CHAPTER THREE
CHAPTER 3

1. OVERVIEW OF EXISTING AND PROPOSED LEGAL AND INSTITUTIONAL FRAMEWORKS FOR COASTAL ZONE MANAGEMENT IN THE WESTERN CAPE PROVINCE

1. DEFINING THE COAST

In essence, the coast is made up of land that is affected by being near to the sea and the sea that is affected by being near to the land. The coast is thus a distinct, but limited spatial area that gets its character mainly from the direct interaction between land and sea (and associated air masses). Surrounding this area of direct interaction are areas of indirect influence, extending from inland mountain catchment areas to the Exclusive Economic Zone and beyond (White Paper, 2000).

A variety of landward and seaward boundaries have been used to define the coast for different activities in South Africa. These are shown in Figure 1 on Page 12 of the White Paper. The new Coastal Zone Bill will however, be introducing some changes. A description of the new boundaries, together with accompanying illustrative sketches, is given below.

The Coastal Zone Bill focuses on regulating human activities within, or that affect the ‘coastal zone’. The coastal zone is defined as the area comprising: (i) coastal public property; (ii) the coastal buffer zone (an area along the edge of coastal public property); (iii) coastal access land (which the public may use to gain access to coastal public property); and (iv) coastal protected areas; and includes the environment within each of these areas.

At the heart of the coastal zone is an area of land and water defined as coastal public property, which is owned by the citizens of South Africa and held in trust on their behalf by the state (as opposed to the current situation under the Seashore Act where the seashore is owned by the President on behalf of the people). Coastal public property is made up primarily of the ‘seashore’ (other than areas of the seashore that have already been lawfully sold) and ‘coastal waters’. Coastal waters are essentially all waters influenced by tides (whether in estuaries, harbours, rivers etc.) and the sea out to the limits of the territorial sea (12 nautical miles). Harbours and installations owned by the state, admiralty reserve land owned by the state, islands, land under coastal waters, and natural resources in or on the exclusive economic zone or in the continental shelf, are also coastal public property.

The Act also provides for the designation of coastal access land over which a public access servitude is established to enable members of the public to exercise their rights to use coastal public property more effectively.

In order to protect and effectively regulate coastal public property, it is also necessary to impose restrictions on certain areas adjacent to coastal public property that form part of coastal ecosystems. Restricting developments in these areas is also essential to take account of the

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1 In Section 10.
2 In Section 11.
3 Section 15.
4 Defined in Section 1.
5 As defined in the Maritime Zones Act 15 of 1994.
6 Sections 22 to 25.
dynamic nature of the coast and to protect people and property from harm from natural causes such as coastline erosion and flooding, or new threats like sea level rise as a consequence of climate change. The Coastal Zone Bill addresses this by creating a coastal buffer zone\(^7\) inland of coastal public property. The Bill provides that the coastal buffer zone will extend one hundred metres inland from the boundary of coastal public property (usually the high-water mark) in areas that have already been zoned for residential, commercial, industrial or multiple-use purposes, and approximately one kilometre inland in other areas. (If a protected area falls partially within this area the whole protected area will form part of the buffer zone unless it is wholly or partially excluded). Since the 100 metre and one kilometre inland boundaries of the coastal buffer zone are relatively arbitrary and do not take account of the very varied situations along the coast, Chapter 4 sets out procedures whereby the various coastal areas may be specifically demarcated on a case-by-case basis. The coastal buffer zone also incorporates other pre-existing areas including areas declared to be sensitive coastal areas under the Environment Conservation Act, dune systems and other parts of the littoral active zone, and admiralty reserve land that is not owned by the state.

\[^7\] Defined in Section 20.
Notes

1. A broken line indicates a variable boundary.

2. "Coastal public property" is defined in section 11, "coastal buffer zone" in section 20, "coastal access land" in section 22, and all other terms in section 1.

3. The position of the baseline of the territorial sea is determined in accordance with the UN Convention on the Law of the Sea.

4. The admiralty reserve exists along some sections of the coast and only forms part of coastal public property where it is owned by the state.
2. THE EXISTING LEGAL AND INSTITUTIONAL FRAMEWORK FOR COASTAL MANAGEMENT IN THE WESTERN CAPE PROVINCE

1. 2.1 Introduction

Coastal management in South Africa is in the process of being dramatically transformed by the introduction of the integrated coastal management (ICM) approach. This approach was formally endorsed for the first time by the White Paper for Sustainable Coastal Development in South Africa (the White Paper), which was published in April 2000. Implementation of many of the recommendations of the White Paper has commenced but the proposed restructuring of the legal and institutional framework for coastal management is largely dependent on the draft National Environmental Management: Coastal Zone Bill (Coastal Zone Bill) being enacted. Among other matters, the Coastal Zone Bill mandates the Member of the Executive Council (MEC) responsible for coastal matters in the Western Cape to ensure that a provincial Coastal Management Programme (CMP) is prepared and adopted in accordance with the procedure specified in the Bill.

This section discusses both the existing legal and institutional framework for coastal management in the Western Cape and how it will be transformed by the enactment of the Coastal Zone Bill (discussed in Section 2.2.1).

1. 2.2 National Coastal Policy

The White Paper sets out South Africa’s national policy on coastal management which aims to achieve sustainable coastal development in South Africa through ICM. It recognises that this ‘profoundly new approach’ is required for proper management of coastal resources and to integrate coastal resource protection into sustainable coastal development. From an institutional perspective, introducing ICM will require the traditional approach to coastal management which is based on different public agencies managing different aspects or sectors (e.g. agriculture, tourism, marine fisheries or mining) on the basis of separate sectoral policies, to be replaced by a more coordinated approach based on the implementation of integrated, and holistic policies.

The White Paper drew attention to the fact that existing South African legislation affecting coastal management was fragmented, administered by diverse government departments and agencies, and in some cases, outdated or inappropriate in relation to the current state of coastal ecosystems. It recommended that appropriate legislative changes be made to facilitate its implementation and to simplify the legislative framework connected with coastal resource use. After considering various options it was decided to enact a new national Act (the National Environmental Management: Coastal Zone Act) to facilitate and support the introduction of integrated coastal management in South Africa.

2.2.1 The Coastal Zone Bill

The Coastal Zone Bill requires the MEC of the Western Cape province who is responsible for environmental and coastal management in the province to prepare and adopt a coastal management programme for managing the coastal zone in the province within four years of the Coastal Zone Bill coming into force. The CMP must meet certain minimum requirements, including consistency with the national CMP (the White Paper is to be treated as the first national CMP), and must be prepared in accordance with the procedure specified in the Coastal Zone Bill.

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8 The Coastal Zone Bill is now in its 7th draft, but has not yet been released for public comment. Accordingly all comments made in relation to the Bill must be regarded as provisional until the Bill becomes an Act of Parliament.
The most important implication of this is that this draft CMP cannot be finalised until the Bill has become law, and the consultation and adoption procedures specified by the new Act have been complied with.

1. National legislation relevant to coastal management in the Western Cape

1.1 The Constitution

The Constitution Act 108 of 1996 provides the legal framework for legislation regulating coastal management in general. It emphasises cooperative governance and the need to devolve management functions to the lowest sphere of government able to undertake them. The Constitution does not refer to the coastal zone or specific components of the coastal zone, but contains a number of provisions that affect the management of coastal areas. These include the environmental clause contained in Section 24 of the Bill of Rights and the provisions determining the legislative and executive competence of each of the three spheres of government (i.e. national, provincial and local).

The Constitution allows both the national and provincial governments to make laws concerning certain matters (i.e. they have concurrent legislative competence) while in relation to other matters only one sphere of government is empowered to legislate (i.e. either the national or the provincial government has exclusive legislative competence). The coastal zone is not specifically mentioned but ‘environment’ and ‘nature conservation, excluding national parks, national botanical gardens and marine resources’ (emphasis added) are areas of shared national and provincial legislative competence. This means that marine fisheries is an exclusively national matter while both the national and provincial spheres of government may make laws concerning most other coastal matters.

The only specific reference to the coast, sea or seashore in the Schedules to the Constitution is the reference to ‘beaches’. They fail to be legislated exclusively as a provincial matter, but must be administered by the relevant local authority with jurisdiction, under the Constitution.

With regard to local government, the Constitution provides that one of its objectives must be the promotion of a safe and healthy environment. The Constitution provides further that local authorities have executive authority in respect of matters mentioned in Part B of Schedules 4 and 5 (which include beaches, pontoons and jetties). Local government regulation is also envisaged in respect of matters listed in Part A of Schedules 4 and 5 where the relevant local authority has the capacity to administer a particular matter and where that matter would be most effectively administered by the local authority. These include matters such as the ‘environment’, ‘nature conservation’ and ‘soil conservation’ (Schedule 4) and ‘provincial recreation and amenities’ (Schedule 5).

1.2 The Maritime Zones Act

The Maritime Zones Act 15 of 1994 establishes various maritime zones in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea. The Act prescribes the baselines along the coast from which the maritime zones are measured and defines the extent of South Africa’s internal waters, 12 nautical mile territorial waters, contiguous zone, maritime cultural area, 200 nautical mile exclusive economic zone (EEZ), and continental shelf. Importantly from a coastal management perspective, the Act provides that any law in force in the Republic, including the common law, shall also apply in its territorial waters and the airspace above its territorial waters.
2.3.3 The National Environmental Management Act

The National Environmental Management Act 107 of 1998 (NEMA) provides for cooperative environmental governance through the establishment of national environmental management principles, and procedures for their incorporation into decisions affecting the environment. It emphasises the principle of cooperative governance and is meant to assist in ensuring that the environmental right and related rights provided for in the Constitution are protected. NEMA requires DEAT, as lead agent, to ensure effective custodianship of the environment.

In addition to articulating principles like ‘polluter pays’ and the precautionary principle, NEMA provides that ‘sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, (and) wetlands … require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure’.

Chapter 5 of NEMA focuses on promoting the use of appropriate environmental tools (primarily environmental and social impact assessment procedures) as a means to achieve a goal of integrated environmental management. Section 24 of NEMA requires that the potential impact on the environment, socio-economic conditions, and cultural heritage of activities that require authorisation or permission by law, must be considered, investigated and assessed prior to implementation, and reported to the relevant regulatory authority. This means that even if an activity is not a listed activity for the purposes of the EIA regulations (discussed below), an EIA may still be required if it is an activity that requires an authorisation by law, or if it may have impacts that will significantly affect the environment.\footnote{It should be noted that proposed amendments to NEMA that are currently being considered by Parliament may abolish this requirement.}

Regulations issued under NEMA provide for the control of the use of vehicles in coastal areas.

2.3.4 The Environment Conservation Act

The Environment Conservation Act 73 of 1989 (ECA) was originally passed to provide a basis for environmental conservation in South Africa. Many of its provisions have since been repealed by NEMA. The most important provisions that remain are those contained in the different policies passed under Section 2 of the ECA, as well as the provisions in Parts V and VI of the ECA which provide for environmental impact assessment. Regulations governing environmental impact assessment (‘the EIA Regulations’) were made under these latter provisions.

The EIA regulations give the Minister (and provincial authorities to which authority has been delegated) the power to regulate activities that may have an undesirable effect on the environment generally, or in specific areas. Coastal activities that would attract the provisions of the EIA regulations include: the construction or upgrading of marinas; harbours and all structures below the high-water mark of the sea; the change of land use from agricultural or undetermined use to any other land use; and the reclamation of land below the high-water mark of the sea and in inland waters including wetlands.

The Outeniqua Sensitive Coastal Area Regulations identify scheduled activities within a defined geographical area along the coast. If an identified activity is to be carried out within the designated area, then it must first be authorised by the relevant (municipal) authority, in terms of
a procedure stipulated in the regulations. The scheduled activities include earthworks, and dredging in tidal rivers and tidal lagoons.

2.3.5 The Seashore Act
The Seashore Act 21 of 1935 provides that ownership of the seashore (which includes the water and land between the low-water mark and the high-water mark in those estuaries which fall within the definition of tidal lagoons and/or tidal rivers) and the sea vests in the state unless it was in private ownership before the commencement of the Act.

All of the provisions of the Act have been assigned to the four coastal provinces, excluding those that regulate the seashore and the sea within ports or harbours.\textsuperscript{10} The Act provides that the State President or the assigned provinces, as deemed owner, may grant leases over any part of the seashore and the sea, for specific purposes.

The Minister is further entitled to regulate sand-winning and other mining activities as well as the removal of aquatic plants, salt and shells from the sea and seashore owned by the State President. The letting or transfer of the seashore and the sea to local authorities is also regulated.

Different regulations have been passed by provincial and local authorities, that relate to specific areas of the seashore under their control.

2.3.6 The Marine Living Resources Act
The Marine Living Resources Act 18 of 1998 (MLRA) regulates the conservation and use of marine living organisms, including recreational and commercial fishing in the sea, estuaries and tidal rivers and lagoons. It also regulates ‘mariculture’ and provides for the establishment of fisheries management areas and marine protected areas anywhere within South African waters.

The Minister of Environmental Affairs and Tourism is ultimately responsible for administering the MLRA and has powers to make regulations concerning a wide variety of matters. The Minister may delegate his or her powers to officers within DEAT or even to authorities in local government.

The primary administrative role in enforcing the Act is undertaken by the Chief Directorate: MCM in Cape Town. Other institutions provided for in the MLRA include the Consultative Advisory Forum for Marine Living Resources (CAF). CAF’s primary function is to advise that Minister on living marine resource management and exploitation. The Fisheries Transformation Council was also constituted by the Act, to redress previous imbalances in the manner in which fisheries’ exploitation rights were allocated.

The Minister has extensive powers to make regulations on a range of matters. General regulations have been promulgated under the MLRA.\textsuperscript{11}

\textsuperscript{10} See Proclamation R27/16346/6 dated 7 April 1995. This exclusion means that several important coastal areas and estuaries such as the Swartkops river mouth, fall within harbour areas and are managed by the National Ports Authority.

\textsuperscript{11} In GNR 1111 in Government Gazette 19205 dated 2 September 1998.
1. 2.3.7 The National Heritage Resources Act

The National Heritage Resources Act 25 of 1999 (NHRA) is the cornerstone of heritage resource regulation in South Africa. All South African places and objects of cultural significance or of other special value for the present community and for future generations (‘heritage resources’), are part of the ‘national estate’ and are regulated by the NHRA. Overall management of South Africa’s heritage resources is the duty of the national and provincial heritage resources authorities.

The NHRA puts in place a three-tier system for heritage resource management, under which national level functions are the responsibility of SAHRA, provincial level functions are the responsibility of provincial heritage resources authorities and local level functions are the responsibility of local authorities.

The NHRA provides for the undertaking of heritage impact assessments (HIAs) in certain circumstances. With some exceptions, dealt with below, any person undertaking a development of a type named in the NHRA, must ‘at the very earliest stages of initiating such a development’, notify the relevant heritage resources authority and furnish it with details regarding the nature, location and extent of the proposed development.

2.3.8 Sea Fisheries Act

Part IX of the Sea Fisheries Act 12 of 1988 was repealed by the MLRA, with the exception of some provisions regulating control over the collection and removal of aquatic plants and shells. It also prescribes offences and penalties that apply to unlawful conduct.

2.3.9 Other natural resources and protected area legislation

In addition to the national Acts discussed above there are many other national Acts and regulations that can have an important impact on coastal management in particular circumstances. These include:

- the Conservation of Agricultural Resources Act (which, among other matters, aims to reduce soil erosion, to restrict the cultivation of virgin land and to protect vleis, marshes, water sponges, watercourses and water sources);
- the Mountain Catchment Areas Act (which regulates possible degradation of coastal ecosystems by factors such as over-abstraction of water from rivers within catchment areas); and
- the Minerals Act (which regulates mining, quarrying and associated activities).

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12 Places and objects of aesthetic architectural, historical, scientific social, spiritual, linguistic or technological value or significance have ‘cultural significance’ under Section 2 of NHRA.
13 Act 43 of 1983.
14 Act 63 of 1970.
15 Act 50 of 1991. This Act is due to be superseded in the near future by the Minerals and Petroleum Resources Development Act, 28 of 2002.
1. **2.4 Provincial legislation relevant to coastal management**

1. **2.4.1 The Constitution of the Western Cape**

The Western Cape Constitution requires the Western Cape government to assign to a municipality, by agreement and subject to appropriate conditions, the administration of matters listed in Part A of Schedule 4 or Part A of Schedule 5 of the national Constitution if, firstly, that matter would most effectively be administered locally; and secondly, the municipality has the capacity to administer it. The provincial government is also obliged to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. This means that from a coastal perspective, many powers and functions relevant to coastal management are likely to be exercised at a provincial level, but powers in relation to the issues referred to above, should be delegated to larger local authorities which have the necessary competency to deal with them.

The Western Cape Constitution establishes an office of the Commissioner for the Environment but a Commissioner has not yet been appointed. The Commissioner is obliged to ensure the conservation of the environment of the Western Cape and to give attention to the need to balance the goals of environmental conservation and sustainable development. The Commissioner is independent, subject only to the national Constitution and no person or provincial organ of state may interfere with the functioning of the Commissioner.

1. **2.4.2 Nature Conservation Ordinance**

Several Ordinances of the former Province of the Cape of Good Hope also remain applicable in the Western Cape. From a coastal management perspective the most important of these is the Nature Conservation Ordinance 19 of 1974. The Ordinance provides for the establishment of provincial, local and private nature reserves and the protection of indigenous species of flora and fauna. Protected and endangered species of flora and fauna are listed in schedules to the ordinance. It is administered by the Western Cape Nature Conservation Board (WCNCB) and grants certain powers to the WCNCB.

1. **2.4.3 The Land Use Planning Ordinance**

The Land Use Planning Ordinance (LUPO) remains applicable until the Western Cape Planning and Development Act 7 of 1999 (WCPDA), discussed below, comes into force. The enactment of the Constitution and environmental legislation such as NEMA has changed the context within which planning legislation is implemented. Local authorities (as organs of state exercising powers and duties under LUPO) must now have regard to environmental issues and comply with legislation such as NEMA. This can be difficult as there is a lack of integration between the laws dealing with the environment, heritage resources and land use management. However, in the interests of applying the cooperative governance principles of the Constitution and NEMA, authorities must attempt to coordinate and harmonise their procedures in order to comply with this legislation.

1. **2.4.4. Western Cape Planning and Development Act**

The Western Cape Planning and Development Act (WCPDA) was promulgated on 9 April 1999, and will come into effect once the regulations fleshing out several of its provisions have been finalised. Furthermore, the Act will almost certainly be amended before it is brought into force. An Amendment Bill was published in 2002 as Bill 11 of 2002.
The WCPDA has the primary object of replacing racially-based planning and development legislation and establishing a system for development planning in the Western Cape. Until the WCPDA comes into force, LUPO will continue to apply.

The WCPDA is founded on a set of general planning and development principles that ‘constitute frameworks, norms and standards relating to coordinated planning and development and the promotion of integrated social and economic development’. The principles are wide-ranging, and include a principle on sustainable development, and a principle on environmental protection.

Future spatial planning in the WCPDA focuses around integrated development frameworks (IDFs), which are to be prepared by local authorities, or groups of local authorities. The general purpose of an IDF is: ‘to lay down strategies, proposals and guidelines, including development objectives and implementation plans by means of development planning so that the general principles … are promoted’.

The Provincial Minister is empowered to identify activities which require environmental impact assessments, and to prescribe the manner in which EIA reports must be submitted. The Provincial Minister is empowered to prescribe that certain activities may not be undertaken except in accordance with written authorisations issued by the Provincial Minister or a council of a responsible municipality. The Provincial Minister is also empowered to declare areas within the province as ‘environmentally sensitive’, and may prohibit any development or activities in such areas.

The WCPDA emphasises the importance of public participation. Councils of responsible municipalities are required to draft and approve policies for public participation in respect of certain matters. The WCPDA also emphasises the constitutional imperative of cooperative governance. It also provides for powers and functions that the WCPDA vests in the Provincial Minister to be assigned or delegated to municipalities.

2.5 Evaluation of the current legal framework for coastal management

As identified in the White Paper, the existing laws affecting coastal management in South Africa are inadequate to achieve the objectives of the White Paper and indeed do not provided a coherent legal framework for coastal management in South Africa. In particular, the current legal framework for coastal management is deficient in that:

- it does not require the preparation of coastal management programmes and plans;
- the existing status of certain coastal areas (e.g. the seashore, the Admiralty Reserve, and estuaries), and the rights of owners and users of coastal areas (particularly existing development rights in respect of land adjacent to the seashore or estuaries or in coastal flood plains), are not conducive to protecting environmental quality and achieving sustainable development;
- the legal mechanisms available for implementing and enforcing plans and rules relating to the coast, are inadequate; and

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16 An ‘integrated development framework’ is defined as: ‘A development framework which deals with the integration of different strategies and sectoral plans relating to development, such as economic, spatial, social, infrastructural, housing, institutional, fiscal, land reform, transport, environmental and water plans, to attain the optimal allocation of scarce resources in a particular geographic area, and includes an integrated development plan as defined in section 10(b) of the Local Government Transition Act 1993...’ (Section 2(24)).
the institutional arrangements provided for by law do not afford sufficient scope for the development of the diverse array of management regimes advocated by the White Paper.

If these shortcomings are not addressed it can be expected that coastal resources will continue to be degraded and that this process will gather pace as population pressures on the coast increase. Even in situations where the coast is not being obviously degraded, South African society is paying a high cost in terms of lost opportunities for the sub-optimal allocation of its coastal resources. This opportunity cost consists not only of the failure to use coastal resources for the most economically efficient purpose, but also the social cost of failing to use public resources to assist the poor, and the environmental costs of irreversible detrimental alteration of the coastal environment. The measures taken to address these inadequacies are discussed in section 2.8 and 2.9 of this chapter as well as chapter 7 of the CMP which sets out goals and strategies for coastal management.

1. 2.6 Institutional arrangements

1. 2.6.1 National sphere of Government

DEAT has a number of different responsibilities in relation to coastal matters including policy formulation, coordination of management activities, biological diversity protection, offshore resource management, research, and environmental education. In practice, the national office plays a largely advisory role and has limited capacity. Management functions affecting the coast are also carried out by other offices of DEAT, as well as other national departments like DWAF, the Department of Agriculture and others.

1. 2.6.2 Provincial sphere of Government

The Department of Environmental Affairs and Development Planning of the Western Cape (DEA&DP) is the department that deals primarily with the planning, management and use of coastal natural resources. However DEA&DP has not yet been officially designated as the lead agency for coastal management and is currently undergoing internal restructuring.

The Western Cape Nature Conservation Board (WCNCB) was established as a statutory body with legal personality by the Western Cape Nature Conservation Board Act No 15 of 1998. The objects of the WCNCB are to promote and ensure nature conservation and related matters in the Western Cape province; to render services and provide facilities for research and training in connection with nature conservation and related matters, and in so doing to generate income, within the framework of any applicable policy determined by the responsible Minister or the Provincial Cabinet. The Act gives the Provincial Government authority to allocate powers from existing Acts and Ordinances to the Board. The WCNCB is responsible for the implementation of the Seashore Act, the Mountain Catchment Areas Act, and the Nature Conservation Ordinance (19 of 1974).

1. 2.6.3 Local government

Within the local government sphere, most of the smaller local municipalities and District Councils (now municipalities) in rural areas lack the resources and capacity to implement the White Paper adequately. In an attempt to boost their capacity, some local authorities cooperate with nature conservation agencies and are involved in co-management initiatives with community groups.
On the other hand the City of Cape Town has significant capacity in the field of environmental management and in October 2002 issued a draft Coastal Zone Strategy for the City of Cape Town, for public comment. The Coastal Zone Strategy forms part of a wider environmental management initiative by the City of Cape Town. The City adopted its first Integrated Metropolitan Environmental Policy (IMEP) and Integrated Metropolitan Environmental Management Strategy (IMEMS) on 31 October 2001. The latter required the City to develop more specific and detailed strategies for six priority areas, including a coastal zone strategy, within two years. The Council of the City of Cape Town is committed to developing and commencing implementation of the Coastal Zone Strategy for the City by October 2003.

2.7 National Environmental Management: Coastal Zone Bill

The Coastal Zone Bill:
- defines the objectives of the Act and how it will take effect within the context of other relevant legislation such as the Constitution and NEMA (Chapter 1);
- sets out coastal management principles to guide public sector decision-making in relation to the coastal zone to ensure the conservation of this national asset and to promote an equitable redistribution of the benefits flowing from it (Chapter 2);
- defines the extent and legal status of the coastal zone and different areas within it; defines coastal public property as being owned by all South African citizens but held in trust by the state on their behalf, and provides improved protection of, and access to, these public assets (Chapter 3);
- sets out procedures for demarcating areas within the coastal zone (Chapter 4);
- provides for the establishment of national and provincial bodies to coordinate and advise on coastal management (Chapter 5);
- establishes an integrated management and planning system for coastal resources to ensure that development is sustainable and in the interest of all user groups (Chapter 6);
- increases the protection of the coastal environment and provides for the establishment of integrated procedures to obtain permits to use coastal resources in order to improve the quality of decision-making and to increase the efficiency of the regulatory system, thus encouraging investment in sustainable coastal activities (Chapter 7);
- prohibits incineration at sea and controls dumping at sea to improve ecosystem and human health, and to give effect to South Africa’s international obligations (Chapter 8);
- establishes procedures that facilitate appeals against administrative decisions (Chapter 9);
- provides improved mechanisms to ensure compliance with the Bill and higher penalties for infringements to deter mismanagement and abuse of coastal public property (Chapter 10);
- sets out the powers and responsibilities of the Minister and of provincial MECs (Chapter 11); and
- deals with miscellaneous transitional and other matters (Chapter 12).

The Coastal Zone Bill gives several organs of state the power, by notice in the Gazette to introduce zoning schemes on land, sea or both, to achieve coastal management objectives. These include: the Minister; the MEC; municipalities; the management authorities of coastal protected areas; and any other authority who is responsible for managing the area in which that part of the coastal zone falls.

2.7.1 Coastal decision making under the Bill

The Bill seeks to change completely how decisions about the current and future use of the coast are made. The key changes to decision-making processes that will be introduced by the Bill
when it becomes law are set out below.

1. The Bill introduces coastal management principles that add to and expand upon, the national environmental management principles in NEMA but operate in the same way.

2. Local communities and persons who depend on the coast for their livelihoods (particularly those who are marginalised or were previously disadvantaged by unfair discrimination) must be given preference when allocating access to coastal resources.\(^{17}\)

3. The state must act as the public trustee of coastal public property (which is defined to include the seashore, tidal waters and the sea to the limit of the territorial sea)\(^{18}\) and decisions in relation to coastal public property must be made in the interests of everyone.\(^{19}\)

4. Decisions concerning demarcating, extending or reducing the area of the coastal buffer zone, coastal public property, or public access land must be made with reference to certain considerations prescribed in the Act.\(^{20}\)

5. Decisions concerning the use of the coastal zone must be guided by, and be consistent with, a hierarchy of CMPs which must be prepared with the involvement of all relevant government agencies in order to promote integrated and coordinated coastal management.\(^{21}\) This means that the Bill will introduce for the first time a comprehensive, planning system for coastal areas that involves aligning municipal and provincial coastal planning initiatives with the national policy goals and objectives set out in the White Paper (Chapter 6).

6. The provincial CMP will function not only as a planning and policy instrument but also as an indirect means of controlling developments that may impact negatively on the coast. There are two main mechanisms used to achieve this. Firstly, no organs of state responsible for authorising or granting consent for any activity in the country that may cause an adverse effect on the environment (even if it is outside of the coastal zone) may grant an authorisation unless it is satisfied that the activity will not substantially prejudice the attainment of a coastal management objectives in a CMP.\(^{22}\) This means that for example, DWAF may not issue a permit allowing a company to discharge effluent into a river a hundred kilometres inland if the effect of that will be that a coastal water quality objective recorded as a coastal management objective in the provincial CMP, will not be met. Secondly, all national, provincial and municipal land-use legislation must be implemented in the buffer zone in a manner that gives effect to the purpose for which the buffer zone was established.\(^{23}\)

7. Decision-making will become more integrated and the Bill allows for the establishment of institutional structures that support horizontal and vertical integration and coordination within government with respect to coastal management (Chapter 5). The Minister must, within 12 months of the Act taking effect, make regulations\(^{24}\) that identify the coastal management roles and responsibilities of the coastal provinces, coastal municipalities and other organs of state.

8. The Bill allows for the issuing of integrated permits\(^{25}\) (i.e. one permit that deals with a range of issues such as discharges to water, air and land) but it is likely to take some time to implement this.

9. The duty of care established by NEMA is elaborated upon to make it more coast-specific.\(^{26}\)

\(^{17}\) Section 8(7).

\(^{18}\) Section 11.

\(^{19}\) Section 16.

\(^{20}\) See Sections 35 (coastal public property), Section 36 as read with Section 21 (coastal buffer zone), and Section 37 (coastal access land)

\(^{21}\) Sections 55, 59 and 62.

\(^{22}\) Section 72.

\(^{23}\) Section 76 as read with Section 21.

\(^{24}\) Section 56.

\(^{25}\) Section 84.

\(^{26}\) Section 71.
2.8 Institutional framework for coastal management under the Coastal Zone Bill

One of the crucial challenges in moving towards integrated coastal zone management in the Western Cape will be to ensure that implementation of the provincial CMP by the many different organs of state is coordinated, effective and efficient, and that jurisdictional disputes are resolved. The current draft of the Coastal Zone Management Bill only identifies the coastal management roles and responsibilities of the coastal provinces, coastal municipalities and other organs of state in very general terms. However the Bill requires the Minister, within 12 months of the Bill taking effect, to identify the coastal management responsibilities and roles of these organs of state by way of a notice in the Gazette. The Minister is required to consult with the authorities specified in the notice before issuing the notice. It is crucial that the Government of the Western Cape province decides on which provincial and municipal organs of state must be involved in each area of coastal decision making in order to implement this draft CMP successfully and then ensure that this is recorded in the regulations made by the Minister.

An overview of the broad roles and responsibilities of each sphere of government is set out in Table 3.1.

The Premier must, within two months of the Bill coming into force, designate a provincial organ of State to function as the lead agency for coastal management in the province and to liaise with DEAT (this is likely to be DEA&DP). The Provincial Minister responsible for the coast must:

(a) within 12 months of the commencement of the Bill, establish a Provincial Coastal Committee;
(b) prepare, periodically revise and oversee the implementation of the provincial coastal management programme;
(c) prepare a report on the state of the coastal environment in the province every two years and update it once every six months and submit the reports and updates to the Minister; and
(d) liaise with coastal municipalities to coordinate actions taken by provincial organs of state in terms of the Bill, with those taken by municipalities.

2.8.1 Coastal management functions of the provincial lead agent

The lead agent in the province will effectively perform most of the functions assigned by the Bill to the MEC. This means that the lead agent is likely to be required:

• to coordinate the implementation of the provincial CMP;
• to monitor the state of the environment in the coastal zone and coastal management in the province to ensure that it is undertaken in an integrated, effective, and efficient manner and in accordance with the coastal management principles and the purpose of the Bill; and
• to support the Provincial Coastal Committee.

27 Section 56.
2. 2.8.2 Provincial Coastal Committees

The primary function of a Provincial Coastal Committee is to promote integrated coastal zone management in the province and the coordinated and effective implementation of this Act and the provincial CMP. In particular the Provincial Coastal Committee must:

- advise the MEC and the provincial lead agency on matters concerning coastal management in the province, including the CMP;
- promote a coordinated, inclusive and integrated approach to coastal management within the province by providing a forum for, and promoting, dialogue, cooperation and coordination between the key organs of state and other persons involved in coastal management in the province;
- promote the integration of coastal management concerns, objectives and principles into the plans, programmes and policies of other organs of state whose activities may create adverse effects on the coastal environment; and
- promote public awareness and participation in coastal zone management.

3. 2.8.3 Role of coastal municipalities

The primary functions of municipalities in relation to coastal management are to prepare and implement municipal coastal management programmes, to manage beaches and other coastal areas under their jurisdiction in an integrated, effective, and efficient manner that is in accordance with the coastal management principles and the purpose of this Act, and to ensure that the public has appropriate access to coastal public property.

A municipality:

- may prepare a municipal CMP either as part of an integrated development plan or separately;
- may establish coastal set-back lines and zoning schemes;
- may make by-laws to implement its CMP; and
- must within four years of the Bill coming into force, designate, demarcate, maintain and sign-post coastal access land.

2.9 Legal and institutional challenges in implementing the White Paper in the Province

2.9.1 Public consultation

The White Paper was the culmination of a long process involving extensive participation by the public and key organisations and organs of state with an interest in how human activities along the coast are managed. Extensive public participation that includes the active involvement of key stakeholders will also be important to refine and finalise the draft provincial CMP. Furthermore the Coastal Zone Bill requires the MEC to consult with those persons that have identified themselves as having a material and direct interest in the adoption or amendment of the provincial CMP, before finalising it. In particular the MEC must consult with provincial organs of state performing functions in the coastal zone and with the National Coastal Committee and the National Coastal Advisory Forum, if they have been established.

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28 Section 59.
2.9.2 Defining institutional responsibilities

As discussed above, one of the most significant challenges will be the allocation of institutional responsibilities and the coordination of the implementation activities of the various organs of state in order to ensure that the coastal zone is managed and regulated in an integrated and coordinated manner that increases administrative efficiency as required by the first coastal management principle. The shortcomings of the present system (which is based on sectoral agencies each of which administers sector-specific legislation) are already evident. Examples include the management of estuaries where many different organs of state have overlapping jurisdiction, and coastal fisheries where MCM has authority over the allocation of fishing rights but is divorced from the key terrestrial issues that affect fishing communities.

One of the most important tasks of the Provincial Coastal Committee will be to identify those parties that should be involved in key coastal decision-making processes and what roles they should play (e.g. should they merely be consulted or must they be co-decision makers). This is likely to require considerable dialogue among the key organs of state (including coastal municipalities) and other interested and affected organisations, the negotiation of memoranda of understanding, and the preparation of submissions to the National Minister to guide the preparation of regulations dealing with provincial and municipal roles and responsibilities as required by Section 56 of the Bill.

2.9.3 Establishing a coherent planning system at provincial level

Provincial and municipal planning is becoming increasingly more complex. In addition to land development plans (such as existing structure plans and zoning schemes under LUPO), and integrated development plans (IDPs) prepared in accordance with the Municipal Systems Act, draft legislation will require the preparation of a range of other plans and policies with the potential to affect coastal planning. For example, in addition to the CMPs required by the Coastal Zone Bill, the forthcoming Biodiversity Act requires the preparation of a national biodiversity framework and bioregional plans.

Although the Coastal Zone Bill provides some general guidance as to the relationship between these different plans, considerable consultation and discussion among organs of state within the province as well as planning experts is likely to be necessary to achieve clarity as to how best to integrate these plans and programmes in practice and how to avoid conflicts. It should be noted that the relevant legislation does allow for several different approaches and the choices should be based on pragmatic considerations. Much of this could be achieved during the process of finalising the draft provincial CMP.

2.9.4 Defining areas within the coastal zone

In order to implement the White Paper and the provincial CMP adequately, and to enforce the

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29 Section 8(1).
30 DEAT has formulated a draft Estuaries Protocol to serve as a management tool to improve the collaborative management of estuaries. Currently it does not have any legal status.
31 Section 64 deals with the alignment of environmental implementation and environmental management plans under NEMA and IDPs with CMPs and Section 65 requires CMPs to take account of these plans as well as the biodiversity framework and bioregional plans produced under the Biodiversity Act and relevant land development plans.
32 For example, CMPs can be integrated into IDPs and IDPs will be regarded as Integrated Development Frameworks for the purposes of the WCPDA when it comes into force.
Coastal Zone Bill it is important that a major initiative be launched in conjunction with coastal municipalities to map the coastal areas defined in the Coastal Zone Bill (see diagrams at the end of this chapter). This process should also identify and prioritise areas in which the boundaries of these areas (e.g. of the coastal buffer zone) should be adjusted in order to achieve the purposes of the Bill more effectively. As this process may be time-consuming it should be initiated as soon as reasonably possible.

2.9.5 Promoting co-management and partnerships in coastal management

The White Paper emphasises the need to build partnerships between government, the private sector and civil society to ensure co-responsibility for coastal management and to empower stakeholders to participate effectively. The Coastal Management Bill provides for the establishment of special management areas\(^{33}\) which can be established for various purposes including to facilitate the management of coastal resources by a local community and to promote sustainable livelihoods for them. One of the challenges in implementing the provincial CMP will be to identify opportunities for promoting co-management and partnerships and using techniques like special management areas to take advantage of these opportunities.

2.9.6 Legislation and capacity building

Implementation of the Coastal Zone Bill at the provincial and municipal levels will require extensive capacity building, and in some cases the preparation of provincial regulations and municipal by-laws to support the implementation of the CMP. The capacity building will require not only additional staff and budgets, but also training and the production of manuals and guidelines to support decision-making.

2.9.7 Enforcement

The Coastal Zone Bill gives enhanced enforcement powers to provincial and municipal authorities, including powers to issue and enforce coastal protection notices\(^{34}\) and repair and removal notices.\(^{35}\) In addition the coastal management objectives established by the CMP will enable it to be used as an instrument of development control. However effective utilisation of these provisions will require the development of a coherent enforcement strategy and capacity building within the provincial and local spheres of government in the province.

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\(^{33}\) Sections 28 to 31.
\(^{34}\) Section 73.
\(^{35}\) Section 74.
**Table 3.1 Coastal management roles of each sphere of government under the coastal zone bill**

**Collective role and responsibilities of all spheres**
- The state is the trustee of coastal public property on behalf of people of South Africa and must ensure that coastal public property is used, managed, protected, conserved and enhanced in interests of everyone (ss 3, 15 and 16).
- Organs of state must apply coastal management principles when coastal zone may be affected (e.g. when formulating and implementing policies, plans, programmes and legislation).
- Enforcement (authorised officers to be appointed under NEMA).

<table>
<thead>
<tr>
<th>Roles and responsibilities</th>
<th>National</th>
<th>Western Cape Province</th>
<th>Municipal</th>
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| **Main roles and functions** | • Must coordinate coastal management within the national sphere of government and between other spheres of government  
• Must ensure that coastal public property is used, protected, conserved and enhanced in the interests of everyone  
• Must ensure that coastal management is integrated, effective, and efficient and in the interests of the whole community  
• Must oversee implementation of the Bill to ensure consistent with (i) national CMP; (ii) NEMA and coastal principles; and (iii) international law | • Premier must designate provincial lead agency (s45)  
• Provincial lead agency must coordinate the implementation of the provincial CMP  
• MEC must ensure that coastal municipalities give effect to coastal principles and provincial CMP | • Must apply coastal principles & provincial CMP when preparing any municipal policy, programme or plan that may affect the coastal zone.  
• Must ensure public access to coastal public property  
• Must manage beaches and other coastal areas under their jurisdiction |
<p>| <strong>Planning</strong> | • Must prepare national CMP within six years, review every five years | • MEC must prepare provincial CMP within 4 years, review every five years | • May prepare municipal CMP (can be part of IDP) &amp; if it does, review |</p>
<table>
<thead>
<tr>
<th>Roles and responsibilities</th>
<th>National</th>
<th>Western Cape Province</th>
<th>Municipal</th>
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<tr>
<td>and oversee implementation (ss53 – 55)</td>
<td>(ss57 –59) &amp; oversee its implementation</td>
<td>every 5 years (ss 60-62)</td>
<td>• Must designate &amp; demarcate public access land within 4 years (ss 22 – 25)</td>
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<td>• May review provincial CMPs within five years (s66)</td>
<td>• May review municipal CMPs at any time (s67)</td>
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<td>• May, with consent of Minister, vary boundaries of coastal buffer zone (33, 34, 36)</td>
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<td>• May extend and adjust boundaries of coastal public property (ss 33 – 35)</td>
<td>• May develop provincial policies consistent with the national coastal policy</td>
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<td>• May establish coastal set-back lines in zoning / land use schemes (s32)</td>
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<tr>
<td>• Minister may vary boundaries of coastal buffer zone (ss 33, 34, 36)</td>
<td>• MEC may, with consent of Minister, declare special management areas within coastal zone (ss28 –31)</td>
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<tr>
<td>• May declare special management areas within coastal zone (ss28 –31)</td>
<td>• May establish coastal set-back lines in zoning / land use schemes (s32)</td>
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<tr>
<td>Legislative</td>
<td>Must make certain regulations (e.g. s56) and may make others (s107)</td>
<td>May make provincial regulations (s108)</td>
<td>May make by-laws to implement municipal CMP (s63)</td>
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<td>Institutional</td>
<td>May establish National Coastal Committee to coordinate effective implementation of Bill (ss 41 –42)</td>
<td>Must establish Provincial Coastal Committee within one year (ss 46 –48)</td>
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<td></td>
<td>May establish National Coastal Advisory Forum (ss 43 –44)</td>
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<td>Monitoring and reporting</td>
<td>Must prepare national report on the state of the coastal zone (based on provincial reports) and update regularly (s112)</td>
<td>MEC must prepare provincial state of the coast report regularly (s112(2))</td>
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<td>Must make information available and accessible to public (s111)</td>
<td>Must monitor compliance by municipalities (s113)</td>
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<td>Must prepare inventory of concessions and leases of coastal</td>
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<tr>
<td>Roles and responsibilities</td>
<td>National</td>
<td>Western Cape Province</td>
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<td>public property and of State land in the coastal zone</td>
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<td>• Must report to International Maritime Organisation regarding dumping at sea (s95)</td>
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<td>Regulatory</td>
<td>• Must issue and administer certain licences, permits and authorisations</td>
<td>• Must review environmental impact assessment (EIA) reports and strategic environmental assessments reports</td>
<td>• Must issue and administer certain licences, permits and authorisations (regulations to be made within 3 months in terms of section 56 will provided further guidance)</td>
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