



Draft NSW Coastal Planning
Guideline: Adapting to Sea Level Rise

Submission of the
Urban Development Institute of
Australia NSW

December 2009

1. INTRODUCTION

The Urban Development Institute of Australia NSW (UDIA NSW) welcomes the opportunity to comment on the NSW Government's *Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise* (the draft Guideline). UDIA NSW has previously provided detailed advice to the Government in response to the *Draft Sea Level Rise Policy Statement* in April 2009.

UDIA NSW also provided the Department of Planning (DOP) with a proactive submission to assist in the development of the planning guidelines in July 2009 which remains applicable to the position of UDIA NSW. In this context UDIA NSW is again pleased to provide feedback on the draft Guideline to assist the DOP finalise its planning policies in relation to sea level rise.

This submission has been developed by the UDIA NSW Council, Sustainability Committee and our members. It responds directly to the consultation questions included in the draft Guideline and also provides feedback on the broader Guideline.

2. Scope and aims of the Guideline

The draft Guideline identifies in its introduction that its intended aim is to '*promote ecologically sustainable development (ESD), and in particular to encourage a precautionary approach to land use planning and development assessment in light of potential sea level rise impacts in coastal areas.*' UDIA NSW submits that the wording of this aim infers a bias in favour of environmental outcomes with out a balanced regard to economic and social outcomes.

In planning for sea level rise a more practical and balanced aim for the draft Guideline, in relation to the use of the precautionary principle, would also take into account the need for a precautionary approach to applying sea level rise planning benchmarks. UDIA NSW has consistently advocated in previous submissions to the NSW Government that a 2100, 90cm, sea level rise benchmark should not be applied for these reasons:

- It is based on the most extreme sea level rise scenario projected in the most recent Inter-Governmental Panel on Climate Change (IPCC) Report. There are multiple scenarios and the IPCC agrees that no one scenario is more likely to occur than any other scenario, indicating that 90cm may be unnecessarily precautionous.
- The asset life span of most new buildings is approximately forty years. Coastal development that it is intended to last to 2050 should not therefore be required to plan for sea level rise by the year 2100.
- Current convention for flood planning requires the application of a 50cm freeboard to floor levels. Accounting for a 2050, 40cm benchmark, this effectively ensures new development would have a 90cm flood planning level that would satisfy the highly speculative 2100 benchmark regardless. Applying an additional 50cm (the additional level from the 2100 benchmark) would be highly onerous and compromise any rational approach to sea level rise planning. Such an approach, with freeboard, would require an excessive flood planning level of 140cm for all new development on top of existing flood levels.

2.1 Guideline Principles

The draft Guideline outlines six principles for sea level rise adaptation. The draft Guideline suggests that the outlined principles should be applied to the decision making processes for land use planning and development assessment in coastal areas.

UDIA NSW does not necessarily agree with the outlined principles, however contends that certainty must be provided to all stakeholders including proponents, landowners, homeowners and local councils. This certainty should be provided for by a robust strategic planning process within the confines of the DOP's Regional and Metropolitan Strategies and the strategic planning processes of local councils.

UDIA NSW does not support the need to consider sea level rise at the development assessment stage in the sense that this could compromise strategic planning and land use objectives. Reconsidering sea level rise at this stage would not only duplicate the considerations given to sea level rise through a comprehensive strategic planning process but it would compromise certainty for stakeholders. UDIA NSW therefore questions the purpose and use of the proposed principles in development assessment.

3. Investigation Areas

The draft Guideline discusses the use of 'investigation areas' by councils in the absence of completed coastal hazard and flood studies accounting for sea level rise. The draft Guideline advises an investigation area can be used by councils as an interim guide to indicate land likely to be subject to coastal risk as a result of sea level rise. UDIA NSW has provided a response to the consultation questions regarding investigation areas below.

Consultation Question

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?

UDIA NSW response:

UDIA NSW contends that investigation areas should not be used for planning or development assessment purposes. Proponents require certainty and consistency both across and within council areas, the use of interim investigation areas would be counter to the intention of any consistent sea level rise planning framework in NSW.

UDIA NSW also submits that proponents and councils require clear descriptive coastal hazard and flood studies to inform any decision making process. Applying investigation areas to the planning and development process would be counter-intuitive to any aim of developing a decision making process based on sound consideration to fact in relation to coastal risk. Further if councils are to identify investigation areas the Guideline should provide a clear and rigid framework, not just several examples, of how such areas may or may not be identified.

UDIA NSW contends that flood modelling is necessary to ensure local councils correctly and consistently apply the sea level rise planning benchmarks. UDIA NSW asserts that this would reflect the objective of the current planning reforms to increase planning consistency amongst councils.

Consultation Question

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

UDIA NSW response:

UDIA NSW contends that without a set measure, different local government areas (LGAs) will vary in their processes and outcomes in the identification of investigation areas. UDIA NSW contends it is counter-intuitive to have a consistent state-wide sea level rise planning benchmark and then provide for local variations in the identification of investigation areas. As such, UDIA NSW would support a set measure to identifying investigation areas.

RECOMMENDATION 1

UDIA NSW recommends investigation areas not be used for planning or development assessment purposes in the absence of completed coastal hazard or flood studies, and that certainty surrounding the identification process for investigation areas be provided to councils by the Department of Planning.

4. Making information available to the public

The draft Guideline discusses providing the public with timely advice on coastal risks so that informed land use planning and development decision making occurs. The draft Guideline continues, *'Planning certificates under section 149 of the Environmental Planning and Assessment Act 1979 (EPA Act) must include reference to coastal risk where Council has adopted a policy that restricts the development of the specific parcel of land. This may include identified coastal risk areas or investigation areas if Council has applied development controls to such land.'*

Consultation Question

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

UDIA NSW response

With reference to the discussion in the draft Guideline, UDIA NSW contends that landowners or proponents cannot reasonably be expected to plan for sea level rise unless the risk of sea level rise is notated on a legal planning instrument such as a section 149 certificate. However, consistent with UDIA NSW previous position, only the 2050 benchmark is supported and therefore only the 2050 sea level rise risk should be notated on a section 149 certificate.

Discussion in the draft Guideline infers that Council can apply *'development controls to such land'* in the draft Guideline's reference to investigation areas. As discussed above, UDIA NSW does not support the use of investigation areas in the development assessment process, and as such, these areas would not require referencing in the section 149 certificate.

RECOMMENDATION 2

UDIA NSW recommends that only a 2050 sea level rise risk be notated on section 149 certificates and that any 2100 sea level rise risk or council investigation area should not be notated on section 149 certificates.

5. Strategic and land use planning in coastal areas

Consultation Question

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

UDIA NSW response

UDIA NSW would not support a complete prohibition of development on land that may be subject to immediate coastal risks. UDIA NSW contends that the Guidelines should encourage the creation

of urban development that is capable of adapting to an evolving physical environment, and evolving coastal risks, through the use of good design and technical innovation.

An indiscriminate prohibition of development that may or may not be subject to coastal risk does not account for a proponent, or the urban development industry's ability, to demonstrate that such risks can be overcome through the use of available adaptation and mitigation options. UDIA NSW supports appropriate sustainable development on land subject to any level of coastal risk.

UDIA NSW contends that the NSW Government, industry and local councils should facilitate the development of performance based criteria to adapt and mitigate the risk of sea level rise on existing and future coastal development while facilitating new coastal development. UDIA NSW contends that engineering solutions such as filling land, sea walls and levees need to be considered as part of a performance based criteria in order to rationally address sea level rise.

Consultation Question

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.

UDIA NSW response

LEPs should make provision for land use and development consistent with the outcomes of the Regional Strategy, Metropolitan Strategy and local council strategic planning processes. Robust strategic planning that identifies coastal land for development and is subject to broad community consultation, in the context of sea level rise, is the best mechanism to be considered by councils when developing LEPs.

UDIA NSW contends that considering sea level rise through multiple approaches including regional planning, the making of LEPs and DCPs, and through the development assessment process creates an inefficient layered policy framework with regards to sea level rise. UDIA NSW submits that such a layered approach will unnecessarily create complexity in an already complex planning and development process. Such an approach will create a further financial burden on individual home owners, developers and local government.

RECOMMENDATION 3

UDIA NSW recommends that the final Guidelines not preclude any land from development regardless of risk, rather the Guidelines should facilitate appropriate sustainable development based on performance based criteria.

RECOMMENDATION 4

UDIA NSW recommends that consideration given to sea level rise in the making of LEPs be consistent with the Regional Strategy, Metropolitan Strategy, land in urban investigation areas and land identified in local council strategies to be zoned for future urban use.

6. Development Control Plans

The draft Guidelines briefly refer to the role of DCPs and the role of a DCP in providing more detailed information on coastal risk. Particularly the draft Guideline identifies that coastal risk areas could be mapped in a DCP.

UDIA NSW contends that to support detailed flood modelling, the NSW Government and local councils must provide comprehensive mapping of sea level rise affected land consistent with any applicable sea level rise planning benchmark. Mapping exists for a range of planning matters

which inform local development controls including bushfire, native vegetation, acid sulphate soils, heritage etc. Further, funding for councils to undertake mapping should be provided by the NSW Government so as to support the implementation of the Guideline being proposed.

Mapping of sea level rise affected land in NSW coastal regions is consistent with the breadth of mapping surrounding other natural resource and conservation matters that are applicable to the planning and development process. Sea level rise mapping would support the decision making processes of the development industry, local councils and the broader community. UDIA NSW argues that flood modeling and mapping of sea level rise are fundamental to inform all stakeholders of the implications of sea level rise policy.

RECOMMENDATION 5

UDIA NSW recommends that the NSW Government support and fund the undertaking of sea level rise mapping by local councils to assist in the implementation of the Government's sea level rise planning guideline.

6.1 Development Assessment in Coastal Areas

The draft Guideline advises that *'development sites that are located within coastal risk areas, pre-DA consultation with the consent authorities and relevant State agencies will be an important component of the development assessment process'*. The outlined structure of the assessment process for development applications in coastal areas, on page 14 of the draft Guideline, suggests that where required, *'a consent authority sends application to State agencies for advice,'* and that such agencies can request additional information or provide general terms of approval to the consent authority.

UDIA NSW contends that the assessment of any development proposal potentially affected by sea level rise policy must be done in the context of the broader merits of a development proposal. For the purposes of efficiency and reducing delays in the assessment of development proposals, sea level rise assessment responsibilities should be delegated only to a relevant council officer.

UDIA NSW does not support any process that would require a development proposal to be referred to another agency such as the Department of Environment and Climate Change or a Catchment Management Authority for consultation. UDIA NSW similarly does not support the need for any concurrence mechanism to be introduced through statute.

RECOMMENDATION 6

UDIA NSW recommends that relevant council officers only, and not other agencies, undertake the assessment of the sea level rise aspects of a development proposal in the interests of reducing delays in the assessment of proposals otherwise imposed by the referral process.

Consultation Question

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

UDIA NSW response

UDIA NSW has previously submitted to the Department of Planning that flood modelling of all coastal areas must be undertaken and financed by the NSW Government to properly assess the impact of any sea level rise benchmark on land directly adjacent to the coast as well as coastal

rivers and streams. UDIA NSW submits that the implications on associated development controls upstream of a river mouth must be considered in the context of any flood modelling.

UDIA NSW contends that with the introduction of any state agency planning guideline or regulation that creates a financial impost on either a proponent or council, the onus should be on that relevant agency to burden the financial cost of the introduced guideline or regulation. If a relevant coastal hazard or flood study has not been completed, or council has not identified an 'investigation area', the Guideline should not require, but instead provide the option, for a proponent to undertake their own coastal risk assessment.

A strict requirement would produce the following outcomes:

- Councils would be encouraged not to complete or undertake coastal risk assessments effectively shifting the financial burden and responsibility of such assessments to the proponent.
- If Council has not identified an 'investigation area' then presumably sea level rise is not a realistic concern to existing or future development in that subject area. Similarly this would create an environment where councils could leverage the requirement for a proponent to provide an unnecessary hazard or flood study as a means to discourage development in a particular location.
- Unnecessary duplication of partially completed flood or hazard studies by both the proponent and Council.

Consultation Question

Should this requirement only be restricted to large-scale or medium to high risk coastal developments?

UDIA NSW response

As discussed above, UDIA NSW does not support this as a requirement, but rather as an option for the developer, regardless of development proposal. UDIA NSW contends that the introduction of a guideline or regulation by a government agency in relation to sea level rise creates an onus on that agency to fund and undertake any requirements as a result.

Therefore the onus of funding flood or coastal hazard studies, in order to meet the requirements of the sea level rise planning guideline, should be on the NSW Government as a priority. However UDIA NSW contends that in instances where the undertaking of a study is delayed by the Government or local council, a proponent should have the option of undertaking their own study.

RECOMMENDATION 7

UDIA NSW recommends that in the absence of any completed coastal hazard or flood study, necessary by implication of potential sea level rise, a proponent should not be strictly required to undertake their own study for reasons outlined in this submission.

RECOMMENDATION 8

UDIA NSW recommends that, regardless of development proposal, the onus of funding coastal hazard or flood studies, necessary by implication of any sea level rise planning guideline, should be on the NSW Government and not a proponent. However a proponent should be provided the option to undertake their own study for a development proposal if they wish.

8. Conclusion

UDIA NSW welcomes the opportunity to provide comment to the DOP and to assist in the development of the Guideline. This submission outlines the key concerns the urban development industry has with the draft Guideline. It should be read in conjunction with UDIA NSW two previous submissions to the NSW Government on both the planning guidelines and the *Draft NSW Government Sea Level Rise Policy Statement*.

UDIA NSW aims to secure the viability and sustainability of the urban development industry and has responded to the draft Guideline in the interests of facilitating genuine sustainable development in this State. UDIA NSW would be pleased to meet with the Department of Planning and elaborate on any of the points raised in this submission. We offer the following recommendations to assist in the concluding of the Guideline.

Recommendations:

1. *UDIA NSW recommends investigation areas not be used for planning or development assessment purposes in the absence of completed coastal hazard or flood studies, and that certainty surrounding the identification process for investigation areas be provided to councils by the Department of Planning.*
2. *UDIA NSW recommends that only a 2050 sea level rise risk be notated on section 149 certificates and that any 2100 sea level rise risk or council investigation area not be notated on section 149 certificates.*
3. *UDIA NSW recommends that the final Guidelines not preclude any land from development regardless of risk, rather the Guidelines should facilitate appropriate sustainable development based on performance based criteria.*
4. *UDIA NSW recommends that consideration given to sea level rise in the making of LEPs be consistent with the Regional Strategy, Metropolitan Strategy, land in urban investigation areas and land identified in local council strategies to be zoned for future urban use.*
5. *UDIA NSW recommends that the NSW Government support and fund the undertaking of sea level rise mapping by local councils to assist in the implementation of the Government's sea level rise planning guideline.*
6. *UDIA NSW recommends that relevant council officers only, and not other agencies, undertake the assessment of the sea level rise aspects of a development proposal in the interests of reducing delays in the assessment of proposals otherwise imposed by the referral process.*
7. *UDIA NSW recommends that in the absence of any completed coastal hazard or flood study, necessary by implication of potential sea level rise, a proponent should not be strictly required to undertake their own study for reasons outlined in this submission.*
8. *UDIA NSW recommends that, regardless of development proposal, the onus of funding coastal hazard or flood studies, necessary by implication of any sea level rise planning guideline, should be on the NSW Government and not a proponent. However a proponent should be provided the option to undertake their own study for a development proposal if they wish.*