Coastal Councils and Planning for Climate Change:
An assessment of Australian and NSW legislation and government policy provisions relating to climate change relevant to regional and metropolitan coastal councils.

Morrison, Craig ¹ and Ghanem, Robert ²
¹ Sydney Coastal Councils Group
² NSW Environmental Defenders Office

Presentation Outline
An assessment of Australian and NSW legislation and government policy provisions relating to climate change relevant to regional and metropolitan coastal councils.

Introduction:
• The Sydney Coastal Councils Group
• The NSW Environmental Defenders Office

Project Background

Key Findings
• Legislation
• Common Law
• Overarching Conclusions

Recommendations

Sydney Coastal Councils Group

BACKGROUND
• Established in 1989 as 7 ‘ocean’ councils addressing beach sewage pollution (pre ocean outfalls).
• The SCCG is a voluntary Regional Organisation of Councils (ROC) established under the provisions of sections 355, 357 and 358 of Local Government Act, 1993.
• SCCG consists of 15 councils adjacent to Sydney’s marine and estuarine environments.

MEMBERSHIP
Botany
Berrys Bay
La Perouse
Manly
Mosman
North Sydney
North Bondi
Pittwater
Redfern
Rockdale
Sutherland
Sydney City
Warringah
Wentworth
Wollongong

SCCG represents over 1.3 million Sydneysiders

The Environmental Defender’s Office

• A community legal centre specialising in public interest environmental law
• Mission: To empower the community to protect the environment through law
• Functions
  – Legal Advice and Representation
  – Policy and Law Reform
  – Community Education
  – Scientific and Technical Advice

People
Over 80% of Australia’s population lives within the coastal zone;

Property within 200 m of the coast
559,000 residential addresses in with replacement value $104 billion replacement value plus contents $128 billion
24,000 commercial and small – medium industrial buildings with replacement value $33.581 billion

Future costs
Preliminary estimates of the value of property exposed to the impacts of sea level rise range from: $50 billion (a sea level rise of 1 metre); to $150 billion (a sea level rise of 3 metres)
An assessment of Australian and NSW legislation and government policy provisions in relation to climate change relevant to regional and metropolitan NSW coastal councils.

- To identify where and within what legal and implementation context the terms climate change, greenhouse and sea level rise occur within all legislation, planning instruments and policy relevant to coastal councils in NSW; and
- Provide a discussion of responsibilities of local government to implement the provisions identified.

Key findings - legislation

- 16 legislative instruments out of 137 contained terms of interest:
  - 3 Commonwealth Acts
  - 4 NSW Acts
  - 9 Coastal LEPs
- 20 NSW Government policies contained terms

Key findings

The references to climate change we identified fell into clear categories:

- Objects clauses in LEPs
- Matters for consideration in LEPs
- Policies
- Other legislation

1. Objects clauses

   - Principal Local Environment Plan
     Clause 32- Development within the coastal zone

     (1) The objectives of this clause are as follows:
     (a) to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development;
     (b) to implement the principles in the NSW Coastal Policy, and in particular to:
     (iv) recognise and accommodate coastal processes and climate change

Key Finding: objects

- Objects clauses impose no direct duties on councils to address climate change
2. Factors to consider

Principal Local Environment Plan- Clause 32(2)
Consent must not be granted in coastal zone unless the consent authority has considered:
...
(i) the effect of coastal processes and coastal hazards and potential impacts, including sea level rise:

Key Finding: factors to consider
• Impose limited responsibility on councils
• Where required, climate change impacts must be considered in a genuine manner
• No requirement that climate change is to have overriding weight

Key Findings: Policies
• Policies are non-legal documents
• Must be applied only where required by legislation
• They may be relevant considerations, but don’t have to make decisions consistent with them
Eg NSW Coastal Policy 2008

Common law liability
• Exists separately from legislation
• Tort of negligence and nuisance most relevant to climate change
• Ability to take against councils significantly restricted by legislation

Local Govt Act 1993- Section 733 (b)
• Likely to provide significant protection from liability
• Exempts local councils from liability for advice, actions or omissions relating to natural hazards in coastal zone
• Covers granting of development consent, making of LEPs, flood mitigation works, etc
• Applies even where council is ‘negligent’ but
• Only applies where council has acted in ‘good faith’ – NSW Coastline Management Manual 1990

Coastline Management Manual 1990
• Assesses and identifies coastal management options for councils
• 4 key areas of management
  - Planning mechanisms
  - Development control conditions
  - Dune management
  - Protective works
Summary

- Currently, few legislative obligations on coastal councils to combat or even consider climate change impacts on coast
- Common law liability for negligence strongly restricted by legislation
- However, likely the law will be amended in future to impose stricter obligations on councils
- Councils should adopt clear policies to protect themselves

Overarching conclusion

- There is a need for state government guidelines to assist coastal councils in adapting to climate change
- Details needed on when and how to conduct adaptation activities to prepare for and prevent climate change impacts

Recommendations

A national assessment of climate change legislation and policy
The development of benchmarks, model provisions and guidelines
A national implementation plan for climate change adaptation roles and responsibilities supported by non competitive funding
Clear methods and protocols for the public disclosure of potential climate change impacts
Open debate about the legislative, policy and communication tools required to deliver an efficient allocation of existing and future resources in response to climate change.

For further information

- A copy of the full report is available by request from the SCCG – www.sccg.org.au
- Email: robert.ghanem@edo.org.au