is reasonably comprehensive, problems include the inability to adequately take into account the cumulative impacts of small decisions. Many of the environmental problems we now face are the result of many small developments, each with apparently insignificant environmental effects, that together are causing environmental damage.⁹ Special Commissioner Graham of the RAC Coastal Zone Inquiry, in a minority report, considered that the bulk of coastal environmental damage is linked to a very large number of small problems.¹⁰ The inability of the planning system to take this into account is a serious deficiency.

2.1 Where does a coastal policy fit within the planning system?

In 1990 the Coalition State government and in 1997 the ALP State Government released a Coastal Policy. To be effective, any environmental planning policy must be integrated into the planning system. To achieve this, the Government has issued a section 117 Direction under the *Environmental Planning and Assessment Act 1979* (EPPA) to ensure that local councils take account of the Coastal Policy in the preparation of local environmental plans. The Direction requires draft LEPs to give effect to and be consistent with the policy. Councils are also required to consider the Coastal Policy when determining development applications under Section 90 of the EPPA. Appendix C of the Coastal Policy also provides explanatory notes for local councils. These notes also include development design and locational principles for consideration in local environment plans.

⁸ Leadbitter, D. *Ocean Watch submission to the House of Representatives Standing Committee on the Environment, Recreation and Arts inquiry into protection of the Coastal Environment*, 1989, p.399.

⁹ Leadbitter, D. *Ocean Watch submission to the House of Representatives Standing Committee on the Environment, Recreation and Arts inquiry into protection of the Coastal Environment*, 1989, p.399.

¹⁰ Resource Assessment Commission, *Coastal Zone Inquiry, Final Report*. 1993, p.IV.

3.0 Definition of the Coastline

The definition of the coast is subject to much debate, with disagreement centering on how far inland the coastal zone extends. The definition is important as any coastal policy, with special development controls, will only be applicable in the defined coastal zone. The 1990 NSW Government Coastal Policy defined the coastal area as a one kilometre landward strip from the low water mark, also extending three nautical miles out to sea.¹¹ Local councils were given the opportunity to nominate tidal lakes and estuaries to be included in the policy, to be determined by the Director of Planning.

The NSW Legislative Council Standing Committee on State Development tabled their report on Coastal Planning and Management in 1991. The Committee defined the coastal zone as extending from the Great Dividing Range to the State's coastal waters.¹²

The Commonwealth Government commissioned the Resource Assessment Commission (RAC) to inquire into the coastal zone. The RAC reported in late 1993 and defined the landward section of the coastal zone in two ways. Firstly, when examining the extent of human use of the coast, the coast was defined as the existing local government administrative area abutting the coast. When describing the extent of physical and biological resources, the coast was defined as the extent of the natural drainage boundaries abutting the coast.¹³

The Coastal Committee of NSW reviewed the Government's 1990 Coastal Policy. The Committee identified the following five possible definitions of the coastal zone:¹⁴

- option 1 - one km landward from the low water mark (1990 Coastal Policy definition)
- option 2 - one km landward from the open coast high water mark and coastal lakes and lagoons
- option 3 - one km landward from the open coast high water mark, all tidal waters, coastal lakes, lagoons and islands and the lands adjoining them for a distance of 40 metres

¹¹ NSW Government, 1990, *The New South Wales Coast. Government Policy*.

¹² NSW Parliament Legislative Council, 1991, Standing Committee on State Development, *Coastal Planning and Management in New South Wales: A Framework for the Future* Volume 1. Report No. 4.

¹³ Resource Assessment Commission, *Coastal Zone Inquiry, Final Report*. 1993, at 7.

¹⁴ Coastal Committee of NSW, 1994, *Draft Revised Coastal Policy for NSW. As Proposed by the Coastal Committee of New South Wales*, at 23.

- option 4 - five km landward from the high water mark on the open coast and in estuaries (to the tidal limits) including coastal lakes and lagoons
- option 5 - an issues based definition where the boundaries of the coastal zone extend as far inland and as far seaward as necessary to achieve the policy's objectives, with a focus on the land sea interface.

The choice of definition of the coastal zone is therefore fraught with difficulty. It is apparent that option 1, ie, one km inland, is too restrictive for the successful attainment of coastal policy objectives. In 1995 the Commonwealth Government released their Coastal Policy which included the definition of the coastal zone to extend as far inland and as far seaward as necessary to achieve their policy objectives.¹⁵

The 1997 Coastal Policy has adopted a combination of the above definitions, and defines the coastal zone as:¹⁶

- three nautical miles seaward of the mainland and offshore islands;
- one kilometre landward of the open coast high water mark;
- a distance of one kilometre around: all bays, estuaries, coastal lakes, lagoons and islands; and tidal waters of coastal rivers to the limit of mangroves, as defined by NSW Fisheries (1985) maps, or the tidal limit whichever is closer to the sea;
- with the line on the maps being taken to the nearest cadastral boundary and/or easily recognisable physical boundary, in consultation with local councils.

With the above definition, the 1997 Coastal Policy is more comprehensive than the previous policy, which did not include coastal lakes and estuaries unless nominated by local councils. However, it is not as comprehensive as recommended by the NSW Legislative Council Standing Committee on State Development, which defined the coastal zone as extending from the Great Dividing Range to the State's coastal waters.

4.0 Problems of Current Coastal Zone Management Practices

The Resource Assessment Commission inquiry into the coastal zone made the following conclusions in regard to current coastal zone management:¹⁷

¹⁵ Commonwealth of Australia, 1995, *Living on the Coast. The Commonwealth Coastal Policy*.

¹⁶ NSW Government, *NSW Coastal Policy 1997. A Sustainable Future for the New South Wales Coast*, October 1997, at 23.

¹⁷ Resource Assessment Commission, *Coastal Zone Inquiry, Final Report*. 1993, at 84.

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- there remain a plethora of Acts affecting coastal zone management, mostly reflecting the traditional sectoral approach to such management.
 - whilst there have been improvements in the level of co-ordination among the large number of institutions involved in coastal management, coordination and integration between institutions remains inadequate.
 - different and usually uncoordinated approvals systems operate for public and private land.
 - management and use of resources spanning marine and terrestrial areas is particularly impeded by a lack of integration and coordination of management systems.
 - existing systems do not provide for effective long term management of coastal zone resources.
 - development approval procedures are complex, time consuming and often sequential rather than concurrent, making them costly for applicants and governments.
 - although some Commonwealth, State and Local government agencies have developed policies to achieve coastal zone management objectives, the policies and objectives are not often implemented and they are rarely integrated with social, economic and environmental goals.

5.0 Recommendations to Manage the Coastal Zone

This section lists some issues of coastal zone management, recommendations to deal with those issues, and concludes each section with an update on government policy.

5.1 Commonwealth Activity in the Coastal Zone - Recommendations of the Resource Assessment Commission Coastal Zone Inquiry (1993)

The Commission made 69 major recommendations in regard to the management of the coastal zone. Covering such diverse areas as coastal action programs, objectives, legislation, community participation, the role of indigenous people, fisheries management and new institutional measures, the report is a comprehensive analysis of the coastal zone.

The Inquiry called for a national approach to coastal management. Recommendation R.01 called for a National Coastal Action Program to be adopted by the Council of Australian Governments. The Program has four elements:¹⁸

¹⁸ Resource Assessment Commission, *Coastal Zone Inquiry, Final Report*. 1993, at 97.

- a set of nationally agreed coastal zone management objectives
- arrangements for implementing and managing the Program
- greater community and industry involvement
- innovative management mechanisms

The Program aims to create a new system of management of Australia's coastal resources. The Council of Australian Government's will be responsible for the coordination of the program, assisted by a small National Coastal Management Agency.

The Inquiry concluded that no new "mega agency" is required to implement the objectives which were identified as part of the National Program. Instead, new institutional arrangements based on a Commonwealth incentive scheme, with a legislative basis, is required to ensure that coastal zone expenditures and programs are consistent with national objectives.¹⁹

The Inquiry recommended the formation of a National Coastal Management Agency. The Agency is to have a Board, comprised of representatives of the three tiers of government and indigenous people. The Agency would be responsible for guiding the implementation of the National Coastal Action Program and report to the Council of Australian Governments.

The Inquiry recommended that a National Coastal Consultative Council, representing the many community, commercial, scientific and managerial interests in the coastal zone be established to provide specialist advice to the National Coastal Zone Management Agency. To increase community input into the care of the coastal zone, the Inquiry recommends the Commonwealth government establish a Coastcare program. This program, modelled on the Landcare program, would provide for local communities to be involved in coastal conservation and monitoring programs.

The Inquiry recommended a legislative basis for Commonwealth involvement in the coastal zone, as follows:²⁰

The Commonwealth enact a Coastal Resource Management Act, which, among other things, would provide that Commonwealth funding of coastal resource management activities - whether in the form of direct expenditure by

¹⁹ Resource Assessment Commission, *Coastal Zone Inquiry, Final Report*. 1993, at 98.

²⁰ Resource Assessment Commission, *Coastal Zone Inquiry, Final Report*. 1993, at 138. Recommendation R.07

Commonwealth agencies on coastal zone management or as grants to state and local governments for specific elements of coastal zone management - be confined to activities consistent with the objectives and principles of the National Coastal Action Program.

In early 1995 the then ALP Commonwealth government released its response to the Resource Assessment Commission Inquiry into the Coastal Zone. Called the Commonwealth Coastal Policy, it has the following features:²¹

- the Commonwealth takes the view that the establishment of a national agency to be responsible for all coastal management matters is unrealistic and unnecessary. Existing agencies are to retain responsibilities, with increased coordination through a Commonwealth Coastal Coordinating Committee. This Committee is to be advised by a National Coastal Advisory Committee, comprised of representatives from peak conservation and industry bodies, indigenous people and state and local governments.
- the Commonwealth will establish and fund (\$23 million) a national Coastcare program, focusing on community help to restore, protect, monitor and care for publicly owned terrestrial or marine environments.
- establishment of an Australia wide electronic communications network called "Coastnet" to improve communications between researchers and coastal managers.
- management plans will be prepared and implemented for all coastal lands and waters under the control of the Department of Defence.
- develop an Australian Marine Conservation Plan for the conservation and sustainable use of the Australian marine environment.
- continue the work of identifying and establishing areas suitable for inclusion in a National System of Marine Protected Areas.
- transfer of surplus Commonwealth owned lighthouses to the States providing that heritage and environmental values are protected.

Reaction to the Commonwealth policy has generally been positive. It was reported in *The Sydney Morning Herald* that Rebecca Fisher of the Marine and Coastal Community Network thought the policy was a step in the right direction, and the establishment of the Coastcare

²¹ Commonwealth of Australia, 1995, *Living on the Coast. The Commonwealth Coastal Policy*.

program very encouraging.²²

Conclusion

The election of the Coalition Commonwealth Government had the potential to create some uncertainty in the implementation of the Commonwealth Coastal Policy. However, the Federal Environment Minister the Hon Senator Robert Hill has stated that the Government's policy objective is to maintain the Commonwealth Coastal Policy and its budget forecasts.²³

The Commonwealth and State governments have also signed a 'Memoranda of Understanding' which outlines cooperative arrangements, including matching funding for three specific areas. These are: Coastcare; the Coastal Strategic Planning Program; and the Local Water Quality Management Program.

A significant new Commonwealth program is the Natural Heritage Trust, with \$1.25 billion available from the part sale of Telstra. From this Trust, \$125 million has been allocated to the Coast and Clean Seas program, which will provide for the conservation, sustainable use and repair of Australia's coastal and marine environments. The breakdown of spending on the Coast and Clean Seas program is as below:²⁴

- \$51 million for projects to reduce pollution of coastal and marine environments, called the 'Clean Seas Program'
- \$8 million to help protect marine species at risk
- \$4 million for reduction, management and local eradication of introduced marine pests
- \$1 million to accelerate the development of the Coastal Resource Atlas to assist in response to contaminating spills
- \$7.9 million for the establishment of a National Representative System of Marine Protected Areas
- \$27.3 million for community grants, Coastcare facilitators, and other support for community activities
- \$7.6 million for strategic planning to guide future development in the coastal zone
- \$6 million to support action to restore and protect fisheries habitats and promote sustainable fishing in estuarine and marine areas
- \$2.7 million to improve coastal and marine managers' understanding of coastal

²² Woodford, J. "\$53m plan to care for nation's coastline" in *The Sydney Morning Herald*, 29 May 1995, p.5.

²³ Speech by the Hon Robert Hill, Minister for the Environment, at *Coast to Coast '96 - Australia's Coastal Management Conference*, 17 April 1996.

²⁴ See the Internet site:
[http://www.environment.gov.au/marine/cle...CCSI_Brochure.html#Natural Heritage Trust](http://www.environment.gov.au/marine/cle...CCSI_Brochure.html#Natural%20Heritage%20Trust).

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- environments and enhance their management capability
 - \$4.2 million to evaluate and improve management approaches through monitoring coastal and marine environments and to manage potential coastal impacts of climate change
 - \$3.2 million to develop an interactive, electronic, coastal atlas
 - \$1.5 million to develop a comprehensive and integrated Oceans Policy for Australia through a wide ranging consultation process

The role of the Commonwealth in regards to environmental protection and participation in environmental issues is under review. The Commonwealth proposes to replace the *Environment Protection (Impact of Proposals) Act 1974* and the *National Parks and Wildlife Conservation Act 1975* with two new Acts. These are the Environment Protection Act and the Biodiversity Conservation Act. It is proposed that the Environment Protection Act will be triggered by an activity or proposal which may have a significant impact on a matter of national environmental significance. In regards to the management and protection of the marine and coastal environment, it is proposed that the ‘trigger’ will be tightly defined to cover all activities that may have a significant impact on the environment in Commonwealth waters. It will not cover activities impacting solely on waters under State jurisdiction. Similarly, the ‘trigger’ will not cover fishing activities in fisheries which are under State control.²⁵

5.2 The Coordination of Planning in the Coastal Zone

One of the major problems of the coastal zone is the number of Statutes applicable to and government agencies responsible for the coast. The lack of integration and coordination of these agencies and legislation is a major problem.

The Resource Assessment Commission Coastal Zone Inquiry recommended reforms for the administration of coastal environments by the States. Recommendations included the formation of State coastal management coordinating committees which would have the following characteristics:

- membership by representatives from all state agencies with significant responsibilities in the coastal zone, including local government.
- requirements for reporting to state governments that ensure the deliberations and advice of the committee are taken into account in all decision making affecting the use and management of coastal resources.
- adequate resources to carry out committee functions, including support from a small secretariat.

²⁵

Commonwealth of Australia, *Reform of Commonwealth Environment Legislation. Consultation Paper*. Issued by Senator the Hon Robert Hill, Minister for the Environment, 1998, at 11.

- the chairperson of each committee should be that State's representative on the National Coastal Management Agency.
- the capacity to advise on, participate in, and where necessary promote local and regional coastal strategy development.
- sufficient seniority and expertise to ensure that the committee can provide an effective overview and understanding of coastal management issues.
- functions and administrative arrangements that enable each committee to act as an integrating body for coastal management activities.
- the ability to set priorities for government action in relation to coastal management.
- it would be advantageous if the state established an advisory committee similar to the National Consultative Council.

One of the most significant roles of the committee is to oversee and coordinate links between state agencies and local authorities. The Inquiry recommended that similar resource management functions should be placed within a single Minister's area of responsibility, thus reducing the number of government departments and agencies involved in coastal management.²⁶

The Legislative Council Standing Committee on State Development found that then NSW Department of Planning had failed to coordinate government agencies involved in the coastal development process. Regional environmental plans, the major prescriptor of land use and development in a region, were found to be inadequate. Coordination of agencies has instead fallen to local councils, which have a limited ability to do so.²⁷

The Standing Committee recognised the difficulties in the coordination of the three tiers of government and their agencies in the management of the coastal zone. The Committee recommended that the State government strongly support the establishment of a national

²⁶ Resource Assessment Commission, *Coastal Zone Inquiry, Final Report*. 1993, at 135.

²⁷ NSW Parliament Legislative Council, 1991, Standing Committee on State Development, *Coastal Planning and Management in New South Wales: A Framework for the Future* Volume 1. Report No. 4, at 17.

cooperative coastal zone management program for Australia.²⁸ The Committee recommended that the State endorse the United States Coastal Zone Management Scheme as a model on which Australia can cooperatively manage the coastal zone. The United States scheme seeks to promote the wise use of the coastal zone by establishing a national partnership of Federal and State governments. The national program provides funds, policy guidance and technical assistance to coastal states to help them establish and maintain coastal management programs that meet certain Federal objectives. The Committee identifies two forms of Federal incentive in the US Coastal Zone Management Act to foster State participation.

These are:

- Federal matching grants which help States meet the cost of implementing and enhancing programs
- Federal consistency authority, which requires that Federal activities directly affecting the coastal zone must be conducted in a manner consistent with the State's Federally approved program.

The Standing Committee recognised that State governments cannot adequately fulfil the complex requirements of coastal management without Federal cooperation. The calls for national involvement in the management of the coast echo many similar calls for such action.

The Committee also recognised problems of coordinating State agencies. The Legislative Council report notes that given the membership of the Coastal Committee of NSW and the vagaries of its resourcing and power base, there is a real possibility that the Committee will fall into the ineffective malaise which besets so many Inter-departmental committees.²⁹

The Legislative Council Standing Committee report recommended that the State Government establish an agency, to be called the State Coordination Agency, vested in the Premier, to facilitate coordination between government agencies.³⁰ The Committee noted that the Agency must be powerful relative to other organisations, adequately resourced and have a clear mandate and political support for its coordination function.

²⁸ NSW Parliament Legislative Council, 1991, Standing Committee on State Development, *Coastal Planning and Management in New South Wales: A Framework for the Future* Volume 1. Report No. 4, at 54. Recommendation 6.

²⁹ NSW Parliament Legislative Council, 1991, Standing Committee on State Development, *Coastal Planning and Management in New South Wales: A Framework for the Future* Volume 1. Report No. 4, at 57.

³⁰ NSW Parliament Legislative Council, 1991, Standing Committee on State Development, *Coastal Planning and Management in New South Wales: A Framework for the Future* Volume 1. Report No. 4, at 59. Recommendation 10.

The Committee recognised the often intense conflict associated with proposed developments in the coastal zone. It concluded that this conflict is a result of restrictions placed on members of the public that limit opportunities for involvement in the coastal planning process. The Committee recommended that greater emphasis be placed on public participation in the process of coastal planning and management and that the proposed State Coordination Agency should institute a public education program.³¹

The Coastal Committee stated in their revised coastal policy that the integration of the policies and programs of government agencies is fundamental to effective and efficient coastal zone management.³² Both inter government relations and their programs need to be considered, as well as intra-government relations. The Coastal Committee held public consultation workshops to help guide their review. The workshop report states that it was consistently argued in the public consultation forums that current mechanisms for coastal management are confusing and inefficient. There was support for: a single policy to establish common goals for the coast; a dispute mechanism to resolve interdepartmental conflicts.³³ It is apparent from these comments that members of the public are looking for a ‘body’ or organisation which has the power and means to lead and manage the coastline.

The Coastal Committee in their Draft revised policy for the coast listed nine goals. Goal nine was to provide for integrated planning and management of the coastal zone. An objective under this goal was to ensure that all government agencies effectively and efficiently implement the Government’s Coastal Policy and function in a coordinated and collaborative manner. The ‘strategic action’ of the draft policy to achieve this objective was “The coastal planning and management activities of agencies will be consistent with the goals of the revised Coastal Policy. The implementation of the Coastal Policy’s strategic actions will be subject to a review every two years and a report provided to the Minister for Planning.”³⁴ The Coastal Committee had the responsibility of writing this review report. The Committee did not recommend the establishment of any new coordination agency.

³¹ NSW Parliament Legislative Council, 1991, Standing Committee on State Development, *Coastal Planning and Management in New South Wales: A Framework for the Future* Volume 1. Report No. 4, at 63.

³² Coastal Committee of NSW, 1994, *Draft Revised Coastal Policy for NSW. As Proposed by the Coastal Committee of New South Wales*, at 72.

³³ Coastal Committee of NSW, 1994, *Draft Revised Coastal Policy for NSW. As Proposed by the Coastal Committee of New South Wales*, at 91.

³⁴ Coastal Committee of NSW, 1994, *Draft Revised Coastal Policy for NSW. As Proposed by the Coastal Committee of New South Wales*, at 73.

5.3 Coordination of the Coast - The 1997 Coastal Policy Response

The 1997 Coastal Policy recognises that no single government organisation is responsible for the management of the coast, nor in fact is the coast defined administratively. The Policy document states that the Policy is an attempt by Government to better coordinate the management of the coast by identifying, in a single document, the State's various management policies, programs and standards as they apply to a defined coastal zone. The various policies and programs have as their basis legislation from several government departments and are often implemented by local councils or the community either in partnership with the State Government or independently.

The Coastal Policy document states that it is in fact many individual policies and programs in one. Its value is in coordinating the endeavours of all the players in coastal management, in identifying the State's major concerns for coastal planning and management and in providing an over-riding philosophy or ideology for coastal zone management.³⁵

The newly reestablished Coastal Council will monitor and review the implementation of the Coastal Policy and report on this through its annual report. The Policy notes that the Committee will not be a 'policeman', it will have a role in ensuring that all parties responsible for the implementation of the policy perform this role effectively. The Committee will have a review role in ensuring that major rezonings and major new developments in the coastal zone are consistent with the ESD principles on which the Policy is based.

The Policy notes that there are a range of mechanisms to remedy non-compliance with the Coastal Policy. These include the Minister 'calling in' a development under section 101 of the *Environmental Planning and Assessment Act* for determination by the Minister for Urban Affairs and Planning, and the use of stop work and conservation powers by the Minister for the Environment. The EPA also has powers to issue and enforce licences.

5.4 Development Design Principles in the 1997 Coastal Policy

The 1997 Policy, as with previous policies, notes that local councils will be largely responsible for the implementation of much of the Coastal Policy. The Policy includes design and locational principles for consideration in Local Environment Plans and Development Control Plans. These principles are outlined below:

- Only development which do not compromise the natural and cultural values of the area will be permitted on beaches and frontal dunes. The Policy envisages only developments for essential public purposes such as surf life saving clubs in these areas.
- Works to protect, restore and rehabilitate beaches and frontal dunes may be permitted

³⁵ NSW Government, *NSW Coastal Policy 1997. A Sustainable Future for the New South Wales Coast*, October 1997, at 8.

where appropriate. Works should preferably favour 'soft' engineering approaches (ie, reconstruct and fence dunes rather than build concrete sea walls to protect land from erosion)

- Undeveloped headlands will be preserved. Undeveloped headlands are a scarce resource. In circumstances where the zoning of an undeveloped headland permits development, a Development Control Plan which promotes low key development should be preserved.
- Any development on headlands already developed should be strictly limited to height and scale no greater than existing buildings and will require an environmental assessment.
- Beaches and waterfront open space will be protected from over-shadowing. The standard to be applied will vary according to local circumstances, however generally the standard to be applied is as follows: in cities or large towns, no overshadowing before 3pm midwinter and 6:30pm summer daylight saving time. Elsewhere, no overshadowing before 4pm midwinter and 7pm summer daylight saving time.
- Tall buildings (greater than 14 metres) will not be permitted outside cities, towns and growth centres except where they can be justified due to environmental planning considerations, the prevailing scale of development or a relevant LEP, DCP or REP. Any such proposals should be subject to environmental assessment, public consultation and the concurrence of the Director General of the Department of Urban Affairs and Planning.
- Applications for buildings taller than 14 metres within cities, towns and growth centres will be assessed on their merits having regard to the prevailing scale of development and in accordance with any relevant LEP, DCP or REP. As a general principle, buildings taller than 14 metres should not generally be permitted in urban areas unless subject to environmental assessment, public consultation and the concurrence of the Director General of the Department of Urban Affairs and Planning.
- Public setback lines will be set for every new development that immediately adjoins coastal lakes, estuaries, beaches, foreshores and cliffs. The amount of setback will be determined by consent authorities taking into consideration specific details of public access requirements, local topography, scenic factors (including the impact of the development as viewed from the waterway and foreshore area), coastal hazards. No new development will be permitted to impede public access to foreshore areas.

Apart from facilities essential to surf life saving, community facilities, works to protect property and environmental restoration measures, no development will be permitted seaward of this setback line and developer will be required to dedicate this land for

public use or enter into a satisfactory agreement for ensuring public access, use and maintenance of the area to a suitable standard as a condition of development.

- As a continuation of existing practice, any tourist or recreational development which is adjacent to or proposes to utilise the natural assets of, a National Park, Nature Reserve or State Recreation Area, must not compromise the natural values of the area.

The above design and locational principles will hopefully guide local councils in their decision making on proposed coastal development. If properly implemented, they provide a foundation for ecologically sustainable development of the coastal zone.

5.5 The NSW Coastal Council

The NSW State government has tried to coordinate all these State agencies with the Coastal Council of NSW. This Council was originally constituted under the *Coastal Protection Act* and commenced its work in 1979. The function of the Council was to advise and report to the Minister on policies that should be adopted by the Government, and the coordination of policies and activities of Government authorities. The term of members was not extended beyond 1985. In October 1988 the Government decided to re-establish the Council to provide advice on coastal planning issues. The Council was renamed the NSW Coastal Committee, established under Section 22 of the *Environmental Planning and Assessment Act*.³⁶ As explained in the next section, the *Coastal Protection Amendment Bill 1997* again reconstitutes the Coastal Council of NSW.

5.6 The Coastal Protection Act 1979

On 19 November 1997 the Minister for Urban Affairs and Planning Hon Craig Knowles MP introduced the *Coastal Protection Amendment Bill 1997*.³⁷ The Bill amends the Act to ensure that the definition of the coastal zone in the Act is the same as that in the Government's coastal policy. The Bill also reconstitutes the Coastal Council as the Government's advisory body of coastal matters. Membership of the Council will be expanded to 20 people, appointed by the Minister, with the Chairperson being an expert in Coastal Protection. The previous Coastal Committee had been chaired by Professor Bruce Thom. Minister Knowles stated that the Council will be entrusted with driving the implementation of the new coastal policy and ensuring the focus of the policy on ecologically sustainable development is translated into real action on

³⁶ NSW Parliament Legislative Council, 1991, Standing Committee on State Development, *Coastal Planning and Management in New South Wales: A Framework for the Future* Volume 1. Report No. 4, at 94.

³⁷ NSWPD, 19 November 1997, p. 2074.

the ground.³⁸

6.0 Conclusion

Australia is a coastal nation, and demands for access to coastal resources will always be competitive. The 1997 NSW Coastal Policy promotes the concept of ecologically sustainable development as a framework for reconciling and, where necessary, making choices between competing demands for access to coastal resources. This approach will hopefully ensure that the coast is an enjoyable place for living, recreation and continues to provide valuable economic benefits.

³⁸

NSWPD, 19 November 1997, p. 2074.