

Draft Sea Level Rise Policy Consultation
Urban and Coastal Water Reform Branch
Department of Environment and Climate Change
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Sydney South NSW 1232

Submission on Draft Policy on behalf of the Australian Coastal Society

The Australian Coastal Society (ACS) welcomes the opportunity to comment on the initiative of the NSW Government to minimise social disruption, economic costs and environmental impacts resulting from long term sea level rise along the NSW coast. Other states in Australia are developing or have developed similar strategies and we are aware that the Commonwealth Government through a House of Representatives Inquiry is examining the national interests of potential impacts of climate change on the coastal zone including impacts and adaptation strategies associated with sea level rise.

We were interested in comments on the draft NSW policy that appeared in the New York Times on 4 March. The report noted that the strategy was not commonly found in the USA and indicated that it “offers a ripe warning to local governments that fail to heed emerging climate hazards...the effect is a little like putting police tape along the seashore”. Perhaps the draft policy does not seek to convey that image, but it does constitute a significant step in alerting all stakeholders to issues and management implications of occupying and using coastal lands that are potentially at risks to the impacts of sea level rise. But is it enough?

Ever since the NSW Coastal Policy was announced in 1997 (which included the NSW Hazards Policy under goal 2), and amendments were made to the Coastal Protection Act in 2002 (especially the introduction in statute law to common law rights under the doctrine of accretion and erosion), there has been an awareness in Government that the coast of NSW is threatened by actions that may not be compatible with the principles of ESD under emerging conditions of climate change. NSW has a range of statutory and policy positions in place which can assist in meeting the challenges of climate change in general and sea level rise in particular, if applied consistently by all relevant agencies and local councils. Planning instruments exist, management practices are known, and the science of coastal dynamics is reasonably well established, for the implementation of a sea level rise policy to be effective. But is there a will to introduce those additional measures which will create more consistent implementation and thus reduce uncertainties in the way investments are to be made in future in areas likely to be affected by sea level rise?

The ACS is aware of the views of senior legal practitioners that the draft policy does not go far enough. Kirston Gerathy in a recent address to the Property Institute (20 March) concluded by saying “A clear policy position must be articulated and a clear prescriptive direction for controlling and limiting development must be provided, to allow for the long term use and enjoyment of the coast, minimisation of the costs of risk exposure and conservation of environmental assets in the face of climate change”. The implication here is that unless the policy on sea level rise is not made more prescriptive than neighbours, councils and the state will be confronted by court challenges. It would not be in the public interest to have policy determined by successive court decisions. We are already seeing the emergence of legal challenges in NSW and other states, the significance of which is still not fully understood given diverse decisions and as yet little direction from the High Court (one

exception is *Alamdo v Bankstown* 2005 with reference to s733 of the Local Government Act 1993).

The ACS would recommend that the draft policy reflect an ability to meet four tests:

1. That it offers all decision makers including property owners and investors the highest level of certainty possible given the latest projections and local scenarios of sea level rise based on coastal oceanographic, geomorphic, engineering and ecologic science;
2. That planning instruments (and the Coastal Protection Act) be revised to ensure that there are “explicit obligations” to have regard to, not just to consider, the potential impacts of sea level rise and other coastal hazards (storm surge, landslip,etc);
3. That technical and financial support be made available to councils to ensure that high resolution mapping of areas at risk to the impacts of climate change be defined and be based on the best available science, and be subjected to revision as worse case scenarios possibly worsen;
4. That a mechanism be in place to monitor and audit the implementation of all aspects of the policy by agencies and local councils and report annually to the NSW Parliament through the Minister for Environment and Climate Change to ensure consistent application of the policy and difficulties that arise in the application of the policy.

The ACS is aware of new technologies that will assist in the mapping of areas likely to be affected at different levels of probability to current projections of sea level rise. It is aware that the Federal Department of Climate Change is involved in investigating coastal vulnerability and applying some of these techniques in consultation with Geoscience Australia, CSIRO and other researchers. These technologies open up the possibility of using visualisation techniques to define probabilities of risk facing individual properties and infrastructures. Given the benchmarks for sea level rise in the draft policy, it is now possible to use digital elevation modelling in urban areas to apply the so-called “bathtub model” of sea level rise that will inform low lying property owners and managers of public services of the potential inundation impacts in future years. The bathtub model could potentially be upgraded to embrace local morphodynamic conditions if under direction councils develop **Climate Change Adaptation Plans.**

It is recommended that the NSW Government through DECC develop guidelines which provide technical information on how a council or agencies responsible for land management can utilise different tools to map and design adaptation measures to meet the challenges of sea level rise, and ensure that adequate technical expertise is available to apply these tools.

The draft policy makes reference to Department of Planning preparing guidelines. The ACS believes that this is a very important step in meeting the challenges of sea level rise right now. Planning is one tool that offers governments a means to determine how lands that are potentially liable to natural hazards can be best managed in the public interest. We recognise that “planning for the worst” may adversely affect the interests of some property owners. However, the wider community benefits through reduced imposts on the public purse, less need for dramatic emergency action and other social consequences, and enhanced protection of environmental assets (eg beaches) and amenities.

Draft planning guidelines could embrace a range of instruments building on the existing planning framework developed in recent years under planning reform. They include:

1. Inclusion in EP&A Act or the regulations, and SEPP 71, the requirement for an “explicit obligation” to have regard to the impacts of sea level rise in land use planning and development approval to apply to all parts of the Act, where appropriate, including Part 3A.
2. That the coastal regional strategies and relevant parts of the Metro Plan contain consistent provisions for adapting to the impacts of sea level rise and climate change as shown for instance in the Far North Coast Strategy.
3. That the LEP Template inform explicitly those affected councils of the need to rezone with the need to have regard to the impacts of sea level rise using overlays; that these overlays be subject to revision every 5 years based on new technical information as appropriate. Current provisions in the template indicating the opportunity to undertake erosion protection works in environmental coastal zones should be removed under clause 30.
4. That SEPP 71 be revised to apply to all councils and agencies and to embrace areas of Sydney Harbour and Botany Bay that are potentially likely to be affected by sea level rise, consistent with part 4A of the Coastal Protection Act.
5. That a schedule be attached to SEPP 71 (and the Major Projects SEPP if appropriate), defining what types of development are appropriate in particular risk areas based on the probability of impacts and the nature of any planned development or re-development in such areas. This schedule would inform both LEP and development approval processes. It would also inform local council climate change adaptation measures such as buy back, planned retreat, and foreshore protection.
6. That the NSW Coastal Design Guidelines 2002 be revised to embrace the impacts of sea level rise more explicitly than the current version and re-released under the s117 direction.
7. That consideration be given to revising the application of s149 certificates especially s149 (5) to notify owners of the potential risks to their property; the certificates should be amended with new technical information every 5 or 10 years. Consideration should be given to visualisation of risks to properties using Google Earth including Streetscape.

Application of these planning measures “in good faith” by state agencies and councils should remove any liability under the Civil Liability Act 2002 and the Local Government Act 1993, and any amendments to the Coastal Protection Act if appropriate.

It is recommended the guidelines to be prepared by the Department of Planning embrace a range of measures that will offer more certainty in the use of lands at risk in coastal NSW to sea level rise and thereby offer a consistent, prescriptive direction for controlling development and meeting the objectives of ESD in the coastal zone to include Sydney Harbour and Botany Bay.

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