

SYDNEY COASTAL COUNCILS GROUP Inc.  
C/- City of Sydney Council  
Level 14, 456 Kent Street  
GPO Box 1591, SYDNEY NSW 2001  
Phone: (02) 9246 7791  
Facsimile: (02) 9265 9660  
Email: [info@sydneycoastalcouncils.com.au](mailto:info@sydneycoastalcouncils.com.au)  
Internet: [www.sydneycoastalcouncils.com.au](http://www.sydneycoastalcouncils.com.au)



Sea Level Rise Technical Guide Consultation  
Urban and Coastal Water Reform Branch  
Department of Environment, Climate Change and Water  
PO Box A290  
South Sydney NSW 1232

CM064-09

and

Director  
Policy Planning Systems Reform  
NSW Department of Planning  
GPO Box 39  
Sydney NSW 2001

22 December 2009

**Re: NSW Government Sea Level Rise Risk Management Guides and Draft NSW Coastal Planning Guideline**

The Sydney Coastal Councils Group (SCCG) would like congratulate the NSW Government on the finalisation of the *NSW Government Sea Level Rise Policy Statement* and take this opportunity to provide comment on the following documents:

- *Draft Coastal Risk Management Guide: Incorporating sea level rise benchmarks in coastal risk assessments*
- *Draft Flood Risk Management Guide: Incorporating sea level rise benchmarks in flood risk assessments*
- *Draft NSW Coastal Planning Guideline – Adapting to Sea Level Rise*

The Risk Management Guides and Coastal Planning Guideline represent an important first step in providing all stakeholders with the necessary guidance to assist the consistent consideration of sea level rise impacts within coastal, estuarine and floodplain environments of NSW. Both the NSW Departments of Planning and Environment, Climate Change and Water are to be congratulated for their coordinated approach to the production and release of these draft documents for consultation.

For over 30 years coastal management in NSW has been a partnership between councils and the State Government. Therefore, it is important that the Risk Management Guides and Coastal Planning Guideline are implemented through a whole of Government approach to provide councils with the necessary guidance to ensure consistent application and continued provision of technical and policy advice through the NSW Coastal and Floodplain Management Programs.

To assist with the preparation of a regionally representative submission the SCCG facilitated a workshop on 1 December 2009 attended by representatives of all 15 of its Member Councils.

The aims of the workshop were:

1. To hear from the NSW Department of Planning and NSW Department of Environment, Climate Change and Water on the content of the documents; and
2. To have a regional forum that enabled Member Council staff and elected members to discuss their councils information and technical needs in applying the Risk Management Guides and Coastal Planning Guideline.

The content of this submission reflects the discussion at the workshop as well as additional targeted consultations undertaken by the SCCG with its Member Councils, academics and coastal engineers and legal experts. It summarises the key issues and needs of SCCG Member Councils in applying the Risk Management Guides and Coastal Planning Guideline. This submission contains comments and recommendations on both sets of documents and is structured in the following manner:

**Chapter 1:** General Comments and Overarching Issues

**Chapter 2:** Risk Management Guides

**Chapter 3:** Draft NSW Coastal Planning Guideline

**Chapter 4:** Conclusion

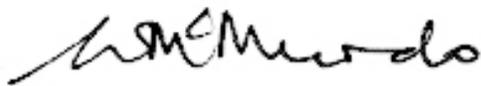
**Appendices:**

- I. Complete list of Recommendations
- II. Consultation Questions on the Draft NSW Coastal Planning Guideline
- III. *Legal issues and considerations for the implementation of the Draft NSW Coastal Planning Guideline* (A report prepared by HWL Ebsworth Lawyers for the Sydney Coastal Councils Group)

**Please note:** at the time of sending the SCCG submission on the NSW Government Sea Level Rise *Risk Management Guides* and *Draft NSW Coastal Planning Guideline* the SCCG had yet to receive the *Legal issues and considerations for the implementation of the Draft NSW Coastal Planning Guideline* report. Once this report has been finalised the SCCG will provide it to both the NSW Department of Planning and NSW Department of Environment, Climate Change and Water for their consideration.

I trust the information provided in this submission will receive the appropriate attention. If you wish to clarify any matter in this correspondence or require further information, please contact SCCG Senior Coastal Projects Officer, Craig Morrison on (02) 9246 7702 or [craig@sydneycoastalcouncils.com.au](mailto:craig@sydneycoastalcouncils.com.au).

Yours sincerely,



Clr. Wendy McMurdo  
**Chairperson**

## Chapter 1: General Comments and Overarching Issues

### Recommendations

1. The NSW Coastal Zone be amended to include the tidal reaches of Sydney Harbour, Botany Bay and the Hawkesbury River.
2. The coastal risks as detailed in the Planning Guideline be expanded to include the eight coastal processes as identified in the NSW Coastal Manual.
3. The NSW Government clarify if Councils will have to undertake different actions or meet differing levels of criteria to qualify for indemnification under section 733 of the Local Government Act for both coastal and flood risks.
4. The NSW Government withdraw its policy position that protection works may be proposed on private foreshore land on a site by site basis until further information on the mechanisms for its implementation are provided and its merits discussed with coastal councils.
5. The NSW Sea Level Rise Policy Statement reiterates the intent and provisions of the NSW Coastal Policy and SEPP 71 to ensure the maintenance and enhancement of coastal access and recognition of the values of beaches.
6. The NSW Government work with all stakeholders to identify and prioritise management actions that protect and enhance existing coastal and shoreline values and services of the NSW coastline from the impacts of sea level rise.
7. Through the NSW Climate Action Plan, DECC take responsibility for developing and implementing a framework and investment program that prioritises the necessary research and identification of risk management responses to build the resilience of intertidal biodiversity in NSW to climate change.
8. The NSW Government work with all stakeholders to identify and prioritise management actions that protect the existing intertidal biodiversity values of coastal environments in NSW from the impacts of sea level rise.
9. The NSW Government work with councils to investigate opportunities for strengthening existing legislation and regulation in order to protect vulnerable threatened species, populations and communities impacted by sea level rise.
10. The Coastal Council of New South Wales be re-established to assist with implementation of the Risk Management Guides and Planning Guideline as well as the legislative amendments associated with the ongoing reform of coastal management, policy and practice in NSW.

The *Draft Coastal Risk Management Guide: Incorporating sea level rise benchmarks in coastal risk assessments* and *Draft Flood Risk Management Guide: Incorporating sea level rise benchmarks in flood risk assessments* (the Risk Guides) as well as the *Draft NSW Coastal Planning Guideline – Adapting to Sea Level Rise* (the Planning Guideline) represent an important and momentous step in building the resilience of coastal communities in NSW to the impacts of sea level rise. The consistent implementation of these documents combined with the increased capacity of councils to communicate and where necessary defend their application will be crucial to reducing the impacts of sea level rise on coastal communities and the environments they value.

The implementation of the Risk Guides and Planning Guideline by councils would be significantly assisted through the provision of the following information and action by the NSW Government.

- Standard digital elevation modeling and hazard maps for NSW;
- A strengthened statutory and regulatory framework for the consistent consideration of sea level rise impacts on the activities of both State and Local Government authorities;
- The provision of decision support tools such as; implementation guides, model conditions and minimum information requirements combined with the delivery of capacity building programs for development assessment and building compliance offers; and
- Consistent and coordinated communication and education activities.

Chapter 2 of this submission addresses the needs for standard digital elevation modeling and sea level rise hazard maps for NSW in relation to the application of the Risk Guides and the definition of sea level rise impacts within existing hazard definition processes. Chapter 3 offers commentary and recommendations for strengthening statutory and regulatory frameworks in NSW and coordinating communication activities in reference to the Planning Guideline.

The SCCG believes there are a number of overarching factors to consider in the delivery of the Risk Guides and Planning Guideline including:

- Consistency with the existing NSW Coastal and Floodplain Management Frameworks;
- Section 733 of the Local Government Act and indemnity for decisions made in relation to sea level rise;
- Proposals for protective works on individual properties;
- Environmental considerations; and
- Re-establishment of the Coastal Council of NSW.

### **Consistency with the existing NSW Coastal and Floodplain Management Frameworks**

The NSW Coastal and Floodplain Management programs provide excellent programs in which natural hazards have been identified and managed in a partnership approach between State and Local Governments. Therefore, in the interests of consistency and integration any activities to address the impacts of sea level rise should be uniform in terminology and the process applied in these management frameworks.

The Planning Guideline makes reference to two terms that are currently not applied in coastal management in NSW through the *NSW Coastal Protection Act*, NSW Coastal Policy and NSW Coastal Management Manual. The terms are:

- **Coastal Areas**, broadly to define “*the coastline, beaches, coastal lakes, estuaries, as well as the tidal reaches of coastal rivers. It also includes other low lying land surrounding these areas that may be subject to coastal processes in the future as a consequence of sea level rise*”; and
- **Coastal risks**, to include *risks from coastal erosion, tidal inundation and coastal flooding exacerbated by sea level rise*.

The definition of a coastal area as defined by the Planning Guideline significantly extends the definition of the Coastal Zone beyond that defined by the *NSW Coastal Protection Act* in Part 10 of the *Interpretation Act 1987*. Page 1 of the Planning Guideline also states that it applies to all coastal areas of NSW, including the NSW Coastal Zone, as well as Sydney Harbour and Botany Bay. This creates two implementation challenges.

- a) It establishes two management frameworks and processes in NSW for managing the same set of coastal processes and impacts (those within the NSW Coastal Zone and applying the NSW Coastal Policy and Manual and those not in the NSW Coastal Zone and therefore not applying the NSW Coastal Policy and Manual), and
- b) It fails to recognise that the Hawkesbury River (not presently part of the NSW Coastal Zone) will also experience the impacts of sea level rise.

It is important that the NSW Coastal Protection Act and corresponding management framework apply equally to all coastal areas of NSW affected by sea level rise. Therefore the SCCG recommends that the NSW Coastal Zone as defined in the *Coastal Protection Act* be amended to include Sydney Harbour, Botany Bay and the tidal reaches of the Hawkesbury River.

The 2002 NSW Coastal Manual identifies eight hazards (beach erosion, shoreline recession, coastal entrance instability, vegetation degradation and sand drift, coastal inundation, slope and cliff instability, stormwater erosion, climate change) that occur along the NSW coast for consideration in the development of coastal process and hazard definition studies. Whereas the

Planning Guideline refers to coastal risks as coastal erosion, tidal inundation and coastal flooding exacerbated by sea level rise. To assist with consistent integration within the existing NSW Coastal Management framework and the holistic consideration of sea level rise impacts on all coastal processes, the SCCG recommends that the coastal risks as detailed in the Planning Guideline be amended to the eight coastal processes as identified in the NSW Coastal Manual.

### **Section 733 of the Local Government Act and Indemnity for decisions made in relation to sea level rise**

Under section 733 of the *Local Government Act*, Councils are exempt from liability for advice or actions undertaken in relation to flood liable land and land in coastal zone if their actions are consistent with a plan prepared in accordance with the appropriate management manual. The NSW Government must clarify how councils are to maintain this exemption from liability under section 733 of the *Local Government Act* and *Civil Liabilities Act* in light of the finalised NSW Sea Level Rise Policy Statement and application of the benchmarks through the Risk Guides and Planning Guideline.

The Policy Statement notes that “*the Sea Level Rise Policy Statement supersedes the 1998 NSW Coastal Hazard Policy*” but makes no reference to its impact on the NSW Flood Prone Land Policy. Flood prone areas covered by the NSW Flood Prone Land Policy will be impacted by sea level rise. Therefore, the NSW Government must state if councils will have to undertake different actions or meet differing levels of criteria to qualify for indemnification under section 733 of the Local Government Act for both coastal and flood risks, as a result of the Policy Statement, Risk Guides and Planning Guideline.

### **Proposals for protective works on individual properties**

Once the level of risk and potential impacts of sea level rise have been identified, there are a number of traditional coastal management responses (protect, accommodate or retreat) that can be applied singularly or collectively in response to sea level rise. Each of the strategies has a number of costs and benefits when considering their implementation in the contexts of zoning and land uses, planning and approvals. Decisions about the best adaptation response must be made at a regional scale and take into account the following considerations:

- A clear vision for the desired characteristics and intended land uses of local and regional coastal areas beyond 2100;
- An understanding of community attitudes and support in relation to selected adaptation responses;
- Information on existing and future land uses within an LGA;
- The capacity and permanency of existing infrastructure to manage the impacts of climate change;
- A cost benefit analysis and comparison of all possible options (including beach nourishment<sup>1</sup>);
- Funding strategies and timeframes for the implementation of the selected management options.

Page 8 of the Planning Guideline states that “*While structural protection works are generally undertaken by or on behalf of public authorities, they may also be proposed on private foreshore land on a site by site basis. Private structural protection works, as with public works, should be based on sound engineering and environmental principles and be consistent with the relevant approved management plan*”.

<sup>1</sup> The Sydney Coastal Councils Group will soon be releasing the *Scoping Study – Maintaining Sydney’s beach amenity against climate change sea level rise by sand nourishment* Report. This report provides an assessment of logistical, economic, social and environmental issues in relation to the utilisation of offshore sands for beach nourishment.

The SCCG strongly opposes any policy that allows individuals to propose protective works on private property. There is significant merit in the consideration of landowner funded protection works. However, before such a policy is finalised there must be a significant level of consultation with councils and their communities on merits of such a policy and the mechanisms through which it would be delivered.

The consideration and construction of protective works on a site by site basis will result in an ad-hoc piecemeal approach to the mitigation of sea level rise impacts on coastal communities. Decisions on the best management option must be consistent with an existing management plan and made considering the regional perspective and the views of all stakeholders affected, not just individual residents adjacent to hazard areas. Therefore, the SCCG recommends that the NSW Government withdraw its policy position that protection works may be proposed on private foreshore land on a site by site basis until further information on the mechanisms for its implementation are provided and its merits discussed with coastal councils.

### **Environmental considerations**

The lack of discussion in both the Risk Guides and Planning Guideline on the consideration of the environmental impacts of sea level rise within the risk management and planning contexts is a concern to the SCCG. Sea level rise will have a significant impact on coastal access, recreational use and biodiversity of coastal NSW. In the NSW coastal zone the existing ecosystems and beach environments provide a broad range of social, cultural, economic and biodiversity benefits. These values must be maintained and protected from the potential impacts of sea level rise. To assist in achieving this, the SCCG recommends:

- The NSW Sea Level Rise Policy Statement reiterate the intent and provisions of the NSW Coastal Policy and SEPP 71 to ensure the maintenance and enhancement of coastal access and recognition of the values of beaches;
- The NSW Government work with all stakeholders to identify and prioritise management actions that protect and enhance existing coastal and shoreline values and services of the NSW coastline from the impacts of sea level rise;
- Through the NSW Climate Action Plan, DECC take responsibility for developing and implementing a framework and investment program that prioritises the necessary research and identification of risk management responses to build the resilience of intertidal biodiversity in NSW to climate change;
- The NSW Government work with all stakeholders to identify and prioritise management actions that protect the existing intertidal biodiversity services of coastal environment in NSW from the impacts of sea level rise; and
- The NSW Government work with councils to investigate opportunities for strengthening existing legislation and regulation in order to protect vulnerable threatened species, populations and communities impacted by sea level rise be explored and implemented at the appropriate scale and locations.

### **Re-establishment of the Coastal Council of NSW**

The ongoing implementation of the Risk Management Guides and Planning Guideline as well as the legislative amendments associated with the ongoing reform of coastal management in NSW must be underpinned by an independent process of monitoring and evaluation. This would ensure that all relevant coastal policy and legislation in NSW is applied and complied with consistently.

The SCCG believes the Coastal Council of New South Wales should be re-established to undertake this task. The Coastal Council of New South Wales was established under the *Coastal Protection Act 1979*, as an independent watchdog for coastal management in NSW. It aimed to protect and enhance the coastal zone by applying ecologically sustainable

development (ESD) principles through an integrated management approach between state and local government, community and industry.

The abolishment of the Coastal Council of New South Wales in 2004 resulted in the loss of a body that provided the NSW Government with independent advice regarding coastal planning and management as well as the monitored and reviewed the implementation of the *NSW Coastal Policy 1997*. If re-established the activities of the Coastal Council of New South Wales would provide invaluable assistance to both the NSW Government and councils in monitoring the implementation of the Risk Management Guides and Planning Guideline as well as the legislative amendments associated with the ongoing reform of coastal management in NSW. Therefore, the SCCG strongly recommends that the Coastal Council of New South Wales be re-established as an independent body that provides the NSW Government with advice regarding coastal planning and management.

## Chapter 2: Risk Management Guides

### Recommendations

1. The NSW Minister for the Environment direct all councils with lands potentially affected by sea level rise to undertake the necessary studies and prepare hazard lines.
2. NSW Government work in partnership with Local Government and other coastal land managers in the development of an appropriately scaled statewide digital elevation model available to all spheres of government for the coastal zone and near-shore environments.
3. The NSW Government guarantee increased funding to the Coastline, Estuary and Floodplain Management Programs to address sea level rise to provide councils with the necessary technical guidance, training and capacity building to ensure the Risk Guides are implemented appropriately and consistently throughout NSW.
4. The NSW Department of Environment, Climate Change and Water provide councils with standard consultancy briefs, specifying minimum standards and information needs, so all sea level rise maps are prepared and hazards lines defined using the same information and consider the same variables.
5. Councils be instructed to map immediate, 2050 and 2100 hazard lines that take into account sea level rise.
6. The NSW Government considers the following staged process for the review and application of the NSW sea level rise benchmarks.
  1. Within 12 months of the release of IPCC Assessment Reports (every seven years) the NSW Government retain or redefine the NSW sea level rise benchmarks;
  2. Councils be instructed, via Ministerial Direction, to review their hazard lines in the 12 months following any changes to the benchmarks; and
  3. Additional, 'pulse' funding be made available to councils during these years to allow for the review and realignment of hazard lines.

### 2.1 Introduction

The SCCG congratulates the Department of Environment, Climate Change and Water (DECCW) on the release of the *The Draft Coastal Risk Management Guide: Incorporating sea level rise benchmarks in coastal risk assessments* and *Draft Flood Risk Management Guide: Incorporating sea level rise benchmarks in flood risk assessments* (the Risk Guides) for consultation. For over 30 years the NSW Government has been working with councils to define and manage the impacts of coastal processes and flooding on both built and natural environments. Limited funding and resources, the voluntary nature of the coastal and flood management programs and the classification of the NSW Coastal Zone, completion of the necessary coastal process and hazard definition studies as well as finalisation of management plans have been piecemeal throughout NSW. This has resulted in a lack of identification and acknowledgement of risk in certain areas of the NSW Coastal Zone.

The release of the Risk Guides and the application of planning Planning Guideline to “*all coastal areas of NSW, including the NSW Coastal Zone, as well as Sydney Harbour and Botany Bay*” represents a significant opportunity to address the fragmented application NSW Coastal Policy and associated Management Manual. Application of the Guides would be greatly assisted through Ministerial Direction on the mandatory use of the Guides and greater technical information and guidance from DECCW.

## **2.2 Ministerial Direction**

Similar to the process applied to the development of bushfire hazard mapping, the SCCG believes it would be beneficial for the appropriate Minister, in this case the NSW Minister for the Environment, to direct all councils with coastal and flood prone lands potentially affected by sea level rise to undertake the necessary studies to prepare hazard lines applying the methodology articulated in both Risk Guides. In this correspondence the Minister would provide councils with a direction that they are to map their sea level rise impacts using the endorsed methodology and clarify to councils in which areas the coastal or flood Risk Guides are to be applied.

This Ministerial Direction would have two clear benefits. Firstly, it would ensure all councils, whether they are part of the NSW Coastal Zones or not, are informed of their responsibilities to undertake the processes articulated in Risk Guides. Secondly, it would clarify for councils the area within their LGA they are to apply the coastal Risk Guide or flood Risk Guide.

## **2.2 Technical Information and Guidance**

It is essential that sea level rise impacts on coastal, estuarine and flood prone environments for each Local Government Area are defined using the same methodology and mapped using digital elevation models of a consistent scale and quality. Councils with areas defined as being part of the NSW Coastal Zone and have prepared Coastline Management Plans or participated in the Floodplain Management Program will have a certain level of existing institutional capacity to apply the Risk Guides to their existing mapping and management activities.

However, as the Planning Guideline and therefore the Risk Guides apply to areas previously not defined as part of the NSW Coastal Zone, a number of SCCG Member Councils (City of Botany Bay, Hornsby, Leichhardt, Manly (parts of), Mosman, North Sydney, Randwick, Rockdale, City of Sydney, Sutherland (parts of), Willoughby and Woollahra) with limited experience and expertise are now considering and mapping coastal or flood hazards for the first time. To ensure that the Risk Guides are applied consistently and to an equal standard will require both technical and mapping assistance be provided by the NSW Government to all coastal councils. Such assistance should be provided in the following forms:

### **A Statewide Digital Elevation Model for NSW**

To achieve this, the NSW Government must work in partnership with Local Government and other coastal land managers in the development of an appropriately scaled statewide Digital Elevation Model available to all spheres of government for the coastal zone and near-shore environments. The provision for such a map would ensure all hazard lines are defined on maps of the same spatial and temporal resolution.

This 'border to border' model would have the additional benefit of enabling the creation of a statewide sea level rise map for NSW using a standard methodology to map sea level rise impacts on same statewide digital elevation model. Therefore allowing for cross council or regional comparisons of likely impacts and avoiding site by site challenges to assessments of risk and management activities.

### **Technical Guidance, Training and Capacity Building**

The experience of coastal councils in Sydney in identifying and managing coastal and floodplain hazards varies considerably. The SCCG understands that such variability in experience and capacity also exists throughout NSW. Therefore increased technical guidance, training and capacity building activities are required from DECCW to aid implementation of the Risk Guides.

For example, consultation with staff of SCCG Member Councils on both Risk Guides has highlighted that councils require further technical information in relation to applying the methodology in the Risk Guides on issues including but not limited to:

- Applying revised Australian rainfall and runoff information;
- Considering the impacts of offshore dynamics on sea level rise impacts;
- Incorporation of other coastal process hazard assessments; and
- The integration of Probable Maximum Flood considerations into investigations for flood prone land.

The SCCG believes the current funding allocated to the Coastal Management Program in NSW is inadequate. Therefore, it is recommended that the NSW Government guarantee increased funding to the Coastal and Floodplain Management Programs to address sea level rise. Funding through these programs should continue to be made available on an annual basis, with specific additional funding made available for:

1. Mapping and modeling the full extent of the NSW coastline and all other areas affected by sea level rise 'border to border' using the methodology identified in the Risk Guides;
2. Monitoring and evaluation of the implementation of the Risk Guides and associated hazard lines.

Additionally, 'pulse' funding should be made available to councils when the sea level rise benchmarks are revised to allow for the timely revision and updating of sea level rise hazard lines. It is clear that if the NSW Government is not going to increase funding to the NSW Coastal and Floodplain Management Program other funding models to support the management activities of councils in the coastal zone will need to be considered.

### **Standard Consultancy Briefs for the Application of the Methodology defined in the Risk Guides**

In its submission to the NSW Department of Environment, Climate Change and Water on Government Draft Sea Level Rise Policy Statement and Draft Technical Note the SCCG recommended that the NSW Government:

*Provide Councils with the necessary coastal modeling and hazard information and standards for integrating the proposed benchmarks with existing hazard definition studies and Environmental Planning Instruments to ensure this information is locally relevant and defensible. (SCCG 2009)*

The Risk Guides go some way to achieving this. The provision of standard consultancy briefs for the engagement of consultants specifying minimum standards and information needs, similar to those provided under the Floodplain Management Program, would assist in ensuring that the information and factors considered in establishing the lines is consistent.

Key issues to be addressed in such briefs include, but are not limited, to the information required and level of detail given to the following issues:

- Defining hazard lines in light of varying recession rates due to differing geological formations as well as beach and foreshore profiles;
- The impact of existing development or protective works on hazard lines;
- Integrating wave run-up and set-up information;
- Applying information on altered estuary dynamics due to climate change; and
- Applying models that move beyond consideration of still water levels to a more dynamic approach.

The provision of such briefs would go some way to ensuring all sea level rise maps are prepared and hazards lines defined using the same information and considering the same variables. This would allow for state and regional comparisons as well as assisting with consistent communication and education on the hazard lines and associated management activities.

## 2.3 Application of a Sea Level Rise Planning Area

Both Risk Guides note that ‘a *sea level rise planning area*’ is to be defined in coastal hazard studies, for land use planning and development assessment. As a result coastal or flood maps will include 2100 hazard lines based on a defined ‘coastal hazard planning area’ or ‘flood planning area’ assuming no sea level rise as well as 2100 hazard lines incorporating sea level rise induced recession using the NSW sea level rise benchmarks. The area between these two lines would be defined as the ‘*sea level rise planning area*’. Consultation with SCCG Member Councils identified a number of possible advantages and disadvantages that can be categorised as follows:

### Advantages

- Offers a useful communication tool on areas potentially affected by;
- Demonstrates that councils are actively considering and addressing the impacts of sea level rise.

### Disadvantages

- All current hazard lines take into account sea level rise.
- Would create confusion by separating the mapping of sea level rise from other coastal processes.
- Could imply that sea level rise may not occur.
- Could create the expectation that different planning consideration should be applied within the sea level rise zone compared to coastal hazard planning area and flood planning area.

**Table 1:** Summary of Advantages and disadvantages of applying a ‘sea level rise planning area’

The SCCG seriously questions the merit and application of a ‘*sea level rise planning area*’ as defined by the Risk Guides. Based on the possible advantages and disadvantages of defining a ‘*sea level rise planning*’ area councils should be instructed to map immediate, 2050 and 2100 hazard lines that take into account historic sea level rise as well as the NSW Government Benchmarks. This would be consistent with existing hazard definition processes. The separation of sea level rise from other coastal hazards as defined by the NSW Coastal Manual has the potential to confuse residents and imply that different planning consideration should be applied to areas potentially impacted by sea level rise as those affected by other coastal hazards that will be exacerbated by sea level rise.

## 2.4 Review of the Benchmarks and Hazard Lines

The 2050 and 2100 sea level benchmarks for NSW are based on projected sea level rise based on global greenhouse gas emission scenarios prepared by the Inter Governmental Panel on Climate Change (IPCC), an allowance for accelerated ice melt as well as the consideration of regionally specific variables and circumstance unique to the NSW coastline. The *Derivation of the NSW Governments sea level rise planning benchmarks – Technical Note* (DECCW November 2009) notes that the benchmarks will be reviewed based updated information, with the next review likely to coincide with the release of the fifth Assessment Report in due 2014.

Any alteration of the benchmarks will result in councils needing to remap their hazard lines based on the new benchmarks. Therefore, the SCCG recommends that the following staged process for the review and application of the NSW sea level rise benchmarks.

1. Within 12 months of the release of IPCC Assessment Reports (every seven years) the NSW Government retain or redefine the NSW sea level rise benchmarks;
2. Councils be instructed, via Ministerial Direction, to review their hazard lines in the 12 months following any changes to the benchmarks; and
3. Additional, ‘pulse’ funding be made available to councils during these years to allow for the review and realignment of hazard lines.

## Chapter 3: Draft NSW Coastal Planning Guideline

### 3.1 Introduction

The SCCG congratulates the NSW Department of Planning (DoP) on the preparation of the *Draft NSW Coastal Planning Planning Guideline: Adapting to Sea level Rise* (the Planning Guideline) for consultation. When finalised it should provide councils with a significant level of guidance as to how they integrate sea level rise considerations into strategic planning and development assessment.

The value and success of the Planning Guideline will be determined by its consistent application and defensibility of the measures proposed. Councils will require further assistance from the NSW Government in gaining the support and acceptance of coastal communities towards statutory and regulatory activities aimed at reducing the volume of building stock impacted by existing coastal hazards and future sea level rise. Therefore a robust legislative framework through which the Planning Guideline is delivered and corresponding communication from Local and State Governments will be crucial for successful short and long term implementation.

Additionally, the DoP must give further consideration to the strategies and tools required in highly urbanised coastal areas compared less developed or greenfield sites for adapting to sea level rise. A 'one size fits all' approach will be extremely difficult to meaningfully apply and result in tension amongst coastal communities and councils.

### 3.2 Identifying Coastal Risk Areas - Principles 1 and 2

#### Recommendations

1. The NSW Department of Planning must provide clear instruction to councils on the following matters related to the application of Investigation Areas:
  - Once an Investigation Area has been identified, for how long does this designation last;
  - Do the same development assessment criteria apply within an Investigation Area as areas with completed coastal hazard and flood studies;
  - What additional information or studies proponents are required to submit with development applications;
  - Are councils able to defer development assessment decisions within Investigation Areas until more detailed information is available;
  - What additional provisions and policies will councils require to effectively implement consistent strategic planning and development assessment within Investigation Areas; and
  - Through what statutory and non-statutory mechanisms are councils to communicate the designation of Investigation Areas to affected residents?
2. The NSW Department of Planning prepare a model NSW Sea Level Rise Investigation Area Policy for councils to adopt that clearly articulates the method used to define the Investigation Areas, any additional planning controls and development assessment criteria to be applied in Investigation Areas as well as the statutory and non-statutory mechanisms through which councils are to communicate the designation of Investigation Areas to affected residents.
3. The NSW Government provide councils and coastal communities with standard information on sea level rise, the processes for defining and mapping hazard lines as well as management responses from the NSW Government using the strategies and tool listed in Table 2.

In the discussion of Identifying Coastal Risk Areas and Principles 1 and 2 this section of the submission will focus on the identification and implementation of Investigation Areas as well as some of the communication strategies and tools required to communicate the impacts of sea level rise and necessary management responses.

### **Investigation Areas**

It will take councils with areas affected by sea level rise a number of years to complete all the necessary coastal hazard and flood studies. Therefore, the application of Investigation Areas for sites lacking completed coastal hazard and flood studies would take a precautionary approach to the approval of future development in hazardous areas. It would also provide councils with the opportunity demonstrate leadership and good faith in integrating sea level rise considerations into strategic planning and development assessment prior to the necessary studies being completed.

For Investigation Areas to be applied appropriately and consistently requires prescriptive advice on the mapping methodology and mechanisms for the integration with strategic planning and development assessment. Without this level of prescription the application of Investigation Areas by councils throughout NSW risks becoming inconsistent and challenged by both residents and the NSW Land and Environment Court.

In relation to defining Investigation Areas the DoP and DECCW need to provide councils with a methodology for defining Investigation Areas in both coastal and floodplain settings. For coastal areas the SCCG recommends considering the inundation extent of a 1 in 100 year storm event combined with the maximum spring tide level plus the 2100 benchmark as criteria for establishing an Investigation Area. In floodplain locations the SCCG supports the application of investigation areas for lands in the vicinity of waters affected by sea level rise below 4 meters AHD. In both coastal and floodplain locations this, or similar, criteria for Investigation Areas should be applied unless councils have more detailed site specific studies or information.

The strategic planning and development assessment criteria applied to Investigation Areas will also need to be clearly defined and applied consistently throughout NSW. The DoP must provide clear instruction to councils on the following matters related to the application of Investigation Areas:

- Once an Investigation Area has been identified, for how long does this designation last;
- Do the same development assessment criteria apply within an Investigation Area and as areas with completed coastal hazard and flood studies;
- What additional information or studies proponents are required to submit with development applications;
- Are councils able to defer development assessment decisions within Investigation Areas until more detailed information is available;
- What additional provisions and policies will councils require to effectively implement consistent strategic planning and development assessment within Investigation Areas; and
- Through what statutory and non-statutory mechanisms are councils to communicate the designation of Investigation Areas to affected residents?

In the interest of applying the precautionary principle, the same strategic planning and development assessment criteria should apply to Investigation Areas as areas with completed coastal hazard and flood studies. The onus should also be placed on the applicant to undertake more detailed studies if such information does not already exist. This will require councils to have an endorsed policy on the application and communication of Investigation Areas.

To assist in the consistent application of Investigation Areas the SCCG recommends the NSW DoP and DECCW prepare a model NSW Sea Level Rise Investigation Area Policy for councils to adopt. Such a policy would clearly articulate the method used to define the Investigation Areas, any additional planning controls and development assessment criteria to be applied in Investigation Areas as well as the statutory and non-statutory mechanisms through which councils are to communicate the designation of Investigation Areas to residents.

### Informing the Public

Amongst coastal communities there is significant variation between knowledge, understanding and acceptance of risk in relation to sea level rise. Coastal communities need to be accurately and regularly informed of the likely impacts of sea level rise so they can make a meaningful contribution to the development of plans and strategies that make them more resilient to potential impacts. Further, Local councils must be able to disclose information related to the economic, social, cultural and environmental impacts of climate change without fear of challenge and liability.

The Planning Guideline implies that councils will be solely responsible for the delivery of information on sea level rise impacts on coastal communities. Councils, as the closest sphere of Government to the community will play a crucial role in building the resilience of communities to the impacts of sea level rise and climate change. Therefore, it is important that when councils present information to their communities on the impacts of sea level rise and the associated management actions they are not forced to regularly defend the validity of this information.

As a result communication tools for engaging residents about the impacts of sea level rise and climate change vulnerabilities more broadly are required. The central development of tools and strategies by the NSW Government for a wide range of audiences would ensure this is done consistently and appropriately. Consultation with SCCG Member Councils has identified the following list of communication tools and processes that could be delivered by all three spheres of Government in Australia to assist disseminate information about the impacts of climate change including sea level rise.

| <b>Tools or process to be used to inform residents of sea level rise impacts in their LGA.</b>   |   |   |
|--|---|---|
| <b>Councils</b>  | <b>NSW Government</b>   | <b>Australian Government</b>  |
| <ul style="list-style-type: none"> <li>• Section 149(2) and 149(5) certificates</li> <li>• Rate Notices</li> <li>• Development and promotion of the relevant State Government endorsed policies</li> <li>• Engaging led community groups (such as Bushacare and Coastacare)</li> <li>• Collaboration with Surf Life Saving Clubs</li> <li>• Public Meetings</li> <li>• Standard information on council websites</li> </ul> | <ul style="list-style-type: none"> <li>• The development of standard information and fact sheets identifying the impacts of sea level rise with a state and regional context.</li> <li>• State-wide media (radio, print and Television) campaigns.</li> <li>• Standard fact sheets and brochures on the identification and implementation of sea level rise hazard lines.</li> <li>• State-wide sea level rise maps available on the DoP and DECCW websites.</li> <li>• The provision of Emergency response information in relation to the coastal and flood impacts of climate change (via the SES and other emergency response agencies)</li> </ul> | <ul style="list-style-type: none"> <li>• The development of standard information and fact sheets identifying the impacts of sea level rise and a national scale.</li> <li>• Provision of National Risk Assessments</li> <li>• National Education Initiatives (radio, print and Television)</li> </ul> |

**Table 2:** Summary of Tools or process to be used to inform residents of sea level rise impacts in their LGA

The delivery of information through strategies such as rate notices, council meetings and council websites must be assisted through the provision of standard information on sea level rise, the processes for defining and mapping hazard lines as well as management responses from the NSW Government. When this is done councils will be in an improved position to provide consistent and endorsed information on the impacts of sea level rise and the management response being adopted in partnership with the NSW and Commonwealth Governments.

### **3.3 Strategic and Land Use Planning in Coastal Areas - Principles 3 and 4**

#### **Recommendations**

1. The NSW Government and its Agencies must ensure that the strategic planning activities they undertake are consistent with and accommodate the principles and proposed management responses articulated in the Planning Guideline.
2. The DoP review the dwelling and employment targets set in the Metropolitan and subregional strategies in light of the NSW Sea Level Rise Policy Statement and Planning Guidelines.
3. The NSW Coastal Protection Act be amended to require councils to consider the impacts of sea level rise in their regulatory and statutory activities.
4. A standard LEP Coastal Risk Planning Model Clause be developed for councils to use in their LEPs.
5. The NSW Department of Planning inform councils who are in process of or have already finalised their LEPs using the standard instrument how they would be expected to amend their LEPs based on the addition of a model clause and whether such a clause would be mandatory or discretionary.
6. The template LEP be amended to require consent authorities to be satisfied that a development application is consistent with the objectives of the plan and a particular zone or other relevant objectives.
7. A standard Zoning Objective for all zones affected by sea level rise that requires the accommodation of the projected impacts of sea level rise where zones are identified as being subject to coastal risk be developed.
8. NSW Department of Planning in consultation with councils develop model Development Control Plan controls for coastal and flood prone lands affected by sea level rise.
9. The NSW Government work with the relevant engineering and construction industry groups to develop standard Building Guidelines for areas impacted by coastal inundation and sea level rise.

Application of the Planning Guidelines will significantly impact upon the ability of many property owners to improve, develop or redevelop their land. The Planning Guideline and supporting policy framework does not adequately address the repercussions of this issue and the potential need for long term acquisition of properties at risk. The DoP must clearly articulate the types of planning and funding mechanisms councils are to apply in dealing with the long term implications of sea level rise on private property rights.

The potential strategic and land use planning strategies and options available to councils in dealing with sea level rise impacts will vary considerably between highly urbanised coastal environments such as those in Sydney and less developed regional centers. In reference to regional coastal centers or less developed sections of the NSW coast any desire to limit land use or reduce the intensity of existing or proposed development must also be reflected in the relevant Regional Strategies.

A number of regional strategies in NSW, including the Central Coast and Mid North Coast strategies, propose major residential and commercial development in areas that will be affected by sea level rise. Councils in these regions require guidance as to how they are expected to accommodate any proposed increases in residential or commercial development in a safe and strategic manner consistent with the Planning Guideline.

The NSW Government must ensure that its own strategic planning processes are consistent with and accommodate the principles and proposed management responses articulated in the Planning Guideline. Additionally the DoP must review the dwelling and employment targets set in the Metropolitan and subregional strategies in light of the NSW Sea Level Rise Policy Statement and Planning Guidelines.

The Planning Guideline recommends a number of strategies to prohibit development or reduce land use intensity using tools such as amended land use zones, zoning objectives and principle development standards. Each of these strategies are appropriate in undeveloped areas but greater guidance needs to be given to councils with respect to prohibiting development in highly urbanised coastal areas, where existing use rights issues will arise. The discussion and recommendations below will focus on the potential implementation issues of activities that prohibit or reduce existing development and land use intensities in the highly urbanised Sydney coastal region.

### **Prohibiting development in areas subject to immediate coastal risk**

In response to the question, *“If land is subject to immediate coastal risks, should further development in these areas be prohibited?”* (Page 10 Planning Guideline), the SCCG believes that ideally the answer should be yes. However, applying such a principle may prove to be difficult and potentially costly, in terms of community dissatisfaction and legal challenges.

For councils in the Sydney coastal region to start prohibiting development in areas where it has been previously allowed would be inconsistent with the strategic and land use planning applied to other natural hazards in NSW, such as bushfire, as well as the intent of principle 3 of the Sea Level Rise Policy Statement and Planning Guideline to allow development to proceed on a merits based assessment. It could also expose councils to potential litigation based on a perceived loss of existing use rights for owners.

If the intent of the NSW Government is that councils should be prohibiting development within areas subject to immediate coastal risk it must provide councils with a statement or policy advising them that it is NSW Government Policy to prohibit development in areas subject to immediate coastal risk. In the absence of such policy support councils risk considerable legal costs and community resentment if they begin prohibiting development where it was previously allowed.

### **Applying strategies such as amended land use zones, zoning objectives and principle development standards through Local Environment Plans**

Similar to prohibiting development in areas where it was previously allowed reducing land use intensity through strategies such as amended land use zones, zoning objectives and principle development standards has the potential to expose councils to potential litigation based on a perceived loss of existing use rights for owners. Councils with areas affected by sea level rise should be provided with additional legislative tools and support to limit or reduce the impacts of sea level rise on existing or proposed development. These tools must carry the required legislative weight and be applied consistently to reduce the potential for litigation when they are utilised. Such legislative and policy tools or guidance should include:

**An Amendment to the NSW Coastal Protection Act:** The NSW Coastal Protection Act must be amended to require councils to consider the impacts of sea level rise in their regulatory and statutory activities. At present the NSW Coastal Manual makes reference to climate change as one of the eight hazards councils are to consider in the preparation Hazard Definition Studies. However no explicit reference for the need to consider sea level rise impacts presently exists in the *NSW Coastal Protection Act* or NSW Coastal Policy.

**A Coastal Risk Planning Management Clause:** A Draft LEP Coastal Risk Planning Model Clause such as that provided on page 12 of the Planning Guideline should be developed for councils to use in their LEPs to identify coastal risk areas using maps and apply specific development controls to that identified land. Such a clause should also be utilised for areas mapped as Investigation Areas with the same development controls applied.

It is also important that the DoP informs councils who are in process of finalising or have already finalised their LEPs using the standard instrument how they are expected to amend their LEPs based on the addition of the model clause and whether such a clause would be mandatory or discretionary.

**A standard Zoning Objective:** The development of a Model Clause for LEPs should be underpinned by a standard Zoning Objective for all zones affected by sea level rise that requires the accommodation of the projected impacts of sea level rise where zones are identified as being subject to coastal risk. To provide such an objective with the necessary weight clause 12.2 of the template LEP should be amended from:

“the consent authority must have regard to the objectives for development in the zone when determining a development application in respect of land within the zone.”

To:

“the consent authority must be satisfied that a development application is consistent with the objectives of the plan and a particular zone or other relevant objectives which are pertinent to the development, before determining to grant consent.”

This provision of a standard zoning objective combined with proposed amendment to the template LEP would ensure that all councils with land affected by sea level rise are undertaking the necessary assessments to be satisfied that projected impacts of sea level rise are being accommodated in new developments.

**Model Development Control Plan Controls:** The implementation of principle development standards (building and foundation design, appropriate materials, structural requirements for risk areas etc) through model Development Control Plan (DCP) controls for coastal and flood prone lands affected by sea level rise would assist councils in applying the same principle development standards in areas affected by sea level rise.

**Building Guidelines for areas impacted by coastal inundation and sea level rise:**

Standard Guidelines for development delivered through a standard DCP and supported by additions to the Building Code of Australia or amended NSW Coastal Design Guidelines would assist councils to consider and apply the necessary minimum building standards for proposed development in areas impacted by coastal inundation and sea level rise.

Together each of these tools would provide councils with the legislative and policy framework to ensure that strategic planning or development assessment decisions are consistent with the intent of the Planning Guidelines and defensible.

### 3.4 Development Assessment in coastal Areas - Principles 5 and 6

#### Recommendations

1. All NSW Government Departments and Agencies must ensure they apply the stated principles of Sea Level Rise Policy Statement and Planning Guidelines when undertaking development assessment activities for proposals potentially impacted by sea level rise through the *Environmental Planning and Assessment Act* and relevant State Environmental Planning Polices.
2. Development in immediate risk zones should be exempt from the application of State Environmental Planning Policy 1 - Development Standards to reduce the possibility of intensification in these areas
3. The NSW Department of Planning work with councils when the Planning Guidelines are finalised to assess any additional information needs and guidance required by councils in applying the Planning Guideline through the development assessment process.
4. The NSW Department of Planning provide councils with implementation guides, case studies, and model conditions that provide a step by step framework for the application of the Planning Guideline during the development assessment process.
5. The NSW Department Departments of Planning and Environment, Climate Change and Water develop and deliver ongoing capacity building and education programs specifically for strategic planning and development assessment officers of councils to assist a greater understanding of the impacts of sea level rise on built and natural environments.
6. The NSW Department of Planning clarify under what circumstances (information needs, scale or type of development) councils can refer applications to the relevant State Agencies for their advice.
7. The NSW Department of Planning provide councils and proponents with a table of minimum information requirements based on the type of development, scale and location of proposals expected to be impacted by sea level rise.
8. The NSW Department of Planning and Department of Environment, Climate Change and Water provide information on how to select appropriately qualified consultants similar to that provided for the selection of contaminated land consultants.
9. The NSW Department of Planning develop and deliver capacity building and education programs specifically for councils officers responsible for issuing and enforcing approvals and conditions of consent.

Overall, the Planning Guideline implies that much of the responsibility for addressing the impacts of sea level rise on existing or proposed development will rest with councils and appears to rely on Council LEPs to implement planning controls relating to the Sea Level Rise Policy Statement and Planning Guidelines. However Part 3A and Part 5 Assessments under the *Environmental Planning and Assessment Act* don't need to refer to Council LEPs. Additionally, the State Environmental Planning Polices for Development Standards, Infrastructure, Major Development, Affordable Rental Housing and Exempt and Complying Development (incorporating the NSW Housing Code) all allow development without council consent within the coastal zone.

This could effectively intensify development without councils having a role in limiting development in these areas. To address this:

- All NSW Government Departments and Agencies must ensure they apply the stated principles of Sea Level Rise Policy Statement and Planning Guidelines when undertaking development assessment activities for proposals potentially impacted by sea level rise through the *Environmental Planning and Assessment Act* and relevant State Environmental Planning Polices.

- With specific reference to State Environmental Planning Policy 1 - Development Standards. As this Policy (implemented through cl 4.6 in the Standard LEP) allows for development standards to be waived. Development in immediate risk zones should be exempt from the application of State Environmental Planning Policy 1 - Development Standards to reduce the possibility of intensification in these areas.

Principles 5 and 6 aim to minimise the exposure to coastal risks from proposed development in coastal areas as well as implement appropriate management responses and adaptation strategies, with consideration for the environmental, social and economic impacts. The practical implementation of both these principles by councils will require a strengthened legislative framework (discussed above) as well as increased support and liaison from the DoP in the implementation of the development assessment components of the Planning Guideline.

The Planning Guideline articulates planning criteria and development application information (type of proposed development, likely implications as well as management responses or adaptation strategies that will be adopted to address the planning criteria) requirements for both development applicants and councils to address when preparing or assessing development applications. The SCCG supports the planning criteria and development application information requirements articulated in the Planning Guideline. With specific reference to part 3 of the Draft LEP Coastal Risk Planning Model Clause the NSW Department of Planning must provide standard benchmarks for councils to apply so that they can feel confident that all development applications meet the objectives of part 3.

Consideration must be given to the issues or potential limitations with councils having to consider these additional criteria or assess this volume of information when reviewing development applications. These issues or potential limitations include:

#### **Relevant expertise and experience**

Many strategic planners and development assessment officers have limited or no knowledge of coastal geomorphology and or coastal processes. Therefore the relevant expertise and experience of councils to meaningfully apply the planning criteria or assess the information provided with development assessment is limited. To address this, the SCCG recommends:

- The DoP work with councils when the Planning Guidelines are finalised to assess any additional information needs and guidance required by councils in applying the Planning Guideline through the development assessment process;
- The DoP provide councils with implementation guides, case studies, and model conditions that provide a step by step framework for the application of the Planning Guideline during the development assessment process; and
- The DoP and DECCW develop and deliver capacity building and education programs specifically for strategic planning and development assessment officers of councils to assist a greater understanding of the impacts of sea level rise on built and natural environments.

#### **Provision of State Agency advice**

Assessment of development applications for proposals affected by sea level rise will be a complex and timely process. Figure 3 on Page 14 of the Planning Guideline suggests that councils may be able to seek advice on particular applications from State Agencies. The SCCG request that the DoP clarify under what circumstances (information needs, scale or type of development) councils can refer applications to the relevant State Agencies for their advice.

#### **Quality of Development Applications and Consultancy Reports**

Page 17 of the Planning Guideline notes that “*depending on the proposed location of the development in relation to coastal risk areas further detail assessment may be required*” and

provides figures 4 and 5 as guides. Additionally, page 19 of the Planning Guideline states that “*applications for development will need to demonstrate how the proposed development will be designed and managed to achieve safety, planning and environmental performance outcomes*”. Ultimately, the capacity of a council to make a merit based assessment will depend heavily on the level and quality of information provided with the development application.

Based on the complexity of the matters to be assessed and level of information required it is expected that the quality of development applications and supporting consultancy reports will vary considerably. To assist in setting minimum standards for the quality and level of information provided during the development application phase the SCCG recommends the DoP provide councils and proponents with details of minimum information requirements based on the type of development, scale and location for proposals expected to be impacted by sea level rise.

The selection of an appropriately qualified consultant to provide the necessary information during the development application phase will be crucial to councils receiving information of an appropriate quality and quantity. Sites affected by sea level rise present a wide range of issues that require a specific technical expertise. There are also considerable social, economic and legal implications if site assessments do not meet the appropriate standards. As poor quality reports will result in further work to reach the required standard at an additional cost to the proponent and ultimately delay the processing of applications the SCCG recommends the DoP and DECCW provide information on how to select appropriately qualified consultants similar to that provided for the selection of contaminated land consultants.

### **Enforcement and Compliance**

Enforcement and compliance with approvals and conditions of consent will also be a difficult issue for councils to address. The enforcement of conditions of consent and compliance with minimum building standards will require a high technical knowledge of coastal geomorphology and processes. To assist with this the SCCG recommends the DoP and DECCW develop and deliver capacity building and education programs specifically for councils officers responsible for issuing and enforcing approvals and conditions of consent.

Meaningfully addressing these issues will need to go beyond the provision of limited financial assistance or short courses for council planners and DA officers. It will require a long-term collaborative capacity building and improved governance arrangements. In the short-term the State Government needs to consider strategies such as temporary secondments of State Government staff to councils struggling to implement the Risk Guides and Planning Guideline. Work must also be undertaken with professional bodies such as the Planning Institute to increase the professional skills of their members to consider coastal management and climate change issues within the NSW planning framework.

In summary, the SCCG supports the intent of the Planning Guideline provides. The capacity of councils to apply and enforce the intent of Planning Guideline must be closely monitored by the DoP, and potentially a re-established Coastal Council of NSW, following the finalisation of the Planning Guideline. The provision of decision support tools such as implementation guides, model conditions and minimum information requirements combined with the delivery of capacity building programs for development assessment and building compliance offers will significantly increase the successful implementation of the Planning Guideline.

## Chapter 4: Conclusion

In conclusion the SCCG looks forward to seeing responses to the issues and recommendations raised in this submission and is eager to facilitate ongoing consultation processes with the NSW Government. Meaningful implementation of both the Risk Guides and Planning Guideline will require enhanced partnerships and provision of strong direction that ensures all spheres of Government invest wisely to address the ongoing issues associated with climate change. Below are concluding comments specific to the Risk Guides and the Planning Guideline.

### **Risk Management Guides**

For many councils, mapping hazard lines that take sea level rise into account is a new activity. Therefore, The NSW Government must work with councils to ensure this process is as seamless and timely as possible. Overall, the SCCG believes that the provision of a statewide digital elevation model, ongoing technical guidance, training and capacity building programs from DECCW, the development of standard consultancy briefs for the application of both Risk Guides combined with the availability of supporting funding for the review of the hazard lines would ensure that the Risk Guides are applied consistently and the maps produced comparable across and between councils in NSW. The SCCG looks forward to consulting and working with the DECCW on the delivery and implementation of the Risk Guides.

### **Draft NSW Coastal Planning Guideline**

Coastal Councils and the NSW Government face a number of significant challenges in implementing the Planning Guideline. It is also acknowledged that this will be a long and ongoing process requiring significant investment from all levels of Government. The recommendations outlined throughout the submission aim to assist overcoming these challenges.

The aim of the Planning Guideline is to promote appropriate development in coastal areas through the merit assessment of proposals based on social, economic and environmental factors. For this to be achieved in a consistent and defensible manner requires:

- The provision of consistent and endorsed information on the impacts of sea level rise and the strategies used to build the resilience of coastal communities to climate change;
- A robust and legislative framework to ensure that strategic planning or development assessment decisions consistent with the intent of the Planning Guidelines defensible; and
- The provision of decision support tools such as implementation guides, model conditions and minimum information requirements combined with the delivery of capacity building programs for development assessment and building compliance offers.

## Appendix I

### Recommendations

#### General Comments and Overarching Issues

1. The NSW Coastal Zone be amended to include the tidal reaches of Sydney Harbour, Botany Bay and the Hawkesbury River.
2. The coastal risks as detailed in the Planning Guideline be expanded to include the eight coastal process as identified in the NSW Coastal Manual.
3. The NSW Government clarify if Councils will have to undertake different actions or meet differing levels of criteria to qualify for indemnification under section 733 of the Local Government Act for both coastal and flood risks.
4. The NSW Government withdraw its policy position that protection works may be proposed on private foreshore land on a site by site basis until further information on the mechanisms for its implementation are provided and its merits discussed with coastal councils.
5. The NSW Sea Level Rise Policy Statement reiterates the intent and provisions of the NSW Coastal Policy and SEPP 71 to ensure the maintenance and enhancement of coastal access and recognition of the values of beaches.
6. The NSW Government work with all stakeholders to identify and prioritise management actions that protect and enhance existing coastal and shoreline values and services of the NSW coastline from the impacts of sea level rise.
7. Through the NSW Climate Action Plan, DECC take responsibility for developing and implementing a framework and investment program that prioritises the necessary research and identification of risk management responses to build the resilience of intertidal biodiversity in NSW to climate change.
8. The NSW Government work with all stakeholders to identify and prioritise management actions that protect the existing intertidal biodiversity values of coastal environment in NSW from the impacts of sea level rise.
9. The NSW Government work with councils to investigate opportunities for strengthening existing legislation and regulation in order to protect vulnerable threatened species, populations and communities impacted by sea level rise.
10. The Coastal Council of New South Wales to re-established to assist with implementation of the Risk Management Guides and Planning Guideline as well as the legislative amendments associated with the ongoing reform of coastal management, policy and practice in NSW

#### Risk Management Guides

11. The NSW Minister for the Environment direct all councils with lands potentially affected by sea level rise to undertake the necessary studies and prepare hazard lines.
12. NSW Government work in partnership with Local Government and other coastal land managers in the development of an appropriately scaled statewide Digital Elevation Model available to all spheres of government for the coastal zone and near-shore environments.
13. The NSW Government guarantee increased funding to the coastline, estuary and floodplain management programs to address sea level rise to provide councils with the necessary technical guidance, training and capacity building to ensure the Risk Guides are implemented appropriately and consistently throughout NSW.

14. The NSW Department of Environment, Climate Change and Water provide councils with standard consultancy briefs, specifying minimum standards and information needs, so all sea level rise maps are prepared and hazards lines defined using the same information and consider the same variables.
15. Councils be instructed to map immediate, 2050 and 2100 hazard lines that take into account sea level rise.
16. The NSW Government considers the following staged process for the review and application of the NSW sea level rise benchmarks.
  1. Within 12 months of the release of IPCC Assessment Reports (every seven years) the NSW Government retain or redefine the NSW sea level rise benchmarks;
  2. Councils be instructed, via Ministerial Direction, to review their hazard lines in the 12 months following any changes to the benchmarks; and
  3. Additional, 'pulse' funding be made available to councils during these years to allow for the review and realignment of hazard lines.

## **Draft NSW Coastal Planning Guideline**

### **Identifying Coastal Risk Areas - Principles 1 and 2**

17. The NSW Department of Planning must provide clear instruction to councils on the following matters related to the application of Investigation Areas:
  - Once an Investigation Area has been identified, for how long does this designation last;
  - Do the same development assessment criteria apply within an Investigation Area as areas with completed coastal hazard and flood studies;
  - What additional information or studies proponents are required to submit with development applications;
  - Are councils able to defer development assessment decisions within Investigation Areas until more detailed information is available;
  - What additional provisions and policies will councils require to effectively implement consistent strategic planning and development assessment within Investigation Areas; and
  - Through what statutory and non-statutory mechanisms are councils to communicate the designation of Investigation Areas to affected residents?
18. The NSW Department of Planning prepare a model NSW Sea Level Rise Investigation Area Policy for councils to adopt that clearly articulates the method used to define the Investigation Areas, any additional planning controls and development assessment criteria to be applied in Investigation Areas as well as the statutory and non-statutory mechanisms through which councils are to communicate the designation of Investigation Areas to affected residents.
19. The NSW Government provide councils and coastal communities with standard information on sea level rise, the processes for defining and mapping hazard lines as well as management responses from the NSW Government.

### **Strategic and Land Use Planning in Coastal Areas - Principles 3 and 4**

20. The NSW Government and its Agencies must ensure that the strategic planning activities they undertake are consistent with and accommodate the principles and proposed management responses articulated in the Planning Guideline.
21. The DoP review the dwelling and employment targets set in the Metropolitan and subregional strategies in light of the NSW Sea Level Rise Policy Statement and Planning Guidelines.

22. The NSW Coastal Protection Act be amended to require councils to consider the impacts of sea level rise there regulatory and statutory activities.
23. A standard LEP Coastal Risk Planning Model Clause be developed for councils to use in their LEPs.
24. NSW Department of Planning inform councils who are in process of or have already finalised their LEPs using the standard instrument how they would be expected to amend their LEPs based on the addition of a model clause and whether such a clause would be mandatory or discretionary.
25. The template LEP be amended to require consent authorities to be satisfied that a development application is consistent with the objectives of the plan and a particular zone or other relevant objectives.
26. A standard Zoning Objective for all zones affected by sea level rise that requires the accommodation of the projected impacts of sea level rise where zones are identified as being subject to coastal risk be developed.
27. NSW Department of Planning in consultation with councils develop model Development Control Plan controls for coastal and flood prone lands affected by sea level rise.
28. The NSW Government work with the relevant engineering and construction industry groups to develop standard Building Guidelines for areas impacted by coastal inundation and sea level rise.

### **Development Assessment in coastal Areas - Principles 5 and 6**

29. All NSW Government Departments and Agencies must ensure they apply the stated principles of Sea Level Rise Policy Statement and Planning Guidelines when undertaking development assessment activities for proposals potentially impacted by sea level rise through the *Environmental Planning and Assessment Act* and relevant State Environmental Planning Polices.
30. Development in immediate risk zones should be exempt from the application of State Environmental Planning Policy 1 - Development Standards to reduce the possibility of intensification in these areas
31. The NSW Department of Planning work with councils when the Planning Guidelines are finalised to assess any additional information needs and guidance required by councils in applying the Planning Guideline through the development assessment process;
32. The NSW Department of Planning provide councils with implementation guides, case studies, and model conditions that provide a step by step framework for the application of the Planning Guideline during the development assessment process; and
33. NSW Department Departments of Planning and Environment, Climate Change and Water develop and deliver ongoing capacity building and education programs specifically for strategic planning and development assessment officers of councils to assist a greater understanding of the impacts of sea level rise on built and natural environments.
34. The NSW Department of Planning clarify under what circumstances (information needs, scale or type of development) councils can refer applications to the relevant State Agencies for their advice.
35. The NSW Department of Planning provide councils and proponents with a table of minimum information requirements based on the type of development, scale and location of proposals expected to be impacted by sea level rise.

36. The NSW Department of Planning and Department of Environment, Climate Change and Water provide information on how to select appropriately qualified consultants similar to that provided for the selection of contaminated land consultants.
37. The NSW Department of Planning develop and deliver capacity building and education programs specifically for councils officers responsible for issuing and enforcing approvals and conditions of consent.

## Appendix II

Please Note: the text in the answers for the consultation questions below has been taken from Chapter 3 of the submission. For more detailed discussion of the issues addressed in each consultation question please refer to Chapter 3.

### Consultation Questions on the Draft NSW Coastal Planning Guideline

**1. In the absence of completed coastal hazard and flood studies which take the NSW sea level rise planning benchmarks into consideration, should councils be able to use investigation areas for planning or development assessment purposes?**

Yes, in the absence of completed coastal hazard and flood studies which take the NSW sea level rise planning benchmarks into consideration, councils should be able to use investigation areas for planning or development assessment purposes. Additionally, an onus should be placed on the applicant to undertake more details studies in the absence of the necessary information already existing.

For Investigation Areas to be applied appropriately and consistently requires prescriptive advice on the mapping methodology and mechanisms for the integration with strategic planning and development assessment. Without this level of prescription the application of Investigation Areas by councils throughout NSW risks becoming inconsistent. With the result being a lack of understanding and due regard for Investigation Areas by residents and development applicants.

**2. Should the NSW Government propose a set measure incorporating the sea level rise planning benchmarks for identifying investigation areas across the State?**

In relation to defining Investigation Areas the NSW Department of Planning and the Department of Environment Climate Change and Water must provide councils with a methodology for defining Investigation Areas in both coastal and floodplain settings.

The SCCG believes that in the interest of applying the precautionary principle, the same strategic planning and development assessment criteria should apply to Investigation Areas as areas with completed coastal hazard and flood studies. This will require councils to have a council resolution or endorsed policy on the application and communication of Investigation Areas.

To assist in the consistent application of Investigation Areas the SCCG recommends the NSW Department of Planning prepare a model NSW Sea Level Rise Investigation Area Policy for councils to adopt that clearly articulates the method used to define the Investigation Areas, any additional planning controls and development assessment criteria to be applied in Investigation Areas as well as the statutory and non-statutory mechanisms through which councils are to communicate the designation of Investigation Areas to affected residents.

**3. Should council rate notices or other mechanisms be used to advise or remind landowners if their properties are located in coastal risk areas?**

The delivery of information through strategies such as rate notices, council meetings and council websites must be assisted through the provision of standard information on sea level rise, the processes for defining and mapping hazard lines as well as management responses from the NSW Government. When this is done councils will be in a position to provide consistent and endorsed information on the impacts of sea level rise and the management response being adopted in partnership with the NSW Government.

#### **4. If land is subject to immediate coastal risks, should further development in these areas be prohibited?**

The SCCG believes that ideally the answer should be yes. However, applying such a principle may prove to be difficult and potentially costly to coastal councils. For councils in the Sydney coastal region to start prohibiting development in areas where it has been previously allowed would be inconsistent with the strategic and land use planning applied to other natural hazards in NSW, such as bushfire, and expose councils to potential litigation based on a perceived loss of existing use rights for owners.

If the intent of the NSW Department of Planning is that councils should be prohibiting development within areas subject to immediate coastal risk it must provide councils with a statement or policy advising councils that it is NSW Government Policy to prohibit development in areas subject to immediate coastal risk. In the absence of such legislative and policy support

#### **5. How should consideration be given to potential coastal risk areas when zoning land in LEPs? i.e. areas that may be at risk in the future due to sea level rise and other climate change parameters.**

Similar to prohibiting development in areas where it was previously allowed, reducing land use intensity through strategies such as amended land use zones, zoning objectives and principle development standards has the potential to expose councils to potential litigation based on a perceived loss of existing use rights for owners. Councils with areas affected by sea level rise should be provided with additional legislative tools and support to limit or reduce the impacts of sea level rise on existing or proposed development. These tools must carry the required legislative weight and be applied consistently to reduce to potential for litigation when they are utilised. Such legislative and policy tools or guidance should include:

- An Amendment to the NSW Coastal Protection Act
- A Coastal Risk Planning Management Clause
- A standard Zoning Objective
- A Model Development Control Plan
- Building Planning Guidelines for areas impacted by coastal inundation and sea level rise

(For more detail on each of these please see Chapter 3 of the submission)

#### **6. Should a model clause be developed for councils to use in LEPs to identify coastal risk areas using maps and to apply specific development controls to that identified land?**

A Draft LEP Coastal Risk Planning Model Clause such as that provided on page 12 of the Planning Guideline should be developed for councils to use in their LEPs to identify coastal risk areas using maps and apply specific development controls to that identified land. Such a clause should also be utilised for areas mapped as Investigation Areas with the same development controls applied.

With specific reference to part 3 of the clause the NSW Department of Planning must provide standard benchmarks for councils to apply so that they can feel confident that all development applications meet the objectives of part 3. It is also important that the NSW Department of Planning informs councils who are in process of or have already finalised their LEPs using the standard instrument how they would be expected to amend their LEPs based on the addition of a model clause and whether such a clause would be mandatory or discretionary.

The NSW Department of Planning needs to give further consideration planning provisions delivered through LEPs are consistent and considered in conjunction with other State and Federal policies, plans and directions to ensure there isn't any unnecessary duplication.

**7. Should a similar provision be incorporated directly into SEPP 71 – Coastal Protection to apply to development in the NSW Coastal Zone?**

A provision for the identification of coastal risk areas using maps and to apply specific development controls to that identified land should be incorporated into SEPP 71 – *Coastal Protection*. However, the incorporation of such a provision should not result in unnecessary duplication of controls.

One of the benefits of such a provision in SEPP 71 is that it would ensure consistent application of the Planning Guideline by all spheres of Government in the NSW Coastal Zone and place a requirement on all NSW Government Departments and Agencies to act in accordance with the *NSW Sea Level Rise Policy Statement* and *Draft NSW Coastal Planning Guideline*. The NSW Department of Planning must give consideration to the instruments (including part 3A of the *Environmental Planning and Assessment Act* as well as the State Environmental Planning Policies for Development Standards, Infrastructure, Major Development, Affordable Rental Housing and Exempt and Complying Development that currently override SEPP 71 to ensure all NSW Environmental Planning Instruments are consistent in their requirement that consent authorities and proponents identify coastal risk areas using maps and to apply specific development controls to that identified land.

**8. Should consideration be given to expanding the application of any coastal risk clause in SEPP 71 to also apply more broadly to the Sydney coastal region?**

It is important that the NSW Coastal Protection Act and corresponding Management framework apply equally to all coastal areas of NSW affected by sea level rise and associated coastal processes. Therefore the SCCG recommends that the NSW Coastal Zone be amended to include Sydney Harbour, Botany Bay and the tidal reaches of the Hawkesbury River.

**9. If a relevant coastal hazard or flood study has not been completed or council has not identified an investigation area, should applicants be required to undertake their own coastal risk assessment as part of the DA requirements?**

In the absence of a relevant coastal hazard definitions study or the designation of an investigation area applicants should be required to undertake their own coastal risk assessment as part of the DA requirements. Councils already have the power to request the production of such reports.

Based on the complexity of the matters to be assessed and level of information required it is expected that the quality of development applications and supporting consultancy reports will vary considerably. The selection of an appropriately qualified consultant to provide the necessary information during the development application phase will be crucial to councils receiving information of an appropriate quality and quantity. As poor quality reports will result in further work to reach the required standard at an additional cost to the proponent and ultimately delay the processing of applications the SCCG recommends the NSW Department of Planning and the Department of Environment, Climate Change and Water provide information on how to select appropriately qualified consultants similar to that provided for the selection of contaminated land consultants.

**10. Should this requirement only be restricted to large-scale or medium to high risk coastal developments?** The requirement to have an independent coastal risk assessment undertaken in the absence of a relevant coastal hazard definitions study or the designation of an investigation should be applied to all development proposals likely to be affected by sea level rise. To assist in setting minimum standards for the quality and level of information provided during the development application phase the SCCG recommends the NSW Department of Planning provide councils and proponents with a table of minimum information requirements based on the type of development, scale and location of proposals expected to be impacted by sea level rise.

**11. Should new development be prevented in coastal risk areas that are already subject to coastal risks (as identified by an immediate hazard line)?** As noted for question 4, the SCCG believes that ideally the answer should be yes. However, applying such a principle may prove to be difficult and potentially costly to coastal councils. The potential strategic and land use planning strategies and tools available to councils will vary considerably between highly urbanised coastal environments such as those in Sydney and less developed coastal centers. In reference to coastal regional centers or less developed sections of the NSW Coastal Zone any desire to limit land use or reduce the intensity of existing or proposed development must be reflected in the regional strategies.

A number of regional strategies in NSW, including the Central Coast and Mid North Coast strategies, propose major residential and commercial development in areas that will be affected by sea level rise. Councils in these regions require guidance as to how they are expected to accommodate any proposed increases in residential or commercial in a safe and strategic manner consistent with the Planning Guidelines. Additionally, The NSW Government must ensure that its own strategic planning process is consistent with and accommodates the principles and proposed management responses articulated in the Planning Guideline.

The Planning Guideline recommends a number of strategies to prohibit development or reduce land use intensity using tools such as amended land use zones, zoning objectives and principle development standards. For these to be applied by councils will require the NSW Sea Level Rise Policy Statement to state that it in NSW Government Policy that new development be prevented in coastal risk areas that are already subject to coastal risks, as identified by an immediate hazard line.