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25 October 2010

GW049-10

Executive Officer
Waters, Wetlands and Coast Division
DECCW
PO Box A290
Sydney South NSW 1232

Dear Executive Officer,

Re: SCCG Submission:

- “Draft Guidelines for preparing Coastal Zone Management Plans”,
- “Draft Guide for Authorised officers under the Coastal Protection Act 1979” and
- “Draft Guide to the statutory requirements for emergency coastal protection works”

INTRODUCTION

The Sydney Coastal Councils Group (SCCG) would like to take this opportunity to provide initial comment on the:

- “Draft Guidelines for preparing Coastal Zone Management Plans”,
- “Draft Guide for Authorised officers under the Coastal Protection Act 1979” and
- “Draft Guide to the statutory requirements for emergency coastal protection works”

The SCCG thanks the Minister for the opportunity to comment on these guidelines. We further thank the Executive Officer for agreeing to accept our late submissions.

In reviewing the Draft guidelines the SCCG continues to have some difficulty in assessing how the overall reform process may work; given the complexity of the issues; the less than desirable consultation process; the fluid nature of the reforms generally and the fact that key supporting guidelines are not finalised and available for our consideration (and some remain to be prepared as drafts). It is our continuing position that the proposed coastal reform package and legislative amendments, of which the guidelines form an integral part, would have been better presented for consultation and comment as a single package rather than in steps as is currently occurring.

Please also note that at the SCCG Technical Committee held on 14 October it was unanimously resolved that ‘the Group write to the Department of Environment and Climate Change and Water DECCW noting that the consultation process for the NSW Coastal Reforms was inappropriate and not allowing meaningful contribution from Councils. Please find attached a letter recently forwarded to the Director General outlining these concerns.

In the preparation of this submission the SCCG has engaged an experienced coastal engineering expert and has also sought advice, comment and input from SCCG Member Councils. As part of the SCCG response to the coastal reform process the SCCG in partnership with the LGSA has also sought legal advice on the Draft Bill. Please note this has now been provided to the Minister, the Department, all SCCG Member Councils and all members of the NSW Parliament for consideration.

Specific comments and recommendations have also been made by SCCG Member Councils in submissions to the (DECCW). The SCCG supports the comments and recommendations made by Member Councils however these will not be specifically addressed in this submission.

In addressing the three documents, the SCCG initially commenced writing a detailed review. However, this resulted in attempting to rewrite the documents and is considered counterproductive. Alternatively, the SCCG has now provided general comments on each document and then specifically addressed the questions raised by DECCW for comment in the boxed sections of their draft addressing key concerns. We acknowledge that there was no consultation questions contained within the "Draft Guide to the statutory requirements for emergency coastal protection works".

The SCCG notes that the three documents together total approximately 170 pages, much of the content of which is technical and needs to be cross checked against the existing and new legislation and manuals. Further, the supporting guidelines which appear on the DECCW web site are removed and/or amended without notice, making the ongoing review difficult and extremely resource intensive.

1. Draft Guidelines for preparing Coastal Zone Management Plans

1.1 General Comments

The NSW Government proposes to replace the existing Coastline Management Manual and Estuary Management Manual with this single guideline. This proposal will replace a 20 year old coastal management process that is well respected and has developed a real partnership approach between State Government and Councils in managing and protecting the coast for all NSW residents.

The existing manual was well thought out and presented a clear, logical and well understood process leading to the preparation of a coastal or estuary management plan (now Coastal Zone Management Plan). The fundamental principle underpinning those manuals was the need for understanding of the behaviour of the natural system, prior to implementing management measures. This risk based methodology has been recognised and adopted by other jurisdictions within Australia and internationally. The longevity of the documents is testimony to their acceptance by the community and by Local Government, resulting in the preparation of coastal zone management plans covering most of the open coast of NSW and the adjacent estuaries. **N.B.** DECCW Annual Report 08-09 – 'total 81 Coastal Zone Management Plans completed by Councils in partnership with State Government'.

The SCCG recognises the need to update these documents and in particular to provide a cohesive single manual that coordinates the management of coasts and estuaries through comprehensive coastal zone management plans that accord with the currently recognised principles of Integrated Coastal Zone Management. Changes in coastal understanding, previous revisions of the legislation and redefinition of the extent of the coastal zone to incorporate the Sydney metropolitan coast and now the foreshores of Botany Bay, Sydney Harbour and Broken Bay, warrant significant revision of those manuals. That revision has been eagerly anticipated by Local Government and promised by the NSW Government for many years.

The draft guideline as prepared for comment is in need of significant further work before it could fulfill those objectives and replace the current manuals.

The draft document is restricted in its focus with the primary stated objectives "to document practical actions to address risks from coastal hazards and risks to the health of estuaries". This represents a significant narrowing of the focus of coastal management in NSW that is of concern to our Member Councils. No longer is the NSW Government position one of balancing the ecological value, recreational amenity and private occupation and commercial reality of coastal areas. Under the new

guideline, recreational and ecological issues relating to the coastal areas are not even considered, other than in the context of hazard reduction. Similarly, ecological health is the only issue to be addressed within the estuaries. This is surprising and significantly limits the usefulness of the proposed draft guideline. It is generally recognized internationally that existing development and services concentrated along estuary foreshores face one of the greatest potential threats from climate change and sea level rise.

Amendments to the Coastal Protection Act (CPAct) introduced in 2004 and consistent with the NSW Comprehensive Coastal Assessment undertaken at that time reinforced recognition of the beach and the right of the community to access and use of the NSW coastal foreshores. The SCCG notes that the draft guideline now recognises coastal access and amenity, including both estuary and ocean foreshores as a “secondary consideration”. This is at direct odds with the NSW Coastal Policy (1997) which states “The objective of the policy is to protect and conserve the coast for future generations.” We also note objective 7 of that Coastal Policy which is “To provide for appropriate public access and use”. Winding back the scope of coastal zone management plans so that they mainly address coastal hazards and estuarine health (rather than the ecologically sustainable development of the coastal zone) is of significant concern and inconsistent with other jurisdictions nationally and internationally. It is seen by the SCCG as a retrograde step for coastal zone management in NSW.

While we appreciate the current guide is a draft, it is clearly disjointed and would appear to have been hastily assembled by a range of authors. The document is in need of a thorough technical review to improve its readability and to bring some consistency to the various sections. It contains inconsistencies and errors. As it stands it does not provide a clear and coherent pathway for Local Government to follow in developing and implementing coastal zone management across NSW.

Recommendation:

The SCCG strongly recommends that in addition to the present consultation process that DECCW commission an independent technical review of these guidelines particularly the “Draft Guidelines for preparing Coastal Zone Management Plans”. This should also be supported by an independent review being undertaken by the Coastal Panel (to be established via the recently passed Coastal Protection and other Legislation Amendment Bill).

1.2 Directed Questions for the consultation draft

Section 1.6 Coastal management principles. Page 14. “*These principles are intended to both guide coastal zone management planning and decision-making as well as enhance the statutory exemptions from liability under s.733 of the Local Government Act 1993. Are these principles appropriate for these purposes? If not, what changes should be made?*”

The question put in the draft document relates to the appropriateness of the four management principles identified. The principles set out are appropriate as they comprise a set of ideals/objectives/outcomes assembled with good intent, however, effective implementation of these principles is the key.

They broadly reflect the objectives incorporated in the current CPAct, the NSW Coastal Policy and the integrated, risk based approach included in the current manuals. However, the subsections rephrasing these principles to reflect coastal hazard management in coastal areas only and estuarine health issues in estuaries only, significantly narrows the focus and emphasis in the current draft.

The principles are also broadly consistent with those defined in the recently adopted SCCG Strategic Plan 2010 – 2014 (*with the key exception of SCCG principle (iv)*):

- i. Protection of the environment and cultural values.
- ii. Integrated planning and decision making.
- iii. Sustainable use of natural coastal resources.
- iv. Appropriate and meaningful public participation.

see: <http://www.sydneycostalouncils.com.au/documents/SCCGSTRATEGICPLAN2010-2014.pdf>

There is little recognition in these draft principles of the connection between the catchment, foreshore and near shore processes and activities which are strongly interlinked. This is the fundamental principle, underpinning Integrated Coastal Zone Management. For example the issues relating to biodiversity in open coast areas, habitat and dune rehabilitation, public access and beach amenity are no longer priorities.

The SCCG also notes concern that the principles provide no recognition of the necessity for appropriate and inclusive consultation and engagement processes in the preparation then implementation of any Coastal Zone Management Plans. Provision of relevant risk information although very important will simply be inadequate if the State in partnership with Councils wish to identify and then implement suitable local and regional solutions to the many pressures and opportunities facing the coastal zone of NSW (see comments below in 2.1 for more information).

Recommended that:

- 1) Issues relating to biodiversity in open coast area, habitat and dune rehabilitation, public access and beach amenity be incorporated as key priorities under the new NSW coastal management principles.
- 2) Inclusive and comprehensive community consultation and engagement be included as a key priority under the new NSW coastal management principles.

Questions relating to foreshore protection, and oceanic inundation, navigation and usage are also not mentioned. Presumably, it is assumed that these issues will be addressed elsewhere (through floodplain management plans, catchment action plans or crown plans of management for public reserves). This has not been the case to date. These issues represent some of the most pressing aspects of climate change adaptation for coastal NSW and pose significant risks and liabilities if not addressed.

The draft guide lacks specificity and provides limited guidance to Councils as to how they can be applied to enhance statutory exemption from liabilities. For example, to state that “decisions should be made in good faith and be reasonable” is completely inadequate. Similarly that “Planning processes should be transparent and inclusive” is open to subjective interpretation and of limited assistance. Similar comments apply to each of the principles as currently presented.

Section 2.1 Minimum Requirements for CZM Plans (preparing Plans) Page 14. “These minimum requirements are intended to define the minimum requirements to be met in preparing a coastal zone management plan and general requirements for all plans. Are these requirements appropriate for these purposes? If not, what changes should be made?”

The question for consideration relates to the appropriateness of the minimum requirements for preparation of coastal zone management plans. These considerations are appropriate and supported and they broadly encompass the stages in the current coastal zone management planning process in NSW. However the level of detail provided as to how each of these steps is to be undertaken is inadequate.

For example “proposed monitoring and reporting on plan implementation and a timetable for the plan’s review” is broad and almost meaningless. It is not clear whether the monitoring relates to the plan effectiveness or merely progress with its implementation. There is no discussion of KPIs to evaluate the plan against objectives. The timetable for review is largely irrelevant as it is already mandated that the plans must be reviewed every ten years. Such sweeping direction is of little assistance to Councils. Similar comment applies to each of the other dot points listed.

The language used is non-specific and provides little assurance to Council or the consultants engaged in the planning process (eg. “as soon as practical”, “take all reasonable steps”, “to a level of detail necessary” etc.). It is further recommended that DECCW provide councils with a series of model consultant tender briefs for the provision of coastal / estuarine process and hazard definition studies, coastal zone management plan preparations and their associated emergency management plans.

The SCCG is further concerned regarding the section 2.2.2 of the guideline. The SCCG believe that the consultation and engagement processes for the preparation of the Coastal Zone Management plans is the key factor in determining any potential implementation success of resultant actions and activities. The tried and tested procedure of establishing a specific Coastal Management Committee as outline in the existing manual should be supported, continued and further resourced. This process can then be supported by facilitating reference panels, undertaking community focus groups and provision of regular broader community based information updates. It is also recommended that DECCW needs to ensure that appropriate technical advice and representation to these Coastal Management Committees is also retained and in some regions enhanced.

Recommended that DECCW:

- 1) Establish monitoring and reporting criteria and example KPIs to be used to monitor implementation and success of new plans
- 2) Provide a series of model consultant tender briefs for the provision of coastal / estuarine process and hazard definition studies, coastal zone management plan preparations and their associated emergency management plans.
- 3) Continue to support, and further resource the tried and tested establishment and facilitation of specific Coastal Management Committees as outline in the existing manual and to retain and enhance relevant DECCW technical representations.

Section 3.1 Minimum requirements for CZM Plans (risks). Page 25 “Will these minimum requirements for the coastal hazard component of a coastal zone management plan adequately inform risk assessment and management under the plan? If not, what changes should be made?”.

The factors listed are again non- specific. For example “to a level of detail sufficient to inform decision making” is subjective and provides little guidance to Local Government in engaging consultants and in-turn preparing the plan.

The description of the coastal hazards is only related to risk to development. None of the requirements consider issues relating to ecological, social, economic, heritage, recreational or foreshore access values. There is no apparent linkage between the coast and the estuaries in the process of planning for hazards.

The mandatory requirement to include “provisions allowing landowners to construct coastal protection works” is ill conceived and may limit the available management strategies being considered. It may also be poor planning and the wrong decision in many locations. We believe this will result in an increase in litigation. (See: SCCG / LGSA legal advice (Part 1 and Part 2) provided by HWL Ebsworth lawyers – as previously provided to the DECCW and the Minister for the Environment.)

Recommended that the descriptions of ‘Minimum requirements for coastal zone management plans (section 3.1) must include coastal issues and values including: ecological, social, economic, heritage, recreation, and foreshore access.

Section 4 Coastal processes and hazards. Page 33 *“The definition of coastal hazard areas is an important component of the risk management process, particularly in relation to land-use planning and development assessment. Are the descriptions of these areas and their definitions appropriate for these purposes? If not, what changes should be made?”*

The areas identified (current, 2050 and 2100) are indicative and consistent with the approach that has been applied to coastal hazard definition in NSW for the past 20 years. The changes to the long accepted terminology may result in some initial confusion. The inundation hazard is correctly to be presented separately from the erosion mapping. However, it needs to be clarified that the inundation mapping also needs to be done for each time step (current, 2050 and 2100).

Recommended that inundation mapping (including wave run up) also needs to be done for each time step (current, 2050 and 2100).

Section 4.3.2 The current (study year) hazard area. Page 36. *“The calculation of the storm bite is important for defining the extent of the area subject to this hazard. Is the guidance on calculating the storm bite appropriate? If not, what changes should be made?”*

The general definition of the storm bite is appropriate. The procedures for calculating storm bite in NSW are long established and well presented in the literature and known to practitioners. They are site specific. The discussion presented in this section is somewhat confusing and does not significantly add to that current understanding (see Appendix C.2 of the NSW Coastline Management Manual).

Section 4.3.3 Coastal hazard zones for 2050 and 2100 planning horizons. Page 40. *“There is a significant degree of uncertainty associated with estimating the response of unconsolidated shorelines to projected sea level rise, including the application of the Bruun Rule. Is the guidance on estimating sea level rise impacts appropriate, given this uncertainty? If not, what changes should be made?”*

The factors affecting the rate of shoreline evolution are set out in this section. Little guidance is provided as to how or which approaches should be applied. In that regard, the guideline provides little guidance to Local Government as to the appropriate methodology to employ. Rather it reiterates the complexity of the issue and the variability in likely beach response from location to location. Reference to technical considerations already included in the existing manual needs to be incorporated.

Section 4.4 Coastal inundation. Page 43. *“The calculation of the extent of areas subject to coastal inundation is important in estuarine areas and some areas of the open coastline with relatively low frontal dunes. Is the guidance on calculating inundation appropriate? If not, what changes should be made?”*

Section 4.4 provides a broad description of coastal inundation issues. It does not provide guidance to Local government as to how coastal inundation should be assessed and applied for coastal management. It does not include historical data relating to measured wave run-up levels or inland extent of inundation at present. There is no discussion of depth or velocity of inundation and there is no guidance as to acceptable recurrence for inundation to occur. Further there is no mention of inundation levels and frequencies will increase (for example against coastal protection structures). The issue of estuary inundation which is the most pressing issue for Local Government in approving development in the short term also is not discussed other than to acknowledge its significance and

state that the still water ocean levels are not applicable. The guide simply refers the reader to the Flood Risk Management Guide which also does not provide an appropriate methodology.

Recommended that DECCW undertake a comprehensive review of techniques and technologies (including those identified in the previous manual) used to assess coastal inundation. From this review, a technical guideline for local government be produced which advises on a suitable and consistent methodology for coastal inundation assessment."

Section 6 Emergency action sub plans. Page 54 *“Emergency action sub-plans are important for both incident management by public authorities and managing the placement of emergency coastal protection works by or on behalf of landowners. Is the guidance on preparing a sub-plan appropriate? If not, what changes should be made?”*

The information provided in this section is clearly focused on the provision of emergency protection to development on open coast beaches. No guidance is provided as to the likely range and suitability of responses in formulating the plan. The guide does not identify the need for a clear chain of command in determining the need for emergency response, who takes responsibility in an emergency and importantly the post emergency removal of temporary works and the rehabilitation of the environment.

Clarification is also needed, in regards the roles of the SES and the NSW Police with additional clear linkages to Councils flood management and emergency strategies and regional and local DISPLANs.

Section 7.1 Minimum requirements for CZM Plans (Estuary Health). Page 56. *“These minimum requirements are intended to define the minimum requirements to be met in preparing the estuary health component of a coastal zone management plan for an estuary. Are these requirements appropriate for these purposes? If not, what changes should be made?”*

The minimum requirements outlined are basic and straightforward. They restrict the consideration of estuary behaviour and response to this single issue/approach. However, no clear objectives for estuary health are provided to guide this process e.g. to improve estuary health; to maintain existing estuary health; to manage the rate of decline of the estuary health; etc. Is the objective to maintain the estuaries in a natural condition or is it intended to embark upon a process of managing the issues to a preferred (albeit artificial) outcome. Without these clear objectives there is limited value in establishing current conditions and monitoring future response particularly within urban areas such as those within the SCCG region.

The approach outlined in this draft guide is a clear move away from the past approach of holistic management of the estuaries, balancing the ecological, recreational, development and commercial issues across the system. There is little or no recognition of the estuary as a part of the broader coastal zone with clear linkages to the catchments and the ocean, other than the need for an entrance management strategy. It represents a clear move away from the Government initiative in 2004 to intrinsically link coastal and estuary management through the coastal zone management planning process.

Section 7.4 Assessing Estuary Health. Page 62. *“Is the information on assessing estuary health adequate for preparing coastal zone management plans? If not, what changes should be made?”*

The section on assessing estuary health is very general. Traditionally, the reporting and amalgamation of data on estuary health has been undertaken by State Government (*with a clear exception of Hornsby Shire Council*). That there is a paucity of data directly measuring estuary health is a reflection of the priority pressures and funding available to various Local Councils with responsibility for managing estuaries. The SCCG is supportive of any efforts to improve the data and hence understanding of the current conditions of estuaries in NSW and specifically Sydney.

The guide provides no information on how this is to be achieved and by whom. It will require more than completion by Council staff of "report cards". The guide fails to recognise the issues and immediacy of the estuarine management issues faced by Local Government from day to day. It is agreed that the best starting point for managing any natural system is a thorough understanding of the key processes controlling a system and their interaction with the variability, use and responsiveness of that system. It is not possible to simply focus on collecting the base data and ignoring the decision making responsibility in the short term. Local Government would welcome clear guidelines that address the range of decisions that are required in managing both urban and pristine estuarine systems.

The SCCG would also assume the DECCW may wish to reference the NSW Water Quality Objectives for Fresh and Estuarine surface waters, river flow and also the marine water quality objectives for NSW ocean waters eg <http://www.environment.nsw.gov.au/water/mwqo/index.htm>

The SCCG would also further suggest that DECCW also include discussion and inclusion of the OzCoasts (via G.A) formally known as OzEstuaries and potentially further using this resource as a platform for information and associated data management.

Section 8.1 Risk from Climate Change. Page 65. "Is the information on assessing threats to estuary health adequate for preparing coastal zone management plans? If not, what changes should be made?"

The information provided on assessing threats to estuarine health is not adequate. Rather it presents a brief and general discussion on factors that may impact estuarine health. Local Government requires clear guidelines as to what is and is not acceptable in managing the various types of estuaries.

The draft guide does not address urbanisation/use of estuaries and the risk to that urbanisation/use arising from climate change. The guideline authors may also wish to liaise with their science unit to determine the applicability of the "Sustainability assessment of Coastal lakes program and the associated 'Coastal Lake Assessment and Management' (CLAM) tools for potential application and recommendation under these initiatives.

Section 9 Strategies for Managing Risk to Estuary Health. Page 68. "Is the guidance on managing risks to estuary health adequate for preparing coastal zone management plans? If not, what changes should be made?"

The target in the State plan that 'By 2015 there is an improvement in the condition of estuaries and coastal lake ecosystems' is of limited use to local Government. It is already acknowledged in the guide that for most estuaries there is insufficient information available to define the current health of those estuaries. The guidance provided is limited to a general discussion of the issues likely to affect estuary health without any clear guidance as to how these are to be addressed or what methodology should be employed by local government.

Section 9.3 dealing with public access appears to have been added and is not consistent with the remainder of the section. It is noted that "Most importantly public access should be accommodated in such a way that estuary health is not compromised". The thrust of the document appears to focus on undeveloped or pristine estuaries, ignoring the level of urbanisation of coastal estuaries state-wide (e.g. Botany Bay, Sydney Harbour, Port Hacking and the Hawkesbury River within the SCCG member's area of responsibility).

Recommended that DECCW provide specific information regarding the management of Urban and ultra urban estuaries.

Section 10 Managing Entrances to Estuaries Page 74. “Is the information on preparing an entrance management policy adequate? If not, what changes should be made?”

The information provided for the preparation of entrance management policies is inadequate and appears to be aimed solely at ‘ICOLLs’, not the major estuaries state-wide that accommodate the vast majority of foreshore urban development.

While the objective of a “*long-term goal of entrance management policies should be to retain or progressively reinstate natural entrance behaviour, returning estuary entrances to their natural condition*” is feasible for essentially undeveloped estuaries under current conditions, this is not likely to continue as sea level rises and development and land currently above inundation levels is exposed to coastal hazards. No guidance is provided as to how the future changes to estuaries under climate change should be assessed and how this may affect entrance management practices and hydraulic performance of these estuaries and further consideration and guidance regarding the needs to balance community, industry recreational user expectations or estuarine use and safety.

For the larger estuaries in NSW entrance management has been largely a state function and the entrance management program funded through NSW Treasury remains with the NSW Land and Property Management Authority. These works have been implemented over two hundred years and have significantly altered (and continue to affect) estuary systems state-wide. Current works include construction and dredging of the Lake Illawarra entrance, dredging within Port Stephens and the Myall River, development of regional fishing ports, and ongoing river entrance dredging. Major ports are managed by local port authorities (Newcastle, Sydney Harbour, Botany Bay, and Port Kembla) who undertake a continual program of dredging of entrance channels, maintenance of training walls and harbour deepening. None of these estuary entrances are likely to be returned to their natural conditions, rather the management of the entrances and the impacts on the hydrodynamics of the estuaries are likely to increase as climate change occurs.

The totality of the estuary management guidance in the draft document would appear to be aimed at a very small number of largely undeveloped and near pristine estuaries in isolated locations and completely inadequate for urban and ultra urban environments.

Section 11 Estuary health monitoring programs. Page 75. “Is the information on monitoring estuary health adequate for preparing coastal zone management plans? If not, what changes should be made?”

The SCCG acknowledges and supports the recognition of monitoring as a key element of natural resource management. However it is only an element and does not replace the need for estuary management and decision making on a day to day basis. While the additional collection of site specific data would enhance the preparation of Coastal Zone Management plans, the constraint on this data collection of available funds remains a significant issue for Local Government.

The guidance provided in the draft document relating to monitoring estuary health is very narrow in its focus and of limited assistance to Local Government in preparing Coastal Zone Management Plans to address the range of issues facing most coastal areas.

Summary

The SCCG suggests that significantly more work is required to ensure that this guideline is adequate to provide Local Government and other ‘Coastal Authorities with the necessary guidance to successfully prepare, implement and monitor Coastal Zone Management Plans. Overall the new guideline does not improve on current processes and will not result in consistent and coordinated coastal management in NSW. Substantial further effort is needed in key areas such as:

- Technical Guidance
- Minimum information requirements
- Consultation and engagement procedures and processes
- Links between open coasts, estuaries and catchments
- Monitoring, reporting and ongoing capacity building and professional development
- Defining the role of The NSW Government in the delivery of CZMPs

It is strongly recommended that in addition to the present consultation process, that DECCW commission an independent technical review of the Guidelines for preparing Coastal Zone Management Plans. This should also be supported by an independent review to be undertaken by the 'Coastal Panel' (to be established via the recently passed Coastal Protection and other Legislation Amendment Bill).

The SCCG looks forward to reviewing the next draft of this guideline and assisting DECCW to undertake consultation with our members to improve the current draft and ensure a suitable risk based framework for developing and review the critically important Coastal Zone Management Plans.

2. Draft Guide for Authorised officers under the Coastal Protection Act 1979

2.1 General Comments

The key role of an authorised officer under the Coastal Protection Act would appear to relate to the issue of certificates for emergency protection works (an emergency works authorised officer), overview of their installation, ongoing maintenance and removal and the restoration of any resulting damage from the works. These emergency works are presently only permitted at 12 defined locations (see Table 1 of the “Draft Guide to the statutory requirements for emergency coastal protection works”), affecting seven Local Government areas state-wide. Only two Councils within the SCCG area have identified locations where these works could possibly be undertaken (Warringah and Pittwater Councils). When each of the Councils finalise / update their CZM Plans, the emergency management requirements will no longer apply.

Other powers also relate to the investigation of and removal of unauthorised works in accordance with the amendments to the Coastal Protection Act. These are powers that already exist under the Act, although the penalties are to be increased substantially and therefore, potentially the risk of conflict with Council officers administering the requirement may also increase. Councils need to assess how often these powers have been applied in the past and whether the current regime would make them more likely or less likely to be used. DECCW also needs to clearly define what enhanced assistance can be provided to Councils in terms of training, provision of relevant information for previous enforcement activities and importantly, compliance and associated assistance in the courts when this occurs.

Council is not required to nominate a delegated authorised officer and this role can be equally fulfilled by an authorised officer nominated from a government department that is a recognised ‘Coastal Authority’. Councils will need to weigh the advantages of appointing and maintaining a delegated officer position, the cost associated with their training and ongoing replacement versus the number of times the powers conferred are likely to be required and the potential for litigation and liability against Council or the individual arising from the use of these powers. An alternative position may be for those Councils to call upon the Government authorised officers as and when required.

2.2 Directed Questions for the consultation draft

Section 5 Powers of delegated authorised officers. Page 12. “Orders provide authorised officers with a powerful tool to regulate activities under the Act. Is the guidance provided below, including the associated checklists and templates in the appendices, sufficient for authorised officers to have confidence in issuing orders? If not, what additional information should be provided?”

The role of an authorised officer in relation to emergency works is extremely difficult and relates to primarily judgment calls. (e.g. “cause or is likely to cause”; “poses or is likely to pose”, etc.). Similarly the checklists provided use the language “in your opinion” when making decisions on the relevant action to take. This requires, in addition to the appropriate training as a designated officer, a comprehensive knowledge of coastal processes and sound qualifications in coastal engineering (or ready access to someone with that expertise).

There is a fundamental flaw in the wording of the guide in relation to the performance of coastal protection works that must not cause or be likely “to cause increased erosion of a beach or land adjacent to a beach”.

The purpose of any coastal protection works (emergency or otherwise) is to limit the erosion of that portion of the seabed/dune landward of the protection structure. Where constructed on a sandy beach with unconsolidated, erodible sediment seaward of the structure or up drift /down drift of the structure, once exposed to wave action and preventing landward movement of the profile will increase erosion

either seaward of the structure or down drift of the structure. The only circumstances where this will not result are when the structure is not limiting the erosion of the protected property. In that case, the structure would not be required. This erosion may not be noticeable (where the protection provided is minimal) or may be manifest as more commonly observed scour of the beach seaward of the seawall, end erosion effects for an isolated seawall or realignment of down drift beaches. The only way that this transferred erosion can be avoided would be by the ongoing nourishment of the local beach with a sand volume exactly equivalent to the erosion volume protected by the protection structure. This wording needs to be amended as it requires a designated officer to issue a stop work and removal order for all protection works as they are completed and exposed to wave action.

3. Draft Guide to the statutory requirements for emergency coastal protection works – comments due 1st October 2010.

3.1 General Comment

Comments were provided by the SCCG to the Department of Environment, Climate Change and Water (10 September 2010) addressing the draft Ministers requirements for emergency works. The comments and conclusions contained in that submission are equally relevant to the current draft guide and our main concerns may be summarised as follows:

- The Ministerial guidelines are designed to restrict emergency works to 12 presently identified hotspot locations where they may be permitted.
- The conditions imposed are such that even at these locations the majority of property owners may not be able to consider implementing emergency works (e.g. not within ten metres of existing escarpment or existing works are in place etc.
- Even if works can be undertaken, they are likely to be ineffective in protecting property.
- When/if the permitted emergency works fail or the conditions relating to their placement are not followed, Council would then be required to oversee their removal and rehabilitate affected areas.
- We do not see the advantage in putting forward a process where the outcome, at considerable effort and expense, is likely to be of little or no benefit either to individual property owners or the wider community.

We note that the DEECCW has not directed review of this guide to specific issue questions, as has been done in some of the other draft guidelines. More specific comments on this guide are therefore included in Section 3.2.

3.2 Specific Comments

Statements included in the draft guideline (page 2) such as “This guide was correct at the date of publication; however, the statutory requirements may have changed subsequently and these requirements take precedence over any information in this guide” render the guide virtually useless to the layperson. It is not practical to expect each person applying the range of guidelines being issued to check to ensure the concurrence of each guide with the latest legislation before applying the guide. They are available from the DECCW website and it would be reasonable to expect the Government to maintain them up to date when and if the legislation is altered.

We have commented on the allowable works (Section 2, page 2) previously in our letter to DECCW relating to the Ministers requirements for emergency works. Those comments remain relevant. In particular, we are advised that even if works can be undertaken (given the stipulated trigger requirements etc.), they are likely to be ineffective in protecting property. More probably the permitted emergency works would fail and Council would then be required to oversee their removal and rehabilitation. The SCCG do not see any advantage in putting forward a process where the outcome, at considerable effort and expense, is likely to be of little or no benefit either to individual property owners or the wider community.

Our consulting coastal engineer further advises the SCCG that the specification of the placement of sand nourishment during a storm event as shown on Figure 2.5 on page 4 would ensure the work is ineffective. For a 5m high erosion escarpment, the sand volume to be placed in the manner shown and at the slopes shown would be limited to less than 20 cubic metres per metre of beach (approximately). For a more modest 2m high escarpment the volume would be limited to around 3 cubic metres per metre. For the minimum trigger requirement in Figure 4.1 with a 0.5 m high escarpment the volume would be limited to less than 0.2 cubic metres per metre. Given that typical

storm erosion demand on the sub aerial beach section of open coast beaches in NSW is around 250 cubic metres per metre of beach, it would be anticipated that the sand placed would be removed by a few waves. If the placement is to be made after the erosion event, it may assist in stabilising the escarpment (or limiting future collapse) if no further storm events occur. Generally it would be expected to be ineffective as an emergency protection measure.

It is unclear to the SCCG why the NSW Government would wish to severely limit the volumes of suitable sand to be placed on the beach by individual residents (at their expense). The SCCG does acknowledge that if large scale nourishment is proposed by individuals, appropriate studies and approvals should be required. However, the restrictions currently proposed will direct affected residents towards the more substantial protection works (Type 1) in the hope of achieving some benefit.

Section 2, page 5 states that “Landowners are also responsible for ongoing public safety risks associated with these works. It is recommended that all landholders seek insurance coverage which extends to all emergency protection works before initiating any form of emergency coastal protection.” The SCCG recommends that the Department approached the insurance industry to ascertain whether such insurance cover is likely to be available for structures designed to fail? If as suspected it is not readily available then this should raise alarm bells regarding the proposed emergency measures. If it is available then it should be mandatory for all works with the potential to cause harm or damage to the public and which under the proposed legislation can be constructed without approval on public land.

Recommended that:

- 1) All landholders must obtain insurance coverage which extends to all emergency protection works before initiating any form of emergency coastal protection.”
- 2) The Department approaches the insurance industry to ascertain whether such insurance cover is likely to be available for structures designed to fail ?

The SCCG would like to refer DECCW to the SCCG submission regarding the Draft Ministerial Requirements under the Coastal Protection Act specifically page 4 section 1.5. The SCCG has highlighted several overarching concerns regarding the construction or placement of temporary works on public lands and significant concerns expressed by SCCG member councils potentially exposing Local Government to potentially increased liability in relation to:

- Injury to members of the public
- Damage to other properties
- Maintenance of temporary works
- The needs for multiple approvals and licenses
- Damage to public infrastructure and utilities
- Impacts on marine parks, Aquatic reserves and intertidal protected areas
- Clearing of dune vegetation, endangered ecological communities and threatened species

The validity period of 2 years for the certificate (Section 3 page 5) is also problematic. If the nature of the works are to be specified at the time of application (no information is provided as to the form or detail required in this specification) then beach conditions, land use, community aspirations, land ownership, etc. may all change over that period. If the works are to extend to adjacent vacant land, then the status of that land and/or its ownership may also change. There is no requirement to verify the information provided when the certificate was issued with the situation at the time the works are constructed.

The list of authorised locations in Table 1 (section 4, page 6) limits the application of emergency works to (currently) 12 locations. The number of locations and their precise application appears to vary from document to document (for example in the press release provided by Minister Sartor dated 21 October

it notes that there are now 15 hotspots ? – clarification is needed). This list is important and requires Councils with these “Hotspots” to undertake a considerable amount of work to satisfy the requirements of the legislation. Will this list be varied (and how)? It is noted that no estuarine locations are identified. Lightweight emergency protection works are frequently used (without approval) at property boundaries fronting estuaries. Are these now to be considered as illegal works and removed or is it proposed that some other approval process will apply to these minor works, potentially affecting several thousand properties with high water mark boundaries that are eroding ?

The figure 4.2 (Section 4, Page 7) shows the erosion escarpment and the front wall of the structure as parallel. In reality this is not likely to be the case. Is the trigger distance defined as the shortest distance between any point on the escarpment crest and any part of the wall of the building, or some other definition? This needs to be clearer.

The statement that severe storms mostly occur in Winter (Section 4, page 8) is misleading. There is a seasonality associated with particular weather systems (e.g. tropical cyclones, east coast lows) and further, the prevalence of these weather systems are affected by location along the coast. A more correct assessment is that severe storm events accompanied by high water levels can occur at most times of year along the NSW Coast. This seasonality and frequency of storms was discussed in some detail in Appendix B.3 of the NSW Coastline Management Manual. This type of technical discussion has not been included in the more recent guidelines which replace the manual.

The statement (section 4, page 8) that “Other periods of increased likelihood of erosion impacts may occur around rarer astronomical events such as king tide cycles (about twice a year), which if combined with storm events have the potential to further increase erosion impacts.” is also misleading. So called King tides (defined as the two highest tides of the year occur in June and December are not rare). Spring tides which may be almost at the same level (as king tides) occur monthly. Variations from the predicted tide (storm surge, wave setup and tidal anomalies) may result in any of these high tides being a significant maximum. Such high water recurrence data is recorded in the long term tidal record.

Each of the tests relating to the use of Public land (section 7, page 8) is subjective and requires the Council to initiate action to remedy the situation after the event. The language used (e.g. ‘where practical’, ‘effective safety fence’, ‘as soon as practical’) is subjective and increases the difficulty for Councils trying to manage such activities. The concept that an individual or contractor is allowed to occupy public land (including a beach) and to fence that area for the duration of construction or maintenance is considered unacceptable to our Member Councils (see previous submission). Given the type of emergency works permitted, it is likely that maintenance and repair work will be frequent and ongoing. The life of the emergency works is given as 6 months (12 months in the revised legislation) and can be substantially longer once a DA for permanent works is lodged.

The information provided relating to landowner (section 6 page 9) preparations is of little practical assistance. While geotextiles could be purchased in advance and bags fabricated, it is not practical to stockpile sand on a residential block for future possible use. The equipment required to fill the bags and place them (other than 18kg sandbags) is generally beyond the means of an individual property owner. The section also acknowledges that the Bureau of Meteorology gives a maximum of 2 days warning on wave conditions and there is no such guarantee (in fact there is a low probability) that the general warning issued would result in erosion at a particular location. It is most unlikely that the permitted emergency works could be placed as described at any time other than well in advance of a storm erosion event.

The information included under safety requirements (section 7 page 10) effectively ensures that emergency works cannot be placed immediately prior to or at a time of peak storm erosion. Works can only take place when erosion is imminent for 3 hours either side of low tide. If the Bureau of Meteorology issues a severe wave warning work must cease or not commence. If erosion is occurring

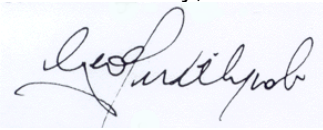
(this is not defined) then the proponent must seek and follow direction from a senior police officer and a professional engineer. These requirements are extremely complicated and considered unworkable.

CONCLUSIONS

The SCCG remains committed to assisting ensure appropriate and workable outcomes of the DECCW reforms to coastal erosion and coastal management more generally for NSW. These proposed reforms must build on and improve the necessary strategic partnerships between Local and State Government and their communities to ensure the sustainable, equitable and strategic management of the NSW coastal zone.

If you wish to clarify any matter in this correspondence or require further information, please contact me directly on (02) 9246 7791 or geoff@sydneycoastalcouncils.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Geoff Withycombe', is written over a light blue rectangular background.

Geoff Withycombe
Executive Officer