



# environmental defender's office new south wales

## Submission to the NSW Department of Environment and Climate Change on the Draft Sea Level Rise Policy Statement

9<sup>th</sup> April 2009

### The EDO Mission Statement

*To empower the community to protect the  
environment through law, recognising:*

- ◆ *the importance of public participation in  
environmental decision making in achieving  
environmental protection*
- ◆ *the importance of fostering close links with the  
community*
- ◆ *the fundamental role of early engagement in  
achieving good environmental outcomes*
- ◆ *the importance of indigenous involvement in  
protection of the environment*
- ◆ *the importance of providing equitable access to  
EDO services around NSW*

### Contact Us

Environmental Defender's  
Office Ltd

Level 1, 89 York Street  
Sydney NSW 2000

Freecall 1800 626 239

tel (02) 9262 6989

fax (02) 9262 6998

email: [edonsw@edo.org.au](mailto:edonsw@edo.org.au)

website: [www.edo.org.au](http://www.edo.org.au)

For further inquiries on this matter contact [robert.ghanem@edo.org.au](mailto:robert.ghanem@edo.org.au)

Submitted to: [andrew.baron@environment.nsw.gov.au](mailto:andrew.baron@environment.nsw.gov.au)

## Executive Summary

The Environmental Defender's Office of NSW (*EDO*) welcomes the opportunity to comment on the Department of Environment and Climate Change's (*DECC*) Draft Sea Level Rise Policy Statement (*Draft SLR Policy*). The EDO is a community legal centre with over 20 years experience specialising in public interest environmental and planning law.

It is widely acknowledged that Australia will be one of the most severely affected developed nations by climate change, especially in relation to the impacts on our coast. Given the large proportion of our population residing in coastal areas, a robust approach to adapting to climate change impacts, including sea level rise, is essential.

The EDO has been extensively involved in law reform and litigation relating to the impact of climate change on coastal communities. In particular, the EDO contributed significantly to a submission made on behalf of the Australian Network of Environmental Defender's Offices (*ANEDO*) to the Inquiry into climate change and environmental impacts on coastal communities. The EDO has also commented extensively on a variety of other climate change law and policy issues.<sup>1</sup>

The EDO has conducted litigation addressing the impacts of climate change in the context of development assessment decision-making processes. Most recently, the EDO acted in the case of *Walker v Minister for Planning & Ors* [2007] NSWLEC 741 (*Walker*) in the Land and Environment Court (*LEC*). In the LEC, Justice Biscoe found that the Minister for Planning had failed to consider whether the flood risk for the site the subject of a development application under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) (*EP&A Act*) in Wollongong would be exacerbated by climate change. While overturned in the Court of Appeal, the case nevertheless illustrates that climate change impacts are becoming a pressing concern for coastal communities. It also illustrates that such matters are now becoming focal issues for decision-makers.

Against this background, the EDO in principle supports the preparation of a policy addressing sea level rise. Indeed, we have consistently advocated for a more active approach to climate change issues.

However, the EDO has serious concerns with the overarching policy position adopted by the Draft SLR Policy. We submit that it does not establish a holistic approach or plan of action that will guide the NSW Government in comprehensively addressing the impacts of sea level rise. Indeed, taken as a whole, the Draft SLR Policy adopts little more than a 'business as usual' approach, and provides scant leadership and guidance for affected stakeholders on this critical

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<sup>1</sup> Please refer to the EDO's website for further detail, at <http://www.edo.org.au/edonsw/site/policy.php>

issue. A number of essential matters that should be addressed are either fleetingly referred to or omitted, such as considerations of biodiversity and public health impacts. Although the adoption of a sea level rise planning benchmark (*Planning Benchmark*) in the Draft SLR Policy is useful for the relative certainty it provides to stakeholders, it does not a comprehensive policy on sea level rise.

While we acknowledge that the Draft SLR Policy states that the Department of Planning will be preparing guidelines on how sea level rise will be considered in land use planning, a more robust and meaningful policy approach is required from the NSW Government as a whole, to ensure that a consistent and consolidated approach to sea level rise is taken in NSW. Addressing sea level rise through changes to the planning system will be an essential element of any response.

In light of this, we believe that the Draft SLR Policy does not provide a decisive and coherent approach to the very real impacts of climate change facing Australian coastal communities, which is imperative given the uncertainties and risks associated with climate change.

We address the following four questions in our submission:

1. Do you have any comment on the Sea Level Rise Benchmarks derived from reports by the Intergovernmental Panel on Climate Change and the CSIRO?
2. Are there any issues you wish to have clarified in the Draft NSW Government Sea Level Rise Policy Statement?
3. What guidance is needed to effectively implement the benchmarks in the land use planning system?
4. Do you have any other comments on the draft Policy Statement?

### **Key Recommendations and Findings**

- The Draft SLR Policy must be strengthened to establish a comprehensive and robust policy framework for the NSW Government;
- The Planning Benchmark figures should be amended to reflect the latest science which indicates that sea level rise may occur faster than previously thought;
- The Draft SLR Policy should clarify where it sits within the plethora of other NSW coastal legislation and policy documents, as well as the NSW Government's forthcoming Climate Change Action Plan;
- The Draft SLR Policy should clarify that it applies to all land that may be affected by sea level rise, and is not limited to the 'coastal zone' as defined by the *Coastal Protection Act 1979*, which excludes parts of certain councils;
- The Draft SLR Policy should clarify the procedures by which the Government proposes to amend the Planning Benchmark in the future;
- The Draft SLR Policy should better clarify and specify the financial and technical assistance that will be provided to local councils to plan for sea level rise;

- Amendments to the EP&A Act are required to strengthen consideration of climate change impacts in all decision-making processes relating to development applications (including Part 3A projects) and the making of local environmental plans (*LEPs*). As part of this, the broad concurrence powers for development in the coastal zone formerly held by the Minister overseeing the environmental portfolio should be reinstated for Part 3A projects (that is, under the *Coastal Protection Act 1979*);
- The Draft SLR Policy should establish a hierarchy of planning options for local councils to adopt in their local environmental plans ‘Policy principle 3’ should be amended to reflect that a ‘business as usual’ or ‘accommodation’ approach is not promoted;
- The Draft SLR Policy should focus more on the impacts on communities, and provide more assistance to communities. There may be circumstances where providing assistance may be appropriate, for example, providing relocation assistance for low income households in coastal communities, and this should be recognised;
- The mere provision of information on sea level rise to communities and Councils is not an adequate response. The Draft SLR Policy should establish that communities must be consulted about sea level rise, and education programs be provided;
- The Draft SLR Policy should properly address the biodiversity impacts of sea level rise;
- The Draft SLR Policy should properly address the public health impacts of sea level rise;
- The focus in the Draft SLR Policy on liability is inappropriate and the comments throughout the Draft SLR Policy purporting to limit the Government’s liability should be removed; and
- Finally, although not directed specifically to the Draft SLR Policy, the EDO’s position is that the best way to approach sea level rise is for the development of a federal legal framework on coastal management which would encompass a comprehensive approach to climate change impacts to be implemented on a local scale according to local conditions.

*1. Do you have any comment on the Sea Level Rise Benchmarks derived from reports by the Intergovernmental Panel on Climate Change and the CSIRO?*

The EDO's view is that the Planning Benchmark is appropriately based on the 'worst case' scenario for sea level rise presented by the Intergovernmental Panel on Climate Change (IPCC)'s 2007 findings, taking into account uncertainty associated with those predictions. The EDO also supports the adaptive risk management approach proposed by DECC in relation to the Planning Benchmark.

However, the EDO notes that the most recent science coming from the International Scientific Congress on Climate Change (ISCCC) on 10 – 12 March 2009 in Copenhagen indicates that the worst case IPCC scenario trajectories are being realised, and that there 'is a significant risk that many of the trends will accelerate, leading to an increasing risk of abrupt or irreversible climatic shifts'.<sup>2</sup> We note that the ISCCC intends to develop its preliminary conclusions from the congress into a synthesis report to be published in June 2009, and to be presented at the United Nations Climate Change Conference (COP15) in Copenhagen in December 2009.

In these circumstances, the EDO submits that it is now appropriate to revise the Planning Benchmark, in accordance with this latest scientific information to ensure that the *current* 'worst case scenario' is used. This will ensure that the precautionary principle is applied, which is an overarching consideration in the context of the ongoing uncertainty of climate change impacts including sea level rise.

The EDO acknowledges and is grateful for the advice and assistance provided by Milton Speer, Research Fellow at the Climate Change Research Centre, School of Mathematics and Statistics, University of NSW, in commenting on the Sea Level Rise Planning Benchmarks.

*2. Are there any issues you wish to have clarified in the Draft NSW Government Sea Level Rise Policy Statement?*

The EDO submits that there are a number of matters requiring clarification in the Draft SLR Policy.

*Interaction with Related Legislation and Policy*

The Draft SLR Policy refers to coastal management policy documents in NSW as 'related NSW Government initiatives'. However, the EDO submits that the Draft SLR Policy should clarify how and where it sits within the plethora of instruments.

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<sup>2</sup> See 'Key messages from the Congress' released by the ISCCC: [http://climatecongress.ku.dk/newsroom/congress\\_key\\_messages](http://climatecongress.ku.dk/newsroom/congress_key_messages), 12 March 2009; see also <http://www.smh.com.au/environment/global-warming/beautiful-one-year-flooded-the-next-20090322-95mg.html> (23/3/09)

For example, the Draft SLR Policy should specify whether it will be incorporated into policy documents such as the NSW Coastline Management Manual 1990 (which we understand is in the process of being revised). This is particularly important to provide certainty for local councils in terms of their responsibilities and potential liability. The EDO also seeks clarification as to where the Draft SLR Policy will fit in the context of the NSW Government's forthcoming Climate Change Action Plan.

#### *Geographical Application of Draft SLR Policy*

The EDO notes that, as currently drafted, the Draft SLR Policy does not clearly specify the land to which it applies. This is problematic as the 'coastal zone' for the purposes of the *Coastal Protection Act 1979* (and related policies) does not include certain areas of some Sydney local government areas, such as Botany Bay, and the harbour side of Manly. The EDO submits that the Draft SLR Policy must be clarified to indicate that it applies to the whole of the NSW coast, whether or not particular areas are considered part of the 'coastal zone'.

#### *Policy principle 1: Procedure for Amending Benchmark*

The EDO also submits that the Draft SLR Policy should clarify how the government intends to revise the Planning Benchmark, as proposed in 'policy principle 1'. Further details should be provided on how the NSW Government intends to 'periodically review' the Planning Benchmark. This could include details such as:

- The procedures to be followed in reviewing and amending the Planning Benchmark (which should include proposed timeframes for reviewing the adequacy of the figures);
- The consultation process the NSW Government will undertake if it proposes to alter the Planning Benchmark; and
- The technical and financial assistance intended to be provided to stakeholders who are likely to be most affected by alterations to the Planning Benchmark.

The EDO acknowledges that given the uncertainties associated with climate change science, and that the predictions of the rates of future sea level rise will almost undoubtedly change over time, flexibility to change the Planning Benchmark is essential. However, the provision of greater details on procedures and financial and technical assistance will provide some measure of certainty to those stakeholders who will be most affected by changes to the Planning Benchmark. These details would recognise the difficulty that will be faced by stakeholders such as local councils if they are to regularly amend their planning documents to reflect the revised Planning Benchmark.

#### *Policy Principle 2: Financial and Technical Assistance*

The Draft SLR Policy in ‘policy principle 2’ states that the NSW Government will continue to provide funding assistance to councils to prepare flooding and hazard risk studies, as well as providing guidance and assistance to councils to reduce the risks to private and public property from these hazards. However, the EDO submits that the Draft SLR Policy should provide greater detail on how the NSW Government intends to support local councils with financial and technical resources that are sufficient to enable them to adequately plan for sea level rise.

In particular, given the critical nature of the availability of data and technical information (such as elevation and terrain modelling) to enable councils to work effectively with the Planning Benchmark and incorporate it into their local planning instruments, it is imperative that technical assistance is provided to councils. This is crucial as the impacts of sea level rise will clearly vary depending on the local conditions in each local government area. Therefore, the Draft SLR Policy should be clarified and expanded to confirm the technical and financial assistance that will be provided to local councils. For example, the Draft SLR Policy could include a commitment to expand the recently conducted ‘LiDAR Pilot Project,’ which mapped the terrain of coastal land in a number of local government areas in the Central and Hunter Coasts, to the whole coast of NSW.<sup>3</sup>

We submit that without adequate financial and technical resources allocated to ensure its implementation, it will be difficult for local councils to implement the Planning Benchmarks within their planning instruments and policies.

### *3. What guidance is needed to effectively implement the benchmarks in the land use planning system?*

As noted throughout this submission, the Draft SLR Policy does not clearly set out a framework or plan of action that the NSW Government intends to utilise to address sea level rise. The setting of a Planning Benchmark is an incomplete response to the future impacts of sea level rise, and has no legal or regulatory force.

The Draft SLR Policy currently states:

‘There is no regulatory or statutory requirement for development to comply with this benchmark. The benchmark’s primary purpose is to provide guidance to support consistent consideration of sea level rise impacts, within applicable decision-making frameworks’.

#### *Changes to the EP&A Act*

In this context, the EDO’s position is that while guidance provided to local councils by way of a Planning Benchmark is supported, this must be complemented by fundamental changes to the planning system that will ensure that climate change becomes a central consideration in decision-making processes within that system.

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<sup>3</sup> See

[http://www.planning.nsw.gov.au/plansforaction/pdf/terrainmapping\\_central\\_hunter\\_coasts\\_report.pdf](http://www.planning.nsw.gov.au/plansforaction/pdf/terrainmapping_central_hunter_coasts_report.pdf)

As the *Walker* case highlighted, the current planning framework does not adequately incorporate climate change nor even a requirement that climate change impacts such as sea level rise are taken into account in decision-making processes. As a result, that case required the argument to be made that climate change must be taken into account via consideration of the ‘public interest’. This demonstrates the lack of legislative prescription. In light of the projected impacts of climate change on coastal communities, it is imperative that the planning framework accommodates climate change considerations explicitly.

Therefore, the EDO submits that legislative change is required to strengthen the consideration of climate change impacts (including sea level rise) in decision-making processes. However, this includes more than just integrating the Planning Benchmark into the land use planning system – it will require changes to the EP&A Act that accommodate the necessary considerations needed to adequately plan for climate change impacts.

Hence, the EDO submits that it is necessary to strengthen *consideration* of sea level rise, and indeed other climate change impacts, through amendments to the EP&A Act (or potentially other relevant legislation and policies, such as state environmental planning policies (*SEPPs*)). We acknowledge that there are already some regulatory provisions that require the consideration of climate change impacts such as the NSW Coastal Policy 1997<sup>4</sup> and clause 5.5 of the Standard LEP Instrument<sup>5</sup>. However, these are limited as they do no more than oblige the decision-maker to ‘consider’ or ‘take into account’ the impacts of climate change, and do not ensure that climate change impacts will be given the overarching consideration that are required in particularly vulnerable coastal areas.

More significantly, applications made under Part 3A of the EP&A Act are excluded from these obligations. The determination of these applications lies with the Minister for Planning. As noted previously, in the case of *Walker* the Court of Appeal held that even the requirement to consider the ‘public interest’ (let alone the principles of ecologically sustainable development) did not necessarily require the Minister to consider climate change in assessing every Part 3A project. This failure of the current planning system to ensure that climate change impacts are considered in the context of proposed future development establishes the critical need for reform.

As a result of the above discussion, the EDO submits that legislative amendments are required in relation to all decision-making processes under the EP&A Act,

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<sup>4</sup> Clause 92 of the *Environmental Planning and Assessment Regulation 2000* (NSW) requires the NSW Coastal Policy 1997 to be taken into account by a decision maker in determining a development application (although not for Part 3A of the EP&A Act). Objective 2.2 of the Coastal Policy is ‘to recognise and consider the potential effects of climate change in the planning and management of coastal development’.

<sup>5</sup> However, this clause is only applicable to land within the coastal zone and to date, many councils have not finalized their new LEPs in accordance with the Standard LEP Instrument.

including the determination of development applications (including Part 3A projects) and the making of local environmental plans (*LEPs*).

This could be done, for example, by inserting a requirement into the EP&A Act that the decision-maker *must* be satisfied that the proposed development, or draft LEP, will not be affected by climate change impacts such as sea level rise, or it cannot be approved.

Such amendments would begin to respond to the need for an ‘overhaul’ of the planning system to ensure that climate change considerations are of overarching importance.

### *Hierarchy of Planning Options*

The EDO submits that a hierarchy of planning options should be developed to guide local councils to include sea level rise considerations in local planning instruments. Legislation should mandate a requirement to implement this hierarchy when councils prepare a draft LEP or other planning instrument.

The EDO’s<sup>6</sup> proposed planning hierarchy would enable the systematic consideration of a number of options by councils, which would provide a degree of flexibility for tailoring and adapting planning controls to local conditions. Councils should be required to revise their LEPs (and other instruments such as coastal hazard studies) and when doing so apply the following principles, in order of priority:

- planned retreat;
- development controls and other planning measures such as setbacks and buffer zones, no go zones, and restrictive zoning;
- resilience building measures;
- early warning and emergency response systems; and finally,
- hard or soft engineering solutions.

This suite of options indicates that, while it is a useful starting point to determine appropriate planning responses at the local level (for example, to identify certain areas that should be zoned in a manner that prohibits further development), the Planning Benchmark is not the only applicable ‘tool’ and cannot represent a complete policy response to sea level rise. The planning hierarchy provides a nuanced and flexible approach, enabling councils to respond to local variables. The EDO therefore submits that the NSW government should establish a framework to guide the application of this planning hierarchy at the local council level. A mandatory obligation to apply this framework should then be established by legislation (potentially through a SEPP).

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<sup>6</sup> This hierarchy is based on ANEDO’s submission to the Inquiry on impacts of climate change on coastal communities, see: [http://www.edo.org.au/policy/climatechange\\_coastal080610.pdf](http://www.edo.org.au/policy/climatechange_coastal080610.pdf)

An alternative (or additional) option that relies solely on the Planning Benchmark would be to create a ‘sea level rise trigger’ in planning legislation, such that any proposed development or draft LEP that falls below land delineated at a local level by the Planning Benchmark must be referred to the Minister for Environment and Climate Change who would have a concurrence power over that decision in the context of the climate change impacts. It is noted that a concurrence power exists under the *Coastal Protection Act 1979*, but is not applicable for Part 3A projects.

Giving legislative force to the consideration of sea level rise impacts is imperative to ensure that a precautionary approach is taken by decision-makers, so that climate change impacts are fully planned for and considered in future decisions. Delineating the responsibilities for addressing, climate change impacts in this way will also provide greater clarity to decision-makers, enabling them to act more confidently to address the huge challenge presented by the impacts of climate change.

We therefore strongly recommend that the NSW Government takes steps to amend the EP&A Act to better address sea level rise and to consider introducing prohibitions on development in the most vulnerable areas.

#### *4. Do you have any other comments on the draft Policy Statement?*

In addition to the matters that have been raised in response to questions 1 to 3 above, which have highlighted necessary amendments to the Draft SLR Policy flowing from those questions, we have a number of additional comments, as follows.

#### **Holistic Approach is Required**

Throughout this submission, we have indicated that the current Draft SLR Policy is an inadequate response to sea level rise, as it fails to clearly establish the approach the NSW Government intends to take to sea level rise on a holistic scale and in a robust manner. As a result, it lacks utility.

The Draft SLR Policy, in effect, simply adopts a ‘business as usual’ approach, failing to provide any leadership or guidance for local councils and other stakeholders (such as communities and developers) as to future action on sea level rise. This is particularly reflected through ‘policy principle 3’.

The application of the precautionary principle, which dictates that a lack of full scientific certainty should not be utilised as a reason to postpone measures to prevent environmental damage, is inconsistent with a ‘do nothing’ approach. Sending the message, in ‘policy principle 3,’ that the NSW Government will ‘support appropriate coastal development’ and that ‘the benchmark is not intended to be used to preclude development of land projected to be affected by sea level rise’ does not expound a precautionary approach in accordance with the principles of ecologically sustainable development, and fails to consider the long planning timeframes necessitated by sea level rise.

Instead, the Draft SLR Policy should make clear that a hierarchy of planning options are appropriate to regulate future coastal development, including zoning prohibiting development of land projected to be affected by sea level rise. As described above, the EDO submits that the proposed planning hierarchy would satisfactorily ensure the application of the precautionary principle in the context of sea level rise. Therefore, ‘policy principle 3’ should be amended to reflect this more nuanced position.

### **Focus on Communities Imperative**

The EDO submits that the Draft SLR Policy must go further in its commitment to provide assistance to, consult with, and educate, communities. At present, the Draft SLR Policy indicates that the NSW Government will do nothing more than continue with its current approach which encompasses emergency assistance and the provision of information.

#### *Policy Principle 4: Emergency Assistance to Communities*

The EDO submits that the Draft SLR Policy should provide further detail about the preparation of emergency and evacuation plans, developed on the basis of predictions of future peak events such as high tides and storm surges. Existing emergency management support structures may be inadequate to cope with the extreme events predicted to occur as a result of climate change and this should be addressed by the Draft SLR Policy.

The EDO also questions the stated policy of ‘zero compensation’ for the owners of land affected by coastal hazards or flood risks. While the EDO does not support the provision of compensation to potential developers of land, the EDO recognises that there may be certain circumstances where assistance may in fact be justified and required (such as where land is compulsorily acquired). Also, structural adjustment packages should be considered where property isn’t acquired.

As commentators have noted, ‘social disadvantage is already endemic in many non-metropolitan coastal communities thus reducing their capacity to response to climate change impacts’.<sup>7</sup> There are potential equity issues in the context of the ‘sea change’ phenomenon that has resulted in coastal communities changing dramatically in socio-economic makeup, and this will undoubtedly impact on the ability of individuals and communities to respond to climate change impacts. In this context, there will be varying levels of capacity to relocate or to take measures to protect property in such areas. Therefore, the Draft SLR Policy should recognise that structural adjustment programs may be considered in the future, for example, to provide relocation assistance to low income households forced to move due to rising sea levels.

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<sup>7</sup> See for example the discussion in Harvey N and Clarke B, ‘Policy Implications for Australian Coastal Communities Affected by Sea-level Rise,’ Just Policy, No. 46, December 2007

### *Policy Principle 5: Need for Consultation and Education*

The EDO supports ‘policy position 5’ which states that the NSW Government will continue to provide updated information on sea level rise and its impacts on the community. However, the provision of information alone is not a panacea. The EDO submits that the Draft SLR Policy should go further and establish the provision of education programs for communities to better understand the impacts of sea level rise and the implications for their lives.

Moreover, the Draft SLR Policy does not provide that local communities should be consulted in relation to the impacts of sea level rise. In addition to establishing procedures for consultation when revising the Planning Benchmark, the EDO submits that the NSW Government should establish a framework for consultation with local communities on planning approaches for sea level rise in their local areas. On a broader level, in accordance with our recommendations in response to question 3 which calls for amendments to the planning system to better incorporate climate change into decision-making, extensive public participation and consultation must be restored for all planning decisions, including those made under Part 3A of the EP&A Act.

### **Omission of Critical Considerations**

The Draft SLR Policy states that the Planning Benchmark can be used for purposes which include:

- ‘considering the impact of sea level rise on coastal and estuarine habitats, such as salt marshes, and identifying valuable habitats at most risk from sea level rise’ and
- ‘assessing the impact of changed salinity levels in estuaries, including implications for access to fresh water’ (page 3).

However, this is the extent to which potential biodiversity and public health impacts are acknowledged in the Draft SLR Policy, and amounts to a serious omission.

### *Omission: Biodiversity Impacts*

The Draft SLR Policy does not address the biodiversity impacts of sea level rise. Potential impacts on biodiversity are broad, and the issues difficult. Coastal estuaries and wetlands will be ‘squeezed’ into smaller spaces as sea levels rise, and the increased salinisation of estuaries and freshwater ecosystems will adversely impact on biodiversity. Further, as protected areas are often found in coastal locations in Australia, sea level rise is likely to lead to a diminution of these areas, if their retreat inland is not facilitated.

Taking these impacts into account in planning for sea level rise will be critical to ensure that impact on biodiversity is minimised. For example, methods such as providing corridors and increasing buffers should be integrated with other policies

to protect biodiversity, particularly planning measures. This is particularly important considering that it is possible that certain adaptation measures could deleteriously affect biodiversity conservation (for example, building sea walls will affect coastal processes and therefore ecosystems). As a result, applying the EDO's suggested planning hierarchy of adaptation options would enable flexibility to address these impacts at the local level.

The EDO therefore strongly recommends that a policy approach for addressing the impacts of sea level rise on biodiversity must be set out in the Draft SLR Policy.

#### *Omission: Public Health Impacts*

The Draft SLR Policy does not address the public health implications of sea level rise. Sea level rise has the potential for a number of serious public health impacts, which, as ANEDO has previously noted, are often overlooked in Australia.<sup>8</sup> Potential impacts include the salinisation of freshwater sources (both surface water and groundwater) which may impact on the availability of drinking water sources (as well as irrigation water), enhanced exposure to diseases (particularly mosquito-borne diseases such as malaria and dengue fever), and the potential for the toxic contamination of sea water from the flooding and inundation of contaminated land.<sup>9</sup>

Planning to reduce the public health impacts of sea level rise could include activities such as securing alternative freshwater sources, identifying contaminated sites and sanitation related facilities that may pose risks if subject to flooding or inundation, and planning for appropriate infrastructure.<sup>10</sup> These are all relevant considerations for planning for sea level rise. The EDO therefore strongly recommends that a policy approach for addressing the impacts of sea level rise on public health is incorporated in the Draft SLR Policy.

These two additional impacts of sea level rise must be a component of the NSW Government's Draft SLR Policy if it is to present a comprehensive and robust policy approach, as the EDO has repeatedly called for. While action may be required at the local level to address these impacts, the Draft SLR Policy should nevertheless provide guidance on these matters to ensure a comprehensive approach is taken to addressing sea level rise.

#### **Focus on Liability is Inappropriate**

The EDO submits that the Draft SLR Policy has an inappropriate focus on the exclusion of liability of the NSW Government in relation to future impacts of sea

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<sup>8</sup> See ANEDO submission, above n6 at pages 39 and 40.

<sup>9</sup> See IPCC Synthesis Report 2007 (Summary for Policymakers) at 13 ([http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr\\_spm.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf)). See also Craig R, 'A Public Health Perspective on Sea-Level Rise: Starting Points for Climate Change Adaptation' *FSU College of Law, Public Law Research Paper No. 307*, see [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1119563](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1119563) (accessed 25/3/09)

<sup>10</sup> See IPCC report above n9 at page 15; see also Craig above n9.

level rise. Comments throughout the Draft SLR Policy which deny the NSW Government's responsibility for any impacts of sea level rise do not assist to clarify this situation for local councils and coastal communities. Any liability for the future impacts of sea level rise will be determined in accordance with the law, on a case by case basis. That is, the NSW Government cannot remove its potential liability in a policy statement.

The priority of the Draft SLR Policy, as noted previously, must be on providing a robust response to the challenges posed by sea level rise, and guiding and assisting communities and other stakeholders, rather than focusing on the NSW Government's position in relation to liability. The Draft SLR Policy is therefore not the appropriate forum within which to address liability, and these comments should be removed. Liability is an 'end of pipe' consideration.

### **Broader Context of Coastal Management**

Although outside the immediate context of the Draft SLR Policy, it is necessary to reiterate ANEDO's opinion<sup>11</sup> that the current institutional arrangements and plethora of laws, policies, manuals and guidelines regulating coastal management in NSW (and, indeed other states) creates an unnecessarily complex and confusing regulatory environment. The need to clarify how the Draft SLR Policy sits within these existing policies and laws has already been highlighted in this submission.

As a result, there is no clear, coherent approach to guide decision-makers regarding planning for climate change impacts on Australia's coast, and in particular, sea level rise. We therefore recommend that the best solution would be a federal framework to coordinate integrated coastal management, which would facilitate decision-makers to take a consistent and robust approach to climate change adaptation, including sea level rise.<sup>12</sup> For example, such a framework could mandate the preparation of coastal management plans on a localised scale, supported by federal funding. The EDO's proposed sea level rise planning hierarchy could be adapted for inclusion in these plans.

For further information about this submission or to discuss any matters related to the submission, please contact Robert Ghanem, EDO Acting Policy Director on (02) 9262 6989 or by email at [robert.ghanem@edo.org.au](mailto:robert.ghanem@edo.org.au)

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<sup>11</sup> ANEDO submission, above n6

<sup>12</sup> ANEDO submission, above n6