



**COASTAL MANAGEMENT:
THE CASE FOR A NEW ZEALAND COASTAL COMMISSION**

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New Zealand is an island nation of many peoples. The coast is important to our sense of identity and nationhood. Many of us live on or near the coast and we use it extensively and in many ways. Tourism, our biggest single income earner – around 10% of our export earnings - is increasingly based on the special attractions of the coastal environment. Near and offshore fisheries provide us with food and another significant export earner. We recreate on the coast.

The coast is a sensitive area in both landscape and ecological terms. It is subject to a statutory management regime with many players and much complexity. It is under pressure and we are not performing well as its custodians. We need to lift our game. The establishment of a Coastal Commission would enable us to do that.

This paper sets out the case for a New Zealand Coastal Commission. It is based on work done by the Environmental Defence Society's Senior Policy Analyst Raewyn Peart who will be publishing a seminal book on the coast in a couple of month's time. It is also informed by my own experience of 30 years of public interest litigation on coastal development and planning.

I'd like to start with the present day context. In a word, it is one of *opportunity*. The National-led government has embarked on the biggest shake-up of environmental administration since the present institutional and legal frameworks were set up in the late 1980s. Some see this as a big risk to the environment. I see it as a big opportunity to improve New Zealand's environment and enhance the integrity of our clean green 100% pure brand. It is also an opportunity to reinforce the way we are seen according to indicators like Mercer's quality of life assessment.

A key feature of the reforms is the establishment of an Environmental Protection Authority (EPA). EDS released a policy paper on the EPA last week entitled *Improving Environmental Governance: the role of an Environmental Protection Authority in New Zealand*. That paper sets out in some detail the roles we envisage the EPA could take on. So far the Minister for the Environment has signalled that the EPA would deal with call-in consenting for major projects. But he has also indicated that it could include a wider range of environmental functions best performed at the national level.

EDS supports a wider role than that set out in the Resource Management (Simplifying and Streamlining) Bill. We see the EPA as the agency that would operationalise national policy developed by the Ministry for the Environment and approved by government and would ensure that a consistent approach was taken to the management of nationally important resources. It has long been understood that the coast is of national importance. As New Zealanders we know that. It says

so in the Resource Management Act. The only compulsory National Policy Statement is the one on the coast. We know how important the coast is to Maori and how feelings run deep about it.

In spite of its importance, the coast is poorly managed. Regional and district councils are uneven in the quality of their management of both coastal land and the sea out to the 12 nautical mile limit. Beyond the 12 mile limit and out to the 200 mile limit there are significant gaps in terms of environmental management.

In spite of the New Zealand Coastal Policy Statement containing some seemingly enlightened provisions, it has been largely ignored by district councils¹ and even in some of the jurisprudence that has evolved in the Courts. The new draft Policy Statement may improve matters somewhat but ignoring it is still a live option for councils, especially if the right to appeal on plans to the Environment Court is diminished and if legal standing before the Court is narrowed.

The problem is that we have left management of these nationally important resources to local government with ineffective or absent national direction. Some of the units of local government do not have the specialist knowledge or sometimes the inclination to make decisions in the national interest: local parochial concerns will dominate more often than not.²

So it is hardly surprising that we perform badly when it comes to the coast. Sporadic and sprawling coastal development, unacceptable levels of silt and contaminated stormwater runoff, poorly performing town sewage treatment plants, conflicts over public access, diffuse pollution carried from farms by freshwater streams and rivers, battles over hard engineering of vulnerable beachfronts, overfishing, marine reserve controversies, arguments about marine mammal conservation – most of you will have had involvement in at least some of these. Poor performance in coastal management is endemic in this country and something needs to be done about it. We need more certainty of direction from government especially given the devolved nature of our system. We need less litigation and more clarity.

In some respects we did a better job of aspects of coastal management before the RMA and the Department of Conservation and Ministry for the Environment. The Town and Country Planning Division of the Ministry of Works and Development, working under the Town and Country Planning

¹ Rosier J, 2004, *Independent review of the New Zealand Coastal Policy Statement*, Massey University, Palmerston North, page 10

² See the analysis in *A Place to Stand: The Protection of New Zealand's Natural and Cultural Landscapes*, Raewyn Peart, 2004; and based on my own experience of coastal litigation

Act, at least had a clear awareness of the need to avoid coastal sprawl and provided national leadership through an active program of intervention. The Ministry had considerable influence over councils, as it also provided funding for local infrastructure such as roads. That act protected the coast from “unnecessary” development – a much stronger obligation than the waffly and vague “inappropriate” development in the RMA. The set-up in the late 1970s and early 1980s wasn’t perfect but the Crown did get engaged in strategic thinking about the coast, went about advocating the national interest and did it robustly.

In 1991 we moved from prescriptive, strategic planning to an effects-based and heavily devolved approach and in which the focus was on site-by-site development. And that happened just as pressure on the coast increased dramatically, fuelled by fast growing demand from affluent baby boomers looking to build second homes by the beach. We saw a new breed of professional property developers. Some of the latter aspired to high quality outcomes but many were in the cheap and nasty category, and these were facilitated by permissive council planning regimes. The RMA took us too far towards *ad hoc* decisions on specific development proposals and the need for quality strategic planning got lost sight of for a period.

Offshore, in the coastal marine area out to the 12 nautical mile limit, we experienced different forms of conflict many of which were inextricably linked to what was happening on the land. Controversies arose around proposed new marina developments. Efforts to protect marine mammals generated regular cycles of judicial review. Marine reserve proposals brought the Department of Conservation into conflict with local communities. Recreational fishers resorted to the courts to protect their interests. Attempts to impose occupation charges for private use of the seabed faltered.

Aquaculture attempted to take off and found it was sensitive to water quality and run-off from the land. Some oyster farms in the Far North had to close down because of sewage pollution. The landscape effects of oyster and mussel farms caused outrage and opposition. The whole industry found itself heading into a limbo while councils and government attempted to find a way forward. Within the exclusive economic zone, developments in technology are making the mining of valuable minerals from extensive areas of seabed commercially feasible. But our antiquated legal framework contains no environmental provisions applying to this area.

More recently, litigation saw the Labour-led government making new laws expropriating ownership of the foreshore and seabed with the enormous political fallout of that is continuing today and still not resolved. As a consequence of the foreshore and seabed controversy, plans for the evolving new Oceans Policy covering the area outside the 12 mile limit were shelved.

In summary, it would be fair to say that management of New Zealand's coast is a dog's breakfast but that might be too hard on dogs. Put another way, coastal management, of both the land and the sea, lacks clear national direction, is fragmented, riddled with conflicts between interest groups, subject to high level strategies that are ignored in practice and over time is devaluing the qualities that make New Zealand special. We are an island nation and we should be leading the world in coastal management, an exemplar to others.

Instead, we need to look at how other countries do it to remind ourselves how poorly we are performing. I propose to briefly examine the coastal planning regimes in California, New South Wales and England, all of which have approached the task by putting in place special arrangements for the coast.

CALIFORNIA COASTAL COMMISSION

During the 1970s many Californians became increasingly concerned about the destruction of natural coastline. A public 'Save Our Coast' campaign was initiated and quickly gained momentum. But attempts to strengthen coastal management by passing new law through the state legislature failed as too few politicians were prepared to stand up to the strong development lobby.

Undeterred, the campaigners turned to the public-initiative process provided for under the Californian constitution. The proposal put to the Californian voters in 1972 involved the establishment of a Californian Coastal Commission, with the power to make decisions on the use of land within the coastal zone. This was intended to take decision-making out of the hands of local councils and to create a regime in which clear priority was placed on the protection of the natural resources and beauty of the coastal zone, as well as on providing public access. The proposal was approved by a majority of voters, and in 1976, the Commission was made permanent by the California Coastal Act.

The Commission has jurisdiction over some 600,000 hectares of coastal land, which extends from a few hundred metres to up to five miles inland. It also oversees the management of the shoreline of nine offshore islands and of the marine area extending up to three miles offshore.

In order to ensure that the Commission did not become the puppet of any particular political party, its appointment procedure was designed so that the Governor, the Senate Rules Committee and the Speaker of the Assembly would each appoint four of its members. Six are locally elected officials and six are appointed from the public at large. Three ex officio (non-voting) members represent state government agencies, serving to link the work of the Commission with other state government

initiatives. The Commission has some 140 staff and an annual budget of around US\$10 million (NZ\$18 million).

The prime role of the Commission is to oversee local council decision-making along the coast. This is largely achieved through the certification of Local Coastal Programs which are prepared by local councils with the assistance of the Commission. These are similar to district plans in New Zealand, but only apply to coastal areas. They include a land-use plan which establishes the location, type and density of development which can occur and contain measures to implement the plan, such as zoning ordinances.

The Local Coastal Programs must comply with the goals and policies of the Coastal Act, which include the protection of the scenic beauty of coastal landscapes and seascapes, the protection and restoration of sensitive habitats, and the protection and expansion of public access and recreational opportunities. Once it is certified by the Commission, the ability to approve coastal development permits is delegated to the local authority concerned.

The Commission also retains appeal authority over some significant local council decisions and directly makes decisions over development applications within the coastal marine area and on public trust land.

NEW SOUTH WALES COASTAL COUNCIL

The New South Wales coastline has experienced very strong development pressures over the past 30 years. In 1979 the state government passed the Coastal Protection Act which established the New South Wales Coastal Council and created a protective coastal zone.

The aim of the Coastal Council was to protect and enhance the coastal zone by advising the government on coastal planning and management. The Council was an independent body and reported directly to Parliament. First established in 1979, it was disbanded in 1986 on the basis that the Labor Government of the day did not want 'coordination' of coastal planning and management by an advisory body. But it was 'reincarnated' in 1989 by the new Coalition Government and remained in place until 2004 when it was again disbanded.

The key focus of the Council in later years was to assist with the implementation and audit of the State Government's 1997 Coastal Policy. The Council also conducted reviews and stimulated the initiation of the multi-faceted Coastal Protection Package, described below, which was launched in 2001.

The coastal zone is still operational. It stretches one kilometre inland from the high water mark, originally outside established urban areas, and three nautical miles seaward, which is the limit of state government jurisdiction over the marine area. In 2005 the zone was extended to include the greater metropolitan region of Sydney (from Newcastle in the North to Shellharbour in the South).

A local council which has responsibility for land within the designated coastal zone is required to create a Coastal Zone Management Plan to be approved by the Minister for Climate Change and Environment. This plan must address the protection and preservation of beach environments and beach amenity, identify emergency actions during periods of beach erosion and ensure continuing and undiminished public access to beaches, headlands and waterways. The council must also consider the State Coastal Policy in formulating and implementing its Local Environmental Plan (similar to a New Zealand district plan).

In 2001, the New South Wales government launched an A\$11.7 million 'Coastal Protection Package' to strengthen coastal management, partly in response to the Coastal Council's advocacy. The package introduced new provisions for management of the coastal zone and launched the Comprehensive Coastal Assessment project. The 'State Environment Planning Policy 71 – Coastal Protection', which came into force in November 2002, applies to all land within the coastal zone. Matters such as existing and potential public access to the foreshore, potential detrimental effects that the development may have on the amenity value of the area, and measures to conserve fish and animals and their habitats were noted in Policy 71 as well as in the Coastal Policy.

Policy 71 also requires the preparation of a master plan for any subdivision in a sensitive coastal location, for a subdivision of more than twenty-five lots, and for the subdivision of rural residential land into more than five lots. The draft master plan must be publicly notified and then approved by the Minister. The plan must include, among other things, a demonstration of how the proposed development will be integrated into the landscape and how the biodiversity of the site will be preserved. The Minister can approve or reject the plan, or approve it subject to certain conditions.

A key part of the Coastal Protection Package is the Comprehensive Coastal Assessment, described by the Department of Planning as the first ever detailed assessment of the New South Wales coastline. Regional assessments are coordinated by the state government and aim to collect information on coastal values and to develop decision-making tools and methods which can be applied to coastal management. So far the assessment process has been used on a number of coastal regional strategies and on a pilot project in the Tweed area.

The coastal assessment has pulled together the information gathered through the assessment process into a toolkit which has been provided to coastal-planning authorities and stakeholders. It contains detailed information on the environmental, social and economic values of the New South Wales coast which should help planning authorities to take informed decisions when developing long-term planning strategies and local environmental plans. Coastal design guidelines were also developed by the Coastal Council in 2002 to assist local councils and developers.

ENGLAND: AONBs

The identification of Areas of Outstanding Natural Beauty (AONBs) in England provide another useful example of how land with high public values, but which is retained in private ownership, can be put under a more protective management regime. Although AONBs are not particularly targeted at coastal areas, several of them include important areas of the British coastline. It is noteworthy that the English coast, in spite of much greater density of population than New Zealand, and much longer human habitation, still has areas that are largely open space and devoid of coastal sprawl.

Shortly after World War Two, a legislative framework for the establishment of AONBs was established under the National Parks and Access to Countryside Act 1949. These are areas where the outstanding quality of the landscape merited national protection, but which did not have the geographic extent or relative wildness to justify designation as national parks. There are currently thirty-six AONBs in England covering about fifteen per cent of the total land area. The large majority of land within the AONBs is privately-owned.

A central government agency, Natural England, is responsible for designating AONBs and advising the government on policies for their protection. The administration of planning and development control within AONBs, however, remains the responsibility of local authorities and is carried out through local planning documents.

Local authority planning is undertaken within the framework of government planning policy statements, which are similar to national policy statements under New Zealand's Resource Management Act. A current policy statement, which is focused on sustainable development in rural areas, makes it clear that local authorities are to give conservation priority over development within AONBs. The policy statement also makes it clear that major development should only take place within an AONB in exceptional circumstances, and applications for such developments should be subject to the most rigorous examination. Such development proposals must show that the development is in the public interest before they are allowed to proceed.

Areas of Outstanding Natural Beauty cover sizeable areas and may cross the jurisdictional boundaries of several local authorities. Historically, AONBs have not had their own separate management authorities, but this is changing. Local authorities often set up joint advisory committees, bringing together local authorities, farmers, conservation groups and other interested parties to collectively manage AONBs.

Larger AONBs can now apply to the Secretary of State to become Conservation Boards. Conservation Board members include local authority representatives and Secretary of State appointees, reflecting the local and national interests in the area. There is provision under the current legislation to delegate the functions of the local authority in respect of the AONB to the Board, where appropriate.

To give an example, much of the coastline of Cornwall is protected as an AONB which was designated in 1959. Most of the land is privately-owned and farmed, but the AONB also includes some coastal villages. The Cornish AONB is focused not just on the prevention of inappropriate development, but also on encouraging sustainable development and good farming practices.

The AONB model provides a more hands-off approach to landscape and coastal protection than that provided by the Californian Coastal Commission. In the case of AONBs, central government takes the lead by spatially identifying areas of high landscape value (including the coast) and by providing clear policy direction stating that conservation is to be given priority over development within the designated areas. But it then leaves local authorities to get on with the job of management through normal planning and consent processes.

If other country or state governments value their coasts enough to have established Coastal Commissions or other specialist planning regimes to manage them, how should New Zealand respond? We are more coastal and more dependent on the coast than all of the comparators examined above. We simply cannot afford to bumble on the way we have. In the relatively short time we have been here, we have allowed an *ad hoc* approach to dominate coastal management. It is time for some institutional changes and for some quality strategic planning and direction-setting by government.

So how should we respond to the coastal challenge? We can't simply transplant an overseas model but we can learn from offshore experience and design a distinctly New Zealand solution.

To achieve the step-change required in coastal management, EDS proposes the establishment of a New Zealand Coastal Commission.

This is not a new idea. In 1975, Hon Mike Moore introduced the Coastal Moratorium and Management Bill into Parliament. The Bill provided for the establishment of a Coastal Planning Commission which would have sole jurisdiction over the planning and development of the coastal zone. The Bill did not proceed. It was an idea whose time was yet to come.

But that time has now come, in my view. The Coastal Commission would be an independent national body charged with protecting the public interest in the coast in the long term.

The Coastal Commission should be an expert body and standing board of inquiry with particular expertise in coastal and marine management. Its members would need to be people of high standing in the community who have relevant expertise, possibly including a retired High Court or Environment Court Judge. It would have 7-9 members.

The Commission would be established under the Environment Act 1986. Provision would need to be made for strong Māori representation on the Commission. The Commission could report to Parliament through the Minister for the Environment.

The Commission would not have staff itself, but would be serviced by the EPA coastal and marine unit. The Commission would provide specialist oversight of the coastal marine functions of the EPA as described in Raewyn Peart's report *Improving Environmental Governance: the role of an Environmental Protection Authority in New Zealand*.

It would also have a number of statutory roles. It would act as a Board of Inquiry for coastal matters under the RMA. This would include hearing submissions and making recommendations to the Minister of Conservation on reviews of the New Zealand Coastal Policy Statement. It could propose national environmental standards – a tool with a lot of potential for tightening up coastal management. The Commission could also determine resource consents and requests for plan changes within the coastal environment which are called-in as matters of national significance.

Within the Exclusive Economic Zone (EEZ), the Coastal Commission could perform the role of the EEZ Commissioner and consider applications for EEZ consents such as for mining. The Commission could also recommend to the Minister for the Environment the adoption of environmental regulations within the EEZ. The regulations will establish environmental standards for the EEZ and govern what activities will require consent.

In terms of fisheries management, the Ministry of Fisheries is proposing to develop environmental standards but such standards do not currently have any statutory weight under the Fisheries Act 1996. That legislation should be amended to give the standards statutory force and to provide for an accessible and transparent process for their preparation. This could include a public submission process, with the standards being approved by the Coastal Commission acting as a Board of Inquiry in the first instance, and with that decision appealable to the Environment Court.

Legislative change should be considered to formalise a process for the preparation of marine protection plans and to enable the plans to have legal impact. This could be achieved through making provision for the plans in the Conservation Act and through consequential amendments to the RMA, the Fisheries Act and the Marine Reserves Act. The Commission could conduct a formal hearing into the plans once prepared and recommend to the Minister of Conservation their adoption under an amended Conservation Act. The Commission could also play a role in determining proposals to establish marine reserves, under new marine reserves legislation.

The Commission should also have intervenor powers on resource consents in the coastal environment. It would be empowered to oppose coastal developments that contravene national policy or to support developments or conservation initiatives that are consistent with national policy.

Just as the EPA should have powers to sign-off regional policy statements prior to notification as being consistent with national policy, the Coastal Commission would have powers to approve plan provisions applying within the coastal environment in the same way.

The Commission could also act as a general advisor to government on coastal and marine issues, particularly on key issues such as coastal hazards and climate change.

The creation of a New Zealand Coastal Commission, grafted onto the proposed EPA, would be entirely consistent with the National-led government's approach to environmental reform. It would enable more specialist input into broader coastal management decisions. It would provide greater national direction and leadership to regional and district councils. It would be an effective risk management strategy mitigating any potential loss of ecological and landscape values on the coast and resultant brand diminution. And it would not require a large bureaucracy to operate. It could be

established at the time the EPA comes into existence and could progressively expand its roles in a phased way as legislative reform happens.

EDS contends that the time has come to act decisively to achieve a step-change in the quality of coastal management in this country. Failure to act in this way will consign the New Zealand coast to a future dominated by second rate, *ad hoc*, carve-ups. That future is not one that is in our national interests. The creation of a New Zealand Coastal Commission is the way forward.

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