

LOW TIDE FOR NON-GOVERNMENT INTERESTS IN NSW COASTAL MANAGEMENT.

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ABSTRACT

The 21st NSW Coastal Management Conference provides an opportunity to look back and assess how well integrated coastal zone management is going in NSW. One answer, from one non-government point of view, is that it is not going well and has not been since the abolition of the Coastal Council of NSW in December 2003.

The paper asserts that the loss of the Coastal Council and the creation of a re-jigged body, the Coastal Panel, has created a low tide of opportunities for non-government participation in coastal management and policy making about coastal land use in New South Wales.

The paper examines these lost opportunities for wider input from a range of non-government perspectives, including the public interest, and argues that coastal management has suffered a lack of focus and momentum due to their loss.

The contraction in focus and function which the Coastal Panel represents, and its inability to develop policy, improve agency co-ordination and encourage non-government interests' participation are considered and compared to the capabilities of the former Coastal Council.

The implications of the loss of expert advice on complex coastal policy issues, which had previously included input from non-government bodies, and the sudden termination of statutory reports direct to the NSW Parliament are discussed and the question is posed: why did we lose these important institutional arrangements?

Subsequent calls for the re-constitution and re-activation of the Coastal Council are considered and a further question is posed: is such a step being contemplated by the NSW Coalition Government? Or the Opposition ALP?

The paper highlights non-government inputs into the Coastal Policy's development from its beginning in 1990, its public review in 1994 and its re-statement in 1997, to its current status as an 'empty shell', and asks a third question: where to now for NSW coastal policy?

SHORT BIOGRAPHY

Mr Corkill was a member of the Coastal Council of NSW 1999-2003, director and later Chair of OceanWatch Australia Ltd and Australian Environmentalist of the Year in 2001. He currently preparing a PhD in law at Southern Cross University, Lismore.

LOW TIDE FOR NON-GOVERNMENT INTERESTS IN NSW COASTAL MANAGEMENT.

1. Introduction

This presentation is no mere walk down memory lane. Though it may seem to be a harking back to the 'good old days' it is a serious attempt to analyse four key elements of the framework for coastal zone management in NSW over the last two decades.

I've undertaken this analysis because of the theme nominated for the conference: 'Coming of Age?' As I understand it, this term means the completion of formative growth, the end of immaturity and the emergence of the adolescent into adulthood at age 21.

The idea is that after the trials and tribulations of teenage years and various attempts to define a personal direction and suitable role in the community, the young adult enters into productive participation in wider society.

How well does this idea translate to the coastal management in NSW? I suggest not very well, so the focus of this presentation is not the community of coastal managers but the key entity, the central body, located at its heart.

In 1990, this was the Coastal Committee of NSW formed to oversee implementation of the first Coastal Policy released by the Greiner Government. Nine years it later became a statutory body the Coastal Council. Now the central body is the Coastal Panel.

We are all no doubt aware that the Coastal Council was suddenly abolished in December 2003¹ and that for seven years there was no central body leading the NSW coastal management community. This sudden absence might have been typical teenage behaviour and many of us had hoped that the key body would grow out of its sullen silence and begin to exercise its mature capabilities, but, regrettably, this is not what has happened.

The analogy between a natural person and a bureaucratic body can be carried only so far but nonetheless it's my intention to compare the institutional arrangements for coastal zone management in NSW today with those of ten years ago and to do so from the perspective of non-government interests.

'Non-government interests' is a very broad term so let me clarify. There are a wide range of interests in and uses of the coast of NSW which are essentially non-government and which have been often described as public interest values and uses. These might be described as the suite of ecological, social, cultural and recreational values of the coast² historically used by non-government sectors of our community.

In addition there are a range of economic values and uses of coastal resources, such as fishing and tourism, which are used by non-government sectors, especially businesses, in the public interest. Nonetheless all these economic, ecological, social and recreational values are subject to government policies and legislation, to manage and protect them and to regulate their use on behalf of the public.

These non-government public interest values, interests and uses are however clearly distinguishable from the non-government interests and economic values of private property owners and coastal property developers. As many coastal managers and biologists would attest these private interests have the potential to seriously compromise public interests in the coast due to the phenomenon of 'coastal squeeze'.³

It is from the perspective of these non-government public interests in the coast that I've undertaken my analysis and prepared my presentation.

The central analogy in my presentation, in contrast to the global trend of rising sea levels, is one of a steadily falling tide. My conclusion is that, after 21 years, the significance of these public interest values and uses of the coast has ebbed away and they currently play little or no role and have minimal recognition within the coastal management framework operating in NSW today.

The rest of my presentation will explain why I've come to this conclusion and towards the end I explore whether this situation might be remedied.

My analysis compares the situation ten years ago under the Coastal Council of NSW with the current situation under the NSW Coastal Panel using four key indicators, the

- * representation of these non-government public interests on the central body;
- * capacity of the central body to consider and respond to public interests issues having regard to their relevant powers and functions;
- * extent to which member of the public can obtain relevant information on coastal zone management in NSW;
- * the opportunities for non government interests and members of the public to participate in other key coastal management processes and activities.

2. Lost representation

The original Coastal Committee included an independent non-government Chairman, three non-government groups, three elected local government councillors and a range of state government agency representatives.

Following the passage of the *Coastal Protection Amendment Act 1998* (NSW)⁴ this diversity mix continued when the Coastal Council was constituted with twenty members,⁵ including

- * a non-government expert in coastal protection;⁶
- * a nominee⁷ of the Nature Conservation Council of NSW;⁸
- * a nominee of an industry group with an interest in coastal matters⁹;
- * a nominee of a professional organisation with an interest in coastal matters.¹⁰

Also included were three elected local councillors nominated by the Local Government and Shires Associations of NSW.¹¹ As elected members of their communities these councillors, although representing their local councils and local government generally, also brought important non-government perspectives to the Coastal Council.

A back-bench Member of Parliament was also a member of the Council.¹² This MP provided a broader line of reporting to the government of the day, particularly to their back bench colleagues, than the narrow line of reporting via the Minister.

While it was not always a perfect fit, a range of other non-government public interests and uses of the coast were represented and advocated for by a delegate of the relevant state government agency, nominated by their minister. These included:

- * recreational and commercial fishers, by NSW Fisheries;¹³
- * recreational boaters by NSW Waterways Authority;¹⁴
- * visitors to national parks / heritage sites, by National Parks & Wildlife Service;¹⁵
- * beachgoers, caravan park users and visitors to Crown lands, by the Department of Land and Water Conservation;¹⁶
- * tourists, tourism industry operators and industry associations, by Tourism NSW;¹⁷

- * recreational users of coastal waters, by the Department of Sport and Recreation; and Environment Protection Authority;¹⁸
- * aboriginal people and communities, through the Department of Aboriginal Affairs.¹⁹

These agencies managing public interests in the coast were supplemented by other key agencies representing private sector interests; the Departments of Mineral Resources and State and Regional Development,²⁰ and by agencies centrally focussed on government interests: the Departments of Local Government and of Planning.²¹

Though not exhaustive, the Council's wide membership was consistent with the notion that all the major stakeholders with an interest in the management of the NSW coast should be represented on the central body charged with the development and implementation of the state's coastal policy.²²

Contrast that wide representation with the membership of the Coastal Panel,²³ comprised of seven members.²⁴

- a) a nominee of the Director General of Department of Environment, Climate Change and Water,²⁵
- b) a nominee of the Director General of the Department of Planning,²⁶
- c) three nominees of the Local Government and Shires Associations of NSW;²⁷
- d) a nominee of the Chief Executive of the Land and Property Management Authority;²⁸
- e) a person appointed by the Minister with the concurrence of the Local Government and Shires Associations of NSW to act as Chairperson.²⁹

There is no representation of a professional body, relevant industry association or elected councillors, and no representation of non-government public interests. Instead there are three nominees of senior departmental officials, not the relevant ministers, and four nominees of local government associations.

Thus the central body is no longer comprised of the wide range of interests, government and non-government, which have a stake in coastal management in NSW.

Thus it's obvious that non-government interests have lost their seats at the policy table.

3. Lost powers and functions: a narrower focus

The role, powers and functions of the central body have also significantly contracted.

The role, powers and functions of the Coastal Council, spelled out in s 28 of the *Coastal Protection Act 1979 (NSW)*³⁰ were:

- (1) to give advice and make reports and recommendations to the Minister for the purpose of encouraging, promoting or securing:³¹
 - (a) the protection maintenance and, where practicable, the enhancement and restoration of the environment of the coastal region and its natural and man-made resources, and
 - (b) the orderly and balanced utilisation and conservation of the coastal region and its resources, having regard to the financial resources of the State and the social and economic needs of the people of the State.

Further the Coastal Council had the functions of

- (2) giving of advice and the making of reports and recommendations to the Minister with respect to:³²
 - (a) policies that may or should be adopted by the Government and public authorities concerning the planning and management of the coastal region;
 - (b) the co-ordination of the policies and activities of the Government and public authorities relating to the coastal region, and

- (c) the lands that should be acquired in the coastal region by or on behalf of the State or any public authority whether for the purposes of coastal protection, access or enjoyment of for other purposes.

In order to achieve its functions the Coastal Council had significant powers and could:³³

- (a) enter into an arrangement or agreement with any person on such terms and conditions as may be agreed upon between the Coastal Council and the person with respect to the conduct of any investigation, study, research or inquiry relating to the coastal region;
- (b) carry out such investigations, studies, research and inquiries as it considers relevant, and
- (c) record and evaluate such information respecting the natural and man-made resources of the environment of the coastal region as it considers relevant.

In addition the Coastal Council could also:³⁴

- (a) arrange and co-ordinate consultations, discussions, seminars and conferences relating to the matters referred to above; and
- (b) provide information and publicity concerning its functions and activities; and could
- (c) establish and maintain standing or special committees for the purpose of advising the Coastal Council in the exercise of its functions...³⁵

Significantly the Coastal Council was also required to provide an annual report on its operations and functions to the NSW Parliament.³⁶

The very limited role of the Coastal Panel, defined by s 13 of the *Coastal Protection Act* (NSW)³⁷ is now focussed on providing advice to the Minister for the Environment³⁸ or to local councils on matters determined by the Minister;³⁹ for considering development consent⁴⁰ for proposals for coastal engineering works, such as the seawall at Kingscliff; and for commenting on Master Plans.

It has no role to develop policy and co-ordinate actions of state agencies, integrate the activities of state agencies, local government and the community sector, no role to oversee policy implementation or recommend land for acquisition, commission or carry out research, inquiries or investigations, and no public reporting role.

As a result of the contraction in these powers the capacity of the central body to address or respond to non-government interests in coastal zone management has been gutted and the role of the Panel now is entirely focussed on serving a very narrow band of only government interests.

4. Lost access to public information

Along with public participation, the tide has gone out on public access to relevant information about coastal management in NSW. Perhaps this is because there is precious little being done ?

i) questions and requests for information at regional meetings

It was the practice of the Coastal Council to hold regular regional community liaison meetings to facilitate the provision of information to coastal communities. Members of the public asked questions of the state government agencies represented on the Council and they usually received straightforward answers. Sometimes the Council members agreed to provide more specific answers or detailed information subsequently.

In 2012 this avenue for open access to key state government agencies has closed and there is no effective flow of relevant information about coastal management policies and programs to regional communities.

ii) local media coverage of regional liaison meetings

These public meetings also created the opportunity for local media to interview the Coastal Council Chairman, or other Council members, to ask questions and elicit relevant information about the work of the Council and the implications of government policies and programs for the local area. In this way media reports provided access to relevant information to many more members of the public than those attending the public meetings.

These opportunities for providing relevant information to the public via the media have also been lost and there is now little or no media coverage of the public interest issues and actions to implement the Coastal Policy 1997. Instead recent media coverage has focussed on the private interests of coastal residents objecting to local government coastal policies and plans.⁴¹

iii) regular information bulletins and newsletters

The core education function of the Coastal Council was well served by the production of a regular email bulletin of news and information on coastal management in NSW, and the publication of the newsletter *Groundswell*, which disseminated relevant information by highlighting new publications, advertising proposed events and items on display and encouraged engagement and participation by soliciting submissions.

The content of these vehicles for communication was not limited to government information, and any member of the coastal management community could contribute material for wider distribution.

However, these avenues for communicating public information have also closed.

iv) non-production of a revised Coastal Zone Management Manual

An important instance of the loss of public access to relevant information regarding the management of the NSW coastal zone relates to the failure to release an updated version of the key document, the *Coastline Management Manual*.

This published manual included extensive background information and provided the framework for preparing Coastline Management Plans during the 1990s. Compliance with its procedures 'in good faith' ensured that local councils received the statutory exemption from liability provided by s 733(3) of the *Local Government Act 1993* (NSW).

First produced in 1990, the *Coastline Management Manual* was, after repeated calls for its review, revised in 2000 and a new updated draft was briefly reviewed by Coastal Council in 2001. It included up to date information and advice from a range of sources including the Assessment Reports of the Intergovernmental Panel on Climate Change (IPCC) regarding potential climate change impacts, especially increased storminess, sea level rise and greater coastal erosion.

In June 2001 as part of the NSW Coastal Protection Package, the Premier and Deputy Premier, announced that the Manual would be further reviewed and combined with the *Estuary Management Manual* (1992), to create a new *Coastal Zone Management Manual*.

However, this announcement was not followed by the release of a revised *Manual*.

In November 2002 amendments to the *Coastal Protection Act 1979* (NSW) inserted a new provision s 55D, which required that Coastal Zone Management Plans be prepared in accordance with the Minister's Guidelines, seemingly sidelining the need for a new Manual. However the relevant Guidelines were not prepared or released until nearly eight years later.⁴²

In fact there was precious little public information about Government coastal management policies or programs made available from the middle of 2003 until 2009.

Following the release of the Intergovernmental Panel on Climate Change's Fourth Assessment Report (AR4) in 2007, which estimated increases in sea level of up to 76 cms by 2100, public awareness and landowner and local government concerns regarding the potential impacts sea level rise grew, but still no guidelines were issued.

In May 2009 Will Steffen published a review of the science relating to climate change since the IPCC's AR4⁴³ and considered the reports of more recent research into rising sea levels,⁴⁴ noting that sea level rise was tracking at or near the upper limits of IPCC projections, and larger increases in sea level could not be excluded.

A raft of documents was produced by the then NSW Government in 2009⁴⁵ and 2010⁴⁶ for local councils' use in their strategic planning, development assessment and approval roles and or in preparing coastal zone management plans.

None of these documents were designated as the relevant *Guidelines* under the Act.⁴⁷

Finally, in December 2010, DECCW released a 25 page final version of the *Guidelines for Preparing Coastal Zone Management Plans*,⁴⁸ and the Minister adopted them as replacing the *Coastline Management Manual 1990*, the *Estuary Management Manual 1992* and the *Coastal Risk Assessment Guide*.⁴⁹ At this same time the Minister adopted the *Minister's Requirements under the Coastal Protection Act*.⁵⁰

Thus nine years after the announcement of the new Manual by the then Premier the new *Guidelines* were finally adopted and publicly released.

It is apparent that public access to the relevant background information, technical reports, and procedural requirements for producing coastal zone management plans, stalled completely between 2002 and 2009, then experienced a flurry of activity,⁵¹ which soon abated.⁵²

On 11 September 2012 most of the policy documents of the previous government were repudiated by the NSW Liberal National Coalition Government. The *NSW Sea Level Rise Policy Statement* was declared to be no longer Government policy⁵³ and the *Guidelines* were proposed for revision as part of the coastal management reforms.⁵⁴

On any analysis, the inescapable conclusion is that public access to relevant up-to-date information on NSW coastal management has been at a low ebb for a decade, despite a brief neap tide prior to the state election.

v) the end of independent statutory reports to NSW Parliament

However the most significant loss of public access to information on NSW coastal management was the loss of the Coastal Council's independent Annual Report to the NSW Parliament.⁵⁵

In these detailed reports Coastal Council provided audited financial reports and described its work developing policy and recommendations; co-ordinating agency activities; reviewing rezoning and development proposals, development control plans and settlement strategies; identifying land for acquisition; organising presentations, seminars, community meetings, and other education activities.

These reports also measured the performance of state and local government action against Coastal Policy goals; and summarised local councils' progress in developing and implementing coastal zone and estuary management plans. One report also documented the results of the review of land uses permissible in coastal Environment Protection zones.⁵⁶

Five reports were made⁵⁷ but with Coastal Council's abolition, this public reporting role simply ceased and public access to this crucial information was drastically reduced.⁵⁸

5. Lost opportunities for public participation

i) participation in technical committees

Non-government members were represented on a number of technical committees formed by the Coastal Council, to undertake detailed work on the Council's behalf.

These committees were:

- * the Rezoning and Development Committee which reviewed proposals to rezone coastal land and scrutinised many major development proposals for coastal locations;⁵⁹
- * the Coastal Information Management Committee which sought to co-ordinate the collection, management and access to data and information about coastal land to assist stakeholders in coastal management;
- * The Strategic Action Committee, which oversaw the identification and performance of actions to achieve the goals of the NSW Coastal Policy;
- * the Promotion and Education Committee which pursued opportunities for publicity, communication and education regarding coastal management.

Non government members also participated in the task groups on the Comprehensive Coastal Assessment and the review of Coastal Land Acquisition Programs.

Through these committee and task groups non-government members had a practical involvement in technical aspects of NSW coastal management. These committees ceased to exist when Coastal Council was abolished and the capacity for non-government members to participate in the implementation of the NSW Coastal Policy through these avenues has vanished.

(The P&E committee had an role in organising the NSW Coastal Management Conference, and it's fortunate that the Conference has survived as a forum for reporting new scientific research and progress on key projects, exchanging information on successful management strategies and facilitating dialogue between sectors.)

ii) attending and participating in regional liaison meetings

Under the Coastal Committee and the later Coastal Council, regular community liaison meetings were held in regional locations where local councillors, business and community groups and members of the public could attend.⁶⁰ At these meetings, Coastal Council members, especially the state government agencies, and Member of Parliament were often closely questioned to elicit information, assess the relevant agency's level of interest, understanding or engagement and/or to request specific action. Sometimes existing policy was explicitly critiqued, or specific new policies or changes to existing policies were recommended.

Since November 2003 no such community liaison meetings have been held and this opportunity for public participation has also ceased.

iii) nominations and briefing notes for coastal site inspections

Usually these regional meetings of the Coastal Council followed field trips during which the Council's members visited a series of key sites of interest,⁶¹ or controversy, to see for themselves the issues and concerns raised by local councils, community groups or members of the public in the media or in correspondence directed to their minister.

The itineraries for these field trips, usually prepared by local councils in association with Coastal Council staff, sometimes included locations nominated by local community groups and recommended by the Council's non-government members. Often these site inspections were supported by briefing notes and background information provided by these groups or members of the public. More than once these inspections resulted in significant discussions or debates. On several occasions the issues raised were then the subject of formal discussions and resolutions at the following Coastal Council meetings and advice to the relevant Minister.

These site inspections and public meetings of the Coastal Council were held in a number of different locations over the years,⁶² and were augmented by informal public information meetings during November at the annual NSW Coastal Management Conference.⁶³

In contrast, no site inspections of a representative coastal policy advisory body were held in the period 2004 -2010 before the formation of the Coastal Panel in 2011.

Since its formation in February 2011 five meetings of the Coastal Panel have been held,⁶⁴ mainly in Sydney. Only one meeting involved a field trip to inspect an area of concern, Kingscliff beach, and no public participation was involved.

Thus it's clear that since the end of 2003, opportunities for public input into site inspections and meetings of the key central body have entirely ceased.

iii) providing reports and presentations

In addition to non-government members' participation in the work of the Coastal Council, a range of presentations by other non-government organisations were made to inform the Council of their work and to obtain feedback on their activities.⁶⁵

These presentations, attended by the non-government members of the Council, were in addition to a large number of briefings and reports made by a range of state and local government agencies not directly represented on the Coastal Council.⁶⁶

Since there has been no Coastal Council since December 2003, the only vehicle for these presentations is this conference, the NSW Coastal Management Conference.

However, due to the limited attendance and participation by NSW government agencies in the conference, there is precious little scope for the opportunities raised by these presentations to be taken up by the state government. The results of new research and admirable progress on specific projects are reported but there is little or no engagement and apparently no interest from the government of the day.

iv) public reviews of coastal policies and priorities

The last major round of public consultation on the scope and content of coastal policy for NSW was held in 1994, when the then Coalition government's review of the *Coastal Policy 1990* sought community views in a comprehensive program of public consultation.

Following the change of government in 1995, the revised Coastal Policy languished hidden somewhere in the Department of Planning, until it emerged in 1997 after repeated requests and cajoling of the then Labor Government. There were no public consultations prior to its final release in 1997, it was simply released with a few new initiatives. By that time many of the strategic actions recommended in 1994 were out of date or irrelevant.

It was because the *Coastal Policy 1997* soon came to be seen as a framework which needed only to be considered, that public pressure built in 2000 for a major new initiative for coastal management.

As a result a State Environmental Planning Policy (SEPP) No. 71 Coastal Protection was proposed in the 2001 Coastal Protection Package and public submissions were invited on the draft SEPP prior to its gazettal in November 2002.⁶⁷

Though the Coastal Protection Package also promised a review of the Coastal Policy,⁶⁸ this did not occur, and there was no public review or consultation on NSW coastal policy from 2004 til 2009.

During 2009 and 2010 of a suite of draft documents and *Guidelines*⁶⁹ were publicly exhibited but this was consultation for specific government purposes.

The exhibition of these documents did not allow NGOs, community groups, members of the public to bring forward an issue requiring a policy response or to recommend new strategic actions to give effect to the existing policy. Public interest concerns and priorities about other areas of coastal management or coastal policy were not sought.

This trend of narrow consultation focussed on government priorities went into overdrive during 2010 as the Government sought to introduce legislation to respond to the threats to coastal property created by episodes of severe coastal erosion during 2009.

Poorly advised on the effect of shoreline law on property boundaries and land title,⁷⁰ the merits of the claimed property rights and Crown 'duty' to protect against the sea,⁷¹ and desperate for re-election, the Government caved in to landowner & media hysteria.

After failing to develop policies and programs to assist local councils to relocate vulnerable landowners and years of delay in producing a new *Manual* or effective *Guidelines* to direct the preparation of coastal zone management plans to protect the public interest values and uses of the coast, the Government decided its priority was to create a scheme of legislation to facilitate coastal protection works for private property.

Public consultation meetings were held on several versions of the *Coastal Protection and Other Legislation Amendment Bill* during 2010, but this legislation did not serve or protect the public interest values of the coast, but rather private sector interests. It ignored the need for planned retreat and embodied the strategy of 'defend' by permitting the ad hoc construction of 'emergency coastal protection works'.

This legislation and the trend towards privileging private property interests over public interest values and uses of the coast is now being strengthened by a proposed new statute, currently before the NSW Parliament, the *Coastal Protection Amendment Bill 2012*, under which 'emergency' works will become 'temporary' works.⁷²

Thus the abolition of an effective, representative, independent, coastal policy advisory council, and a decade of inaction and distraction has resulted in the public interest values and uses of the coast being relegated to the periphery.

Consequently I've concluded that the ecological, social, cultural, recreational and public interest economic values of the coast are in a worse position than they were ten years ago and the capacity to protect them and ensure their survival and persistence in the face of the challenges presented by the impacts of climate change has been substantially compromised, if not permanently thwarted, by recent legislation.

6. Institutional reform in reverse

However you look at it, it's apparent that the central body at the heart of our coastal management community is not 'coming of age'. The analogy of a young person, steadily growing in skills and abilities, of increasing confidence, competence and understanding building to possess a mature and coherent capacity to play a significant and productive role in society, is not consistent with the stark reality.

NSW coastal management is not at a point of maturity or independence. Despite promising early progress there have been significant setbacks such that current coastal management's performance falls short of the early benchmarks in these four criteria.

Rather than 'coming of age', we are facing a case of arrested development, where the structures of governance, scope for public participation and protection of public interest values have not progressed but regressed and remain stalled at an immature stage. Regrettably, after 21 years, the central body in the governance framework for coastal management in NSW does not have the independence, organisational maturity or competence demonstrated in its younger days.

5. New momentum for a revived Coastal Council?

In late 2006, the Legislative Council of the NSW Parliament considered a motion moved by Greens MLC Ian Cohen calling for Coastal Council's re-establishment.⁷³

It was supported by the Liberal and National Party MLCs then in Opposition and by a range of minor parties. It was not opposed by the then Labor Government and as a result the motion was agreed to.

But what happened? Did Labor realise that it had made a serious error in removing the central body in the governance of NSW coastal management? If it did, was the Coastal Panel the result? If so, it was a very weak and much delayed response, more akin to lip-service than actual restitution.

And now after more than a year in Opposition, facing more amendments to the *Coastal Protection Act* and the junking of the *Sea Level Rise Policy Statement*, has Labor come to see the folly of removing the independent Coastal Council that reported directly to the Parliament? There is no sign yet of a strategic rethink or even any insight.

Have the Coalition parties carried their support for this resolution forward as a policy for Government? From the recent proposals for further ad hoc amendments to the *Coastal Protection Act* it would seem apparently not...

If the Stage Two review of the *Coastal Protection Act* is to be more than hollow rhetoric, the tide must turn, and the membership, role, functions and powers of this key central body, and the opportunities for meaningful public participation, and the protection of public interests values of the coast must be restored to their former high water mark.

Only when this occurs will it be possible to say that coastal management in NSW has 'come of age'.

ENDS
Words = 4,995

¹ through its inclusion in Part 2 of Schedule 3 of the *Natural Resources Commission Act 2003* (NSW).

² Such as wildlife habitat, biodiversity persistence, ecological services, scenic and aesthetic amenity, sense of place, and as a family and community resource for health and well being, exercise, active sports, passive relaxation, holidays, leisure and ceremonial uses.

³ J Pat Doody, 'Coastal Squeeze' – an historical perspective' (2004) 10(1-2) *Journal of Coastal Conservation* 129. 'Coastal squeeze' occurs when coastal resources both, physical and biological, cannot relocate landward as sea levels rise, due to presence of a fixed structure, such as a sea wall, which obstructs their retreat.

⁴ Assented 26 June 1998 commenced 31 July 1998.

⁵ *Coastal Protection Act 1979* (NSW) s 9 (1)

⁶ *Ibid*, s 9 (1) (a).

⁷ The Minister selected the non government members from a panel of 3 persons nominated by the relevant group.

⁸ *Ibid*, s 9 (1) (o).

⁹ *Ibid*, s 9 (1) (p), initially the Coalition for Economic Advancement, later Urban Development Industry Association

¹⁰ *Ibid*, s 9 (1) (q), initially the Royal Australian Planning Institute, later the Planning Institute of Australian (NSW Div.)

¹¹ *Ibid*, s 9 (1) (r).

¹² *Ibid*, s 9 (1) (b).

¹³ *Ibid*, s 9 (1) (g).

¹⁴ *Ibid*, s 9 (1) (n).

¹⁵ *Ibid*, s 9 (1) (e).

¹⁶ *Ibid*, s 9 (1) (d).

¹⁷ *Ibid*, s 9 (1) (l).

¹⁸ *Ibid*, s 9 (1) (m) and (i) respectively.

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- ¹⁹ Ibid, s 9 (1) (j).
- ²⁰ Ibid, s 9 (1) (f) and (k), respectively.
- ²¹ Ibid, s 9 (1) (h) and (c), respectively.
- ²² This idea is aligned with Principle 10 of the *Rio Declaration on Environment and Development* (1992), accords with a key themes of *Agenda 21* 'Strengthening the Role of Major Groups' and is consistent with the Guiding Principles of the *Australian National Strategy for Ecologically Sustainable Development* (1992), particularly Objective 32.3
- ²³ Constituted under s 12 of the *Coastal Protection Act 1979* (NSW) as amended by the *Coastal Protection and Other Legislation Amendment Act 2010* (NSW)
- ²⁴ Ibid, s 12 (2) (a) – (e).
- ²⁵ This Department has been abolished and most environmental functions are operated through the Office of Environment and Heritage, within the Department of Premier and Cabinet.
- ²⁶ Now the Department of Planning and Infrastructure.
- ²⁷ The current nominees are not local government councillors, but local government staff and expert advisers: Ms Jane Lofthouse (Tweed SC staff) and Professors Bruce Thom and Andy Short.
- ²⁸ The LPMA was abolished in April 2011 and its functions transferred to other agencies. Crown land management functions are now operated by the Catchments and Lands Division of the Department of Primary Industries, within the Department of Trade and Investment, Regional Infrastructure and Service.
- ²⁹ The position of Chairperson of the Coastal Panel, initially filled by former Blue Mountains MP and Labor Minister for the Environment, Mr Bob Debus, has been vacant since October 2011.
- ³⁰ as amended by *Coastal Protection Amendment Act 1998* (NSW) assented 26/06/1998, commenced 31/07/1998.
- ³¹ *Coastal Protection Act 1979* (NSW) assented 26/06/1998, commenced 31/07/1998, s 28 (1).
- ³² Ibid, s 28 (2).
- ³³ Ibid, s 28 (3)
- ³⁴ Ibid, s 28 (4)
- ³⁵ Ibid, s 29 (1)
- ³⁶ Ibid, s 33. The Annual Report was provided to the Minister for tabling in both Houses of the NSW Parliament.
- ³⁷ as amended by the *Coastal Protection and Other Legislation Amendment Act 2010* (NSW), assented 27/10/2010.
- ³⁸ *Coastal Protection Act 1979* (NSW) commenced 01.01.2011, s 13 (1) (a);
- ³⁹ Ibid, s 13 (1) (b)
- ⁴⁰ Ibid, s 13 (1) (c)
- ⁴¹ See for eg Ean Higgins, 'Climate change forecasts erode a family home', *The Australian* (Sydney), 4 August 2012.
- ⁴² A 94 page draft of the relevant Guidelines was finally produced and exhibited for public comment in August 2010. See < <http://www.environment.nsw.gov.au/resources/climatechange/10757DraftGLCoastZoneMgmt.pdf> >
- ⁴³ Will Steffen, *Climate Change 2009: Faster change and more serious risks* (2009)
- ⁴⁴ Rahmsdorf, S et al 'Recent climate observations compared to projections' (2007) 316 *Science* 709.
- ⁴⁵ In February 2009 public submissions were invited on the draft *Sea level Rise Policy Statement*. In October DECCW produced an 8 page *Draft Coastal Risk Management Guide: Incorporating sea level rise benchmarks in coastal risk assessments* and called for public submissions. Also in October the Department of Planning released its 19 page *Draft NSW Coastal Planning Guideline Adapting to Sea Level Rise – Consultation Draft* and called for public submissions until 11 December. In November DECCW produced a 28 page information report *A Snapshot of Future Sea Levels: Photographing the King Tide 12 January 2009* to illustrate the potential of impacts of rising sea levels.
- ⁴⁶ In July 2010 DECCW released a 7 page draft *Minister's Requirements under the Coastal Protection Act* and called for public submissions by 10 September 2010. In August, the Department of Planning released its final *NSW Coastal Planning Guideline: Adapting to Sea Level Rise* and DECCW released its final *Coastal Risk Management Guide: Incorporating sea level rise benchmarks in coastal risk assessments* and exhibited its 93 page *Draft Guidelines for preparing Coastal Zone Management Plans*. In September DECCW released a draft 16 page *Guide to the Statutory Requirements for Emergency Coastal Protection Works* and called for public submissions by 1 October 2010. In December, DECCW adopted its 37 page *Coastal Protection Service Charge Guidelines*.
- ⁴⁷ Fortunately, the *Coastal Protection and Other Legislation Act 2010* (NSW) inserted new provisions, s 55D (3) & (4) into the *Coastal Protection Act 1979* which required the Minister to notify the adoption of any guidelines in the Gazette and to make a copy of any relevant guideline available on the Department's website.
- ⁴⁸ See < <http://www.environment.nsw.gov.au/resources/coasts/101019GdlnsCZMPs.pdf> >
- ⁴⁹ by a Notice published by the Minister in the Gazette of 31 December 2010.
- ⁵⁰ See < <http://www.environment.nsw.gov.au/resources/coasts/101018MinReqCPA.pdf> >
- ⁵¹ This burst of activity is explained by the approach of the NSW state election on 26 March 2011.
- ⁵² However in July 2011, the Office of Environment and Heritage produced a 9 page *Coastal Zone Management Guide Note : emergency action subplans*⁵² which listed matters to be considered by local councils when preparing such plans as part of their CZMPs.
- ⁵³ See < <http://www.environment.nsw.gov.au/climatechange/sealevel.htm> >
- ⁵⁴ See < <http://www.environment.nsw.gov.au/coasts/stage1coastreforms.htm> > The basis for the decision to repeal the *NSW Sea Level Rise Policy Statement* and its planning benchmarks for sea level rise of 40 cms by 2050 and

90 cms by 2100 was said to be the 'uncertainty in the rate of change' as described in the report by the NSW Chief Scientist and Engineer. See < http://www.chiefscientist.nsw.gov.au/getmedia/92f55d4f-b31c-4483-82ec-d8960e8959dd/CSE-Report-Sea-Level-Rise-Benchmarks_.aspx >

⁵⁵ See s 33 of the *Coastal Protection Act 1979* (NSW) as amended by *Coastal Protection Amendment Act 1998* (NSW). This provision has been repealed.

⁵⁶ Coastal Council Annual Report 2000-2001.

⁵⁷ Coastal Council Annual Reports for 1998-99, 1999-2000, 2000-2001, 2001-2002 and 2002-2003.

⁵⁸ Regrettably in their recent paper, 'That sinking feeling: A legal assessment of the coastal planning system in New South Wales' (2011) 28 *EPLJ* 182, Zada Lipman and Robert Stokes did not recognise that this important role of the Coastal Council had been lost. Their 'assessment' which, referred to the Coastal Committee formed by the Greiner Government in 1989, failed to note that the 1998 amendments to the *Coastal Protection Act 1979* (NSW) under which the Coastal Council was constituted, also inserted this power of public reporting.

⁵⁹ The Rezoning and Development Committee regularly found gaps in key information, identified issues of concern, proposed possible mitigating or limiting conditions or declined to support the rezoning or development proposal in its recommendations to the Council and or Department of Planning. See also Coastal Council's Annual Reports.

⁶⁰ Coastal Council n 54 above.

⁶¹ *Ibid.*

⁶² Bega, April 1999; Byron Bay, August 1999, Kiama, April 2000; Nambucca, August 2000; Eurobodalla, May 2001; Kempsey, August 2001; Shoalhaven, October 2002; Taree, May 2003.

⁶³ Bateman's Bay 1998; Forster, 1999; Yamba 2000; Newcastle, 2001; Tweed Heads 2002 (National Coast to Coast Conference); Port Macquarie 2003.

⁶⁴ See minutes of the Coastal Panel at < <http://www.environment.nsw.gov.au/coasts/coastalpanel.htm> >

⁶⁵ Eg * Professor Tony Underwood, Director of Research on Ecological Impacts of Coastal Cities, Sydney University, who reported on coastal biological research and management, (25/02/1999); and on scientific research into the protection of rock platforms (26/02/1999); * Mr Robert Gourlay, managing director of Environment Research and Information Consortium, who provided a briefing on coastal zone mapping and monitoring (25/02/1999); * Mr Duncan Leadbitter, Executive Director of Oceanwatch Australia Ltd, who outlined the fishing industry's involvement in waterway and habitat protection (21/10/1999); * Kendall Banfield, Australian Institute for Sustainable Futures, who described the Institute's work with councils on ESD (19/10/2000); * Mr Robert Kay, Consultant, who reported progress scoping a study for a Comprehensive Coastal Assessment (20/10/2000).

⁶⁶ Dates and descriptions of the presentations made by state and local government agencies are provided in the Coastal Council Annual Reports cited above.

⁶⁷ *SEPP No. 71 Coastal Protection* was then amended four times in January and August 2003, March 2004 and December 2005.

⁶⁸ See Coastal Council Annual Report 2000-2001, at 155.

⁶⁹ See documents cited in n 43 and n 44 above.

⁷⁰ Advice to government did not consider the rulings of the courts that right-line boundaries do not extend below the mean high-water mark (MHW) onto the beach, (unless shown on the Certificate of Title) since land below MHW ceases to be 'real property' under the *Real Property Act 1900* (NSW). See *Southern Centre of Theosophy Inc v South Australia* [1982] 1 All ER 283, and *EPA v Saunders and Leaghur Holdings PL* (1994) 6 BPR 13,655, confirmed by the Court of Criminal Appeal in *EPA v Leaghur Holdings PL* (1995) 87 LGERA 282.

⁷¹ A series of errors were made by Karen Coleman in 'Coastal Protection and Climate Change' (2010) 84 *Australian Law Journal* 421, in her claim that 'Government and legislators cannot ignore the fundamental right of property owners to protect their land from the sea', at 422. This assertion is shown to be baseless in JR Corkill 'Claimed property right doesn't hold water' (2012) *Australian Law Journal* in press. Relevant cases in which the courts have specifically rejected this assertion, such as *Vaughan v Byron Shire Council* (1990) 40 APA 267, were not referred to by Coleman or considered by Government.

⁷² The Bill proposes a suite of additional measures which favour private property interests eg removing the requirement to first obtain a certificate from an authorised officer before constructing 'temporary coastal protection works' on private land, reduces the maximum penalty for offences relating to the construction of such works, and extends the period such works can remain in place from 12 months to 2 years (or longer if a DA is pending).

⁷³ 23 November 2006. See < http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LC20061123043?open&refNavID=HA8_1 >