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PORTFOLIO COMMITTEE NO. 7

Planning system and the impacts of climate change on the environment and communities

Report 24

November 2024

7



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Portfolio Committee No.7 – Planning and Environment

Planning system and the impacts of climate change on the environment and communities

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Planning system and the impacts of climate change on the environment and communities

"November 2024"

Chair: Ms Sue Higginson MLC



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Table of contents

	Terms of reference	vi
	Committee details	vii
	Chair’s foreword	viii
	Recommendations	x
	Conduct of inquiry	xiii
Chapter 1	Background	1
	The planning system: primary legislation and planning authorities	1
	<i>Environmental Planning and Assessment Act 1979</i>	2
	Other relevant planning legislation	3
	Planning bodies and consent authorities	5
	Land and Environment Court	9
	Planning instruments	9
	Environmental planning instruments	10
	Development control	13
	State significant development	13
	Regionally significant development	14
	Local development	14
	Climate change modelling and frameworks	16
	The Paris Agreement	16
	The NSW Climate Change Adaptation Strategy	16
	The Common Planning Assumptions	17
	Current NSW Government climate change considerations	21
	<i>Climate Change (Net Zero Future) Act 2023</i>	22
	Supporting framework	24
	Committee comment	25
Chapter 2	Case studies – community outcomes of current planning laws	27
	Committee comment	43
Chapter 3	Adequacy of the planning system to address climate change	45
	Historical development approvals	45
	Community impacts of 'zombie' development applications	46
	Recommendations for reform	50
	Biodiversity conservation in the planning system	52

	NSW Biodiversity Offsets Scheme	52
	Criticism of <i>Biodiversity Conservation Act 2016</i> and assessment processes	53
	Independent Review of the <i>Biodiversity Conservation Act 2016</i>	54
	Referral of proposals to Australian Environment Minister	55
	Supporting local councils and enhancing environmental protection in the planning system	56
	Integrating climate change and net zero emissions goals into the planning system	57
	Natural hazard modelling, mapping and other data	60
	Council resourcing	63
	Climate change as a prevailing consideration	65
	Community participation	67
	Genuine consultation with community	67
	NSW Planning Portal	69
	Committee comment	69
Chapter 4	Governance models	75
	Lack of governance structures between planning authorities	75
	Local councils and private certifiers	75
	Relationship between Land and Environment Court and other planning authorities	76
	State Government and local councils	77
	Non-approval provisions	79
	Land and Environment Court	81
	Coastal management	83
	Mature tree growth and presence compliance	85
	Committee comment	88
Chapter 5	Mitigation and adaptation	91
	Mitigation measures	91
	Local council initiatives to mitigate climate change	92
	Urban Heat Island Effect	94
	Resilient infrastructure	97
	Adaptation	100
	Improved land use planning	100
	Planned retreat	103
	Committee comment	107
Chapter 6	First Nations perspectives	109
	Legislated protections for Aboriginal cultural heritage	109

	Effects of development and climate change on Aboriginal cultural heritage	110
	Inclusion of First Nations perspectives and knowledge in planning processes	115
	Aboriginal Land claims process	116
	Connecting with Country framework	117
	Committee comment	118
Appendix 1	Submissions	120
Appendix 2	Witnesses	128
Appendix 3	Minutes	136
Appendix 4	Dissenting statement	174

Terms of reference

1. That Portfolio Committee 7 inquire into and report on how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes, and in particular:
 - (a) developments proposed or approved:
 - (i) in flood and fire prone areas or areas that have become more exposed to natural disasters as a result of climate change,
 - (ii) in areas that are vulnerable to rising sea levels, coastal erosion or drought conditions as a result of climate change, and
 - (iii) in areas that are threatened ecological communities or habitat for threatened species
 - (b) the adequacy of planning powers and planning bodies, particularly for local councils, to review, amend or revoke development approvals, and consider the costs, that are identified as placing people or the environment at risk as a consequence of:
 - (i) the cumulative impacts of development,
 - (ii) climate change and natural disasters,
 - (iii) biodiversity loss, and
 - (iii) rapidly changing social, economic and environmental circumstances
 - (c) short, medium and long term planning reforms that may be necessary to ensure that communities are able to mitigate and adapt to conditions caused by changing environmental and climatic conditions, as well as the community's expectation and need for homes, schools, hospitals and infrastructure
 - (d) alternative regulatory options to increase residential dwelling capacity where anticipated growth areas are no longer deemed suitable, or where existing capacity has been diminished due to the effects of climate change
 - (e) listening to, and learning from, Aboriginal voices and experiences to better inform planning outcomes¹
 - (f) any other related matters.

¹ On 25 January 2024, the committee resolved to amend the terms of reference by omitting paragraph (e) and inserting instead new paragraphs (e) and (f). *Minutes*, NSW Legislative Council, 6 February 2024, p 860.

Committee details

Committee members

Ms Sue Higginson MLC	The Greens	<i>Chair</i>
Hon John Ruddick MLC	Libertarian Party	<i>Deputy Chair</i>
Hon Mark Buttigieg MLC	Australian Labor Party	
Hon Anthony D'Adam MLC	Australian Labor Party	
Hon Scott Farlow MLC	Liberal Party	
Hon Jacqui Munro MLC	Liberal Party	
Hon Peter Primrose MLC	Australian Labor Party	

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Chair's foreword

This report presents the committee's recommendations on how the planning system can better ensure that people and the natural and built environments are protected from and adapting to the impacts of climate change and changing landscapes. Developments currently approved or proposed, the adequacy of planning powers and planning bodies, possible planning reforms and learning from Aboriginal voices are all themes discussed in this report.

The inquiry was established on 23 August 2023 and received 247 submissions from organisations and concerned citizens across New South Wales. The committee conducted hearings and site visits across New South Wales, including Sydney, the Central Coast, South Coast and North Coast.

The committee had the benefit of hearing directly from local communities about the impacts of developments in their local environment, and observed first-hand natural environments that are being put at risk from developments. This includes proposed and approved developments on fire and flood prone land, which will put people at risk from the effects of climate change and extreme weather events. The overwhelming message that the committee heard from these communities is that the planning system is not serving these communities and not enabling responsible environmental outcomes.

The committee received evidence about the harmful effects of some historically approved developments, many of which were approved under previous legislation, some which had not yet been built, but remain live in the planning system. These developments are not consistent with our current understanding and the realities of climate change. In many cases these developments will harmfully impact upon wildlife, including threatened species facing extinction, such as koalas, greater gliders and endangered ecological communities. These developments should not be able to proceed. However, there are barriers for consent authorities to review and modify or revoke these development consents.

This report makes 18 recommendations in total, including that the NSW Government seek to amend provisions of the *Environmental Planning and Assessment Act 1979* relating to historical development approvals, increasing the threshold for developers to have undertaken action in commencing physical works in order to prevent their development consent from lapsing, and for the NSW Government to consider a mechanism with appropriate thresholds for the reassessment of historical development consents. The report recommends the NSW Government consider giving power to consent authorities to revoke or modify development approvals where it can be demonstrated that the development will have significant social, environmental or cultural impacts not previously identified or that have changed from the time of approval and in certain circumstances, do so without the need to compensate for that change.

The committee heard that in order to properly address climate change in the planning system, the *Environmental Planning and Assessment Act 1979* must be amended, noting in particular that the Act does not currently mention climate change. It is now one year since the *Climate Change (Net Zero Future) Act 2023* commenced in New South Wales, which amongst other things introduced emissions reduction targets. Yet this year the Minister for Climate Change issued a Ministerial Statement warning that New South Wales is not on track to meet these targets. The Minister's statement contained a clear message to entities and decision makers responsible for assessment and decision making processes under the *Environmental Planning and Assessment Act 1979* that they should consider New South Wales' obligations to reduce emissions when dealing with development. The Minister for Planning then wrote to the Independent Planning Commission, the body responsible for decision making in relation to high emitting projects, pointing to the Minister's Statement and the *Climate Change (Net Zero Future) Act 2023*. Given the inextricable link between climate change and the planning system, the *Environmental Planning*

and Assessment Act 1979 should contain provisions requiring decision makers to ensure development is meeting emissions reduction requirements and that the impacts of climate change and the need to prepare and adapt to those impacts are central considerations in all decisions under the planning system. Alternatively, but less desirable, a state environmental planning policy could be introduced to properly integrate climate change within the planning system.

Furthermore, given the impacts of climate change and the need to prepare and adapt to those impacts fall heavily on local communities, the report recommends that the NSW Government continue to support councils to undertake their functions in addressing climate change, such as assessing the need for additional funding and making sure councils have the appropriate skills to assess large and complex proposals.

The committee heard from stakeholders about the availability and efficacy of a variety of climate data, including bushfire and flood mapping and other data used by planning bodies to inform decision-making on development and land-use. The report therefore recommends that the NSW Government investigate the establishment of a centralised source for all government held planning data, accessible to councils across New South Wales.

The committee notes calls from inquiry participants for a more comprehensive and coordinated climate adaptation framework, and recommends that the NSW Government enhance land use processes to take into account climate change risks, including the development of clear guidelines about where homes and infrastructure should and should not be located. Further, the committee recommends that the NSW Government continue to work through the NSW Reconstruction Authority to develop a state policy for managed relocation in situations where this may be a viable solution for communities or specific sites.

The committee heard from First Nations people and how the planning system continues to disrespect the perspectives, knowledge and cultural practices of First Nations people. In doing so the planning system continues to harm and destroy First Nations culture and heritage, which harms community. The committee heard that culturally appropriate consultation with First Nations people would be less harmful and lead to better environmental outcomes.

The planning system is big, complex, and interwoven with many environmental, social and economic realities. It deals with decisions that impact upon the natural and built environment which people and communities are inextricably a part of. It is a system that sees real power imbalances where some stand to make enormous financial gain and others stand to lose everything about the places they know and love. The committee learnt that people and their community do not always choose to engage with the planning system, rather they get drawn into it, they put their lives on hold to engage in good faith, yet get harmed because it can be a place of conflict over land use where their voices, while powerful, are not provided the weight they require to advocate in the public interest over certain private interests and better outcomes are missed.

I thank all inquiry participants for their evidence and in many cases, for welcoming the committee to their communities and on to country for hearings and site visits. I also thank my committee colleagues. It was an ambitious inquiry and I am very grateful to the secretariat who went above and beyond to make this inquiry possible.

I commend this report to the House.

Ms Sue Higginson MLC
Committee Chair

Recommendations

Recommendation 1

25

That the NSW Government consider implementing a system for when the Minister for Planning may request the Independent Planning Commission to conduct a public hearing for any development.

Recommendation 2

70

That the NSW Government seek to amend provisions of the *Environmental Planning and Assessment Act 1979* relating to historical developments to:

- increase the threshold required for developers to have undertaken action in commencing physical works in order to prevent their development consent from lapsing after 5 years
- consider a mechanism with appropriate thresholds for consent authorities to assess whether a historical development consent should be reassessed, and
- consider giving power to consent authorities to revoke or modify historical development consents, where it can be demonstrated that the development will have significant social, environmental or cultural impact not previously identified or that has been changed from the time of approval.

Recommendation 3

71

That the NSW Government consider amending the *Environmental Planning and Assessment Act 1979* to make the powers to consent authorities to modify or revoke development consents in the public interest, and that if a consent authority exercises the power to revoke a development consent, that no compensation is to be paid by the consent authority to the aggrieved person.

Recommendation 4

72

That the NSW Government consider implementing:

- all of the recommendations of the statutory review of the *Biodiversity Conservation Act 2016*
- planning instruments that provide for the retention and creation of deep soil, native tree cover and habitat in urban areas
- guidelines for a clear and transparent process for when the Minister for Planning will refer a development to the Federal Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Recommendation 5

73

That the NSW Government review the need for legislation amending the *Environmental Planning and Assessment Act 1979* or a state environmental planning policy to consider climate change within the planning system alongside the need to deliver development outcomes, including housing diversity, supply of industrial land and critical infrastructure.

Recommendation 6

73

That the NSW Government consider ways to improve the independence of the assessment of planning proposals and development applications, without increasing the time taken to assess such proposals.

- Recommendation 7** **73**
 That the NSW Government investigate the establishment of a centralised source for all government held planning data accessible to all councils across New South Wales, including:
- flood, coastal inundation and fire
 - biodiversity
 - climate modelling
 - any other relevant data.
- Recommendation 8** **74**
 That the NSW Government continue to support councils to undertake their functions in respect of addressing climate change where necessary, such as:
- assessing the need for additional funding
 - making sure councils have appropriate skills to assess large and complex proposals.
- Recommendation 9** **74**
 That the NSW Government implement enforceable measures and progress legislative change to ensure planning authorities:
- better reach communities using ongoing access to modern tools and a central database to inform them about development proposals in their local areas and
 - provide increased, meaningful and impactful opportunities for community participation in the planning process.
- Recommendation 10** **89**
 That the NSW Government review deemed refusal appeals under section 8.17 of the *Environmental Planning and Assessment Act 1979* and consider the impacts that deemed refusal appeals have on local councils, particularly in relation to the costs incurred in defending these appeals and the strain that this has on council resources.
- Recommendation 11** **89**
 That the NSW Government look into strengthening Development Control Plans so that provisions within Development Control Plans bear greater weight when considered in the Land and Environment Court and so that they can be enforced.
- Recommendation 12** **90**
 That the NSW Government introduce a formalised governance structure at the State level to provide leadership and better assist local coastal councils with the management of catchments, funding and administrative constraints in relation to their Coastal Management Plans.
- Recommendation 13** **107**
 That the NSW Government:
- implement statutory planning controls to mitigate the urban heat island effect, either through legislation, changes to the Sustainable Buildings SEPP, and/or any other relevant instruments
 - advocate for changes to the National Construction Code, through the Australian Building Codes Board, to help ensure that infrastructure is resilient to climate change impacts.

Recommendation 14**108**

That the NSW Government develop a more comprehensive and coordinated climate adaptation framework which can be implemented at local scale which:

- integrates climate resilience and preparedness measures into all aspects of planning and development
- identifies climate risks and prioritises specific actions being taken to reduce those risks.

Recommendation 15**108**

That the NSW Government enhance land use planning processes to take into account climate change risks, including the development of clear guidelines about where homes and infrastructure should and should not be located.

Recommendation 16**108**

That the NSW Government continue to work through the NSW Reconstruction Authority to develop a state policy for managed relocation in situations where this may be a viable solution for communities or specific sites.

Recommendation 17**119**

That the NSW Government give effect to the right of First Nations people to self-determination and the principle of free, prior, informed and ongoing consent in the New South Wales planning system, including in relation to:

- development applications and planning proposals
- culturally appropriate consultation and
- protection of cultural heritage and connection to Country.

Recommendation 18**119**

That the NSW Government in partnership with local Aboriginal land councils and other Aboriginal land holders, in land claims processes to identify and activate land suitable for development and progress any necessary rezonings to enable that development and where parties agree, consider land swaps where lands are not suitable for development due to biodiversity and climate change constraints.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 24 August 2023 and updated on 25 January 2024.

The committee received 246 submissions, 7 supplementary submissions, and 10 types of pro formas.

The committee held eight public hearings: three at Parliament House in Sydney, one in Gosford, one in Bega, one in Nowra, one in Campbelltown and one in Dee Why.

The committee also conducted 6 site visits to the following locations: the South Coast, Northern Beaches, Central Coast, Western Sydney, Mid and Far North Coast of New South Wales.

The committee originally determined to table an interim report then, following more regional hearings table a final report. After further consideration that determination was revised, the timeline was truncated, and it was determined that a single and final report would be tabled on 19 November 2024.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Background

This chapter will outline the current planning system under the *Environmental Planning and Assessment Act 1979*, including the roles, powers and scope of various bodies and consent authorities involved in assessing and approving developments in New South Wales. It will address the relevant environmental planning instruments used, including State Environment Planning Policies (SEPPs), Local Environmental Plans (LEPs), and other documents such as Development and Control Plans (DCPs). It will also discuss development controls and outline the eight planning approval pathways available for development in New South Wales. Finally, this chapter will consider the current climate modelling undertaken by the NSW Government and provide an overview on how the current planning system addresses the impacts of climate change on the environment and communities.

The committee acknowledges that the Legislative Assembly Standing Committee on Environment and Planning is currently conducting a public inquiry into historical development consents in NSW and notes that it will also draw findings and recommendations on this issue for the NSW Government to consider.

The planning system: primary legislation and planning authorities

1.1 This section provides an overview of planning legislation in New South Wales. It includes a review of the State's primary planning legislation, the *Environmental Planning and Assessment Act 1979*, as well as other supporting legislation such as the *Environmental Planning and Assessment Regulation 2021* and the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (Cth). This section will also address the various bodies and consent authorities that are involved in assessing and approving developments in New South Wales, and the roles, powers and scope of these authorities within the planning system.

1.2 The New South Wales planning system is a complex array of legislation, policies, guidelines and planning instruments, which aims to support planning authorities in making merit-based decisions. The policies and guidelines established under the *Environmental Planning and Assessment Act 1979* 'support fair and transparent decisions that are determined on their merits, having regard to potential economic, environmental and social impacts and the principles of ecologically sustainable development'.² The New South Wales planning system can be divided into two comprehensive areas:

- **Land use planning** is the process undertaken by planning authorities to determine how an area of land should be used. It involves extensive study, consultation and public input, and as a result, both immediate and future social, environmental, and economic objectives for an area are determined. Planning authorities may take into account an array of factors such as social, economic or environmental characteristics.³
- **Development control** is the assessment of developments against the eight approval pathways available, which are established under the *Environmental Planning and Assessment Act 1979*. Planning authorities assess local development and are then able to either grant

² Submission 189, NSW Government, p 6.

³ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 3.

approval, (with or without conditions), or refuse an application for development. The eight approval pathways help 'to ensure that appropriate assessment rigour and development controls are applied, including the appointment of an appropriate planning authority'.⁴

Environmental Planning and Assessment Act 1979

1.3 The *Environmental Planning and Assessment Act 1979* is the primary planning legislation in New South Wales. The Act provides a system for managing, planning, controlling and regulating land use in New South Wales. The Act also establishes how rules and regulations affecting developments are made and how developments are assessed against those rules and regulations.⁵

1.4 The *Environmental Planning and Assessment Act 1979* has eight core components being:

- planning administration (the relevant planning bodies and consent authorities, as well as the scope and powers of these authorities)
- planning instruments
- development assessment
- environmental impact assessment
- building and subdivision certification
- infrastructure funding
- reviews and appeals
- implementation and enforcement.⁶

1.5 Section 1.3 of the *Environmental Planning and Assessment Act 1979* notes the 10 objectives of the Act. They are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

⁴ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 3.

⁵ NSW Government, Department of Planning, The Planning System, (2024), <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/your-guide-to-the-da-process/getting-started/the-planning-system>.

⁶ *Environmental Planning and Assessment Act 1979*.

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.⁷

1.6 'Ecologically sustainable development' has the same definition as prescribed in the *Protection of the Environment Administration Act 1991*, which states that 'ecologically sustainable development requires the effective integration of social, economic and environmental considerations in decision-making processes'.⁸ The section goes on to state how ecologically sustainable development can be achieved by implementing and considering the following:

- whether 'there are threats of serious or irreversible environmental damage'
- whether the 'present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations'
- that 'conservation of biological diversity and ecological integrity' should be a 'fundamental consideration'
- that 'environmental factors should be included in the valuation of assets and services'.⁹

1.7 Under the *Environmental Planning and Assessment Act 1979*, 'development' is defined as:

- (a) the use of land,
- (b) the subdivision of land,
- (c) the erection of a building,
- (d) the carrying out of a work,
- (e) the demolition of a building or work,
- (f) any other act, matter or thing that may be controlled by an environmental planning instrument.¹⁰

Other relevant planning legislation

1.8 The Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* is Australia's primary national environment legislation. The purpose of the Act is to:

- help protect the environment and conserve biodiversity
- protect and manage important natural and cultural places
- assess the environmental impact of projects

⁷ *Environmental Planning and Assessment Act 1979*, s 1.3.

⁸ *Protection of the Environment Administration Act 1991*, s 6(2); *Environmental Planning and Assessment Act 1979*, s 1.4.

⁹ *Protection of the Environment Administration Act 1991*, s 6(2).

¹⁰ *Environmental Planning and Assessment Act 1979*, s 1.5(1).

- promote ecologically sustainable development
- recognize and promote the role of indigenous people in protecting and sustainably using the environment, and to promote using indigenous people's knowledge with their permission and cooperation.¹¹

1.9 The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) is concerned with protecting matters of national environmental significance,¹² of which there are many pertaining to New South Wales.

1.10 Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) the NSW Minister with administrative responsibility for a development may refer the development proposal to the Australian Minister for the Environment in relation to whether or not the development is a controlled action.¹³

1.11 The *Environmental Planning and Assessment Regulation 2021* is subordinate legislation that provides detailed rules and procedures to support and enable the effective implementation of the *Environmental Planning and Assessment Act 1979*.¹⁴

1.12 The *Coastal Management Act 2016* is also a significant piece of legislation regularly used within the planning system. The *Coastal Management Act 2016* commenced in April 2018 to establish a new strategic framework and clear objectives for managing coastal development issues in New South Wales. The objectives of the *Coastal Management Act 2016* are wide-ranging and include:

- (a) to protect and enhance natural coastal processes and coastal environmental values
...
- (b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and
- (c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and
- (d) to recognise the coastal zone as a vital economic zone ...
- (e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and
- (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and
- (g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline ...
- (h) to promote integrated and co-ordinated coastal planning, management and reporting, and
- (i) to encourage and promote plans and strategies to improve the resilience of coastal assets ...
- (j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone ...
- (k) to support public participation in coastal management ...

¹¹ Australian Government, Department of Climate Change, Energy, the Environment and Water, *Environment Protection and Biodiversity Conservation Act 1999*, (26 June 2024) <https://www.dcceew.gov.au/environment/epbc>.

¹² *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 3(1)(a).

¹³ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 69(1).

¹⁴ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 5.

- (l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone ...¹⁵

1.13 The *Coastal Management Act 2016* is a key component of the overall coastal management framework. The coastal management framework also includes Coastal Management State Environmental Planning Policies (which are discussed in paragraph 1.37 of this report), as well as the formation of the NSW Coastal Council, and the NSW Coastal Management Manual.¹⁶

1.14 The planning process also considers the regulatory requirements of other New South Wales legislation, such as the *Biodiversity Conservation Act 2016*, *NSW Reconstruction Authority Act 2022*, *Water Management Act 2000* and the *Heritage Act 1977*.¹⁷

Planning bodies and consent authorities

1.15 A range of government agencies and bodies in New South Wales are involved in the planning system. These agencies and bodies, also known as planning authorities, endeavour to 'work with the community and stakeholders to develop strategic plans, create rules and policies to support these plans, and make decisions about development'.¹⁸

1.16 In New South Wales, planning authorities include:

- The Minister for Planning
- The Secretary of the Department of Planning, Housing and Infrastructure (the Planning Secretary)
- The Independent Planning Commission
- Sydney district or regional planning panels
- a local planning panel
- a local council
- a determining authority appointed under Part 5 of the *Environmental Planning and Assessment Act 1979*
- a public authority that may be prescribed by the *Environmental Planning and Assessment Regulations 2021*.¹⁹

1.17 Part 2 of the *Environmental Planning and Assessment Act 1979*, addresses the roles, powers and scope of the various planning authorities involved in assessing and approving developments in

¹⁵ *Coastal Management Act 2016*, s 3.

¹⁶ NSW Government, Environment and Heritage, Coastal Management Framework, (2024), <https://www2.environment.nsw.gov.au/topics/water/coasts/coastal-management/framework>.

¹⁷ Submission 189, NSW Government, p 10.

¹⁸ NSW Government, *Community Guide to Planning* (July 2023), p 8.

¹⁹ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 8.

New South Wales.²⁰ The role of planning authorities is to 'make and amend planning instruments, and to apply planning instruments and other policy to the assessment and determination of proposed development'.²¹

Minister for Planning and the Secretary of the Department of Planning, Housing and Infrastructure

- 1.18** The Minister for Planning (the Minister) has overall portfolio responsibility for the planning and administration of the provisions of the *Environmental Planning and Assessment Act 1979* whilst the Secretary of the Department of Planning, Housing and Infrastructure (the Planning Secretary), has departmental responsibility for planning and for the administration of the provisions of the *Environmental Planning and Assessment Act 1979*.²²
- 1.19** The Department of Planning, Housing and Infrastructure (DPHI) 'coordinates the assessment of state significant projects' and the Minister or their delegate determines the majority of these.²³ A State environmental planning policy may declare any development to be a state significant development or the Minister, subject to conditions, may declare a development to be state significant.²⁴ A proposal is considered state significant if it is over a certain size, is in a sensitive environmental area, or if it will exceed a specific capital investment value.²⁵ Examples of state significant development include Sydney Olympic Park, Darling Harbour, the Bays Precinct and Barangaroo.²⁶

The Independent Planning Commission

- 1.20** The Independent Planning Commission was established as a standalone agency under the *Environmental Planning and Assessment Act 1979* on 1 March 2018, replacing the Planning Assessment Commission.²⁷ The Independent Planning Commission operates independently of government.²⁸ It can conduct public meetings and/or public hearings into matters concerning

²⁰ *Environmental Planning and Assessment Act 1979*, part 2; Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 8.

²¹ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 8.

²² *Environmental Planning and Assessment Act 1979*, ss 2.1-2.2.

²³ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 8.

²⁴ *Environmental Planning and Assessment Act 1979*, ss 4.36(2)-(3).

²⁵ NSW Government, State Significant Development, (2024), <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways/state-significant-development>.

²⁶ NSW Government, State Significant Development, (2024), <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways/state-significant-development>.

²⁷ Independent Planning Commission, History of Independent Planning Bodies, <https://www.ipcn.nsw.gov.au/about-us/history-of-independent-planning-bodies>.

²⁸ *Environmental Planning and Assessment Act 1979*, s 2.7(2); Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 9.

planning and development, provide independent expert advice and can act as a Sydney district or regional planning panel or a local planning panel.²⁹ It is the consent authority for state significant developments in New South Wales in cases where:

- there are at least 50 public objections to the state significant development
- the local council objects to the state significant development
- a reportable political donations disclosure is made by the state significant development applicant.³⁰

1.21 The Independent Planning Commission 'provides advice on all gateway reviews in [New South Wales], and rezoning reviews in the City of Sydney local government area'.³¹ Members of the Independent Planning Commission are 'appointed by the Minister ... for their core decision-making skills and backgrounds in a diverse planning-related fields'.³²

1.22 When the Independent Planning Commission is the consent authority for development, the Minister may request the Independent Planning Commission hold a public hearing in relation to the proposed development, distinct from a public meeting.³³ When the Independent Planning Commission has held a public hearing any merit appeal rights to the Land and Environment Court third parties may have had are extinguished.³⁴

1.23 During a Budget Estimates hearing on 30 August 2024, the Hon Paul Scully MP, Minister for Planning and Public Spaces told the committee that he will refer projects to the Independent Planning Commission 'as they're required to' be, and that he will consider requesting the Commission to hold a public hearing on a 'case-by-case basis in the assessment of the particular circumstances of a proposal'.³⁵ In answer to supplementary questions in February 2024, the Minister said that 'key considerations' in whether to refer a project for a public hearing 'are the complexity of the project and the level of public interest'.³⁶

Sydney district and regional planning panels

1.24 There are five Sydney district planning panels and four regional planning panels.³⁷ Sydney district and regional planning panels 'bring independent decision-making to larger

²⁹ Independent Planning Commission, What We Do, <https://www.ipcn.nsw.gov.au/about-us/what-we-do>.

³⁰ Independent Planning Commission, Our Role in the Planning System, <https://www.ipcn.nsw.gov.au/about-us/our-role-in-the-planning-system>.

³¹ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 9.

³² Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 9.

³³ *Environmental Planning and Assessment Act 1979*, s 2.9(1)(d).

³⁴ *Environmental Planning and Assessment Act 1979*, Div 8.3 s (8.6)(3)(a).

³⁵ Evidence, the Hon Paul Scully MP, Minister for Planning and Public Spaces, 30 August 2024, p 4 (Budget Estimates 2024-25).

³⁶ Answers to supplementary questions, the Hon Paul Scully MP, Minister for Planning

³⁷ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 10.

developments that are not of state significance, such as regionally significant development'.³⁸ Each Sydney district and regional planning panel consists of five members of which:

- three are appointed by the Minister,
- two are nominees of an applicable council who are councillors, members of a council staff or other persons nominated by the council.³⁹

1.25 Examples of regional significant developments 'include development on Crown ... or council land with a [capital investment value] of over \$5 million, coastal subdivisions that result in more than 100 lots, or private infrastructure and community facilities ... with a [capital investment value] over \$5 million'.⁴⁰

Local planning panels

1.26 All local councils in the Greater Sydney Region and Wollongong are required to establish a local planning panel, however other councils may elect to create a panel or be required to do so by the Minister.⁴¹ All planning and development decision-making are to be exercised on behalf of these councils by:

- a local planning panel; or
- an officer or employee of the council to whom the power has been delegated.⁴²

1.27 Each local planning panel consists of four members (who are appointed by the relevant council), which are:

- (a) an approved independent person appointed as the chairperson of the panel with relevant expertise that includes expertise in law or in government and public administration,
- (b) 2 other approved independent persons with relevant expertise,
- (c) a representative of the local community who is not a councillor or mayor.⁴³

1.28 Development applications should generally be referred to a local planning panel where:

- there is a conflict of interest, such as a councillor or member of parliament being the applicant or landowner
- 10 or more unique submissions have been made objecting to the application
- there was a departure or more than 10% of a development standard imposed by an environmental planning instrument

³⁸ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 10.

³⁹ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 10.

⁴⁰ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 10.

⁴¹ *Environmental Planning and Assessment Act 1979*, s 2.17; Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 11.

⁴² *Environmental Planning and Assessment Act 1979*, s 4.8(2).

⁴³ *Environmental Planning and Assessment Act 1979*, s 2.18(2).

- the development is sensitive, such as involving the demolition of a heritage item.⁴⁴

Land and Environment Court

- 1.29 The Land and Environment Court (LEC) 'supports the effective administration' of New South Wales planning legislation.⁴⁵
- 1.30 The four main functions of the LEC are as follows:
- **Merits appeals:** ... the LEC can reconsider a decision made by [a planning authority] ...
 - **Civil enforcement:** The LEC can impose an obligation on a developer to obtain a licence, issue an order to stop an unauthorised activity, or impose an obligation on government decision-makers to consider all relevant matters when exercising their power.
 - **Criminal enforcement:** The LEC can oversee prosecutions for criminal breaches of environmental law ...
 - **Judicial review:** The LEC can inquire into the legality of a decision made by a minister, government official, or agency, and the decision-making process.⁴⁶

Planning instruments

- 1.31 Planning instruments are 'strategic, regulatory, and guidelines-based documents established by the EP&A Act to govern land use and development controls.'⁴⁷ They are 'generally prepared by the NSW Government or local councils'.⁴⁸
- 1.32 The three types of planning instruments used by the New South Wales planning system are:
- Strategic planning instruments
 - Environmental planning instruments
 - Development control plans.⁴⁹

⁴⁴ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 11.

⁴⁵ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 32.

⁴⁶ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) pp 32-33.

⁴⁷ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 12.

⁴⁸ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 12.

⁴⁹ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 12.

1.33 Strategic planning instruments are a subgroup of planning instruments identified under part 3, division 3.1 of the *Environmental Planning and Assessment Act 1979*.⁵⁰ The hierarchy of strategic planning instruments is as follows:

- **Regional plans:** state-led strategic planning documents that set the general direction 'for strategic planning and land use within a region.'⁵¹ There are ten regional plans across New South Wales.⁵²
- **District strategic plans:** five district plans implement the vision and objectives of the Greater Sydney Region Plan at a district level.⁵³ These 'twenty-year plans provide a bridge between regional and local planning to inform Local Environmental Plans, local strategic planning statements and the assessment of planning proposals'.⁵⁴
- **Local strategic planning statements:** set out the strategic planning ambitions for a local government area as a whole and for specific areas.⁵⁵ Each local strategic planning statement aligns with the relevant regional and district strategic plan and allow councils to translate their strategic planning into local priorities and actions.⁵⁶

Environmental planning instruments

1.34 Environmental planning instruments have a number of purposes, 'including regulating development, protecting the environment, and land zoning'.⁵⁷ There are two types of environmental planning instruments:

- State Environmental Planning Policies
- Local Environmental Plans.⁵⁸

State Environmental Planning Policies

1.35 State Environmental Planning Policies (SEPPs) 'provide state-level planning controls on matters of regional or State significance or for certain areas of the state' and allow 'for a consistent approach to state planning issues'.⁵⁹ They 'inform how land or natural resources can be used, managed and conserved in New South Wales'.⁶⁰

⁵⁰ *Environmental Planning and Assessment Act 1979*, part 3, division 3.1.

⁵¹ NSW Government, Local Environmental Plan Making Guideline (August 2023), p 10.

⁵² NSW Government, Local Environmental Plan Making Guideline (August 2023), p 10.

⁵³ NSW Government, Local Environmental Plan Making Guideline (August 2023), p 10.

⁵⁴ NSW Government, Local Environmental Plan Making Guideline (August 2023), p 10.

⁵⁵ NSW Government, Local Environmental Plan Making Guideline (August 2023), p 11.

⁵⁶ NSW Government, Local Environmental Plan Making Guideline (August 2023), p 11.

⁵⁷ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 13.

⁵⁸ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 13.

⁵⁹ Submission 189, NSW Government, p 9.

⁶⁰ NSW Government, *Community Guide to Planning*, (July 2023), p 14.

1.36 SEPPs generally focus on one of the following eight areas:

- Planning systems
- Housing
- Transport and infrastructure
- Primary production
- Biodiversity and conservation
- Resilience and hazards
- Industry and employment
- Resources and energy.⁶¹

1.37 The State Environmental Planning Policy (Coastal Management) 2018 promotes an integrated and co-ordinated approach to coastal development in a manner that is consistent with the objectives of the *Coastal Management Act 2016*.⁶² Coastal management is also discussed in chapter two of this report in relation to specific coastal site case studies (Wamberal Beach and Collaroy/Narrabeen Beach) and chapter four.

Local Environmental Plans

1.38 Local Environmental Plans (LEPs) are generally developed by councils to outline rules to regulate and control development and land use within their local government area.⁶³ LEPs 'govern matters such as land zoning, minimum subdivision lot sizes, building height, and floor space ratios'.⁶⁴ LEPs must comply with the common format and contain certain mandatory provisions as outlined in the Standard Instrument (Local Environmental Plans) Order 2006.⁶⁵

1.39 A planning proposal is a request to create or amend an LEP, which is generally initiated by a landowner, developer or a local council.⁶⁶ In some instances, such as when a proposal is of state significance, the Minister 'may initiate an amendment to an LEP via a SEPP'.⁶⁷

1.40 There are six key stages related to the making of an LEP as shown in the following Figure 1:

⁶¹ NSW Government, *Community Guide to Planning*, (July 2023), p 14.

⁶² *State Environmental Planning Policy (Coastal Management) 2018*, s 3.

⁶³ NSW Government, *Community Guide to Planning*, (July 2023), p 15; Submission 189, NSW Government, p 9.

⁶⁴ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 14.

⁶⁵ NSW Government, *Local Environmental Plan Making Guideline*, (August 2023), p 12; Submission 189, NSW Government, p 9.

⁶⁶ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 14.

⁶⁷ Damian Gilyana and Daniel Montoya, 'How the NSW Planning System Works' (Research Paper No 4, Parliamentary Library, Parliament of New South Wales, 2024) p 14.

Figure 1 LEP making process overview:⁶⁸



Development Control Plans

1.41 Development Control Plans (DCPs), are non-statutory plans 'prepared by local councils to set considerations for development assessment' and to support their LEPs.⁶⁹ These plans provide

⁶⁸ NSW Government, *Local Environmental Plan Making Guideline*, (August 2023), p 16.

⁶⁹ Submission 189, NSW Government, p 9.

further guidance for development as they can cover the finer details of development such as building design, layout and access, signage, parking and waste management.⁷⁰

Development control

1.42 Development applications are assessed through one of eight different approval pathways. They are as follows:

- State significant development
- State significant infrastructure
- Regionally significant development
- Local development
- Exempt development
- Complying development:
- Development without consent
- Designated fishing activity.⁷¹

1.43 All developments requiring consent must be evaluated against the criteria set out in section 4.15 of the *Environmental Planning and Assessment Act 1979*.⁷² The relevant planning authority must take into consideration the following factors:

- any relevant environmental planning instrument (SEPPs, LEPs and DCPs)
- the likely environmental, social and economic impacts of the development
- the suitability of the site for the proposed development
- public submissions
- public interest.⁷³

State significant development

1.44 State significant developments, as discussed above at paragraph 1.19, include large-scale or complex projects.⁷⁴ The general planning approval process for state significant developments is as follows:

⁷⁰ NSW Government, *Community Guide to Planning*, (July 2023), p 15.

⁷¹ NSW Government, *Planning Approval Pathways*, (2024), <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways>. The NSW Government website states that nine approval pathways are available, however, please note that the approval pathway for Part 3A Development is no longer in use.

⁷² *Environmental Planning and Assessment Act 1979*, s 4.15.

⁷³ *Environmental Planning and Assessment Act 1979*, s 4.15.

- preparation and lodgement of request for Secretary's Environmental Assessment Regulations (SEARs)
- community and stakeholder consultation
- preparation of development application and environmental impact assessment
- DPHI reviews development application
- formal lodgement of development application
- public exhibitions and submissions (minimum public exhibition period of development application and environmental impact assessment is 28 days)⁷⁵
- response to submissions
- DPHI assesses development application
- referral to Independent Planning Commission (if required)
- determination.⁷⁶

Regionally significant development

- 1.45** Regionally significant development has a similar approval process to that of state significant development, however instead of a SEARS lodgement, a Statement of Environmental Effects is required to accompany the development application.⁷⁷ Generally, a local council (not DPHI) will assess the development application and will then present their findings to a planning panel.⁷⁸ The minimum public exhibition period for regionally significant development is 14 days, rather than 28 days.⁷⁹

Local development

- 1.46** Local development is the most common development in New South Wales.⁸⁰ It is development where a SEPP or LEP states that development approval is required but the

⁷⁴ NSW Government, State Significant Development, (2024), <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways/state-significant-development>.

⁷⁵ *Environmental Planning and Assessment Act 1979*, schedule 1, s 9. The Department of Planning Housing and Infrastructure exhibits development application and environmental impact assessment on their 'Major Works' website.

⁷⁶ NSW Government, *State Significant Development Guidelines*, March 2024.

⁷⁷ *Environmental Planning and Assessment Regulation 2000*, schedule 1, part 1, s 2(c).

⁷⁸ NSW Government, *Community Guide to Planning*, (July 2023), p 20.

⁷⁹ *Environmental Planning and Assessment Act 1979*, schedule 1, division 2, 7(1).

⁸⁰ NSW Government, Local Development, (2024), <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways/local-development>.

development is not considered to be regionally or state significant.⁸¹ The local development approval process is generally as follows:

- pre-lodgement
- lodgement
- assessment
- determination
- obtaining a construction certificate
- obtaining a occupation certificate.⁸²

Designated development

1.47 Designated development is local development that is considered high impact (likely to significantly impact the environment and/or generate pollution), or local development in an environmentally sensitive area.⁸³ There are two ways that a development can be categorised as 'designated development':

- firstly, if the class of development is listed as designated development in schedule 3 of the *Environmental Planning and Assessment Regulation 2021*
- secondly, if a SEPP or LEP declares a development to be designated development.⁸⁴

1.48 Designated development applications require a public exhibition period of at least 28 days and must be accompanied by an Environmental Impact Statement.⁸⁵ The Land and Environment Court has 'jurisdiction to hear and dispose of appeals ... by objectors ... [who made a submission during the public exhibition period], who are dissatisfied by a consent authority's determination to grant consent to a development application for designated development' under section 8.8 of the *Environmental Planning and Assessment Act 1979*.⁸⁶

1.49 Where, upon the request of the Minister for Planning, the Independent Planning Commission has held a public hearing in relation to designated development, including designated

⁸¹ NSW Government, Local Development, (2024), <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways/local-development>.

⁸² NSW Government, *Your Guide to the DA Process*, (2024), <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/your-guide-to-the-da-process>.

⁸³ NSW Government, Local Development - planning approval pathways, <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways/local-development>.

⁸⁴ NSW Government, Local Development, (2024), <https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/planning-approval-pathways/local-development>.

⁸⁵ *Environmental Planning and Assessment Act 1979*, schedule 1, s 8; *Environmental Planning and Assessment Act 1979*, s 4.12(8).

⁸⁶ *Environmental Planning and Assessment Act 1979*, s 8.8; Land and Environment Court, Development Appeals, <https://lec.nsw.gov.au/types-of-cases/class-1---environmental-planning-and-protection-appeals/development-application-appeals.html>.

development that is state significant development the merit appeal rights of objectors (third-parties) are extinguished.⁸⁷

Climate change modelling and frameworks

1.50 This section will consider the climate modelling that is currently being undertaken by the NSW Government to inform planning decisions and implement climate change considerations. This section will also address the actions that the NSW Government is taking to ensure that New South Wales meets its commitments under the Paris Agreement.

The Paris Agreement

1.51 The Paris Agreement is a legally binding international treaty on climate change, which was adopted by Australia alongside 195 countries at the UN Climate Change Conference (COP21), in Paris, France on 21 December 2015.⁸⁸ The Paris Agreement seeks 'to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C'.⁸⁹

1.52 As a signatory to the Paris Agreement, Australia must submit emissions reduction commitments known as Nationally Determined Contributions (NDCs).⁹⁰ Under the most recent NDC Australia has committed to reducing its emissions to 43 per cent below 2005 levels by 2030.⁹¹

1.53 The Agreement 'encourages governments to develop strong adaptation policy, strategy and plans, monitoring and evaluation, and climate change risk assessments'.⁹²

The NSW Climate Change Adaptation Strategy

1.54 The NSW Climate Change Adaptation Strategy sets out how the NSW Government will prepare for climate change.

1.55 The strategy has four priorities:

- develop robust and trusted metrics and information on climate change risk

⁸⁷ *Environmental Planning and Assessment Act 1979*, Div 8.3 s (8.6)(3)(a).

⁸⁸ The United Nations Framework Convention on Climate Change, The Paris Agreement <https://unfccc.int/process-and-meetings/the-paris-agreement>.

⁸⁹ The United Nations Framework Convention on Climate Change, The Paris Agreement <https://unfccc.int/process-and-meetings/the-paris-agreement>.

⁹⁰ Australian Government, Department of Climate Change, Energy, the Environment and Water, International climate action, (3 May 2024), <https://www.dceew.gov.au/climate-change/international-climate-action>.

⁹¹ Australian Government, Department of Climate Change, Energy, the Environment and Water, International climate action, (3 May 2024), <https://www.dceew.gov.au/climate-change/international-climate-action>.

⁹² NSW Government, NSW Climate Change Adaptation Strategy, 2022, p 12.

- complete climate change risk and opportunity assessments
- develop and deliver adaptation action plans
- embed climate change adaptation in NSW Government decision-making.⁹³

1.56 The NSW Government has started to undertake climate modelling to develop robust and trusted metrics which will then provide the right information for strategic adaptation planning and decision-making.⁹⁴

The Common Planning Assumptions

1.57 The Common Planning Assumptions Group is a ('whole-of-government group') established in 2016 to leverage and bring together the latest assumptions and data sets across New South Wales agencies.⁹⁵ Its intent is to ensure that 'there is common use of data, advice and guidelines across government when it comes to strategic planning'.⁹⁶

1.58 The data sets, parameters and assumptions, models and tools that are ascertained by the Common Planning Assumptions Group are called 'Common Planning Assumptions,' which are then 'used by NSW Government and external stakeholders, to prepare proposals, business plans and strategies that rely on projections'.⁹⁷ The Common Planning Assumptions cover 'a range of climate and natural resources information such as data, maps and reports relating to climate change, biodiversity, bushfires, heatwaves, rainfall, sea level rise and air quality'.⁹⁸

1.59 The Common Planning Assumptions Group has representatives from all of the major departmental groups.⁹⁹ In regard to the structure of the Common Planning Assumptions Group, there is one group at the top which reports to the Secretaries Board, and five subgroups underneath that work on specific themes and report to the Common Planning

⁹³ NSW Government, NSW Climate Change Adaptation Strategy, 2022, p 4.

⁹⁴ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

⁹⁵ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4; NSW Government, NSW Common Planning Assumptions, <https://www.treasury.nsw.gov.au/information-public-entities/nsw-common-planning-assumptions>.

⁹⁶ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

⁹⁷ Submission 189, NSW Government, pp 12-13.

⁹⁸ Submission 189, NSW Government, p 13.

⁹⁹ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 6.

Assumptions Group.¹⁰⁰ These subgroups progress work to enhance data for common planning decisions, 'promote data-sharing and also bring together communities of practice to explore future issues'.¹⁰¹ Each of the sub-groups meet regularly and report to the Common Planning Assumptions Group.¹⁰²

1.60 When asked how the climate modelling from the Common Planning Assumptions Group is implemented at the instrument level, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability from the NSW Department of Planning, Housing and Infrastructure advised that it is a 'key input to decision-making'.¹⁰³

1.61 Mr Hartley went on to provide the following example:

If I take the Greater Sydney Region Plan as an example, the Common Planning Assumptions feed directly into that strategic planning process. The Greater Sydney Region Plan includes a number of objectives. There are around three or four objectives that relate directly to climate change adaptation and mitigation. Those objectives are informed by the Common Planning Assumptions work.

The region plans, from a planning perspective, are a critical document because they flow through to the relevant decision pathway, there being a number of different development typologies and associated pathways under the *Environmental Planning and Assessment Act 1979*, but the region plan really sets then how those frameworks make decisions on the development application that's in front of them.¹⁰⁴

1.62 Mr Hartley further advised that the guidelines and controls from the Common Planning Assumptions Group are applied to a development application at the initial detailed planning stage, prior to the commencement of site investigation and construction:

There are requirements to consider the implications or impacts of climate change through that process. There are also cumulative impact assessment guidelines that apply to those processes. At multiple levels, the Common Planning Assumptions feed into the decision-making.¹⁰⁵

¹⁰⁰ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, pp 7 and 16.

¹⁰¹ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 7.

¹⁰² Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division from the Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 7.

¹⁰³ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 7.

¹⁰⁴ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 7.

¹⁰⁵ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 8.

- 1.63** A 'key component' of the Common Planning Assumptions Group is the regional climate modelling.¹⁰⁶ New South Wales leads the New South Wales and Regional Climate Modelling project (NARCLiM), which generates detailed climate projections and data for New South Wales.¹⁰⁷ Mr Riley advised that the aim of the NARCLiM project is to 'provide the best information ... at the scales appropriate for us to take informed decisions on future climate changes'.¹⁰⁸
- 1.64** There are three climate scenarios that are modelled under the NARCLiM project. They are as follows:
- **Shared socioeconomic pathway 1 -2.6 (SSP1-2.6):** This is a scenario that is 'broadly aligned with reaching and achieving' Australia's commitments under the Paris Agreement.¹⁰⁹ According to Mr Riley, it 'leads us to, around about, globally, a 1.8-degree Celsius warming,' which is 'below the 2-degree target'.¹¹⁰ This socioeconomic pathway can be best described as the best-case scenario.¹¹¹
 - **Shared socioeconomic pathway 2 -4.5 (SSP2-4.5):** This scenario is best described as a 'middle-of-the-road scenario'.¹¹² Under this scenario, 'the Paris Agreement targets are not met,' as this scenario results in a 'global warming of around 2.5-3°C,' but it is 'better than the current nationally determined contributions'.¹¹³
 - **Shared socioeconomic pathway 3 -7.0 (SSP3-7.0):** This scenario is best described as a 'worst-case scenario' as it takes into account the nationally determined contributions that other countries have made and puts 'us on a pathway to a global warming of

¹⁰⁶ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

¹⁰⁷ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

¹⁰⁸ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

¹⁰⁹ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

¹¹⁰ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

¹¹¹ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

¹¹² Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

¹¹³ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 5.

4°C'.¹¹⁴ According to Mr Riley, this will occur 'if we do nothing more than achieve our current nationally determined contributions'.¹¹⁵

1.65 Mr Riley explained how each of the climate models are then processed so they can then be used by planning authorities to inform planning decisions:

What we do is we take the global climate models, we assess how well they perform in Australia—and in particular over south-eastern Australia—and we choose the best of those models. We then take those models, five of them, and we run them through two regional climate models. For each scenario that I mentioned, and I started with SSP1-2.6, we have 10 possible future climates to inform our planning decisions. This is important because no one model can we have any degree of certainty will be the future climate, so we must take a risk-based approach looking at a range of possible future outcomes.¹¹⁶

1.66 The Department of Climate Change, Energy, the Environment and Water confirmed that modelling is complete for SSP1-2.6 and SSP3-7.0 and is already being used to 'inform work within the government'.¹¹⁷ The modelling for SSP2-4.5 will be completed towards the end of 2024.¹¹⁸

1.67 The regional climate models provide a 'range of information,' including changes in temperatures, changes in rainfall and precipitation, changes in forest fire weather, thunderstorms and wind events.¹¹⁹ Mr Riley advised that the NARCLiM project is 'generating somewhere close to 20 petabytes of data' and 'is likely to be the single biggest project in terms

¹¹⁴ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

¹¹⁵ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

¹¹⁶ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 4.

¹¹⁷ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 5.

¹¹⁸ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 5.

¹¹⁹ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 5.

of data ever run in Australia'.¹²⁰ The data collected from regional climate modelling gives the NSW Government the information needed to make 'informed, strategic planning decisions'.¹²¹

Current NSW Government climate change considerations

1.68 According to the NSW Government, the 'planning framework is in a unique position to help ensure the impacts of climate change and natural disaster are addressed'.¹²² The following provides an overview of how the planning system currently guides land use planning decisions in relation to climate change:

- **Environmental Planning and Assessment Act 1979:** Whilst there are no direct references to climate change within the *Environmental Planning and Assessment Act 1979*, one of the objectives of the Act states that relevant economic, social and environmental considerations should be integrated within planning decision-making to facilitate ecologically sustainable development.¹²³ Ecologically sustainable development is discussed in further detail above in paragraph 1.6 of this report.
- **Regional and district strategic plans:** Often these plans include 'statements and objectives that relate to climate change, climate risks, resilience, climate mitigation and adaptation'.¹²⁴ Regional and district strategic plans must also be 'consistent with the State Disaster Mitigation Plan and Disaster Adaptation Plans' (which assess and consider the impacts of climate change on natural disasters).¹²⁵
- **Local strategic planning statement:** If the relevant district or regional plan identifies measures relating to climate or natural hazard risk, local strategic planning instruments must be consistent with this.¹²⁶ Local strategic planning statements can also be used 'to identify changes needed to local planning controls for climate resilience'.¹²⁷
- **State environmental planning policies:** some SEPPs 'contain specific climate change or natural-hazard related controls'.¹²⁸
- **Local environmental plans:** As discussed above in paragraph 1.38, local environmental plans must contain certain mandatory provisions. One of those provisions is the mandatory flood planning provision, which requires councils to consider 'the impact of development on the projected changes to flood behaviour as a

¹²⁰ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 5.

¹²¹ Evidence, Mr Matthew Riley, Director of Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water, 8 March 2024, p 5.

¹²² Submission 189, NSW Government, p 6.

¹²³ *Environmental Planning and Assessment Act 1979*, s 1.3.

¹²⁴ Submission 189, NSW Government, p 12.

¹²⁵ Submission 189, NSW Government, pp 9 and 11.

¹²⁶ Submission 189, NSW Government, p 9.

¹²⁷ Submission 189, NSW Government, p 9.

¹²⁸ Submission 189, NSW Government, p 9.

result of climate change'.¹²⁹ Councils can also 'include their own local provisions on climate change resilience and natural hazards, including coastal hazards and urban heat'.¹³⁰

- **Development control plans:** Many councils chose to include provisions within their development control plans 'regarding natural hazards and climate resilience'.¹³¹
- **Local planning directions:** These planning directions 'set requirements for planning proposals' and can provide specific directions for 'the consideration of natural hazard and climate change risks'.¹³²

Climate Change (Net Zero Future) Act 2023

1.69 The *Climate Change (Net Zero Future) Act 2023* was enacted to give effect to the international commitment established through the 2015 Paris Agreement to:

- a) hold the increase in the global average temperature to well below 2°C above pre-industrial levels, and
- (b) pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, and
- (c) increase the ability to adapt to the adverse impacts of climate change.¹³³

1.70 The objects of the Act are as follows:

- (a) to establish guiding principles for action to address climate change,
- (b) to set targets for the reduction in net greenhouse gas emissions in New South Wales until 2050,
- (c) to set an objective for New South Wales to be more resilient to a changing climate,
- (d) to establish the Net Zero Commission to independently monitor, review and report on progress in New South Wales towards the targets, the adaptation objective and other matters.¹³⁴

1.71 The Act also outlines targets for reducing net greenhouse gas emissions in New South Wales over the next two decades:

- (a) by 30 June 2030—to reduce net greenhouse gas emissions in New South Wales by at least 50% from the net greenhouse gas emissions in 2005, and

¹²⁹ Standard Instrument (Local Environmental Plans) Order 2006, clause 5.21(3).

¹³⁰ Submission 189, NSW Government, p 9.

¹³¹ Submission 189, NSW Government, p 9.

¹³² Submission 189, NSW Government, p 9.

¹³³ *Climate Change (Net Zero Future) Act 2023*, s 3.

¹³⁴ *Climate Change (Net Zero Future) Act 2023*, s 4.

(b) by 30 June 2035—to reduce net greenhouse gas emissions in New South Wales by at least 70% from the net greenhouse gas emissions in 2005, and

(c) by 30 June 2050—to reduce net greenhouse gas emissions in New South Wales to zero.¹³⁵

1.72 In addition, the *Climate Change (Net Zero Future) Act 2023* provides powers for:

- future regulations to make the targets for reducing greenhouse gas emissions more ambitious by adjusting dates to an earlier date and/or by prescribing a higher percentage¹³⁶
- the establishment of the Net Zero Commission to 'monitor and review, and to provide advice and recommendations to the Minister on, progress' on net greenhouse gas emission targets, adaptation objective, and actions to address climate change.¹³⁷

1.73 As per section 15(3)(b) of the Act, the Net Zero Commission 'may provide advice and made recommendations to ... the Independent Planning Commission within the meaning of the *Environmental Planning and Assessment Act 1979*'.¹³⁸

1.74 Once this Act commenced, the Minister for Climate Change, the Hon Penny Sharpe MLC, issued a statement which noted that:

the latest projections from the NSW Department of Climate Change, Energy, the Environment and Water show a significant risk that NSW is not on track to meet its 2030 and 2035 targets without further action by the Government and the private sector.

...

The Government's policy is that entities involved in assessment and decision-making processes under the planning system – including ... the Independent Planning Commission (IPC) – should consider NSW's emissions-reduction targets and, to the extent relevant, the Climate Change Act's guiding principles when examining new developments.¹³⁹

1.75 Then on 20 May 2024, the Minister for Climate Change wrote to the Minister for Planning, the Hon Paul Scully MP, advising of 'updates to Government policy, which have implications for current and upcoming planning decisions' and that the 'Environment Protection authority is finalising new Climate Change Assessment Requirements and Guidelines for high-emitting projects.' The Minister also advised that the Government was in the 'process of setting up the Net Zero Commission' and hoped to 'make further updates to the Net Zero Plan and the

¹³⁵ *Climate Change (Net Zero Future) Act 2023*, s 9(1)(a-c).

¹³⁶ *Climate Change (Net Zero Future) Act 2023*, s 9(2)(a-b).

¹³⁷ *Climate Change (Net Zero Future) Act 2023*, s 15(1).

¹³⁸ *Climate Change (Net Zero Future) Act 2023*, s 15(3)(b).

¹³⁹ Ministerial statement, Hon Penny Sharpe MLC, Minister for Climate Change, Energy, Environment, Heritage, Updates regarding Net Zero Plan Stage 1: 2020-2030 and previous Implementation Updates, 20 May 2024, <https://www.energy.nsw.gov.au/nsw-plans-and-progress/government-strategies-and-frameworks/reaching-net-zero-emissions/update>.

NSW's climate change policies in 2025 once it has received advice from the new Commission'.¹⁴⁰ Furthermore, the Minister for Climate Change stated that '[u]pdates to other Government policies will also be forthcoming. For instance ... [the] Strategic Statement on Coal Exploration and Mining ... [and] a new Critical Minerals Strategy'.

- 1.76 Then on 2 June 2024, the Minister for Planning, the Hon Paul Scully MP, wrote to the Independent Planning Commission noting Minister Sharpe's request that 'agencies involved in assessment and decision-making processes within the planning system have regard for the Government's ... new Climate Change Assessment Requirements and Guidelines for high-emitting projects' and that it 'consider the issues that Minister Sharpe raised as the ... Commission continues to assess projects currently before it'.¹⁴¹

Supporting framework

- 1.77 The NSW Government has implemented the following guides and policies to assist and support planning authorities on how and when to consider climate change during the planning process:

- Climate Risk Ready NSW Guide: this guide contains 'information to help planning authorities to understand their exposure to climate risks' and how to 'embed climate risk management into existing risk management frameworks'
- Local Environmental Plan Making Guideline: this guideline addresses the assessment criteria for determining planning proposals, which includes the consideration of climate change
- Local Strategic Planning Statements – Guideline for Councils: 'this guideline identifies requirements for planning priorities in local strategic planning statements and suggests planning priority themes such as "environment" with sub-themes such as biodiversity, climate, resilience and risks'
- *Environmental Planning and Assessment Act 1979's* Climate Change Policy and Climate Change Action Plan 2023-26: these 'include information on understanding and considering climate change risks and adaptation in land use planning decisions'.¹⁴²
- Under the *NSW Reconstruction Authority Act 2022* the Authority must have a disaster mitigation plan, approved by the Minister, for the State, and 'may also, on its own initiative or as directed by the Minister, prepare a disaster adaptation plan'.¹⁴³ The State disaster mitigation plan must include or identify the following:

¹⁴⁰ Correspondence from the Hon Penny Sharpe MLC, Minister for Climate Change, Energy, Environment, Heritage to Hon Paul Scully MP, Minister for Planning and Public Spaces, 20 May 2024, <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/2024-policy-documents/nsw-net-zero--letter-from-penny-sharpe-mlc.pdf>

¹⁴¹ Correspondence from the Hon Paul Scully MP, Minister for Planning and Public Spaces, to Mr Andrew Mills, Chair, Independent Planning Commission, 2 June 2024, <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/2024-policy-documents/signed--min24572--letter-to-ipc-comissioner--nsw-net-zero-redacted.pdf>.

¹⁴² Submission 189, NSW Government, p 10.

¹⁴³ *NSW Reconstruction Authority Act 2022*, s 30; s 35(2).

- (a) potential strategies and actions for mitigating the impact of disasters on the State,
- (b) an assessment, and consideration, of the impacts of climate change on disasters,
- (c) priority areas or regions for projects to mitigate the impact of disasters,
- (d) the basis on which the Authority will monitor and report on the implementation of the strategies and actions mentioned in paragraph (a),
- (e) other matters prescribed by the regulations.¹⁴⁴

Committee comment

- 1.78** The committee notes with concern that high emissions projects are continuing to be approved without a binding obligation that decision makers have regard to the state's legislated emissions reduction targets. The committee notes that the Minister for Climate Change has issued a statement on the Net Zero Plan Stage 1: 2020-2030 and other implementation updates for the *Climate Change (Net Zero Future) Act 2023*, and that the Minister for Planning has written to the Independent Planning Commission referring to this statement, however there is nothing binding or enforceable about the ministerial statement. This is not desirable in a planning system where certainty and consistency are required. While these statements and letters are important they are no substitute for binding provisions in planning and environment laws.
- 1.79** The committee notes the evidence of the increasing frequency and intensity of natural hazards including bush fire, floods and coastal erosion. Given this, the NSW Government should consider making express reference to these matters in the evaluation of development and in the provisions for plan making under the *Environmental Planning and Assessment Act 1979*.
- 1.80** The committee considers that the process for the Minister to request the Independent Planning Commission to hold a public hearing about a project is unclear, other than that it is occurring on a case-by-case basis. Given the significant access-to-justice consequences of the Independent Planning Commission holding a public hearing, namely, that it extinguishes a community appeal right to the Court, the power of the Minister to request such a hearing ought to be exercised in a clear, consistent and transparent way. Therefore, the committee recommends that the NSW Government consider implementing a system for when the Minister for Planning may request the Independent Planning Commission to conduct a public hearing for any development.

Recommendation 1

That the NSW Government consider implementing a system for when the Minister for Planning may request the Independent Planning Commission to conduct a public hearing for any development.

¹⁴⁴ NSW *Reconstruction Authority Act 2022*, s 31(2).

Chapter 2 Case studies – community outcomes of current planning laws

- 2.1 During the inquiry, the committee conducted site visits to communities across New South Wales where developments have been approved or proposed in areas prone to the effects of climate change and natural disasters.
- 2.2 These site visits, as well as other evidence to the committee, provide examples of deficiencies in the planning system in ensuring the protection of communities from the effects of climate change. These examples highlight many of the issues examined throughout this report and are discussed below.

Case study 1 – Proposed Wamberal Beach seawall¹⁴⁵

Wamberal Beach on the New South Wales Central Coast has been subject to several development applications to construct a seawall along various sections of beachfront to address coastal erosion on the beach. The committee conducted a site visit of Wamberal Beach on 10 April 2024, accompanied by Mr Mark Lamont, Ms Corinne Lamont and Mr Justin Hickey, volunteers of the Wamberal Beach Save Our Sands community group.

The Wamberal Beach beachfront has a mix of privately owned land, five NSW Government-owned lots and Council land (which includes the Wamberal Beach Surf Club and access paths).

One of the seawall proposals put forward is by local residents' group Wamberal Protection Association in partnership with Central Coast Council for a '1.3 kilometer long, three-meter-high vertical concrete structure' which is opposed by the majority of the local community.

Mr Lamont stated that academics, including Mr Angus Gordon OAM and Professor Andrew Short, believed the proposed seawall would have the following impacts:

- Destroy public beach amenity through significant sand loss
- Undermine public safety along the beach through post-storm scouring
- Increase the risk of sea surge flooding of the adjacent Terrigal and Wamberal lagoons which are home to thousands of residents. Seawalls have 'end effects'. A Wamberal seawall would drive wave energy into the lagoon entrances, scouring them to become efficient channels of sea surge energy resulting in increased lagoon precinct flooding.
- Introduce risk of end effect impacts on the adjacent protected Wamberal Lagoon Reserve area managed by National Parks and Wildlife Service, a significant pristine dune ecosystem.

An analysis commissioned by the NSW Office of Environment and Heritage in 2017 recommended against constructing a vertical seawall, and that the proposal would not be in line with the NSW Coastal Design Guidelines issued by the then-NSW Department of Planning and Environment in 2023. Mr

¹⁴⁵ Submission 208, Mr Mark Lamont, p 1; Evidence, Mr Mark Lamont and Ms Corinne Lamont, Wamberal Beach Save Our Sands, 17 June 2024, pp 2-8. This case study is based on the content of the submission and evidence to the committee.

Lamont said the Guidelines instead promoted 'adaptive strategies', such as 'sand nourishment,' 'beach re-vegetation and even voluntary retreat' to address coastal erosion.

Concerns were expressed that appropriate planning processes have not been followed for the seawall proposals. Ms Lamont said actions proposed for Wamberal Beach in the Gosford Beaches Coastal Zone Management Plan (CZMP) adopted in 2017 included investigating funding and design of a revetment wall as well as adaptive measures, rather than a vertical seawall. Mr Lamont explained a revetment wall is a 'totally different' structure from a hard, vertical seawall and consists of 'a combination of rocks and loose materials' that are 'sometimes in wire cages that are flexible and are situated, usually sloping, along the beach' or are buried.

After a 2020 storm event Central Coast Council began to progress a hard seawall proposal as the appropriate option for Wamberal Beach despite it not being recommended in the CZMP. According to the Lamonts, the community were only consulted on options involving a seawall by Central Coast Council: "What type of seawall do you like? Do you like a seawall that is like this, like this, or one like this?" and that it became the 'adopted position' of Central Coast Council, despite the other available options.

The seawall option is also inconsistent with the objects of the *Coastal Management Act 2016*, which favours 'more adaptive soft strategies' over 'hard strategies' such as a seawall.

One of the potential adaptive measures, sand nourishment 'came up as a preferable option or a very good option for the beach', however it has not been pursued due to it not being studied.

The Development Applications for all three sections of the Wamberal seawall have now been lodged with the Central Coast Council. Community members from Save our Sand hand delivered 1,000 handwritten objections to Section B of the project in September 2024, with a further 700 objections lodged online.¹⁴⁶

Case study 2 – Callala Bay development proposal¹⁴⁷

Callala Bay is a small coastal community on the New South Wales South Coast. A 38-hectare area of forested land at Callala Bay subject to a proposal for a residential subdivision containing 380 lots on land which is home to endangered species. The committee conducted a site visit to the area on 3 May 2024, accompanied by Mr Rob Barrel, President and Convenor of Callala Matters and Mr Alfred Wellington, Chief Executive Officer of the Jerrinja Local Aboriginal Land Council.

Callala Matters, a local community action group, stated that the developer responsible for the proposal utilised 'outdated planning law' and 'exploited the flawed NSW Biodiversity Offset Scheme to create a biobank agreement over' land which previously could not be developed, in exchange for the rezoning

¹⁴⁶ 'Public comment open for two sections of proposed Wamberal seawall', *Coast Community News*, 20 September 2024, <https://coastcommunitynews.com.au/central-coast/news/2024/09/public-comment-open-for-two-sections-of-proposed-wamberal-seawall/>

¹⁴⁷ Submission 11, Callala Matters, pp 1-2; Evidence, Mr Rob Barrel, Callala Matters, 3 May 2024, pp 18-20. This case study is based on the content of the submission and evidence to the committee.

of the land. This was subsequently approved by the NSW Department of Planning and Environment in October 2022 despite there being no biodiversity certification for the development proposal. Mr Barrel said the biodiversity assessment was supposed to 'run concurrent' with the rezoning proposal but it is still outstanding.

Callala Matters shared that:

The subdivision plan ... offers no protection for endangered greater gliders or gang gang cockatoos – nor other threatened species including the yellow-bellied glider, grey-headed flying fox, gloss-black cockatoo, and eastern pygmy-possum. No habitat corridor is proposed. All but 2ha will be razed, including old-growth forest containing vital hollow-bearing trees...

According to the group, the subdivision does not meet the requirements of the Jervis Bay Settlement Strategy 2003 which stated that any 'potential new urban release' of land in Callala Bay should be 'contingent on site constraints around threatened species ... localised habitat corridors and significance of vegetation within the subject land.'

Mr Barrel advised that 97 per cent of submissions about the proposal opposed the clearing of land. Raising concerns with the process, Mr Barrel said:

It's not that the State's planning guidelines are so bad; it's that the State doesn't adhere to its own rules. Property developers should be obliged to comply with the strategies of planners and ecologists working for a democratically elected government acting for the people.

Mr Barrel further claims the data used to inform the developer's biodiversity application was 'based on survey data and findings that were more than five years old and predated the catastrophic fires', and that the 'field surveys were unrepresentative of the vegetation there.'

Elected councillors subsequently voted to withdraw the previous biodiversity application for the proposal. A new biodiversity application is being prepared by the developer with reference to an updated Biodiversity Assessment Method.

Case study 3 – Culburra Beach development proposals¹⁴⁸

Culburra Beach is another New South Wales South Coast community where developments of concern are proposed. The committee visited sites at Culburra Beach on 3 May 2024, accompanied by volunteers of the Culburra Residents & Ratepayers Action Group Committee (CRAAG) and Mr Alfred Wellington, Chief Executive Officer of the Jerrinja Local Aboriginal Land Council.

Two developments of concern in Culburra Beach are West Culburra development and PP006.

- West Culburra development is 47 hectares of forested land which is proposed to be developed for retail, industrial and residential use. The development was rejected by the then Department of Planning, Industry and Environment in 2018, before being

¹⁴⁸ Submission 192, Culburra Residents & Ratepayers Action Group Committee, pp 2-12; Evidence, Ms Rebecca Sleath, Culburra Residents & Ratepayers Action Group Committee, 3 May 2024, p 26. This case study is based on the content of the submission and evidence to the committee.

conditionally approved by the Land and Environment Court in 2021. The development is currently awaiting approval under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

- The project historically known as 'PP006' is predominantly forested land originally zoned as rural and environmental land. The use of the land is currently a 'deferred matter', after the developer of the site approached the then-Planning Minister to seek a zoning preferable for their intended development, resulting in the land becoming 'deferred' in anticipation of a masterplan.

CRAAG states both projects have been in development for 'decades', describing them as:

... classic examples of where decades-old planning processes ... are continuing to be forced through by loopholes exploited by developers and a legislative system unable to change course to keep abreast of changing societal needs.

Culburra Beach is a 'one-road-in, one-road-out village' that was threatened by the 2019-20 Black Summer bushfires. According to CRAAG, the forest due to be cleared for development is 'one of the small pockets of bushland in the Shoalhaven not to have burned' in the Black Summer bushfires.

The area is home to threatened wildlife species, including Gliders, Powerful Owls, Glossy Black Cockatoo and Gang-gang cockatoos.

CRAAG provided some examples of what it sees as a failure in processes in the planning system in respect of development sites at Culburra Beach:

- deferral of zoning for land for the PP006 development demonstrated the developer was able to 'sidestep' local government processes and approach the Planning Minister directly to seek a more favourable outcome. If the developer was not able to make this approach, the land would today be zoned rural and environmental, 'protecting Culburra's sensitive waterways and ecological communities'
- developers approaching councillors on Shoalhaven City Council directly influenced the council passing a motion in favour of their development, without any balance or opportunity for an opposing view to be presented to the councillors on what was a 'complex situation'
- the developer did not undertake appropriate community consultation, noting this is a requirement before a referral to the department is made. CRAAG states:

In our situation the developer did what they considered the legally required minimum – they put the report on display in the Nowra library (15kms away from the affected community) and at the State Library (200km from the affected community) and publicised it on their own company website (which no-one in the community had ever heard of).

This of course led to a scenario where the community did not get the opportunity to lodge submissions because nobody knew the application was in process. Having discovered belatedly what was afoot, many in the community emailed the EPBC NSW only to be told that the *“Minister is not required to consider late comments when making a decision”*.

- the proposed developments appear contrary to the South Coast Regional Strategy 2006-31,

which stated that urban development should occur on 'largely cleared land or areas where only limited clearing of native vegetation' is needed

- the developer is able to pursue development at Culburra Beach because of the inclusion of a 'Culburra Urban Expansion area' in a local environment plan adopted in 1985, which is outdated 'in light of 21st century understanding of extreme weather events, potentially rising sea levels, the value and fragility of coastal ecosystems and cultural heritage'.

CRAAG made several recommendations in its submission, including:

- that there be 'safeguards' to 'actively ensure a process of conscious balance' in government decision-making on development approvals
- reform to ensure the methods by which a developer notifies an affected community are not optional, such as making it 'compulsory for any developer to letterbox drop every house in a 20km radius of a development at every stage of community consultation'
- reforms to enable assessment and review of past decisions, including whether the decision was 'made in the best interests of the community' and if the decision meets 'society's current ideas and future requirements'
- all developments involving the 'clear felling of native bushland' be 'revoked and reassessed using a cost-benefit analysis incorporating the social cost of carbon'
- 'immediate reassessment' of the West Culburra Beach development approvals, which should 'include independent, post-bushfire environmental impact reports'
- a NSW Government 'review of the cumulative impact of developments across NSW' to ensure future developments balance 'growth with the need to protect and enhance environmental and cultural values.'

Nearly 19,000 First Nations items have been removed from the site as part of the proponent's work to prepare their development. The Jerrinja Aboriginal Land Council has now called for the return of the culturally significant material in accordance with cultural practice and lore. Some of the items have been dated between 5,000 and 10,000 years old and the disturbance has had a significant impact on the community. Mr Alfred Wellington, Chief Executive Officer of the Jerrinja Local Aboriginal Land Council (Jerrinja LALC) has stated that the process has been 'highly distressing, offensive, insulting and caused ongoing trauma to Jerrinja people ... Not only is it cultural vandalism, it is pure greed - there is no other reasoning for it'. His experiences have led him to conclude that '[t]he planning system is not set up to respect our value system, even the fact that we are consulted separately regarding ecology to culture, when for us they are one and the same. There is a statutory obligation to consult with us but there is no statutory obligation to actually respect what we have to say'.¹⁴⁹

¹⁴⁹ Abi Kirkland, 'Land council demands the return of 19,000 artefacts removed form Culburra', *Milton Ulladulla Times*, 20 August 2024, <https://www.ulladullatimes.com.au/story/8732200/culburra-beach-artefacts-removal-causes-cultural-distress/>.

Case study 4 – Westleigh Park redevelopment¹⁵⁰

During the inquiry, the committee heard about plans by Hornsby Shire Council to redevelop a site at Westleigh Park on the Upper North Shore of Sydney into recreation and sporting facilities. The committee visited the redevelopment site on 10 May 2024, accompanied by volunteers of the Save Westleigh Park Alliance.

Save Westleigh Park Alliance raised a number of issues with the proposed redevelopment, including:

- the site is 'heavily contaminated with asbestos, coal tar, PFAS, heavy metals and putrescibles'
- the redevelopment puts at risk threatened species and ecological communities, with the construction of a new mountain bike-only track on the land
- the proposed relocation of a Scarred Tree of 'high cultural significance to the Aboriginal community', against the wishes of Aboriginal stakeholders
- potential pollution from synthetic turf fields (microplastics, fungicides, cleaning agents and chemicals' may negatively affect the adjacent threatened ecological community and poses a bushfire risk, as Westleigh Park is already on bushfire prone land
- likely increased stormwater runoff
- low and mid-rising housing reforms resulting in increased density will put pressure on the 'one road in and out, Quarter Sessions Road'. Concerns have been raised by residents and the Rural Fire Service that in the event of a bushfire, Quarter Sessions Road will not have sufficient capacity to 'evacuate residents and allow firefighting vehicles in to get to the fire'
- the redevelopment will lead to a significant increase in traffic volumes
- a planned extension to Sefton Road will be constructed on Sydney Water land which contains Thornleigh Reservoir, and the council proposes to excavate part of the dam wall. Save Westleigh Park states Sydney Water engineers are concerned the proposed extension works may impact upon the integrity of the dam.

Mr Steven Head, General Manager of Hornsby Shire Council said he believes the council's plan will 'both maintain that incredible biodiversity and also share the use of the land for other uses that the community needs.' Mr Head said the council had developed a master plan for the site after 'incredibly extensive consultation and engagement,' which formed the basis of a 'very comprehensive development application' which had been placed on public exhibition. Mr Head also noted given that the council owns the land, it had 'acquired an independent planner' for the proposal and that it would be referred to the Sydney North district planning panel for determination.

Save Westleigh Park Alliance also highlighted that the previous NSW Government provided a \$40 million grant to Hornsby Shire Council for the project in 2018, which under the terms of the grant was required to be spent by 2022. Save Westleigh Park stated although work had not commenced on the project at the time of its submission, the grant funds had not been returned to the NSW Government.

¹⁵⁰ Submission 244, Save Westleigh Park, pp 1-5; Evidence, Mr Steven Head, General Manager, Hornsby Shire Council, 10 May 2024, p 17; This case study is primarily based on the content of the submission and evidence to the committee.

Hornsby Shire Council's website notes that the NSW Government has since rescinded the grant.

The NSW Government is currently in negotiations with Hornsby Shire Council about the return of unspent grant monies associated with the Westleigh Park development. The Office of Local Government has indicated that funds have been put aside for the purposes of pursuing the recovery of unspent monies through legal action if required.¹⁵¹

Case study 5 – Collaroy/Narrabeen Beach seawall¹⁵²

The committee also heard about a seawall constructed along parts of Collaroy/Narrabeen Beach on Sydney's Northern Beaches, as well as proposals to extend the seawall. The committee visited Collaroy Narrabeen Beach on 10 May 2024 accompanied by volunteers of the Surfrider Foundation (Surfrider) and Mr Angus Gordon OAM, a coastal and water engineer.

Surfrider's submission stated that it had recently opposed a development application to construct further sections of a 7.5 metre vertical seawall, which was approved by the Sydney North Planning Panel, noting that coastal erosion 'is an increasingly problematic issue'. Although stating that a rock revetment wall is 'not ideal', Surfrider prefers a rock revetment wall as an alternative to a vertical seawall as it costs less, is 'less damaging and far better for the public'.

In particular, Surfrider noted that the *Coastal Management Act 2016* removed provisions from the legislation it replaced (the *Coastal Protection Act 1979*), which required a 'panel of coastal practitioners' to consider proposals such as seawalls. Surfrider said the removal of these provisions was a 'retrograde step in coastal planning', which it considered a 'retreat' from the NSW Government in relation to coastal planning.

Surfrider said it believed that under the previous legislation, the development application for the seawall would have been refused, as some previous seawall proposals had been after assessment by the panel of coastal experts. Surfrider noted that the Sydney North Planning Panel which approved the seawall comprised two town planners, a community representative and a retired Land and Environment Court judge, but no representatives with coastal planning expertise.

Mr Brendan Donohoe, President of Surfrider's Northern Beaches Branch said coastal management had hit a 'crisis point' in New South Wales since the introduction of the *Coastal Management Act 2016*, which had made possible proposals such as the Collaroy-Narrabeen Beach seawall.

Surfrider called for the 'immediate reinstatement' for compulsory review of proposals such as seawalls, by an expert planning panel and the creation of a 'Coastal Commissioner' to ensure coastal structures 'meet with requirements under the Act and properly consider community standards'.

¹⁵¹ Evidence, Mr Ron Hoenig, Minister for Local Government, Portfolio Committee No. 8 – Customer Service, Budget Estimates, 5 September 2024, p 17.

¹⁵² Submission 3, Surfrider Foundation Australia, Northern Beaches Branch, pp 3-5; Evidence, Mr Brendan Donohoe, President, Surfrider Foundation, Northern Beaches Branch, 10 May 2024, pp 36-40; Submission 168, Northern Beaches Council, p 3. This case study is based on the content of submissions and evidence to the committee.

Northern Beaches Council said that 'storm events causing coastal erosion', including at Collaroy-Narrabeen Beach 'highlighted the need to reduce exposure to natural hazards and climate-related risks' in coastal settings. The council said the best way to address this is 'at a strategic planning level where a wholistic response can be developed and then implemented using clear, objective, consistent controls.' The council further commented:

elements of the NSW coastal management framework lack clarity and strategic direction which leaves substantial differences in interpretation to be resolved in the development assessment process.

Case study 6 – South West Rocks development¹⁵³

There are several historical developments of concern at South West Rocks, on the Mid North Coast of New South Wales. The committee visited some of these sites on 30 May 2024, accompanied by volunteers with the community group, Voices of South West Rocks and Mrs Nancy Pattison, Member, South West Rocks Figtree Descendants Aboriginal Corporation.

According to Ms Larah Kennedy, Committee Member of Voices of South West Rocks said that South West Rocks is experiencing a 'trajectory of unsustainable development and rapid, widespread native vegetation clearing.'

The historical development approvals in South West Rocks, also referred to as a 'zombie development application', were approved at different points in the past, potentially under different environmental standards, but continue to remain valid and do not lapse as long as works have physically commenced under the development approval.

Rise Projects development

This development was originally approved in 1993 for the construction of 180 villas. Kempsey Shire Council contended this approval had lapsed as 'substantial works' had not started, however the developer appealed to the Land and Environment Court and in March 2023 the development was given consent. The site has been cleared, as per the 1993 development consent.

The developer has since lodged a new development application for stage 1 of the project, approved in August 2023 under current planning legislation while the project's second stage is being assessed. The second stage of the development seeks approval for the construction of five six-story buildings and four five-story buildings, significantly higher than the zoning of most areas of South West Rocks.

The land is home to six listed threatened species and is an important wildlife corridor, running adjacent to a saltwater creek which runs to the ocean. Voices of South West Rocks also holds concerns about the 'impacts of sea level rise, flooding and acid sulphate soils on the site.'

¹⁵³ Evidence, Ms Larah Kennedy, Committee Member, Voices of South West Rocks, 17 June 2024, p 12; Submission 200, Voices of South West Rocks, pp 2-10. This case study is based on the content of the submission and evidence to the committee.

In July 2024, the proponent announced they would be taking legal action because Kempsey Shire Council was taking too long to provide its recommendation on the development application. Kempsey Shire Council provided a Council Assessment Report, dated 27 August 2024, to the Northern Regional Planning Panel recommending that the Rise development be refused on grounds of environmental impact, building heights and traffic management.¹⁵⁴

Seabreeze Estate development

This development is for a 221-lot sub-development adjacent to a saltwater lagoon. The site is close to sensitive wetlands and Voices of South West Rocks states the development will result in disturbance to acid sulphate soils and a 'devastating impact' on the wetlands.

The development was challenged in the Land and Environment Court in 2019, however this action was unsuccessful.

Settlers Ridge development

This development is a 154-lot sub-development approved in 2013 by the NSW Department of Planning, with construction of only 12 lots subsequently commencing in 2013-14 to ensure that development consent did not lapse. Voices of South West Rocks states that further work on the development did not take place until 2023, when 'all native vegetation was clear-felled, including hollow-bearing habitat trees.'

Voices of South West Rocks is concerned that the clearing of the coastal forest removes a significant contribution to mitigating the effects of climate change, such as enabling the forest to absorb carbon dioxide.

Case study 7 – Coffs Harbour Jetty Foreshore development¹⁵⁵

The committee also heard concerns about the Coffs Harbour Jetty Foreshore Precinct revitalisation project. The committee visited the Coffs Harbour Jetty Foreshore on 30 May 2024, accompanied by volunteers with the community group, Let's Own Our Future – Jetty Foreshores (Let's Own Our Future) and Uncle Reg Craig, a Gumbaynggirr Elder.

Let's Own Our Future is concerned about a NSW Government proposal to rezone land currently zoned for public recreation and environmental protection, and instead construct residential development next to a 'narrow strip of beachside parkland area' between the beach and North Coast Railway line.

¹⁵⁴ Ellie Chamberlain, 'Refusal recommended for Rose's multi-story apartments in South West Rocks', *The Macleay Argus*, 6 September 2024, <https://www.macleayargus.com.au/story/8752442/panel-advised-against-multi-storey-project-in-south-west-rocks/>.

¹⁵⁵ Submission 231, Let's Own Our Future – Jetty Foreshores, pp 2-8; Evidence, Dr Sally Townley, Let's Own Our Future – Jetty Foreshores, 17 June 2024, pp 12-14. This case study is based on the content of the submission and evidence to the committee.

The area is mostly Crown land managed by Coffs Harbour City Council on behalf of the NSW Government, but some land adjoining the railway line, which was surplus railway land had recently been purchased by Property and Development NSW (PDNSW).

The proposed rezoning will allow multi-story residential and commercial development on the land purchased by PDNSW, consisting of buildings up to six storeys and 450 apartments (including 250 residential and 200 short stay apartments). Let's Own Our Future believes that the land is 'grossly unsuited to privately owned residential development' and that its best use is as 'public open space for the purpose of passive recreation.'

Let's Own Our Future also raised concerns about the level of community engagement by PDNSW, including the efficacy of a survey conducted on their behalf which they believe focused on the type of 'built form development' that should proceed rather than any other options. Let's Own Our Future also believes a survey report misrepresented community values and perspectives on the future of the precinct.

Dr Sally Townley, Deputy Mayor of Coffs Harbour City Council and volunteer with Let's Own Our Future told the committee that the proposed development would be 'at risk of coastal erosion'. Dr Townley said:

We believe that the process of construction, changes in hydrology, stormwater run-off, foot traffic and vehicles would compromise the parklands and the littoral rainforest. We believe that it's unsuited to residential development of any kind. We believe that the proposed development is contrary to a whole range of existing laws which seek to protect the coast and the coastal biodiversity and to avoid development in hazard zones. We believe it's inconsistent with a range of strategies and policies, such as the North Coast Regional Plan and the Coffs Harbour city council Local Growth Management Strategy, which identifies areas for future development and seeks to maximise infill. We believe that the concerns of Aboriginal stakeholders and community members have been ignored.

Coffs Harbour City Council had offered to give PDNSW 'two blocks of serviced land' in the Coffs Harbour CBD to construct affordable housing 'as an exchange for keeping the jetty land in public ownership', but this offer was 'refused'.

At the NSW local government elections held on 14 September 2024, electors in the City of Coffs Harbour responded to a referendum question about the development of the Jetty Foreshore with 68.68 per cent of responses saying no to the land being used for multi-level private residential development.¹⁵⁶

¹⁵⁶ See NSW Electoral Commission, *City of Coffs Harbour Poll Election*, 30 September 2024, <https://vtr.elections.nsw.gov.au/LG2401/coffs-harbour/poll#questionDetails1>; Britt Ramsey, 'Coff Harbour Jetty Foreshores poll favours 'No' vote', *NBN News*, 20 September 2024, <https://www.nbnnews.com.au/2024/09/20/coffs-harbour-jetty-foreshores-poll-favours-no-vote/>.

Case study 8 – Yamba developments¹⁵⁷

The committee heard about developments of concern, both proposed and under construction in Yamba, a town in the New South Wales Northern Rivers region. The committee visited some of these sites on 31 May 2024, accompanied by volunteers of the community group, Yamba Community Action Network Inc (Yamba CAN) and Mr Kenn (Fox) Laurie, Yaegl Elder.

Yamba CAN advocates for the protection of Yamba's 'unique and fragile environment, particularly on the Yamba floodplain.' The group said that over the past few years, the number of developments has increased, 'negatively impacting on the lifestyle and amenity of residents.' Many of these projects are proposed, approved and/or already being filled or constructed.

Yamba CAN's concerns derive primarily from Yamba township's location, nearly three quarters of which sits on a floodplain ('a delta of nearly 690 hectares'). In the February 2022 flood, Yamba residents' only evacuation route was closed due to stormwater flooding. This event also saw many homes in Yamba flooded and there is a possibility that many homes in Yamba will be 'uninsurable' due to the 'climate-exacerbated riverine flooding'.

Ms Lynne Cairns, Secretary of Yamba CAN and Ms Helen Tyas Tunggal, Member of Yamba CAN called for several actions, including:

- a review of planning panels' 'operational procedures', to ensure all development applications comply with a council's LEP
- councils to ensure there is 'accurate modelling and mapping including stormwater flooding'
- 'better community consultation and engagement' by councils with communities
- 'an immediate moratorium on floodplain development until things are properly sorted out with an embedded physical climate restarter in all decisions'.

What is most concerning to the community, is the lack of implementation of the current Yamba Floodplain Risk Management Plan, (FRMP) endorsed by the council in 2009.

The FRMP recommends that a 'practical method of evacuation approved by the SES...needs to be in place prior to a development consent'. The FRMP also stated that 'any further development will exacerbate the flood hazard.'

The West Yamba Urban Release Area Development Control Plan requires any development to be consistent with the FRMP, but this plan had not been implemented by council. Clarence Valley Council staff had for several years insisted the FRMP had been superseded by a '2013 Grafton and Lower Clarence flood model' document. However, Ms Tunggal said it had now been confirmed the Yamba FRMP is the 'current legal FRMP'. Ms Tunggal said that if the FRMP 'had been implemented as intended, we could have largely prevented the huge problem currently occurring in Yamba'.

¹⁵⁷ Submission 164, Yamba Community Action Network Inc, pp 1-14, Evidence, Ms Lynne Cairns, Secretary, Yamba Community Action Network Inc, 17 June 2024, pp 17-20; Evidence, Ms Helen

Case study 9 – Maclean developments¹⁵⁸

The committee received evidence about several developments of concern on flood prone land in Maclean, in the New South Wales Northern Rivers region. The committee visited Maclean on 31 May 2024, accompanied by local residents Mr Paul and Ms Janeen Scully, Ms Elizabeth Smith, Yaegl Elder and Ms Lenore Parker, Matriarch and Senior Laegl Elder.

Mr and Ms Scully outlined the current 'corridor of development', both under construction and proposed that will impact Maclean's sewerage, stormwater and flood mitigation:

- River Glen development – large historical development which has commenced but is currently stalled. The development has been through several iterations dating back to 2005
- 50 Iona Close – development application has been lodged with Clarence Valley Council consisting of 16 townhouses. The development proposes '3 or more metres of fill and releasing stormwater into Essex Drain'
- Lot 1052069 – Large lot next to the River Glen development, currently zone 'low density'.
- 1 Rannoch Avenue – a smaller development, but 'significant' given its proximity to the above developments.

These developments will be connected to the Central Avenue Pump Station, which borders Wherrett Park and is surrounded by several developments, existing residents, businesses and an aged care home. The area has a very high percentage of older residents.

Wherrett Park is protected by a levee wall. Following the February and March 2022 storm events, ponding in Wherrett Park persisted for 'about two weeks' which exposed the town to become a 'brewing ground' of disease, and the Wherrett Park levee was 'overtopped.'

There are concerns about the capacity of sewerage and stormwater, and flood mitigation infrastructure to support new developments and protect existing properties in the area, given the impacts Maclean has already experienced from previous storm events.

Mr and Ms Scully called for the following outcomes:

- the River Glen 'zombie' development to stop, with developers to 'work with the community for better outcomes'
- 'a halt on potential development on neighbouring flood prone land until the stormwater, run-off, flooding and environmental issues' of concern to the community are 'addressed'
- development applications be required to 'include combined or cumulative existing and potential developments in their flood, stormwater and run-off planning'

Tyas Tunggal, Member of Yamba Community Action Network Inc, 17 June 2024, pp 17-20. This case study is based on the content of the submission and evidence to the committee.

¹⁵⁸ Submission 235, Paul and Janeen Scully, pp 1-12; Evidence, Mr Paul Scully, 17 June 2024, p 24. This case study is based on the contents of the submission and evidence to the committee.

- a condition be required for developments, 'of local stormwater assets to meet increased demand'
- legislation to support councils to reject a development application 'without incurring expensive legal fees'
- 'time-efficient strategies for unfinished developments to gone broke'
- the NSW Government to require insurance companies to provide affordable insurance, factoring in 'flood mitigation changes which owners make to their properties and to offer the option of no flood cover' to bring premiums in line with properties in non-flood prone areas'.

Case study 10 – Iron Gates development, Evans Head¹⁵⁹

The committee received evidence about the Iron Gates residential development at Evans Head, in the New South Wales Northern Rivers region. The committee visited Evans Head on 31 May 2024, accompanied by local residents, including Dr Richard Gates and Dr Peter Ashley, members of the community group Evans Head Residents for Sustainable Development Inc (EHRSD).

The Iron Gates site is 'an environmentally sensitive location on the Evans River, a significant local coastal waterway, not too far upstream from the river mouth and ocean.' Dr Peter Ashley outlined several of the environmental and other risks:

- the site is mapped as key fish habitat, with some of the north east section of the site designated as a wetland under State Environmental Planning Policy No 14—Coastal Wetlands
- the site is declared 'Core Koala Habitat' – with a known threat to koalas being the loss, modification or fragmentation of koala habitat
- the site is home to a 'White-bellied sea eagle' nest
- the site contains Littoral Rainforest and Coastal Vine Thickets of Eastern Australia, Coastal Swamp Sclerophyll Forest of NSW...nine threatened fauna species, including various bat species, the Squirrel glider...and Brush-tailed phascogale'
- the site is flood prone and 'suffers from severe stormwater flooding'. The site was 'seriously impacted' during 2022 flooding, including no postal service for a week, garbage collection falling a week behind, empty supermarket shelves, shops closed and houses flooded
- the site is declared bushfire prone land, which came close to evacuation during 2020 fires
- if the development proceeded, in the event of a flood or fire emergency, the impact on

¹⁵⁹ Submission 243, Dr Peter Ashley, pp 2-5; Submission 245, Evans Head Residents for Sustainable Development, pp 1 and 5; Evidence, Dr Peter Ashley and Dr Richard Gates, 17 June 2024, pp 27-29. This case study is based on the content of submissions and evidence to the committee.

Evans Head's 'social and physical infrastructure if it had to accommodate an extra 600 people' would be 'overwhelming', noting that Evans Head does not have a State Emergency Service unit.

EHRSD said there had been protests against development at the Iron Gates site (240 Iron Gates Drive) for 40 years. The current iteration of the development application was first lodged in 2014 and has been through various changes in status since then. In June 2022, an Independent Assessment Report by Richmond Valley Council, along with a peer review of that report, recommended refusal of the development application.

The Northern Regional Planning Panel refused the development application in September 2022, however an appeal was lodged by the developer. The Land and Environment Court granted the developer leave to file amended plans in November 2023, and the council subsequently advertised these in January 2024 and called for public submissions. The case was heard in the Land and Environment Court in June 2024.

EHRSD allege the developer appears to 'cherry pick' planning instruments in the development application that 'best suit their purposes'. EHRSD states the current application reflects 'nearly 10 years of tinkering around the edges', with many amendments, leaving a 'confusing mass of pages choosing different eras of planning laws to suit the developers' objectives.'

There are 'outstanding Land and Environment Court orders from 1997' for the developer to remediate fire and flood-prone land on the Iron Gates site. Despite the risk of 'fines and jail if not done', the remediation work has not been done.

EHRSD made several recommendations including:

- That there 'should be a better mechanism for informed local knowledge to be included in planning decisions that affected local people and their communities.
- Development applications should have a 'fixed use-by date for commencement and completion', and after lapsing a new development application lodged updated to 'current planning requirements'.
- 'Native regrowth' should be examined as possible habitat.
- The 'importance of wildlife corridors' should be included in planning laws.
- When 'communities raise an issue' with a development, a report should be 'independently peer reviewed at cost to the developer'.
- There should be an 'effective body to oversee the cumulative effects of development on local environments, community and social infrastructure'.
- Where a developer seeks to amend a development application, 'the planning conditions current at the time of the amendment should apply'.
- Planning laws should provide for 'support' for 'small regional and rural councils', where assessment of a matter exceeds their resources, such as by engaging 'independent expertise' at the expense of the developer.
- A 'moratorium be placed on coastal developments' until 'adequate mapping is available for coastal regions' showing climate change impacts such as 'sea level rise, floods and fire risk'.

- Greater recognition of First Nations cultural heritage.
- Enforcement of 'greater transparency' in New South Wales planning processes.
- Identities of owners of development land and assets to be made 'publicly available'.

In July 2024, the Land and Environment Court upheld an appeal by the proponent that will allow stage-one of the project to go ahead with 121 community title residential lots.¹⁶⁰

Case study 11 – Wallum development, Brunswick Heads¹⁶¹

The committee received evidence about the Wallum housing development, located at Brunswick Heads on the New South Wales North Coast. The committee visited Brunswick Heads and viewed the site on 31 May 2024, accompanied by members of the community group, Save Wallum including the group's Founder, Mr James Barrie and members of the local First Nations community, including Ms Arabella Douglas.

The Wallum development is a historical, or 'zombie' development approved under the repealed Part 3A (Major Projects) of the *Environment Planning and Assessment Act 1979*. Mr Barrie noted that this has 'insulated it from the proper protections for threatened species and sensitive habitats.' Mr Barrie told the committee this has resulted in the developer having 'stewardship of threatened species that they've repeatedly harmed on site.' The site is also 'Indigenous sacred land'.

A clause 34A certification had been issued for the Wallum development, which recognises past offset agreements made under a concept plan or planning agreement prior to the commencement of the *Biodiversity Conservation Act 2016*. Mr Barrie said:

If the 34A certificate didn't exist to reanimate laws that have been repealed at the expense of current laws, it wouldn't be able to cause the divide and expensive trouble that it has. We as a community have become alarmed to discover the inadequacy of the proposed offsets legitimated under clause 34A and the erosion that this loophole has had on our planning laws.

Mr Barrie continued:

It is incomprehensible that the NRPP [Northern Regional Planning Panel], who approved the DA and issued the clause 34A, could have been unaware of the many aspects of this development that have not been satisfactorily assessed. There is nothing satisfactory about the biodiversity impact assessments that have been made in ecological reports of this DA. The offsets are afforded to only three of the 22 threatened species on the site and are not based on accurate species distribution data. They are woefully inadequate for threatened species conservation and they are not

¹⁶⁰ Miranda Saunders, 'Evans Head Iron Gates development saga ends in approval for housing', *ABC News*, 31 July 2024, <https://www.abc.net.au/news/2024-07-31/evans-head-iron-gates-development-ends-in-approval-for-housing/103972094>.

¹⁶¹ Evidence, Mr James Barrie, Founder, Save Wallum, 17 June 2024, pp 32-36. This case study is based on evidence to the committee.

established methods with longitudinal precedents, nor are they best practice; but rather, they are experimental and temporary relative to intact natural habitats.

The community have lobbied the developer and the Hon Paul Scully MP, NSW Minister for Planning to refer the project to the Hon Tanya Plibersek MP, Commonwealth Minister for the Environment for assessment under the *Environment Protection and Biodiversity Conservation Act 1999*. However, the developer will not refer the project. The NSW Minister for Planning had advised councils have the ability to stop a 'zombie' development approval 'and should do so'. Mr Barrie said it appears Minister Plibersek will only consider the matter if it is referred by Minister Scully.

The committee notes that Minister Scully in response to a question without notice from the Member for Ballina on 20 March 2024 stated:

The compliance unit of the Commonwealth department is also aware of those activities. My department has also been advised that the Commonwealth was aware of the Wallum Estate development and was in discussions with the proponent in the requirements and their responsibilities under the Commonwealth Act. This matter is now with the Commonwealth, which can complete its own assessment as to whether a controlled action has been carried out and, if it was triggered, undertake compliance action where there is an identified breach. With that in mind, I have asked my department to engage regularly with the Commonwealth on this matter.¹⁶²

The developer claims there will be an 'ecological enhancement' of threatened species' habit on the site under their proposal. However, the offset measures proposed by the developer consist mostly of 'artificial frog ponds', 'temporary nesting boxes' for some nesting animals, and 'planting saplings' for large, old trees and that these only 'cover three of the 22 threatened species'.

There are also specific conditions in the Wallum area in which threatened Wallum frogs live, and that the proposal for artificial frog ponds are insufficient. These frogs are state and nationally listed threatened species. Three frog ponds have been trialed on the site for the past few years and 'the threatened frogs won't go near them.'

The most ideal outcome for the site would be its preservation as a wildflower reserve, with 'firestick farming practices by the local Indigenous people that would support the Wallum ecology.' Mr Barrie said the developer had 'made it clear that they would sell the site for a cost' as they would 'like it to be off their hands'. The community would like to see any clause 34A certifications issued or developments approved under the repealed Part 3A, to be 'thrown out and reassessed under appropriate legislation that is current and more representative of the community's values.'

As works on the site commenced in April 2024, members of the community gathered to try to stop the machines entering the site. Several people locked themselves to mesh fencing that was surrounding the property and also to an excavator. Around 18 people were arrested as part of this community resistance effort to save the lands at Wallum from harm.¹⁶³

A community group, Save Wallum Incorporated, applied to the Federal Court of Australia which

¹⁶² *Hansard*, Legislative Assembly, 20 March 2024, p 13 (Paul Scully).

¹⁶³ Hannah Ross, 'Protestors fighting Wallum housing development arrested in Brunswick Heads as machinery moves on site', *ABC News*, 17 April 2024, <https://www.abc.net.au/news/2024-04-17/police-protestors-clash-at-wallum-housing-site-brunswick-heads/103736282>.

granted a temporary injunction preventing work on the development from proceeding, with only minor maintenance works allowed to be undertaken by the proponent. The case for a final injunction is due to be heard by the Federal Court in February 2025. The community is needing to fundraise to carry the expensive cost burden of this litigation.¹⁶⁴

Committee comment

- 2.3** Throughout the inquiry, the committee has conducted hearings and site visits in locations across New South Wales including Sydney, the Central Coast, South Coast and North Coast. This has provided us the opportunity to hear directly from local councils and other concerned citizens on the ground about the impacts of developments in their local communities. It should be noted that the committee only received evidence from members of the community who had concerns about the developments, the subject of these case studies.
- 2.4** The committee observed first-hand natural environments including beaches, bushland and areas of native habitat and threatened species that are impacted by development proposals. The committee has also seen fire and flood prone land where developments are proposed to occur, where it is argued people are at risk from the effects of climate change and extreme weather events.
- 2.5** The committee thanks all inquiry participants for their evidence and for welcoming the committee to visit their communities and the places they love and are working to protect. It is very clear that the planning system can cause serious stress and anxiety and take up a lot of time, including years and even decades in some cases, for members of the community who engage in the system, in good faith, hoping that it will deliver environmental and social justice outcomes, when it doesn't. This leads to the loss of public trust and confidence in the system, which is clearly not a good outcome for social cohesion, trust in governments and good planning outcomes. The coming chapters go into further detail on these issues and discusses how the planning system can be enhanced to better serve these communities.

¹⁶⁴ 'Wallum protest blockade packed down', *The Echo*, 18 October 2024, <https://www.echo.net.au/2024/10/wallum-protest-blockade-packed-down/>.

Chapter 3 Adequacy of the planning system to address climate change

This chapter canvasses issues raised by stakeholders relating to how the planning system takes into account the impacts of climate change on the environment and communities. The chapter begins by discussing historical development approvals, and possible legislative changes which could address them and prevent them from occurring into the future. It then explores the impacts of development on biodiversity and how this interacts with the planning system. This is followed by a discussion of how councils and other planning bodies can be better supported to address climate change. The chapter concludes by discussing the effectiveness of community engagement in the planning system.

Historical development approvals

3.1 Under section 4.53(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) a development consent generally lapses within 5 years after the date from which it begins to operate.¹⁶⁵ However, section 4.53(4) states:

(4) Development consent for—

(a) the erection of a building, or

(b) the subdivision of land, or

(c) the carrying out of a work,

does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section.¹⁶⁶

3.2 The effect of this section of the Act is that a development approval may not lapse if the developer has physically begun some type of work on the development, even if that work seems relatively insignificant.¹⁶⁷

3.3 Section 4.57 of the EP&A Act provides provision for the 'revocation or modification of development consent,' stating that the 'Planning Secretary (having regard to any proposed State Environmental Planning Policy' or a council (having regard to a proposed Local Environmental Plan), may revoke or modify a consent if it appears to them that the development 'should not be carried out or completed, or should not be carried out or completed except with modifications'.¹⁶⁸

¹⁶⁵ *Environmental Planning and Assessment Act 1979*, s 4.53.

¹⁶⁶ *Environmental Planning and Assessment Act 1979*, s 4.53(4).

¹⁶⁷ *Environmental Planning and Assessment Act 1979*, s 4.53(4).

¹⁶⁸ *Environmental Planning and Assessment Act 1979*, s 4.57.

- 3.4 This section also provides for the consent authority to notify each person who is affected by the revocation or modification, affording them the opportunity to appear before the consent authority to 'show cause why the revocation or modification should not' occur.¹⁶⁹
- 3.5 The section also states that a 'person aggrieved by the revocation or modification is entitled to recover' compensation from the NSW Government or council, 'for expenditure incurred' in relation to the development while it was valid.¹⁷⁰

Community impacts of 'zombie' development applications

- 3.6 As referred to in several case studies in the previous chapter (South West Rocks, Yamba, Maclean, Culburra and Brunswick Heads) there is significant community concern about historical development approvals in the planning system.
- 3.7 Some participants in the inquiry expressed concern that this provision had enabled developments approved under previous environmental standards, which are out of step with current standards, to remain in effect as long as the developer has commenced some level of physical work on the site.¹⁷¹ In some cases, these developments may remain 'dormant' for several years before a developer decides to begin substantial construction.¹⁷² Local Government NSW (LGNSW) stated that the delayed implementation of decades old development consents results in developments going ahead that are 'out of step with contemporary...environment and planning standards'.¹⁷³
- 3.8 The committee heard from inquiry participants about other examples of historical developments, such as one 39-year old 'zombie DA' at Manyana, on the New South Wales South Coast.¹⁷⁴ Mr William Eger, President, Manyana Matters Environmental Association and retired Rural Fire Service volunteer told the committee that the footprint for this development 'holds endangered ecological communities', is home to critically threatened species and is in a 'historical bushfire corridor'.¹⁷⁵ Mr Eger said 'these zombie DAs last forever, yet there is no

¹⁶⁹ *Environmental Planning and Assessment Act 1979*, s 4.57.

¹⁷⁰ *Environmental Planning and Assessment Act 1979*, s 4.57(7).

¹⁷¹ Evidence, Ms Larah Kennedy, Committee Member, Voices of South West Rocks, 17 June 2024, p 14; Evidence, Dr Penelope Davidson, Secretary, Our Future Shoalhaven, 3 May 2024, p 18; Submission 245, Evans Head Residents for Sustainable Development, p 3; Submission 33, Sandy Beach Action Group, p 3; Submission 62, Dalmeny Matters, p 7; Submission 132, Hallidays Point Community Action Group, p 9; Submission 65, Pacific Palms Community Association, p 4; Submission 72, Kingscliff Ratepayers and Progress Association, p 1; Submission 99, Vincentia Matters, pp 1-2; Submission 197, Friends of Coila, p 7; Submission 198, Friends of CRUNCH, p 8; Submission 213, Sydney Basin Koala Network, p 9; Submission 214, Kempsey Shire Residents Association, p 1; Submission 207, Local Government NSW, p 12; *Environmental Planning and Assessment Act 1979*, s 4.53.

¹⁷² Evidence, Ms Larah Kennedy, Committee Member, Voices of South West Rocks, 17 June 2024, p 14.

¹⁷³ Submission 207, Local Government NSW, p 12.

¹⁷⁴ Evidence, Mr William Eger, President, Manyana Matters Environmental Association, 3 May 2024, p 32.

¹⁷⁵ Evidence, Mr William Eger, President, Manyana Matters Environmental Association, 3 May 2024, p 32.

mechanism by which to put a halt to them, not even in exceptional circumstances such as the Black Summer bushfires'.¹⁷⁶

3.9 Ms Jorj Lowrey, Founder and Committee Member of the Manyana Matters Environment Association told the committee of the impact of 'zombie DAs' in her community:

Zombie DAs mean that communities like ours will always have a noose hanging over our heads and we never know when the axe is going to fall and we'll potentially lose everything that we hold dear. We are in a constant state of fear and fight. Manyana Matters committee and members continue to work tirelessly to preserve the exceptional environmental values of our area. At times, it's a full-time job on top of a full-time job that we already have. Our work, our health, our relationships, our family all suffer. It shouldn't be up to communities to defend that which is really the remit of government to protect. If government cannot, due to legal loopholes, then the laws must change to close them.¹⁷⁷

3.10 Other community groups affected by 'zombie DAs' expressed concern about their impact and called for changes to planning laws to stop these developments from proceeding, including Our Future Shoalhaven, Evans Head Residents for Sustainable Development, Sandy Beach Action Group, Dalmeny Matters, Hallidays Point Community Action Group, Pacific Palms Community Association, Kingscliff Ratepayers and Progress Association, Vincentia Matters, Friends of Coila, Friends of CRUNCH, Sydney Basin Koala Network and Kempsey Shire Residents Association.¹⁷⁸

3.11 In their submission to the inquiry, community organisation Better Planning Network (BPN) raised concerns about 'zombie' development approvals.¹⁷⁹ BPN noted that these developments often take communities 'completely by surprise' when they start construction, as there is 'often a whole new population in the area who have no knowledge of the proposal' and are unable to provide any input to the proposal at that stage.¹⁸⁰ BPN noted that the local environment and community attitudes might have 'changed radically since the original approval was given,' and so 'it is only fair that developers should have to submit historic proposals to renewed scrutiny.'¹⁸¹

¹⁷⁶ Evidence, Mr William Eger, President, Manyana Matters Environmental Association, 3 May 2024, p 32.

¹⁷⁷ Evidence, Ms Jorj Lowrey, Founder and Committee Member, Manyana Matters Environmental Association, 3 May 2024, p 33.

¹⁷⁸ Evidence, Dr Penelope Davidson, Secretary, Our Future Shoalhaven, 3 May 2024, p 18; Submission 245, Evans Head Residents for Sustainable Development, p 3; Submission 33, Sandy Beach Action Group, p 3; Submission 62, Dalmeny Matters, p 7; Submission 132, Hallidays Point Community Action Group, p 9; Submission 65, Pacific Palms Community Association, p 4; Submission 72, Kingscliff Ratepayers and Progress Association, p 1; Submission 99, Vincentia Matters, pp 1-2; Submission 197, Friends of Coila, p 7; Submission 198, Friends of CRUNCH, p 8; Submission 213, Sydney Basin Koala Network, p 9; Submission 214, Kempsey Shire Residents Association, p 1.

¹⁷⁹ Submission 184, Better Planning Network, p 31.

¹⁸⁰ Submission 184, Better Planning Network, p 31.

¹⁸¹ Submission 184, Better Planning Network, p 31.

3.12 BPN further stated that there is a 'lax interpretation' of the physical or 'substantial commencement' of work on a development required to ensure the approval does not lapse, which is taken advantage of by developers.¹⁸² BPN said that '[w]orks as minimal as surveying pegs or nesting boxes have been accepted by consent authorities as "substantial commencement" sufficient to keep approvals alive'.¹⁸³

3.13 Among local councils giving evidence to the committee, there were diverse perspectives on the issue of 'zombie' development approvals. In his evidence, Cr Matt Gould, Mayor of Wollondilly Shire Council nominated 'zombie' development approvals as a 'real issue in some of our villages', stating that when a developer 'comes forward, it's got the DA consent so long as they have put pegs out at some point' and that 'there's not much that can be done about it at that point'.¹⁸⁴

3.14 In its submission to the inquiry, Tweed Shire Council spoke about 'zombie' development approvals and current processes to revoke development consents:

The current powers under s 4.57 to review the appropriateness of an existing development approval and to amend or revoke an approval that is incongruous with a draft LEP are adequate. However, it is not the power or authority that presents a barrier, it is the cost of the review and compensation to an aggrieved person that prevents the otherwise capable operation of s 4.57.¹⁸⁵

3.15 In evidence to the committee, Mr Anthony McMahon, Chief Executive Officer of Bega Valley Shire Council raised concerns about the 'use and interpretation' of the term 'zombie developments'.¹⁸⁶ Mr McMahon told the committee 'you can't pigeonhole ['zombie' development approvals] all the same way and assume that some of them should be allowed to go ahead and be done more simply, and others shouldn't'.¹⁸⁷

3.16 Mr McMahon continued:

We were trying to unpick that with people in our community to say, "This development is not the same as that one, even though they look the same to you. They were given different consents at different points in time— for example, with different tree preservation orders in place at a point in time that then affects what can and can't happen 20 years later". I think it's a lot more complicated than what might be playing out in the public domain, which in some ways I think is oversimplification of a complex planning framework that has changed over and over again for a number of decades.¹⁸⁸

¹⁸² Submission 184, Better Planning Network, p 31.

¹⁸³ Submission 184, Better Planning Network, p 31.

¹⁸⁴ Evidence, Cr Matt Gould, Mayor, Wollondilly Shire Council, 6 May 2024, p 20.

¹⁸⁵ Submission 155, Tweed Shire Council, p 17.

¹⁸⁶ Evidence, Mr Anthony McMahon, Chief Executive Officer, Bega Valley Shire Council, 2 May 2024, p 5.

¹⁸⁷ Evidence, Mr Anthony McMahon, Chief Executive Officer, Bega Valley Shire Council, 2 May 2024, p 5.

¹⁸⁸ Evidence, Mr Anthony McMahon, Chief Executive Officer, Bega Valley Shire Council, 2 May 2024, p 5.

- 3.17** The Nature Conservation Council noted that although local councils are 'primarily responsible for halting inappropriate developments including zombie developments', councils often do not have the financial resources to challenge developers who take legal action against a council decision which is not in their favour.¹⁸⁹ The Council cited an example of a 'zombie' development approval at South West Rocks, in which the developer appealed a decision by Kempsey Shire Council not to issue a construction certificate for the development, resulting in the developer taking legal action against the council requiring it to expend financial resources to defend the action.¹⁹⁰
- 3.18** Mr Martin Fallding, a strategic and environmental planner gave evidence to the committee providing a contrasting view of how to address 'zombie' development approvals.¹⁹¹ While acknowledging that 'zombie' development approvals are a 'real problem', Mr Fallding said there is 'capacity' within the EP&A Act for development consents to be revoked.¹⁹² He stated that 'the general culture within councils is that that is impossible to do'.¹⁹³
- 3.19** Mr Fallding further stated it is also seen as 'impossible' for land to be 'back-zoned' once it has been zoned for a particular purpose.¹⁹⁴ He cited an example of an industrial development in 'high-biodiversity land, with a lot of threatened species' he had been involved with in Lake Macquarie City Council.¹⁹⁵ Mr Fallding said that after the development was 'refused in the courts', the council was able to obtain the NSW Government's approval to 'rezone that as environment protection'.¹⁹⁶
- 3.20** In citing the example, Mr Fallding says 'It shows that things can change'.¹⁹⁷ He cautioned however, that there needed to be recognition that 'land should not be able to be fixed in time forever' and that developments need to be considered appropriate 'at the time the development commences'.¹⁹⁸ Mr Fallding suggested:
- There should be consideration to what 'commencement' means, in relation to the lapsing of a development approval and
 - There should be consideration of 'mechanisms' which could be 'quite easily' introduced to 'develop criteria for when it's appropriate to be able to review the validity of a consent'.¹⁹⁹
- 3.21** Questions about the power of local councils to revoke development consents were also raised at Budget Estimates hearings in August - September 2024. According to the Minister for

¹⁸⁹ Submission 136, Nature Conservation Council, p 33.

¹⁹⁰ Submission 136, Nature Conservation Council, p 33.

¹⁹¹ Evidence, Mr Martin Fallding, Principal, Land and Environment Planning, 8 March 2024, pp 38-39.

¹⁹² Evidence, Mr Martin Fallding, Principal, Land and Environment Planning, 8 March 2024, p 38.

¹⁹³ Evidence, Mr Martin Fallding, Principal, Land and Environment Planning, 8 March 2024, p 38.

¹⁹⁴ Evidence, Mr Martin Fallding, Principal, Land and Environment Planning, 8 March 2024, p 38.

¹⁹⁵ Evidence, Mr Martin Fallding, Principal, Land and Environment Planning, 8 March 2024, p 38.

¹⁹⁶ Evidence, Mr Martin Fallding, Principal, Land and Environment Planning, 8 March 2024, p 38.

¹⁹⁷ Evidence, Mr Martin Fallding, Principal, Land and Environment Planning, 8 March 2024, p 38.

¹⁹⁸ Evidence, Mr Martin Fallding, Principal, Land and Environment Planning, 8 March 2024, pp 38-39.

¹⁹⁹ Evidence, Mr Martin Fallding, Principal, Land and Environment Planning, 8 March 2024, pp 38-39.

Planning and Public Spaces, the Hon Paul Scully MP, 'since day one of the EP&A Act there's been a provision for council to overturn those decisions. To the best of my knowledge no council has acted on that, but the option remains. Councils can deal with it'. When asked about the exercise of that power he stated, 'I would like councils to exercise their power. They have a head of power and they should exercise it'.²⁰⁰

Recommendations for reform

3.22 Stakeholders including the Better Planning Network, Nature Conservation Council, LGNSW and Environmental Defenders Office gave evidence on legislative changes that could be enacted to address concerns about historical development approvals.²⁰¹

3.23 BPN made the following recommendations for changes needed:

- A significant strengthening of the definition of 'substantial commencement'
- Strict time limits on the validity of approvals, as a 'use it or lose it' incentive
- Requirements to re-advertise historic DAs more than a few years old and to accept and respond to community submissions.²⁰²

3.24 LGNSW recommended that the NSW Government review planning provisions to 'provide for a sunset provision' on development consents to 'avoid unreasonable delays in implementation of development consents and development not reasonably meeting contemporary environmental standards'.²⁰³

3.25 The Nature Conservation Council said that local councils 'must be given additional financial or legislative protection to allow them to challenge inappropriate developments' without being deterred by 'significant financial loss such as legal fees'.²⁰⁴ The Nature Conservation Council further recommended:

Existing zombie developments more than 5 years old are subject to reassessment under current planning laws. Inappropriate approvals must redesign, take a land swap or receive compensation.²⁰⁵

3.26 Similar sentiments were echoed by the Environmental Defenders Office (EDO) who recommended reform to the EP&A Act provisions relating to 'zombie' development approvals.²⁰⁶ Noting that there is 'an extremely limited ability for a consent authority to require

²⁰⁰ Evidence, Mr Paul Scully MP, Minister for Planning and Public Spaces, Portfolio Committee No.7 – Planning and Environment, Budget Estimates, 30 August 2024, p 37.

²⁰¹ Submission 184, Better Planning Network, p 31; Submission 136, Nature Conservation Council, pp 33-34; Submission 207, Local Government NSW, p 13; Submission 187, Environmental Defenders Office, pp 18-19.

²⁰² Submission 184, Better Planning Network, p 31.

²⁰³ Submission 207, Local Government NSW, p 13.

²⁰⁴ Submission 136, Nature Conservation Council, p 33.

²⁰⁵ Submission 136, Nature Conservation Council, p 34.

²⁰⁶ Submission 187, Environmental Defenders Office, pp 18-19.

a new environmental impact assessment', the EDO believes this is 'contrary to the intent of the provision providing for the lapsing of consents'.²⁰⁷

3.27 EDO recommended 'tightening of the wording' of section 4.53 of the EP&A Act, stating that the 'courts have interpreted "building, engineering or construction work" in a very broad way'.²⁰⁸ EDO stated the provision should be amended to require a developer to have undertaken more substantive work within a certain amount of time, in order to avoid the consent lapsing.²⁰⁹

3.28 Further, EDO suggested section 4.57 of the EP&A Act be amended to enable consent authorities to 'modify or revoke development consent conditions issued under repealed statutes'.²¹⁰ EDO stated this will 'ensure developments consents comply with the environment assessment requirements under' current legislation.²¹¹

3.29 Finally, the EDO proposed amending section 4.57 of the EP&A Act to 'trigger reassessment' where a development's activities 'would have a substantially greater impact than those identified at the time of the action's approval'.²¹²

3.30 Ms Rachel Walmsley, Head of Policy and Law Reform at the EDO commented in relation to zombie development approvals:

If we have dinosaur DAs that are still potentially able to be developed because we haven't tightened this loophole, that is going to potentially undermine climate reforms that we're trying to make. We're trying to lift the standards so we have better climate-ready homes, better climate-ready communities. But if we have these dinosaur DAs, they could undermine that.²¹³

3.31 Ms Walmsley also said zombie development approvals can 'undermine our ability to address cumulative impacts' of climate change:

In a climate scenario, we want to be able to know what the cumulative impacts of a range of developments are. You can do that if you know what developments are going to go ahead, but if you have these zombie developments, it's harder to tell. They're kind of hibernating there with the ability to undermine the good things that we're suggesting be achieved through making climate-ready planning laws and processes.²¹⁴

3.32 Recommendations put forward by the Tweed City Council in relation to historical development approvals included:

²⁰⁷ Submission 187, Environmental Defenders Office, pp 18.

²⁰⁸ Submission 187, Environmental Defenders Office, pp 18-19.

²⁰⁹ Submission 187, Environmental Defenders Office, pp 19.

²¹⁰ Submission 187, Environmental Defenders Office, pp 19.

²¹¹ Submission 187, Environmental Defenders Office, pp 19.

²¹² Submission 187, Environmental Defenders Office, pp 19.

²¹³ Evidence, Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, 8 March 2024, p 51.

²¹⁴ Evidence, Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, 8 March 2024, p 51.

- when considering reviewing, amending or revoking development approvals that have 'necessitated significant private investment and raised legitimate expectations on the granting of the approval', that 'this should occur at a minimum through a Planning Panel, whose members are practicing professionals in land use planning disciplines'
- consider the 'impact on the property market and for commercial investment associated with a loss of confidence owing to greater uncertainty about existing' approvals, before progressing any amendment to 'widen the ambit' of section 4.57 of the EP&A Act
- 'consider options for land buy back by way of acquisition or tradeable development rights to ensure the development yield is retained and reallocated' to a better location.²¹⁵

Biodiversity conservation in the planning system

3.33 In its submission, the NSW Government noted the effect climate change will have on biodiversity, 'including the survival of many species and ecosystems'.²¹⁶ Where development is proposed in New South Wales that is 'situated in or located near threatened species habitat', this may prompt consideration of a proposal under:

- Biodiversity Conservation Act 2016 (the BC Act)
- Marine Estate Management Act 2014 ('for marine parks and aquatic reserves')
- Fisheries Management Act 1994 (for threatened fish species).²¹⁷

3.34 As referred to in case studies in the previous chapter (such as development at Callala Bay, Westleigh Park and Brunswick Heads), there are community concerns about how the planning system takes into account the impacts on biodiversity as a result of developments.

NSW Biodiversity Offsets Scheme

3.35 The NSW Biodiversity Offsets Scheme is established by the *Biodiversity Conservation Act 2016* (the BC Act) and 'requires development and clearing proposals' that have 'significant impacts on biodiversity to assess, avoid and minimise the impact of their proposal on biodiversity'.²¹⁸

3.36 The BC Act establishes the Biodiversity Assessment Method (BAM) 'as a scientifically rigorous and consistent method to identify and quantify biodiversity values'.²¹⁹ The NSW Government explained that development proponents can generate biodiversity credits 'by establishing biodiversity stewardship sites, which require specific threatened ecological communities, species and their habitats to be protected in perpetuity'.²²⁰ When biodiversity offsets are required for a development, development proponents then will 'generally be

²¹⁵ Submission 155, Tweed Shire Council, p 17.

²¹⁶ Submission 189, NSW Government, p 5.

²¹⁷ Submission 189, NSW Government, p 17.

²¹⁸ Submission 189, NSW Government, p 17; *Biodiversity Conservation Act 2016*, s 6.2(d).

²¹⁹ Submission 189, NSW Government, p 17.

²²⁰ Submission 189, NSW Government, p 17; *Biodiversity Conservation Act 2016*, s 6.2.

required to retire biodiversity credits.' Biodiversity offset obligations can also 'be met by making a payment into the Biodiversity Conservation Fund.'²²¹

Criticism of *Biodiversity Conservation Act 2016* and assessment processes

- 3.37** The committee heard some criticism about the BAM used to assess developments. Mr Rob Barrel, President and Convenor of Callala Matters told the committee that he is concerned about the current methodology, stating that it 'is better than what it was before, but is still not good by any means'.²²²
- 3.38** Likewise, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist at Central Coast Council spoke about the BAM, stating that it 'misses a key understanding of connectivity' and that 'the intent is more around avoiding impacts that are occurring now...rather than impacts that might occur in 30 to 50 years time'.²²³
- 3.39** Dr McLean gave an example of species migrating from north to south as there is a 'warming climate', and advised Central Coast Council have been 'trying to look at' the issue and 'understand how you'd factor that in'.²²⁴ Dr McLean noted that it is 'complex work' that is 'best led by another agency at a higher level'.²²⁵
- 3.40** Woollahra Municipal Council shared a similar view, stating that current legislation does not equip planning bodies to 'adequately consider the costs on people and the environment stemming from biodiversity loss'.²²⁶ The council said the BC Act 'only addresses impacts from projects that trigger entry into the Biodiversity Offset Scheme'.²²⁷
- 3.41** In the Woollahra municipality, projects are generally smaller 'residential and commercial' developments that 'do not meet the threshold for entry into the Biodiversity Offset Scheme'.²²⁸ The council stated that 'accordingly, the planning system is not sufficiently equipped to address impacts from smaller projects that cumulate over time'.²²⁹ As a result, it recommended that the government:

...introduce legislation that requires consent authorities to consider cumulative biodiversity loss from projects that do not trigger a BOS. This will help ensure that local biodiversity is protected in LGAs with mostly infill development.²³⁰

²²¹ Submission 189, NSW Government, p 17.

²²² Evidence, Mr Rob Barrel, Callala Matters, 3 May 2024, p 20.

²²³ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 4.

²²⁴ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 4.

²²⁵ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 4.

²²⁶ Submission 10, Woollahra Municipal Council, p 3.

²²⁷ Submission 10, Woollahra Municipal Council, p 3.

²²⁸ Submission 10, Woollahra Municipal Council, p 3.

²²⁹ Submission 10, Woollahra Municipal Council, p 3.

²³⁰ Submission 10, Woollahra Municipal Council, p 3.

3.42 Similar sentiments were shared by Mr Michael Park, Executive Director, Planning and Environment at Shellharbour City Council who said the BAM does not take into account the 'cumulative impacts of loss of biodiversity'.²³¹ Mr Park said:

It assesses it on a site-by-site basis, and that's a real challenge because, when you go through either the five-part test of significance or if you go through a [Biodiversity Development Assessment Report] and you look at the impact of a development site in isolation, almost always there is a pathway to clear the vegetation. It's very rare that you'd have a serious and irreversible impact. If you looked more strategically at the loss of all of that vegetation and the cumulative impacts of the loss of that vegetation, you might get a very different picture, but that's not how the legislation is set up.²³²

Independent Review of the *Biodiversity Conservation Act 2016*

3.43 In its evidence to the committee, Central Coast Council referred to the final report of the Independent Review of the *Biodiversity Conservation Act 2016*, conducted by Ken Henry AC and published in August 2023.²³³

3.44 The review of the BC Act made various findings, including that:

- The BC Act 'is not meeting its primary purpose of maintaining a healthy, productive and resilient environment, and is never likely to do so'
- 'intensifying land use, a growing population and...infrastructure development has led to the destruction, alteration and fragmentation of habitat across the state'
- Climate changes effects 'are being felt, and are expected to become more pronounced' with an increase in 'extreme weather events' and impacts on 'species and ecosystems', including 'limiting their ability to adapt'.²³⁴

3.45 The Review made many recommendations, including:

- amending the Act to 'commit to an overarching object of "nature positive", where biodiversity is protected, restored' and within this goal, 'halting and reversing biodiversity loss and ecosystem collapse', 'zero human-induced extinctions of known threatened species' and 'a standard of net gain in biodiversity'
- amending the Act 'to require a 'net gain for biodiversity by setting credit obligations for all development and clearing assessed' at '120% of calculated biodiversity loss'
- amending the Act 'to give the Minister for the Environment a call-in power to determine if a proposal for local development or clearing' needing consideration by the

²³¹ Evidence, Mr Michael Park, Executive Director, Planning and Environment, Shellharbour City Council, 3 May 2024, p 10.

²³² Evidence, Mr Michael Park, Executive Director, Planning and Environment, Shellharbour City Council, 3 May 2024, p 10.

²³³ Evidence, Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council, 10 April 2024, p 4.

²³⁴ Department of Planning and Environment, *Independent Review of the Biodiversity Conservation Act 2016 – Final Report*, August 2023, p 1.

Native Vegetation Panel or Biodiversity and Conservation SEPP 'would give rise to a serious and irreversible impact'

- amending the Act 'to give the Minister for the Environment a call-in power for major projects in determining a serious and irreversible impact'
- providing 'clearer guidance on the requirements to avoid and minimise impacts to biodiversity from development'.
- supporting a nature positive framing of the Act, noting that this requires giving primacy to biodiversity considerations and that the Act should have primacy over competing pieces of legislation.²³⁵

3.46 Wollondilly Shire Council Mayor, Matt Gould expressed support for implementing the recommendations of the report, and further stated that the committee should 'consider and provide recommendations to address shortcomings in the planning framework in so much as it relates to biodiversity loss'.²³⁶

3.47 In July 2024, the NSW Government responded to the review of BC Act.²³⁷ In its response, the NSW Government supported or supported in principle, 49 out of 58 recommendations from review, and said it would further consider the remaining nine recommendations.²³⁸

Referral of proposals to Australian Environment Minister

3.48 Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), referrals may be made to the Australian Minister for the Environment by parties including a development proponent or a state or territory, if they believe an action will have a significant impact on 'any matters of national environmental significance'.²³⁹

3.49 In evidence to the committee, Mr James Barrie, Founder, Save Wallum said the community at Wallum found it 'disconcerting' that there was no clear or transparent process for the Minister for Planning to refer the development at Wallum to the Australian Minister for the Environment under the EPBC Act.²⁴⁰ Mr Barrie also said that the development proponent had 'refused' to refer their own proposal.²⁴¹

²³⁵ Department of Planning and Environment, *Independent Review of the Biodiversity Conservation Act 2016 – Final Report*, August 2023, pp 6-10.

²³⁶ Evidence, Cr Matt Gould, Mayor, Wollondilly Shire Council, 6 May 2024, p 22.

²³⁷ Media release, the Hon Penny Sharpe MLC, Minister for Environment and Heritage and The Hon Tara Moriarty MLC, Minister for Agriculture and Regional NSW, 'NSW plan for nature puts biodiversity protections, and landholder support front and centre', 17 July 2024.

²³⁸ The Cabinet Office, *NSW plan for nature: NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013*, July 2024, p 38.

²³⁹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Div 2.

²⁴⁰ Evidence, Mr James Barrie, Founder, Save Wallum, 17 June 2024, p 32.

²⁴¹ Evidence, Mr James Barrie, Founder, Save Wallum, 17 June 2024, p 33.

- 3.50** Mr Barrie told the committee that the community was of the view that the development would likely have a significant impact on the wallum sedge frog.²⁴² Mr Barrie said that his community had asked the NSW Minister for Planning to exercise his powers to refer the development to the Australian Minister for the Environment for assessment, because that power is limited to him as the Minister who has administrative responsibility for the development under the EP&A Act.²⁴³
- 3.51** Mr Barrie said the Save Wallum community had lobbied the Australian Minister for the Environment and the NSW Minister for Planning, but both were not accepting responsibility to take any action.²⁴⁴ As referred to in the case study, Mr Barrie emphasised his community's efforts have come at a large cost to them.²⁴⁵
- 3.52** By contrast, a proposal for a residential development in Manyana on the NSW South Coast was approved under the *Environment Protection and Biodiversity Conservation Act 1999* with the Australian Minister for the Environment and Water, the Hon Tanya Plibersek MP, writing to the Hon Paul Scully MP, NSW Minister for Planning and Public Spaces, on 20 September 2024 to outline responsibilities of the federal government in these matters.²⁴⁶ Minister Plibersek advised that '[u]nder federal legislation, I can only consider the project's impacts on matters of national environmental significance'. She also referred to the powers of the federal government in these matters:

...the federal government has no ability or authority or intervene in local planning or zoning decisions and determine whether this is in fact an appropriate location for housing. This is a matter for state and local governments. I can only regulate where a matter of national environmental significance is impacted.²⁴⁷

Supporting local councils and enhancing environmental protection in the planning system

- 3.53** The committee received a large volume of evidence from stakeholders about how planning bodies, particularly local councils, can best be supported to address climate change impacts within the planning system. The committee heard perspectives on how to integrate climate change considerations into planning legislation and policies, the sufficiency of flood, bushfire and other data available to councils and planning bodies, and the resourcing of councils.

²⁴² Evidence, Mr James Barrie, Founder, Save Wallum, 17 June 2024, p 34.

²⁴³ Evidence, Mr James Barrie, Founder, Save Wallum, 17 June 2024, p 33.

²⁴⁴ Evidence, Mr James Barrie, Founder, Save Wallum, 17 June 2024, p 33.

²⁴⁵ Evidence, Mr James Barrie, Founder, Save Wallum, 17 June 2024, p 33.

²⁴⁶ Correspondence from Hon Tanya Plibersek MP, Commonwealth Minister for the Environment and Water, to Mr Paul Scully MP, NSW Minister for Planning and Public Spaces, 20 September 2024.

²⁴⁷ Correspondence from Hon Tanya Plibersek MP, Commonwealth Minister for the Environment and Water, to Mr Paul Scully MP, NSW Minister for Planning and Public Spaces, 20 September 2024.

- 3.54** The committee notes that the lived experience conveyed by witnesses of climate fueled disasters, including the floods and the fires, provided a depth of compelling perspectives on how present and urgent these risks are.

Integrating climate change and net zero emissions goals into the planning system

- 3.55** Several stakeholders told the inquiry that the planning system should better and more explicitly incorporate measures to address climate change, including by integrating objectives and measures to help achieve the NSW Government's goal to reach net zero emissions by 2050.

- 3.56** Mr Jasper Brown, Solicitor at the Environment Defenders Office told the committee that despite the goals of the *Climate Change (Net Zero Future) Act 2023*, 'we are yet to see enforceable climate targets embedded in relevant decision-making processes' in the planning system.²⁴⁸ Mr Brown continued:

In addition to strengthening targets and the role of the Net Zero Commission under the new climate legislation, a critical and urgent reform needed is the integration of climate change considerations into the New South Wales planning system.²⁴⁹

- 3.57** Mr Brown added that 'integration' of climate change considerations would involve amending the EP&A Act to 'include a new objective setting out the explicit roles of the planning system in reducing emissions and protecting New South Wales against climate change impacts'.²⁵⁰

- 3.58** Similar perspectives about aligning state planning legislation and policy with its net zero emissions goals were expressed by other stakeholders, including the NSW Law Society, Sweltering Cities, Local Government NSW, Lock the Gate Alliance and the Public Interest Advocacy Centre.²⁵¹

- 3.59** Lock the Gate Alliance recommended the EP&A Act be amended to require that 'climate change mitigation and adaptation are made a mandatory consideration' for all development proposals and that consent not be granted to developments that are 'not consistent with New South Wales's 'obligation to reduce greenhouse gas emissions' or 'not resilient to the impacts of climate change'.²⁵²

- 3.60** The Public Interest Advocacy Centre said the planning system must aim to:
- Make contributions based on updated evidence regarding what is required to keep climate related temperature increases to between 1.5-2 degrees.
 - Minimise emissions from the built environment and land use;

²⁴⁸ Evidence, Mr Jasper Brown, Solicitor, Environmental Defenders Office, 8 March 2024, p 49.

²⁴⁹ Evidence, Mr Jasper Brown, Solicitor, Environmental Defenders Office, 8 March 2024, p 49.

²⁵⁰ Evidence, Mr Jasper Brown, Solicitor, Environmental Defenders Office, 8 March 2024, p 49.

²⁵¹ Submission 61, NSW Law Society, p 1; Submission 85, Sweltering Cities, p 1; Submission 207, Local Government NSW, pp 5-6; Submission 70, Lock the Gate Alliance, p 2; Submission 82, Public Interest Advocacy Centre, p 3.

²⁵² Submission 70, Lock the Gate Alliance, p 2.

- Minimise climate related harm to people and communities through robust planning for future development that properly considers the risks of climate change related impacts in all decision-making; and
- Strengthen resilience of people and communities in response to the impacts of climate change through appropriate place-based adaptation measures developed with communities to meet their needs.²⁵³

3.61 In evidence to the committee, Professor Nicky Morrison, an expert in collaborative planning at Western Sydney University said:

If climate change is not strongly articulated and embedded in State-level planning policies, councils face challenges when implementing local policies politically but also from industry, and are powerless to deliver necessary change. It would also give a lot of consistency across councils.²⁵⁴

3.62 Dr Jennifer Kent, Senior Research Fellow and Urbanism Discipline Lead at the University of Sydney said that state-level policy 'obviously has an extreme impact' on councils 'in guiding their decision-making' but noted that state-level policy 'gives them the mandate, it gives them the teeth' to be able to make decisions based on climate change considerations.²⁵⁵

Addressing climate change through SEPPs

3.63 In its submission, the Environmental Defenders Office (EDO) proposed the introduction of a 'Climate Change SEPP'.²⁵⁶ According to the EDO, this SEPP 'would integrate climate change mitigation or adaptation considerations into decision-making under the EP&A Act', as well as 'ensure they meet the revised objects of planning legislation and the Climate Change Act'.²⁵⁷ The EDO also said a review of all other 'relevant SEPPs' would be required to 'identify risks, processes and solutions for climate mitigation and adaptation'.²⁵⁸

3.64 In evidence to the committee, Ms Rachel Walmsley, Head of Policy and Law Reform at the EDO argued that a 'climate SEPP is the missing SEPP so far'.²⁵⁹ Ms Walmsley indicated that climate change considerations might be dealt with 'to some extent' in other SEPPs, however a climate change-specific SEPP was needed to 'bring in that whole-of-government piece'.²⁶⁰ She explained: 'we need decisions across government to link to targets' and that 'we need to have

²⁵³ Submission 82, Public Interest Advocacy Centre, p 3.

²⁵⁴ Evidence, Professor Nicky Morrison, Professor of Planning, and Director, Urban Transformations Research Centre, Western Sydney University, 8 March 2024, p 26.

²⁵⁵ Evidence, Dr Jennifer Kent, Senior Research Fellow and Urbanism Discipline Research Lead, School of Architecture, Design and Planning, University of Sydney, 8 March 2024, p 28.

²⁵⁶ Submission 187, Environmental Defenders Office, p 4.

²⁵⁷ Submission 187, Environmental Defenders Office, p 4.

²⁵⁸ Submission 187, Environmental Defenders Office, p 4.

²⁵⁹ Evidence, Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, 8 March 2024, p 49.

²⁶⁰ Evidence, Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, 8 March 2024, p 49.

mechanisms at every level'.²⁶¹ In answers to questions on notice to the committee, Ms Walmsley said that the EDO 'would be happy to work with the NSW Government and parliament to progress' a climate change SEPP if the committee recommended doing so.²⁶²

3.65 During the hearing, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure (DPHI) responded to the idea of a climate change SEPP, stating that while SEPPs are 'definitely an important instrument', that 'there are other decisions pathways' that help determine the type of planning decision that is appropriate to a pathway or development type, noting that it is 'not always a SEPP'.²⁶³

3.66 Other perspectives expressed by inquiry participants on using SEPPs to address climate change issues include:

- Professor Nicky Morrison referred to a previously proposed Design and Place SEPP which she said 'had all the right ingredients within it about green infrastructure, about light-coloured roofs', and should be 'resurrected'.²⁶⁴
- Mr Angus Gordon OAM, coastal engineer said that a 'natural hazard SEPP' should be developed 'to ensure there exists appropriate and consistent conditions of consent' for proposed developments in natural hazard areas.²⁶⁵
- Mr Jamie Erken, Manager, Statutory Planning, Camden Council expressed the view that implementing a SEPP 'gives consistency' on a particular area of planning policy across the state and is a good mechanism to ensure local councils' controls are not 'out of step' with NSW Government controls.²⁶⁶
- Cr Matt Gould, Mayor of Wollondilly Shire Council echoed agreed that SEPPs are desirable where they 'cover the baseline but still allow councils to be able to be flexible to their local needs' while requiring development proponents not to avoid any locally relevant controls imposed by a council.²⁶⁷
- Mr Mark Brisby, Director, Planning and Sustainability at Lane Cove Council told the committee his council 'sees an opportunity for improved alignment between climate and planning policies' and 'stronger leadership' from the NSW Government through the implementation of SEPPs, 'to provide best practice guidance to local government'.²⁶⁸ Mr

²⁶¹ Evidence, Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, 8 March 2024, p 49.

²⁶² Answers to questions on notice, Ms Rachael Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, 8 April 2024, p 1.

²⁶³ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 15.

²⁶⁴ Evidence, Professor Nicky Morrison, Professor of Planning, and Director, Urban Transformations Research Centre, Western Sydney University, 8 March 2024, p 28.

²⁶⁵ Evidence, Mr Angus Gordon OAM, Principal Consultant, Coastal Zone Management and Planning, 8 March 2024, p 34.

²⁶⁶ Evidence, Mr Jamie Erken, Manager, Statutory Planning, Camden Council, 6 May 2024, p 23.

²⁶⁷ Evidence, Cr Matt Gould, Mayor, Wollondilly Shire Council, 6 May 2024, p 24.

²⁶⁸ Evidence, Mr Mark Brisby, Director, Planning and Sustainability, Lane Cove Council, 10 May 2024, p 21.

Brisby nominated planning controls that 'address methods of reducing heat in the Sustainable Buildings SEPP' and allowing councils to introduce 'sustainability initiatives and requirements within' their LEPs as issues they would like to see addressed.²⁶⁹

Natural hazard modelling, mapping and other data

- 3.67** During the inquiry, stakeholders expressed concern about the availability and efficacy of bushfire, flood and other climate-related data used by planning bodies to inform decision-making on development and land-use.
- 3.68** Several local councils called for data that was consistent and up to date for modelling, projections and planning activities.²⁷⁰
- 3.69** For example, Cr Clover Moore, Mayor of City of Sydney said that a 'lack of up-to-date data and scenario projects is leading councils to complete data of their own, which means wider regional considerations are lost'.²⁷¹ Cr Moore said the NSW Government needed to 'release update climate projections and climate modelling analysis at a usable resolution for all local government areas'.²⁷²
- 3.70** Ms Monica Barone, Chief Executive Officer of City of Sydney added her perspective, stating that she believed there should be 'agreements around what data is provided' and legislation setting out the provision of data to councils 'so that different departments or even Ministers cannot...withdraw or stop supporting the collection of a particular dataset'.²⁷³
- 3.71** Ms Barone said that councils were required to prepare strategic planning statements, without access to any data to address climate change and emissions reduction, and that 'no councils had the data or even the capability to collect that data'.²⁷⁴ Ms Barone said City of Sydney had developed a data platform that provides them with emissions, water, waste, canopy and other data, which they have rolled out 'for the whole of Greater Sydney' so that all councils in the region could be 'working together in local government off the same database'.²⁷⁵ Ms Barone noted the cost was 'about \$5 million'.²⁷⁶ Ms Barone further stated it 'took two years to get the agreements with the State Government' to get canopy data for its data platform.²⁷⁷

²⁶⁹ Evidence, Mr Mark Brisby, Director, Planning and Sustainability, Lane Cove Council, 6 May 2024, p 21.

²⁷⁰ Evidence, Ms Suzanne Dunford, Sustainability and Resilience, Waverley Municipal Council, 15 March 2024, p 2; Evidence, Cr Clover Moore, Mayor, City of Sydney, 15 March 2024, p 10; Evidence, Mr Michael Park, Executive Director, Planning and Environment, Shellharbour City Council, 3 May 2024, p 3.

²⁷¹ Evidence, Cr Clover Moore, Mayor, City of Sydney, 15 March 2024, p 10.

²⁷² Evidence, Cr Clover Moore, Mayor, City of Sydney, 15 March 2024, p 10.

²⁷³ Evidence, Ms Monica Barone, Chief Executive Officer, City of Sydney, 15 March 2024, p 11.

²⁷⁴ Evidence, Ms Monica Barone, Chief Executive Officer, City of Sydney, 15 March 2024, p 11.

²⁷⁵ Evidence, Ms Monica Barone, Chief Executive Officer, City of Sydney, 15 March 2024, p 11.

²⁷⁶ Evidence, Ms Monica Barone, Chief Executive Officer, City of Sydney 15 March 2024, p 11.

²⁷⁷ Evidence, Ms Monica Barone, Chief Executive Officer, City of Sydney, 15 March 2024, p 12.

- 3.72** Ms Jane Stroud, Chief Executive Officer, Kiama Municipal Council and Mr Michael Park, Executive Director, Planning and Environment at Shellharbour City Council echoed the view that there should be real-time, updated flood maps to enable councils' planning decision to be responsive to the most up-to-date information.²⁷⁸
- 3.73** In particular, Mr Park advocated for LEPs to be able to reference 'a centralised data point' that was updated in real time.²⁷⁹ Mr Park said 'if we had State-led flood mapping...and we had instantly updated flood modelling to show' what happened after a flooding event, then LEPs would be 'pointing to that point to set the controls'.²⁸⁰ Mr Park noted 'it's not necessarily the controls that will change, it's the data that sits behind the controls about where the flood line sits'.²⁸¹ Mr Gordon Clark, Manager, Strategic Planning, Shoalhaven City Council supported the idea, stating it 'would be a responsive model'.²⁸² Mr Martin Fallding, also suggested that that 'there should be capacity to bring good data into local environmental plans to make these decisions clearer and more accurate'.²⁸³
- 3.74** Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, stated that 'state and local governments can work together through the planning system to reduce the impacts of climate change on communities,' however, 'effective decision-making on climate impacts requires consistent, accessible information and a requirement on the urgency to act'.²⁸⁴ Ms Dunford called for 'sub-regional hazard mapping reflecting climate projections from the State Government' to 'inform and support consistent planning decisions at all scales in New South Wales'.²⁸⁵
- 3.75** In terms of flood mapping, Ms Stella Agagiotis, Acting Manager, Sustainability at Randwick City Council told the committee that flood planning takes a 'very long time', resulting in the modelling and 'input and assumptions' used in their studies being questioned by the time plans are finalised due to 'changes in the nature of flooding'.²⁸⁶ Ms Agagiotis said 'there is a need to

²⁷⁸ Evidence, Ms Jane Stroud, Chief Executive Officer, Kiama Municipal Council, 3 May 2024, p 3; Evidence, Mr Michael Park, Executive Director, Planning and Environment, Shellharbour City Council, 3 May 2024, p 14.

²⁷⁹ Evidence, Mr Michael Park, Executive Director, Planning and Environment, Shellharbour City Council, 3 May 2024, p 14.

²⁸⁰ Evidence, Mr Michael Park, Executive Director, Planning and Environment, Shellharbour City Council, 3 May 2024, p 14.

²⁸¹ Evidence, Mr Michael Park, Executive Director, Planning and Environment, Shellharbour City Council, 3 May 2024, p 14.

²⁸² Evidence, Mr Gordon Clark, Manager, Strategic Planning, Shoalhaven City Council, 3 May 2024, p 14.

²⁸³ Evidence, Mr Martin Fallding, Principal, Land and Environment Planning, 8 March 2024, p 36.

²⁸⁴ Evidence, Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, 15 March 2024, p 3.

²⁸⁵ Evidence, Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, 15 March 2024, p 3.

²⁸⁶ Evidence, Ms Stella Agagiotis, Acting Manager, Sustainability, Randwick City Council, 15 March 2024, pp 6-7.

streamline that process of flood investigations, and to have readily available access to dashboards' for councils.²⁸⁷

3.76 Ms Sue Weatherly, NSW President of the Planning Institute of Australia said that an area the planning system needed improvement was 'accountability for hazard modelling and mapping'.²⁸⁸ Ms Weatherly said the current approach is 'ad hoc', 'rests primarily with local government' and that 'there is difficulty with maintaining those hazard maps with up-to-date climate data as we get more information and we need to make adjustments'.²⁸⁹

3.77 Ms Weatherly also said that 'most local government areas' do not have the resources to 'do it fully', and that their efforts would only be limited to their local government area.²⁹⁰

3.78 The Insurance Council of Australia (ICA) and Insurance Australia Group told the committee of unreliable datasets used for planning decisions across local government areas.²⁹¹ The ICA called for improvements to these datasets and advised it was working with the Australian Government to look at how to consolidate datasets across industry and government.²⁹²

3.79 In his submission, Dr Grahame Douglas of Western Sydney University acknowledged that 'there are significant inconsistencies in the mapping guidelines and the requirements for bushfire assessment in NSW'.²⁹³

3.80 Dr Douglas went on to explain that:

In New South Wales we continue to require local government to revise the bushfire prone land mapping on a 5 yearly basis. This has not been successful in that many Councils have failed to review their maps, the New South Wales Rural Fire Service did many of the initial maps to support Councils, and there are significant delays that have occurred between local councils preparing maps, the New South Wales Rural Fire Service approving maps, and availability of maps at a central point.²⁹⁴

3.81 Dr Douglas also stated to the committee in evidence that 'bushfire-prone-land-mapping should be centralised and done by State government' so that the mapping is 'maintained and kept up to date'.²⁹⁵

²⁸⁷ Evidence, Ms Stella Agagiotis, Acting Manager, Sustainability, Randwick City Council, 15 March 2024, p 7.

²⁸⁸ Evidence, Ms Sue Weatherly, NSW President, Planning Institute of Australia, 8 March 2024, p 42.

²⁸⁹ Evidence, Ms Sue Weatherly, NSW President, Planning Institute of Australia, 8 March 2024, p 42.

²⁹⁰ Evidence, Ms Sue Weatherly, NSW President, Planning Institute of Australia, 8 March 2024, p 42.

²⁹¹ Evidence, Ms Alix Pearce, Senior Manager, Climate and Social Policy, Insurance Council of Australia, 15 March 2024, pp 38-42; Evidence, Mr Andrew Dyer, Manager, Land Planning Hazards, Insurance Australia Group, 15 March 2024, p 43.

²⁹² Evidence, Ms Alix Pearce, Senior Manager, Climate and Social Policy, Insurance Council of Australia, 15 March 2024, pp 41-42.

²⁹³ Submission 78, Western Sydney University, 3 November 2023, p 6.

²⁹⁴ Submission 78, Western Sydney University, 3 November 2023, p 6.

²⁹⁵ Evidence, Dr Grahame Douglas, School of Engineering, Design and Built Environment, Western Sydney University, 8 March 2024, p 18.

- 3.82** Professor Nicky Morrison, Professor of Planning and Director, Western Sydney University advised that Western Sydney University was working on a project with Western Sydney Health Alliance to look at a partnership of eight councils within Western Sydney. The project looked at how those eight councils are focussing on climate change and how they 'work together and collaborate better ... and share centralised resources together'. Professor Morrison also advised that local councils are in the right position, 'they have knowledge of their communities and have direct engagement with the residents' so they should be at the coalface of implementing climate change at a local level.²⁹⁶ However, Professor Morrison did add that 'we need to build capacity within that cohort of the government and work more closely with the State and be consulted in a much more effective way with State government as well'.²⁹⁷
- 3.83** In evidence to the inquiry, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, DPHI said the planning system is moving from a 'hazard focus' to a 'risk-based focus', as recommended by the 2022 NSW Flood Inquiry.²⁹⁸ Mr Hartley told the committee a recent example of this shift is in an updated flood risk management manual issued by the NSW Government, and subsequent guidance to development proponents and councils on factors to consider in preparing for or assessing a proposal in a flood-risk area.²⁹⁹
- 3.84** Asked when this shift to a 'risk-based' focus will flow through to decision-making by planning authorities, Mr Hartley said 'that process has already started'.³⁰⁰ Mr Hartley also referred to the Hawkesbury Nepean flood evacuation modelling, which he said is 'informing planning decisions already'.³⁰¹ Mr Hartley also referenced work being conducted by the NSW Reconstruction Authority to prepare modelling for priority catchments in New South Wales, which is 'intended to be reflected in planning-specific decisions'.³⁰²

Council resourcing

- 3.85** Several stakeholders told the committee that councils were not adequately resourced to fulfill many of their duties under the planning system and addressing climate change.
- 3.86** Professor Warwick Giblin, Adjunct Professor, Faculty of Science, Agriculture, Business and Law at the University of New England raised concerns about the capacity of small regional

²⁹⁶ Evidence, Professor Nicky Morrison, Professor of Planning, and Director, Urban Transformations Research Centre, Western Sydney University, 8 March 2024, p 29.

²⁹⁷ Evidence, Professor Nicky Morrison, Professor of Planning, and Director, Urban Transformations Research Centre, Western Sydney University, 8 March 2024, p 29.

²⁹⁸ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 8.

²⁹⁹ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, pp 8-9.

³⁰⁰ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 9.

³⁰¹ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 9.

³⁰² Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, pp 9-10.

councils to 'address state significant developments'.³⁰³ Professor Giblin said 'this means either additional resources need to be engaged or DAs can receive a less than thorough merit-based evaluation and assessment'.³⁰⁴ Professor Giblin argued small rural councils needed increased funding to engage additional staff.³⁰⁵ Professor Giblin put forward the suggestion that DPHI 'could potentially loan or second some of their staff to these small councils'.³⁰⁶

3.87 The committee heard from other stakeholders including Randwick City Council, Waverley Council, Dr Grahame Douglas, Dr Patrick Harris and the Planning Institute of Australia, that some councils, particularly in regional areas, may not have sufficient resources and/or staff to undertake a variety of functions such as completing flood studies, monitoring compliance with development consents, bushfire mapping and engage fully with their communities.³⁰⁷

3.88 For example, Ms Sue Weatherley, NSW President, Planning Institute of Australia described the impacts of lack of resources in relation to flood risk modelling:

Most councils would be very keen to have the help and the assistance, because it's not just planners that are in this process. It's not just the planners and the strategic planning team. You need engineers who know how to read a flood model and prepare that. That's a level of expertise that's difficult for a council to buy in. They normally engage consultants and have someone in there, who would be one of their flood engineers, perhaps, trying to manage that process. But it's a really highly skilled area of expertise, and I would suggest it's the same for coastal inundation and some of the other things. For urban heat, I think there's a bit more knowledge out there and it's not as expensive a process, but if we took flooding, that requires, in most cases, beyond the expertise and capacity of most councils.³⁰⁸

3.89 Cr Philipa Veitch, Mayor, Randwick City Council added that flood mapping and modelling is a very time-consuming and resource-intensive process and went on to explain that:

The problem is that the cost of addressing the issue is so high that we end up with flood studies that identify all these risks, give recommendations as to what needs to happen, and then nothing can really happen because councils simply do not have the resources to do these massive infrastructure upgrades.³⁰⁹

³⁰³ Submission 37, Professor Warwick Giblin, p 3.

³⁰⁴ Submission 37, Professor Warwick Giblin, p 3.

³⁰⁵ Submission 37, Professor Warwick Giblin, p 3.

³⁰⁶ Evidence, Professor Warwick Giblin, Adjunct Professor, Faculty of Science, Agriculture, Business & Law, University of New England Fellow, Environment Institute of Australia & New Zealand, 8 March 2024, p 24.

³⁰⁷ Submission 158, Randwick City Council, p 2; Evidence, Ms Suzanne Dunford, Sustainability and Resilience, Waverley Municipal Council, 15 March 2024, p 2; Evidence, Dr Grahame Douglas, School of Engineering, Design and Built Environment, Western Sydney University, 8 March 2024, p 17; Evidence, Dr Patrick Harris, Senior Research Fellow, and Acting Director, Centre for Health Equity Training, Research and Evaluation, University of New South Wales, 8 March 2024, p 28; Evidence, Ms Sue Weatherley, NSW President, Planning Institute of Australia, 8 March 2024, p 42.

³⁰⁸ Evidence, Ms Sue Weatherley, NSW President, Planning Institute of Australia, 8 March 2024, p 46.

³⁰⁹ Evidence, Cr Philipa Veitch, Mayor, Randwick City Council, 15 March 2024, p 7.

3.90 Ms Julie Bindon from the Urban Development Institute of Australia NSW in giving evidence stated that:

Forward planning, strategic planning and getting the plan-making and the content of the plans right is very important. It has been neglected, in my view, for a long time. I suspect it's being neglected because there are just not enough resources going into it. We know there are not enough planners. We know that there is not enough money and that local councils don't have enough money.³¹⁰

3.91 Ms Bindon went on to explain that 'it's often too little too late when you get to the development application, so it leads us back to the very crucial role of strategic planning, getting that right and putting some serious resources into that'.³¹¹ Ms Bindon added that councils simply do not have the resources, 'even in the court, getting them to respond to court orders in time is a real problem because the staff are too stretched. It's a real problem'.³¹²

Climate change as a prevailing consideration

3.92 Evidence received in the inquiry canvassed how the planning system should balance considerations of climate change with other imperatives such as resolving the current housing crisis in New South Wales.

3.93 In its submission, the Nature Conservation Council said the New South Wales planning system 'has treated the relationship between the built and natural environments as one that requires the balancing of economic, social, and environmental considerations'.³¹³ However, the Council said the 'ecologically sustainable development' elements of the EP&A Act has 'failed to give adequate weight to the natural world and the right of future generations to thriving ecosystems'.³¹⁴

3.94 Expressing a similar view, Professor Warwick Giblin told the inquiry that the planning system is 'heavily skewed' and 'biased—towards enhancing and promoting development'.³¹⁵ Professor Giblin said that outcomes in the planning system should be 'about environmental, social and economic justice, not short-term jobs and economic growth', and that 'better' and more 'holistic decisions' needed to be taken on development proposals.³¹⁶

³¹⁰ Evidence, Ms Julie Bindon, Life Member, Urban Development Institute of Australia, NSW, 8 March 2024, p 44.

³¹¹ Evidence, Ms Julie Bindon, Life Member, Urban Development Institute of Australia, NSW, 8 March 2024, p 44.

³¹² Evidence, Ms Julie Bindon, Life Member, Urban Development Institute of Australia, NSW, 8 March 2024, p 44.

³¹³ Submission 136, Nature Conservation Council, p 9.

³¹⁴ Submission 136, Nature Conservation Council, p 9.

³¹⁵ Evidence, Professor Warwick Giblin, Adjunct Professor, Faculty of Science, Agriculture, Business & Law, University of New England Fellow, Environment Institute of Australia & New Zealand, 8 March 2024, p 22.

³¹⁶ Evidence, Professor Warwick Giblin, Adjunct Professor, Faculty of Science, Agriculture, Business & Law, University of New England Fellow, Environment Institute of Australia & New Zealand, 8 March 2024, p 22.

- 3.95** Professor Nicky Morrison, Professor of Planning and Director, Western Sydney University, said in reference to the integration of climate change into the EP&A Act, that this can 'promote a balanced approach, prioritising economic prosperity alongside environmental protection and the health and wellbeing of our communities'.³¹⁷
- 3.96** Local councils acknowledged there is a tension in their role in both addressing climate change and providing housing. Cr Clover Moore, City of Sydney Mayor told the committee that her council is 'balancing the pressures of providing housing while at the same time reducing the exposure of climate hazards on people's lives, home and environment'.³¹⁸
- 3.97** In its submission to the inquiry, Eurobodalla Shire Council noted that the planning system inherently puts economic considerations at odds with climate change considerations:
- Urban and regional planning requires balancing a range of environmental, community and economic development priorities that might sometimes compete and even conflict with climate change adaptation options. It is fundamental that the NSW Government shows strong and consistent leadership to guide the difficult decision-making process by providing clear evidence and consistent approaches within the NSW planning system.³¹⁹
- 3.98** Cr Russell Fitzpatrick, Mayor, Bega Valley Shire Council told the committee that his council has 'had a significant conflict in our shire between biodiversity and the urgent need for affordable housing'.³²⁰ Cr Fitzpatrick continued:
- Again, local government is expected to solve this issue, yet we have few levers, if any, to do so. Increasing requirements for bushfire protection, BASIX and biodiversity offsets are making housing more and more expensive in our shire. While we need to be proactive in mitigating future impacts and protecting our natural environment, it needs to be proportionate to the risk and balanced with the need for more housing. We have little development land left in the shire.³²¹
- 3.99** In evidence to the committee, Ms Larah Kennedy, Committee Member of Voices of South West Rocks said that development needs to 'avoid unacceptable impacts on the community, the environment, the economy and our cultural landscape'.³²² While acknowledging that 'small coastal towns are really suffering under the need for housing', Ms Kennedy said this needs to be balanced with 'climate resiliency' and addressed by 'sensible, ecological and responsible environmental planning'.³²³

³¹⁷ Evidence, Professor Nicky Morrison, Professor of Planning and Director, Western Sydney University, 8 March 2024, p 26.

³¹⁸ Evidence, Cr Clover Moore, Mayor, City of Sydney, 15 March 2024, p 10.

³¹⁹ Submission 203, Eurobodalla Shire Council, p 2.

³²⁰ Evidence, Cr Russell Fitzpatrick, Mayor, Bega Valley Shire Council, 2 May 2024, p 2.

³²¹ Evidence, Cr Russell Fitzpatrick, Mayor, Bega Valley Shire Council, 2 May 2024, p 2.

³²² Evidence, Ms Larah Kennedy, Committee Member, Voices of South West Rocks, 17 June 2024, p 12.

³²³ Evidence, Ms Larah Kennedy, Committee Member, Voices of South West Rocks, 17 June 2024, p 12.

Community participation

3.100 Throughout the inquiry, stakeholders highlighted the difficulties that communities face when engaging with the planning system, in particular the ability to express their views on development applications and planning proposals. Members of the public generally do want to engage and have their say on planning and development in their local communities,³²⁴ however the planning system presents multiple obstacles for genuine community consultation.

Genuine consultation with community

3.101 Some stakeholders emphasised the need for the planning system to foster and prioritise 'meaningful',³²⁵ 'transparent',³²⁶ and 'inclusive'³²⁷ community engagement.

3.102 Although there are mandatory community participation requirements,³²⁸ some submissions to the inquiry noted there is a lack of consistent and clear channels by which planning documents are exhibited.³²⁹ This has led to circumstances where stakeholders are not notified of proposals which may affect or interest them and miss the opportunity to comment.³³⁰

3.103 In addition, the mandatory community participation requirements vary for different planning documents, such that certain documents are not required to be available for public consultation, for example Reviews of Environmental Factors and 'modifications'.³³¹ Mr Nic Clyde, NSW Coordinator, Lock the Gate Alliance, told the committee that in regard to recent coalmine expansions and extensions:

...half of all of those 16 projects that are in the system right now are being dealt with as 'modifications', and that means there is no opportunity for that project to go to the Independent Planning Commission with all of the process that entails and the transparency. So, on half of those projects communities never get a chance to see the final assessment report from the Department of Planning. There is no formal opportunity for anyone to comment on the draft recommendation, which is almost always to approve projects, before it goes to a decision. It's basically the Department of Planning producing a report to advise itself what decision it should make, with zero

³²⁴ Evidence, Ms Sally Hunter, Representative of Lock the Gate Alliance and People for the Plains, 15 March 2024, p 34.

³²⁵ Submission 58, Central NSW Joint Organisation, p 4; Submission 62, Dalmeny Matters, pp 1-2.

³²⁶ Submission 184, Better Planning Network, p 34; Evidence, Professor Nicky Morrison, Professor of Planning, and Director, Urban Transformations Research Centre, Western Sydney University, 8 March 2024, p 32.

³²⁷ Submission 82, Public Interest Advocacy Centre, pp 2 and 4; Evidence, Mr Mark Brisby, Director, Planning and Sustainability, Lane Cove Council, 10 May 2024, p 21.

³²⁸ See the *Environmental Planning and Assessment Act 1979*, Schedule 1.

³²⁹ Submission 83, Save Sydney Koalas, p 6; Submission 184, Better Planning Network Inc, p 17; Submission 193, Name suppressed, p 4.

³³⁰ Submission 192, Culburra Residents and Ratepayers Action Group Committee, p 7; Submission 193, Name suppressed, p 4.

³³¹ Evidence, Bron Hanna, Member, Friends of Lane Cove National Park Inc, 10 May 2024, p 31; Submission 212, Friends of Lane Cove National Park Inc., pp 6-7.

public accountability and transparency between the moment that final assessment report is produced and the actual decision.³³²

- 3.104** Where formal avenues for consultation were available, several stakeholders argued that it was still difficult to provide their input, citing unreasonable timeframes and system complexity as an obstacle. As outlined in chapter one, the EP&A Act requires that different planning documents such as planning proposals and development applications must be exhibited for a minimum number of days. The Voice of Wallalong and Woodville and Miss Julie Vint referred to the '28 day' consultation period for many types of planning proposals as inadequate, noting that it was not feasible for community members to read, understand and respond to sometimes lengthy, technical and complex proposals.³³³
- 3.105** The Culburra Residents and Ratepayers Action Group Committee observed that providing feedback on development applications is done by community members while balancing their own jobs and responsibilities, often without legal or financial support.³³⁴ In addition, they highlighted that a huge imbalance of power and wealth exists between the developer and the community.³³⁵
- 3.106** Stakeholders also commented that even when community members had provided input on a particular proposal, they felt that their views were ignored or misrepresented, making them feel powerless and frustrated.³³⁶ Mr Angus Gordon OAM and Professor Warwick Giblin noted that poor community consultation and follow up can lead to an overall lack of confidence in the system.³³⁷
- 3.107** Some inquiry participants also referred to an absence of clear recourse for the community to challenge planning decisions once made.³³⁸ In her submission, Ms Catherine Brady commented on this issue in reference to rezoning, saying that:

The current planning system gives developers recourse to rezoning reviews when they are knocked back, and to assistance from the Planning Delivery Unit within the Department of Planning However, there is no equivalent process or team to protect the interests of residents who have to endure seemingly endless development proposal processes...it would appear that the concerned residents' only recourse will be to bring judicial proceedings. This would be prohibitively expensive and is not a viable option.³³⁹

³³² Evidence, Mr Nic Clyde, NSW Coordinator, Lock the Gate Alliance, 15 March 2024, p 35.

³³³ Submission 7, Voice of Wallalong and Woodville, p 2; Submission 25, Miss Julie Vint, pp 35-36, 52; See also Submission 44, Mr Philip Carkagis, p 1; Submission 49, Ms Kathryn Jarzabek, p 8.

³³⁴ Submission 192, Culburra Residents and Ratepayers Action Group Committee, p 5; See also Submission 105, Save Myall Road Bushland Incorporated, pp 3-4.

³³⁵ Submission 192, Culburra Residents and Ratepayers Action Group Committee, p 4.

³³⁶ Submission 14, Ms Janet Harwood, p 9; Submission 7, Voice of Wallalong and Woodville, p 6; Submission 62, Dalmeny Matters, p 4; Submission 24, Mr Angus Gordon, p 1.

³³⁷ Submission 24, Mr Angus Gordon, p 1; Submission 37, Professor Warwick Giblin, p 4; Submission 86, Mudgee Region Action Group, p 1.

³³⁸ Submission 86, Mudgee Region Action Group, p 1; Submission 121, Lungs of Leichardt Working Group, p 4, Evidence, Professor Giblin, 8 March 2024, p 23.

³³⁹ Submission 94, Ms Catherine Brady, pp 2-3.

NSW Planning Portal

- 3.108** Evidence to the inquiry highlighted issues with the NSW Planning Portal, one of the mechanisms through which the community can engage with and provide feedback to DPPI and local councils on various planning matters. The Portal is an online consultation platform which provides interested stakeholders to 'have their say' on draft plans and policies, development applications and council exhibitions.³⁴⁰
- 3.109** While Mr Mark Brisby, Director, Planning and Sustainability, Lane Cove Council noted the overall utility of the Portal,³⁴¹ a number of stakeholders highlighted some of the system's shortcomings, hindering effective and transparent community consultation.³⁴² The Better Planning Network suggested that the requirement for individuals to register and create an account on the Portal to access information and lodge a submission, was a 'clear deterrent to casual or occasional users, including members of the public who may have an interest in one specific major project'.³⁴³
- 3.110** In addition, the Better Planning Network submitted that in order to navigate the Portal users would need to be already familiar with the planning system, process and terminology to find relevant content.³⁴⁴ Similarly, Save Balickera Incorporated argued that using the Portal was 'an extremely challenging exercise even for those of us with experience navigating technology, let alone those who are not accustomed to it'.³⁴⁵

Committee comment

- 3.111** The committee is concerned to hear about the devastating impacts some historically approved developments are having on local environments and communities across New South Wales. The committee notes that many of the developments in question were approved under repealed legislation, will impact upon biodiversity that has become more threatened with extinction, and are not consistent with our current understanding of the impacts of climate change. It also appears that many of these development consents have remained valid on the basis of often relatively minor 'physical commencement' works being conducted.
- 3.112** The committee acknowledges that the Legislative Assembly is undertaking its own inquiry into historical development consents, and notes we have received correspondence from Manyana Matters Environmental Association Inc and Huskisson Heritage Association Inc which claims their representatives attended a roundtable held at the Shoalhaven Library, Nowra on 10

³⁴⁰ NSW Department of Planning, Housing and Infrastructure, *NSW Planning Portal – Exhibitions*, <http://www.planningportal.nsw.gov.au/exhibitions>.

³⁴¹ Evidence, Mr Mark Brisby, Director, Planning and Sustainability, Lane Cove Council, 10 May 2024, p 21.

³⁴² Submission 88, Save Balickera Incorporated, p 2; Submission 184, Better Planning Network Inc, p 34.

³⁴³ Submission 184, Better Planning Network Inc, p 34.

³⁴⁴ Submission 184, Better Planning Network Inc, p 34.

³⁴⁵ Submission 88, Save Balickera Incorporated, p 2.

September 2024.³⁴⁶ While the committee has agreed to publish the correspondence from the Manyana Matters Environmental Association Inc and Huskisson Heritage Association Inc and refers to it in this paragraph, the committee will not make any findings in relation to the intentions or conduct of the public inquiry into historical development consents in NSW of the Legislative Assembly Standing Committee on Environment and Planning.

3.113 Under current laws, local councils and the NSW Government have constrained power to review and modify or revoke these developments consents in certain circumstances and there is an apparent reluctance to exercise such powers. The committee considers it irresponsible to allow developments to proceed that were approved under outdated environmental standards and where communities and experts hold continuing concerns for the environmental impacts of these developments. The committee therefore recommends that the government seek to amend provisions of the *Environmental Planning and Assessment Act 1979* relating to historical developments to:

- increase the threshold required for developers to have undertaken action in commencing physical works in order to prevent their development consent from lapsing after 5 years
- consider a mechanism with appropriate thresholds for consent authorities to assess whether a historical development consent should be reassessed, and
- consider giving power to consent authorities to revoke or modify historical development consents, where it can be demonstrated that the development will have significant social, environmental or cultural impact not previously identified or that has been changed from the time of approval.

Recommendation 2

That the NSW Government seek to amend provisions of the *Environmental Planning and Assessment Act 1979* relating to historical developments to:

- increase the threshold required for developers to have undertaken action in commencing physical works in order to prevent their development consent from lapsing after 5 years
 - consider a mechanism with appropriate thresholds for consent authorities to assess whether a historical development consent should be reassessed, and
 - consider giving power to consent authorities to revoke or modify historical development consents, where it can be demonstrated that the development will have significant social, environmental or cultural impact not previously identified or that has been changed from the time of approval.
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3.114 Evidence before the committee also indicates there is concern around the exercise of this power and the compensation it may attract, notwithstanding that the compensation provision

³⁴⁶ Correspondence from Mr William Eger, President, Manyana Matters Environmental Association Inc to Chair, 27 October 2024; Correspondence from Ms Joanne Warren, Public Officer, Huskisson Heritage Association Inc, to Chair, 27 October 2024.

is limited. The question of compensation is live and ought to be addressed. It does not serve a reasonable end to refer to a power that could be used for beneficial environmental, social and planning outcomes, in circumstances where there is fear around using it because of incapacity or an unreasonableness to have to pay compensation. Unlike the Commonwealth Legislature, the NSW Legislature does not have a constitutional requirement to compensate, on just terms, for the acquisition of property.³⁴⁷ There is no legal prohibition on the NSW Legislature passing laws giving the government the power to revoke a development consent in certain circumstances without compensation, such as where the public interest dictates. The committee notes that the *Environmental Planning and Assessment Act 1979* already provides such a power in relation to suspending development consents that are found to be tainted by corruption.³⁴⁸

- 3.115** Therefore, the committee recommends that the NSW Government consider amending the *Environmental Planning and Assessment Act 1979* to make the powers to consent authorities to modify or revoke development consents in the public interest, and that if a consent authority exercises the power to revoke a development consent, that no compensation is to be paid by the consent authority to the aggrieved person.

Recommendation 3

That the NSW Government consider amending the *Environmental Planning and Assessment Act 1979* to make the powers to consent authorities to modify or revoke development consents in the public interest, and that if a consent authority exercises the power to revoke a development consent, that no compensation is to be paid by the consent authority to the aggrieved person.

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- 3.116** The committee is also concerned about the impacts of development on biodiversity in New South Wales. The committee heard alarming evidence about how some developments, exacerbated by the effects of climate change, are putting at risk the survival of many species and ecosystems in New South Wales.
- 3.117** In particular, the committee is concerned that the Biodiversity Offsets Scheme does not sufficiently take into account the cumulative loss of biodiversity and therefore not fulfilling its purpose to limit biodiversity loss.
- 3.118** The committee notes the NSW Government's response to the statutory review of the *Biodiversity Conservation Act 2016* conducted by Ken Henry AC. The committee urges the government to introduce planning instruments that provide for the retention and creation of deep soil, native tree cover in habitat and urban areas.
- 3.119** The Committee also notes the uncertainty in process around when the power to refer developments that concern matters of national environmental significance are exercised under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). The community in relation to the Wallum development has carried a heavy economic and social burden, including seeking

³⁴⁷ See *Australia Constitution Act 1901* (Cth), s 51(xxxi) in contrast to *Constitution Act 1902*, s 5.

³⁴⁸ *Environmental Planning and Assessment Act 1979*, s 9.49(9).

intervention by the Federal Court of Australia, when what they are seeking is for the development to be assessed under the Australian environmental law, something the Minister for Planning could have referred. We therefore think it is necessary for the government to consider implementing guidelines for a clear and transparent process for when the Minister for Planning will refer a development to the Australian Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Recommendation 4

That the NSW Government consider implementing:

- all of the recommendations of the statutory review of the *Biodiversity Conservation Act 2016*
 - planning instruments that provide for the retention and creation of deep soil, native tree cover and habitat in urban areas
 - guidelines for a clear and transparent process for when the Minister for Planning will refer a development to the Federal Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
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- 3.120** The committee believes that the current EP&A Act does not necessarily place sufficient importance upon protecting the environment and communities from the impacts of climate change, noting in particular that the EP&A Act does not mention climate change. The committee is concerned that the current Act does not require consent authorities to sufficiently consider and place appropriate weight on the potential climate impacts of developments. The evidence also suggests some development proponents are able to seek alternative pathways to seek approval for their development, if it does not have the support of the local council.
- 3.121** The committee believes that consideration should be given to whether local councils should be empowered to be the primary decision makers regarding planning decisions in their local areas and should be given the necessary powers to challenge inappropriate development, including the power to revoke or modify existing development consents that are no longer considered environmentally appropriate (as also relevant to recommendation 2).
- 3.122** The committee notes the compelling evidence that in order to properly address climate change in the planning system the *Environmental Planning and Assessment Act 1979* must be amended. Alternatively, this could be achieved through the making of a Climate SEPP. Given the seriousness of climate change and the inextricable link between climate change and the planning system, there is a strong case that the Act should contain climate provisions throughout and any matters requiring further flexibility could be contained in the SEPP.
- 3.123** Therefore, the committee recommends that the NSW Government review the need for legislation amending the *Environmental Planning and Assessment Act 1979* or a state environmental planning policy to consider climate change within the planning system alongside the need to deliver development outcomes, including housing diversity, supply of industrial land and critical infrastructure.
-

Recommendation 5

That the NSW Government review the need for legislation amending the *Environmental Planning and Assessment Act 1979* or a state environmental planning policy to consider climate change within the planning system alongside the need to deliver development outcomes, including housing diversity, supply of industrial land and critical infrastructure.

- 3.124** Further, the committee believes development assessments and plans should be conducted via a genuinely independent environment assessment process, and that the NSW Government consider ways to improve the independence of the assessment of planning proposals and development applications, without increasing the time taken to assess such proposals.
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Recommendation 6

That the NSW Government consider ways to improve the independence of the assessment of planning proposals and development applications, without increasing the time taken to assess such proposals.

- 3.125** The committee believes that having reliable data, such as flood and fire mapping is essential to good decision making in relation to development. The committee heard there is no consistent source of fire and flood data, and information local councils are provided with is often historic and not updated in real time to reflect the most recent weather events.
- 3.126** While acknowledging the potential challenges of such an endeavour, the committee encourages the NSW Government to look into ways to create a centralised source for all government held planning data that is accessible to all councils across New South Wales.
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Recommendation 7

That the NSW Government investigate the establishment of a centralised source for all government held planning data accessible to all councils across New South Wales, including:

- flood, coastal inundation and fire
 - biodiversity
 - climate modelling
 - any other relevant data.
-

- 3.127** The committee also heard that many councils across New South Wales do not have the staff or resources to carry out various functions in respect to addressing climate change. The committee notes evidence that the NSW Government has provided funding to councils to prepare coastal zone management plans, and seconded staff to upskill council officers on specific programs. However, the committee is of the view more can be done to support councils to undertake their functions in respect of addressing climate change where necessary.
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We recommend that the NSW Government continue to support councils to undertake their functions in respect of addressing climate change where necessary, such as:

- assessing the need for additional funding
 - making sure councils have appropriate skills to assess large and complex proposals.
-

Recommendation 8

That the NSW Government continue to support councils to undertake their functions in respect of addressing climate change where necessary, such as:

- assessing the need for additional funding
 - making sure councils have appropriate skills to assess large and complex proposals.
-

3.128 Finally, the committee is concerned with evidence given to the inquiry that communities are often not being adequately consulted, including having insufficient time to comment on proposals, not being made aware of submissions that affect them, having their feedback ignored or misrepresented, or not afforded the opportunity to comment on proposals until they are already well progressed. The committee believes current community consultation processes in the *Environmental Planning and Assessment Act 1979* do not enable the most effective engagement by local councils and other consent authorities with the communities they serve. Rather, the mandatory community participation requirements as set out in the Act serve to be a 'tick the box' exercise. As a result, the committee recommends that the government implement enforceable measures and progress legislative change to ensure planning authorities better reach communities using ongoing access to modern tools and a central database to inform them about development proposals in their areas, and provide increased, meaningful and impactful opportunities for community participation in the planning process.

Recommendation 9

That the NSW Government implement enforceable measures and progress legislative change to ensure planning authorities:

- better reach communities using ongoing access to modern tools and a central database to inform them about development proposals in their local areas and
 - provide increased, meaningful and impactful opportunities for community participation in the planning process.
-

Chapter 4 Governance models

This chapter begins by addressing the lack of governance structures between planning authorities, with a particular focus on the relationships between State Government, private certifiers, local councils and the Land and Environment Court. It will then discuss the need for State level non-approval provisions and address local councils' concerns regarding the enforceability of Development Control Plans. This is followed by an examination of issues faced by coastal councils with respect to developing Coastal Management Plans. The chapter concludes with a discussion of mature tree and vegetation requirements for development proposals.

Lack of governance structures between planning authorities

- 4.1 Various stakeholders argued there were a lack of governance structures between planning authorities and that a system of rules, processes, roles and responsibilities were required between planning authorities to provide guidance and enable effective communication and management.³⁴⁹

Local councils and private certifiers

- 4.2 Private certifiers are 'public officials and independent regulators of development' that assess and determine applications for development certificates for building and subdivision work.³⁵⁰ A certifier carries out mandatory inspections during construction and 'can only issue a development certificate if all legislative requirements are met'.³⁵¹ After the final inspection, a certifier will issue an occupation certificate or subdivision certificate if all requirements are met.³⁵² If a 'non-compliance is brought to the certifier's attention, they must issue a written direction to comply' and if 'non-compliance continues, the certifier must refer the matter to the council'.³⁵³
- 4.3 Central Coast Council advised that due to the subjective nature of compliance, local councils need to remain informed as to the degree to which a development complies particularly when private certifiers issue occupation or subdivision certificates.³⁵⁴

³⁴⁹ Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 19; Evidence, Mr Kerry Robinson, OAM, Chief Executive Officer, Blacktown City Council, 6 May 2024, p 9; Evidence, Mr Mark Brisby, Director, Planning and Sustainability, Lane Cover Council, 10 May 2024, p 21; Evidence, Cr Philipa Veitch, Mayor, Randwick City Council, 15 March 2024, p 2.

³⁵⁰ NSW Government, Fair Trading, *What Certifiers Do*, <https://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-renovate/what-certifiers-do>.

³⁵¹ NSW Government, Fair Trading, *What Certifiers Do*, <https://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-renovate/what-certifiers-do>.

³⁵² NSW Government, Fair Trading, *What Certifiers Do*, <https://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-renovate/what-certifiers-do>.

³⁵³ NSW Government, Fair Trading, *What Certifiers Do*, <https://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-renovate/what-certifiers-do>.

³⁵⁴ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

- 4.4 This was also supported in Beecroft Cheltenham Civic Trust's submission, which stated that councils should have the right to access all of the certifier's records concerning the advice provided and compliance.³⁵⁵ Beecroft Cheltenham Civic Trust elaborated to say that

at present where a neighbour lodges a complaint about non-compliance with a condition on the development approval, the Council ... being the enforcement agency has no capacity to seek all relevant information to help understand the complaint as to noncompliance. This stifles the ability to bring enforcement action.³⁵⁶

- 4.5 Dr Grahame Douglas from Western Sydney University provided an example where a development application goes through the entire planning process up until the point where the certifier assesses the development to then find that the development does not comply and there are natural hazard issues that have not been considered.³⁵⁷

Liverpool council received a development application for a subdivision in Austral ... The council didn't identify it as bushfire prone, even though it's mapped bushfire prone. That was the first thing. The developer didn't offer a bushfire assessment report. The matter went to the Land and Environment Court and the court was not aware that it was bushfire-prone land. It got approved and went through the whole processes, but it wasn't until the certifier came along to approve the construction of buildings that they realised that, in fact, it was bushfire prone. But all the decision-making and planning that had gone up to that point had failed to look at bushfire as being an issue, and that's simply because when I'm looking at ticking the box under 4.15 I don't see "natural hazards".³⁵⁸

- 4.6 Mr Douglas confirmed that there was no mechanism in place for certifiers to raise those issues and to seek a review of the development application, as the certifier has to certify exactly what has been approved.³⁵⁹

Relationship between Land and Environment Court and other planning authorities

- 4.7 The scope and role of the Land and Environment Court within the New South Wales planning system is discussed in chapter one of this report. Formally, the Land and Environment Court's jurisdiction is separated into eight classes under part 3, division 1 of the *Land and Environment Court Act 1979*.³⁶⁰ Class 1 relates to environmental planning and protection appeals.³⁶¹

³⁵⁵ Submission 6, Beecroft-Cheltenham Civic Trust, p 3.

³⁵⁶ Submission 6, Beecroft-Cheltenham Civic Trust, p 3.

³⁵⁷ Evidence, Dr Grahame Douglas, School of Engineering, Design and Built Environment, Western Sydney University, 8 March 2024, pp 19-20.

³⁵⁸ Evidence, Dr Grahame Douglas, School of Engineering, Design and Built Environment, Western Sydney University, 8 March 2024, p 19.

³⁵⁹ Evidence, Dr Grahame Douglas, School of Engineering, Design and Built Environment, Western Sydney University, 8 March 2024, p 20.

³⁶⁰ *Land and Environment Court Act 1979*, part 3.

³⁶¹ *Land and Environment Court Act 1979*, s 17.

4.8 Throughout the course of the inquiry, the following issues were brought to the committee's attention with respect to the relationship between the Land and Environment Court and other planning authorities:

- **Deemed refusal appeals:** if a council has not responded to an applicant in regard to their application within a specified time period, then the applicant can go to the Land and Environment Court to obtain a decision. Local councils advised that this pathway can sometimes be easier for developers to obtain approval.³⁶²
- **Resources:** as a result of deemed refusal, local council resources are significantly depleted.³⁶³
- **The lack of weight given to Development Control Plans.**³⁶⁴
- **The ability to review conflicts of interest:** Mr Saul Deane from the Total Environment Centre advised that 'if there's something that is very evidently, prima facie, a conflict of interest, there should be a review of that decision. We should go back to the courts, review it and say, "Well, obviously it looks like it's a conflict of interest, so let's review that decision." Then you would find that you would get very little movement between the larger developers and the department of planning'.³⁶⁵
- **Lack of local government control and input:** Mr Joseph Hill, Executive Manager, Northern Beaches Council stated that 'the court process is not straightforward' and that 'once an applicant takes council to court on an issue, council's control is basically ceded and the determination body takes over from there'.³⁶⁶

State Government and local councils

4.9 Mr Stephen Hartley, Executive Director from the Department of Planning, Housing and Infrastructure advised the committee that they work closely with councils in relation to their development applications but that the department's role was dependent on the 'size and scale of the development application'.³⁶⁷

4.10 Mr Hartley explained that:

³⁶² Evidence, Ms Jessica Rippon, Director, Planning, Environment and Communities, Kiama Municipal Council, 3 May 2024, pp 15-16.

³⁶³ Evidence, Ms Jessica Rippon, Director, Planning, Environment and Communities, Kiama Municipal Council, 3 May 2024, p 16; Evidence, Mr Gordon Clark, Manager, Strategic Planning, Shoalhaven City Council, 3 May 2024, p 16.

³⁶⁴ Evidence, Mr Mark Brisby, Director, Planning and Sustainability, Land Cove Council, 10 May 2024, p 2; Evidence, Mr Angus Gordon OAM, Principal Consultant, Coastal Zone Management and Planning, 8 March 2024, p 37.

³⁶⁵ Evidence, Mr Saul Deane, Urban Sustainability Campaigner, Total Environment Centre, 15 March 2024, p 30.

³⁶⁶ Evidence, Mr Joseph Hill, Executive Manager, Strategic and Place Planning, Northern Beaches Council, 10 May 2024, p 7.

³⁶⁷ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 10.

We have close formal and informal relationships on a number of natural hazard matters with councils who are affected by natural hazards. We work pretty closely. There are lots of questions that go backwards and forwards at an informal level. What does that mean? How do I translate it? What does it mean in this situation where I'm mostly through a DA process or I'm just starting the DA process? So, we have those relationships.³⁶⁸

4.11 Mr Hartley added that 'depending again on the natural hazard, there is work that the department does, both by embedding officers and by providing funding for councils'.³⁶⁹

4.12 Mr Hartley advised that the department also conducts implementation audits:

We go in. I'm aware of several projects where we've worked with councils. We've, effectively, analysed the development approvals that they've provided to look against, "Does it meet the requirements of how that decision should have been made?" And we do work with councils on performance improvement, including improving the types of guidance and training and so on that we give as well. The planning system makes decisions across a breadth of projects. We do try to ensure that we provide the support, the training and the checking after.³⁷⁰

4.13 This is somewhat contrary to the evidence provided by local councils. Local councils advised that the current levels of support provided by the State Government were insufficient and that greater guidance and leadership was required.³⁷¹

4.14 Mr Matthew Rose, Shoalhaven City Council requested greater support and funding from the New South Government to assist local councils with managing climate change impacts:

We advocate and ask for greater and consistent leadership by the New South Wales Government, noting the many and potential opportunities to contribute to managing the impacts of climate change. These opportunities are provided by amendments to planning legislation, new or updated planning policies and the publication of contemporary guidance. Council also asks the New South Wales Government to increase its support for risk assessment and planning activities, including new and increased funding for the preparation and implementation of action plans and strategies.³⁷²

³⁶⁸ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 10.

³⁶⁹ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 10.

³⁷⁰ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 11.

³⁷¹ Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 19; Evidence, Mr Matthew Rose, Coordinator, Strategic Planning, Shoalhaven City Council, 3 May 2024, p 2; Evidence, Mr Kerry Robinson, OAM, Chief Executive Officer, Blacktown City Council, 6 May 2024, p 9; Evidence, Mr Mark Brisby, Director, Planning and Sustainability, Lane Cove Council, 10 May 2024, p 21; Evidence, Cr Philipa Veitch, Mayor, Randwick City Council, 15 March 2024, p 2.

³⁷² Evidence, Mr Matthew Rose, Coordinator, Strategic Planning, Shoalhaven City Council, 3 May 2024, p 2.

- 4.15** The following issues were raised by local councils with respect to the lack of governance between planning authorities:
- the lack of non-approval provisions (such as the prescription of mandatory requirements for development): there is a need for state level support so that climate change provisions can be implemented and enforced at the local level³⁷³
 - coastal management: a governance structure is required to assist coastal councils in the development of their Coastal Management Plans.³⁷⁴

Non-approval provisions

- 4.16** A common issue raised by local councils throughout this inquiry was the need to move towards implementing non-approval provisions at a local level. Local councils currently prepare and use Development Control Plans (DCPs), (as discussed in chapter one), to provide guidance when determining applications for development.³⁷⁵ DCPs generally provide detailed planning, building and design requirements to support the planning controls within council's local environmental plans.³⁷⁶
- 4.17** Examples of planning, building and design requirements within DCPs include encouraging developers for multi-unit developments to use electric stovetops rather than gas,³⁷⁷ that the removal of existing mature trees be minimised and where appropriate be replaced,³⁷⁸ and that proposed new development should not include dark-coloured roofs as a design feature.³⁷⁹ The primary issue with DCP provisions is that they are mostly unenforceable. Developers are encouraged to prepare their development applications in alignment with DCP provisions, but there is nothing that states that they must comply.³⁸⁰
- 4.18** Mr Angus Gordon OAM, Principal Consultant from Coastal Zone Management and Planning stated that 'over time the DCPs have become meaningless, useless documents. Neither the courts, nor developers, nor members of the community take much notice of them'.³⁸¹

³⁷³ Evidence, Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council, 10 April 2024, pp 9-10.

³⁷⁴ Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 18.

³⁷⁵ Submission 189, NSW Government, p 9; NSW Government, *Community Guide to Planning*, (July 2023), p 15.

³⁷⁶ City of Sydney, *Development Control Plans*, <https://www.cityofsydney.nsw.gov.au/development-control-plans>.

³⁷⁷ Evidence, Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, 15 March 2024, p 3.

³⁷⁸ Evidence, Cr Matt Gould, Mayor, Wollondilly Shire Council, 6 May 2024, pp 19-20.

³⁷⁹ Evidence, Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, 8 March 2024, p 52.

³⁸⁰ Evidence, Ms Nicole Magurran, Director, Planning and Environment, Camden Council, 6 May 2024, p 24.

³⁸¹ Evidence, Mr Angus Gordon OAM, Principal Consultant, Coastal Zone Management and Planning, 8 March 2024, p 37.

- 4.19** Likewise, Mr Mark Brisby, Director, Lane Cove Council stated that in the Land and Environment Court 'the hierarchy is SEPP, LEP, DCP'.³⁸² Opposing counsel will quote clause 4.15(3A) in 'the Environmental Planning and Assessment Act that says the court takes the position of council and must apply the DCP flexibly ... The court generally doesn't give it great weight'.³⁸³
- 4.20** The committee also heard from Central Coast Council who addressed the need for non-approval provisions, using urban heat and the loss of mature trees as an example for why they are needed.³⁸⁴ Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council advised that 'in terms of trees ... there's not really much planning in terms of a planning framework that protects them'.³⁸⁵ Dr McLean went on to state that 'you can say in the DCP that you should protect trees' but DCPs do not carry much weight due to the fact that they are not legally binding.³⁸⁶
- 4.21** Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council agreed and added that 'there's always pressure from developers, and it's always the verge that goes first', therefore 'from a State Government level we need to be absolutely prescribing a minimum verge width'.³⁸⁷ If these important provisions, such as minimum verge width and the need to replace and maintain mature trees exist solely within a local level planning instrument (such as a DCP), then they can be 'challenged,' 'varied' and 'overruled in the Land and Environment Court'.³⁸⁸ State level implementation is required in the form of non-approval provisions to ensure that these provisions bear weight and are applied to development applications.³⁸⁹
- 4.22** This concept was also supported by Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council who advised that the Waverley local government area is 'rapidly losing canopy and deep soil on private land' and that the State Environmental Planning Policy (Exempt and Complying Canopy Codes) 2008, 'is silent on the need for deep soil on lots'.³⁹⁰ Ms Dunford explained that 'once deep soil is gone, it's adaptive capacity – its

³⁸² Evidence, Mr Mark Brisby, Director, Planning and Sustainability, Lane Cove Council, 10 May 2024, p 22.

³⁸³ Evidence, Mr Mark Brisby, Director, Planning and Sustainability, Lane Cove Council, 10 May 2024, p 22.

³⁸⁴ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 9.

³⁸⁵ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 9.

³⁸⁶ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 9.

³⁸⁷ Evidence, Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council, 10 April 2024, p 9.

³⁸⁸ Evidence, Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council, 10 April 2024, pp 9-10.

³⁸⁹ See Evidence, Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council, 10 April 2024, pp 9-10.

³⁹⁰ Evidence, Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, 15 March 2024, p 3.

cooling, stormwater absorption and or biodiversity benefits – are unlikely to be recovered in the future'.³⁹¹ Ms Dunford stated that provisions to the State Environmental Planning Policy (Exempt and Complying Canopy Codes) 2008, 'to mandate minimum canopy, vegetation and deep soil should be pursued urgently'.³⁹²

- 4.23** The need for non-approval provisions was also supported by Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, when discussing the need to prohibit dark roofs as a design feature for new developments:

If we can make sure that those new developments don't have dark roofs—I think there is a role for having more prescriptive provisions. Where there is clear evidence from other jurisdictions that there are benefits, I think that's an appropriate approach for the planning system to take.³⁹³

- 4.24** Ms Walmsley went on to state 'it's [the] lack of clear requirements. It's the lack of the mention of climate change in the planning law to drive requirements' and that 'we do need requirements at this stage to guarantee that certain minimum standards can be met'.³⁹⁴

Land and Environment Court

- 4.25** When asked whether councils can challenge a decision made by a planning panel or the State Government in court, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council replied 'the issue with that is that third-party appeal rights are limited' as they're 'based on jurisdiction, not merit'.³⁹⁵ The Land and Environment Court only undertakes judicial review and determines whether an 'error in law' has been made, as 'opposed to the merit' of the development application.³⁹⁶ Due to the fact that DCP provisions are not legally binding, there's no legal basis to refuse an application that does not conform to those provisions and therefore they can be 'overruled' in the Land and Environment Court.³⁹⁷
- 4.26** Concerns regarding 'deemed refusal appeals' were also raised by the Central Coast Council. Dr McLean advised that councils generally have 40 days to review and determine a development

³⁹¹ Evidence, Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, 15 March 2024, p 3.

³⁹² Evidence, Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, 15 March 2024, p 3.

³⁹³ Evidence, Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, 8 March 2024, p 52.

³⁹⁴ Evidence, Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, 8 March 2024, p 53.

³⁹⁵ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

³⁹⁶ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

³⁹⁷ Evidence, Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council, 10 April 2024, pp 9-10.

application (depending on the type, scale and nature of the development).³⁹⁸ Once the specified time period has lapsed, the application is deemed to have been refused.³⁹⁹ The applicant can then ask the Land and Environment Court to consider the application.⁴⁰⁰

- 4.27** Ms Deanne Frankel added that 'to get a fair procedural system' the Land and Environment Court 'should only really be allowed to consider what was submitted and what the application contained'.⁴⁰¹ The process can result in multiple versions of the same application as amendments are made throughout the legal process.⁴⁰² This generates a significant amount of work for council staff with limited time to complete, which, Dr McLean confirmed leads to more deemed refusals in the process because they're not done in 40 days.⁴⁰³
- 4.28** Shoalhaven City Council, Shellharbour City Council and Kiama Municipal Council provided similar evidence with respect to the problems that councils face in the Land and Environment Court.⁴⁰⁴ Ms Jessica Rippon Director, Planning, Environment and Communities of Kiama Municipal Council advised that they currently have approximately ten cases in the Land and Environment Court either because of refusal, or because of deemed refusal.⁴⁰⁵
- 4.29** Mr Michael Park, Executive Director from Shellharbour City Council added that 'there are definitely developers out there ... who lodge a development application the second that the deemed refusal period is up, they'll go straight to the court, and see that as the easiest pathway forward'.⁴⁰⁶
- 4.30** Shoalhaven City Council and Kiama Municipal Council discussed the mutual concern of costs.⁴⁰⁷ Ms Rippon advised that Kiama Council spends approximately \$100,000 to \$200,000 on each case and that they simply do not have the funds available for this to continue.⁴⁰⁸ Mr

³⁹⁸ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

³⁹⁹ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

⁴⁰⁰ *Environmental Planning and Assessment Act 1979*, s 8.17.

⁴⁰¹ Evidence, Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council, 10 April 2024, p 11.

⁴⁰² Evidence, Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council, 10 April 2024, p 11.

⁴⁰³ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 11.

⁴⁰⁴ Evidence, Ms Jessica Rippon, Director, Planning, Environment and Communities, Kiama Municipal Council, 3 May 2024, pp 15-16; Evidence, Mr Gordon Clark, Manager, Strategic Planning, Shoalhaven City Council, 3 May 2024, p 16; Evidence, Mr Michael Park, Executive Director, Shellharbour City Council, 3 May 2024, p 16.

⁴⁰⁵ Evidence, Ms Jessica Rippon, Director, Planning, Environment and Communities, Kiama Municipal Council, 3 May 2024, pp 15-16.

⁴⁰⁶ Evidence, Mr Michael Park, Executive Director, Shellharbour City Council, 3 May 2024, p 16.

⁴⁰⁷ Evidence, Ms Jessica Rippon, Director, Planning, Environment and Communities, Kiama Municipal Council, 3 May 2024, p 16; Evidence, Mr Gordon Clark, Manager, Strategic Planning, Shoalhaven City Council, 3 May 2024, p 16.

⁴⁰⁸ Evidence, Ms Jessica Rippon, Director, Planning, Environment and Communities, Kiama Municipal Council, 3 May 2024, p 16.

Clark also confirmed that they currently have approximately 15 cases in the Land and Environment Court 'that's, potentially, a direct cost to the council, just to defend those cases, of \$1.5 million or thereabouts'.⁴⁰⁹

4.31 Mr Clark also added that this also 'takes council staff away from their day-to-day work' and so this adds 'another issue for us, which is diverting resources into court process rather than actually assessing development applications' and as a consequence, development applications aren't processed within the required timeframe.⁴¹⁰

4.32 With respect to the above issues, the following recommendations were put forward by the Environmental Defenders Office:

- to add non-approval climate change provisions to existing SEPPs to provide State level guidance and support to local planning authorities
- to develop and implement mandatory climate considerations in strategic plan-making
- to implement clear impact assessment pathways
- establishing powers that allow local planning authorities and the Land and Environment Court to refuse projects with unacceptable climate impacts.⁴¹¹

Coastal management

4.33 Coastal Management Programs (CMPs) are 'prepared by local councils in accordance with the Coastal Management Manual and in consultation with their communities'.⁴¹² CMPs set the 'long-term strategy for the coordinated management' of coastal areas, with a focus on achieving the objectives of the *Coastal Management Act 2016*.⁴¹³ CMPs 'identify coastal management issues' and address what actions are required to manage and rectify these issues.⁴¹⁴ CMPs also include how and when these actions are to be implemented, the costs involved and how these costs are to be met, either by proposing a cost-sharing arrangement or through other viable funding mechanisms.⁴¹⁵

⁴⁰⁹ Evidence, Mr Gordon Clark, Manager, Strategic Planning, Shoalhaven City Council, 3 May 2024, p 16.

⁴¹⁰ Evidence, Mr Gordon Clark, Manager, Strategic Planning, Shoalhaven City Council, 3 May 2024, p 16.

⁴¹¹ Evidence, Mr Jasper Brown, Solicitor, Environmental Defenders Office, 8 March 2024, p 49.

⁴¹² NSW Government, Environment and Heritage, *Coastal Management Programs*, <https://www.environment.nsw.gov.au/topics/water/coasts/coastal-management/programs>.

⁴¹³ NSW Government, Environment and Heritage, *Coastal Management Programs*, <https://www.environment.nsw.gov.au/topics/water/coasts/coastal-management/programs>.

⁴¹⁴ NSW Government, Environment and Heritage, *Coastal Management Programs*, <https://www.environment.nsw.gov.au/topics/water/coasts/coastal-management/programs>.

⁴¹⁵ NSW Government, Environment and Heritage, *Coastal Management Programs*, <https://www.environment.nsw.gov.au/topics/water/coasts/coastal-management/programs>.

- 4.34** The committee heard from Sydney Coastal Councils Group who spoke of the issues that member councils are facing with respect to coastal hazards and managing these hazards through the development of CMPs.
- 4.35** Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group advised that the *Coastal Management Act 2016* 'enables councils to obtain funding to develop CMPs, which can then identify coastal inundation areas and build the capacities of their communities to adapt'.⁴¹⁶ In the regions, usually one council will work on their CMP, however in the Sydney region, multiple councils are required to work together collectively to develop their CMPs.⁴¹⁷ Ms Joyce stated that this is 'very problematic' and that 'in the Sydney region, the development of the majority of multi-council CMPs has stalled'.⁴¹⁸
- 4.36** Ms Joyce explained that this is due to the fact that 'there is a lack of leadership at the State level,' with 'no formalised governance arrangements set up to manage catchments, funding and administrative constraints'.⁴¹⁹ She added there 'is a lack of will from State agencies to partner with councils in the development of CMPs'.⁴²⁰
- 4.37** Ms Joyce stated that the reason why councils want to develop a CMP is because they will 'get statutory immunity for coastal inundation once it's certified by the Minister,' and they will 'also get two-for-one funding'. Ms Joyce added that there is a real need for councils 'to partner together to apply for that funding' because 'then there can be actions that actually get implemented'.⁴²¹
- 4.38** Ms Joyce also provided some examples of how CMPs can assist councils:
- allow for capacity-building within councils to deal with issues concerning coastal inundation including how to respond to coastal inundation.
 - funding for seawalls
 - provide better support and guidance for planned retreat
 - upgrading stormwater devices that are going to be inundated by the rise in sea-level.⁴²²

⁴¹⁶ Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 18.

⁴¹⁷ Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 18.

⁴¹⁸ Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 18.

⁴¹⁹ Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 18.

⁴²⁰ Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 18.

⁴²¹ Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 23.

⁴²² Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 20.

- 4.39** The need for state leadership and support was also supported by Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council who stated that the Eastern Beaches Coastal Management Program Scoping Study (a study to identify and manage risks) has identified five stages that need to be completed in order to appropriately develop a CMP. Ms Dunford advised that Woollahra Council and Waverley Council had worked together to complete stage one, but that there was no governance mechanism in place to enable the councils to progress the study to the next stage.⁴²³
- 4.40** Ms Dunford noted that 'this is the same problem that the Sydney Harbour Coastal Management Program is facing, and they have a lot more councils involved. Trying to get that multi-council collaboration and coordination is difficult when there isn't a formal structure to progress it'.⁴²⁴
- 4.41** Randwick City Council also voiced concerns in their submission stating that the preparation of CMPs is 'resource intensive' and as a result, 'very few councils have been able to achieve a Minister-approved CMP'.⁴²⁵
- 4.42** Ms Joyce strongly recommended that support should come from either 'the State, the Commonwealth, or even a regional scale like a catchment management authority, or a joint organisation, or a regional organisation of councils'.⁴²⁶
- 4.43** Ms Joyce added that a governing body is required long-term to manage and enforce the Coastal Management Plan, and not just to assist with the development stage:

It's not just trying to facilitate the development of the CMPs; it's also ensuring that once the CMP is done, who is going to govern that? Who is going to ensure that all those actions are done, that councils continue to work together and that there is monitoring done? You might move to an adaptation pathways approach, where, as new information comes in, there might be changes to those actions. You need a body that governs that. At the moment, we're not seeing that the State is wanting to take on that role.⁴²⁷

Mature tree growth and presence compliance

- 4.44** It was widely accepted by stakeholders that the New South Wales planning framework fails to address the importance of protecting and maintaining mature trees and does little to assist local councils in ensuring that mature tree provisions are complied with by developers.⁴²⁸ The known benefits of mature trees are as follows:

⁴²³ Evidence, Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, 15 March 2024, p 8.

⁴²⁴ Evidence, Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, 15 March 2024, p 8.

⁴²⁵ Submission 158, Randwick City Council, 7 November 2024, p 2.

⁴²⁶ Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 19.

⁴²⁷ Evidence, Ms Sarah Joyce, Executive Officer, Sydney Coastal Councils Group, 15 March 2024, p 20.

⁴²⁸ Evidence, Cr Matt Gould, Mayor, Wollondilly Shire Council, p 20.

- reduce air pollution⁴²⁹
- manage and absorb stormwater⁴³⁰
- have cooling effects and can mitigate urban heat island effects⁴³¹
- provide natural habitats for wildlife and fauna, contributing towards biodiversity.⁴³²

4.45 In their evidence, Central Coast Council explained the difficulties in ensuring the ongoing quality of landscaping in completed developments.⁴³³ Chapter five of this report addresses the issue of urban heat and how councils are encouraging developers to maintain and include mature trees and vegetation in their development proposals to assist with the impacts of urban heat. Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council advised that an applicant can be told to 'go and plant trees' which they may do, however there's nothing in place to monitor the condition of those trees, to ensure they survive and reach their expected level of growth.⁴³⁴

4.46 Dr McLean also advised that 'the *Environmental Planning and Assessment Act 1979* doesn't allow for the holding of bonds on private land at all,' so developers will be motivated to plant trees and ensure the condition of those trees up until they are issued with a construction certificate and occupation/subdivision certificate.⁴³⁵ Once these certificates have been issued, council has very limited powers to enforce these requirements.⁴³⁶

4.47 Dr McLean mentioned that councils have the ability to impose conditions on the consent of an application which can include that the applicant must take care of and maintain the trees for five years.⁴³⁷ However, councils do not have the compliance staff needed to ensure that developers comply with the conditions imposed.⁴³⁸ Dr McLean also added that it becomes

⁴²⁹ Evidence, Ms Janine Kitson, Vice-President, Friends of Ku-ring-gai Environment Inc, 10 May 2024, p 32.

⁴³⁰ Submission 4, Saving Sydney Trees, pp 1-2.

⁴³¹ Submission 4, Saving Sydney Trees, pp 1-2; Submission 85, Sweltering Cities, pp 3-4.

⁴³² Evidence, Ms Janine Kitson, Vice-President, Friends of Ku-ring-gai Environment Inc, 10 May 2024, p 32; Evidence, Mrs Kathy Cowley, President, Friends of Ku-ring-gai Environment Inc, 10 May 2024, p 32.

⁴³³ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

⁴³⁴ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

⁴³⁵ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

⁴³⁶ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

⁴³⁷ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

⁴³⁸ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

subjective; 'you go out there and the tree's still sitting there and it's kind of alive' so the box is ticked but it may have been 'planted in the road base and hasn't been able to grow'.⁴³⁹

- 4.48** Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council added that due to a lack of funding and resources, the Central Coast Council is unable to monitor mature tree growth and presence compliance:

From the delivery we're doing now, the financial sustainability of our council, unfortunately, is dictating a lot of the outcomes that are being achieved. It's the budget constraints that are impeding our ability to do better in regard to the provision particularly of trees. For us to even provide trees in different areas, let alone our policies around what developers are supposed to provide—we are desperately short in those people, the compliance officers, the assessment officers and the maintenance staff.

...

Even if we're prescribing these outcomes—sometimes it's not even trees; sometimes trees aren't suitable; sometimes it could be understorey vegetation—the resistance we get internally is because we don't have the maintenance staff to be able to go out there, because some people won't like it or it might impede the pedestrian footpath. They just don't have the resources to be going out there. So, it's trying to get that balance with the resources that we've got. If we had more resources, we'd be able to do better.⁴⁴⁰

- 4.49** This issue was also raised by Randwick City Council who advised that they have a tree policy that details the 'specifications for the types of trees and the mature height requirements of those trees to be provided'.⁴⁴¹ However, when asked whether the council had capacity to ensure that the trees planted comply with the specifications within their tree policy, Ms Stella Agagiotis responded that they do not have capacity to follow up. She stated 'there is no current legislative process that authorises inspections by Council officers after an occupation certificate is issued, to validate future compliance with landscaping or any other conditions on an approval'.⁴⁴² A 'private certifier inspects and issues the occupation certificate so Council would not be aware if conditions have or have not been complied with' unless the matter is brought to the Council's attention.⁴⁴³
- 4.50** Randwick City Council noted that given mature tree growth can take upwards of five years, appropriate resourcing and funding would be required to ensure sustained and regular inspections can be carried out by councils where appropriate.⁴⁴⁴

⁴³⁹ Evidence, Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council, 10 April 2024, p 10.

⁴⁴⁰ Evidence, Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council, 10 April 2024, p 10.

⁴⁴¹ Evidence, Ms Stella Agagiotis, Acting Manager, Sustainability, Randwick City Council, 15 March 2024, p 5.

⁴⁴² Answers to questions on notice, Randwick City Council, 22 April 2024, p 1.

⁴⁴³ Answers to questions on notice, Randwick City Council, 22 April 2024, p 1.

⁴⁴⁴ Answers to questions on notice, Randwick City Council, 22 April 2024, p 1.

- 4.51** To address these issues, Randwick City Council made the following recommendations:
- that a security bond be applied via a condition of consent, which would be refunded after a specified timeframe once the tree had reached a specific height (noting potential for changes to ownership)
 - include a requirement for private certifiers to inspect properties 12-24 months after the occupation certificate is issued in relation to tree growth/presence
 - introduce legislative provisions giving power to councils to require tree planting when trees have been removed or where they have not survived
 - introduce a rebate system for tree purchases on any land to encourage tree planting on private property
 - improve community awareness and education on the environmental benefits of tree planting
 - increase fines for tree removal.⁴⁴⁵

Committee comment

- 4.52** The committee heard from a range of planning authorities, organisations and stakeholders across all tiers of the New South Wales planning system.
- 4.53** The committee heard evidence from multiple local councils that there is a lack of governance between planning authorities and that the NSW Government could be doing more to provide greater guidance and support to local councils.
- 4.54** The committee notes that the shortfall in resourcing for local councils will become more pronounced as climate change impacts increase in their intensity and frequency over time.
- 4.55** The committee acknowledge the issues raised with respect to private certifiers and note that local councils have expressed a need to remain informed and involved in the evaluation and final certification stages of a development, particularly in regard to what degree a development complies. The committee notes that where successive decisions are being made, predicated on the work completed by private certifiers, there is a risk of cascading and compounding faults with how projects and developments are being assessed. This is leading to poor outcomes in the natural and built environments and is reducing public trust and confidence in the planning system.
- 4.56** Issues concerning the Land and Environment Court were put to the committee by local councils, particularly with regard to deemed refusal appeals. The committee acknowledges that deemed refusal appeals can generate inconsistencies within the planning approval pathways and create a significant amount of work for local councils which, as a consequence, depletes local council resources. Therefore, the committee recommends that the NSW Government review deemed refusal appeals under section 8.17 of the *Environmental Planning and Assessment Act 1979* and consider the impacts that deemed refusal appeals have on local councils, particularly in relation to the costs incurred in defending these appeals and the strain that this has on council resources.

⁴⁴⁵ Answers to questions on notice, Randwick City Council, 22 April 2024, p 1.

Recommendation 10

That the NSW Government review deemed refusal appeals under section 8.17 of the *Environmental Planning and Assessment Act 1979* and consider the impacts that deemed refusal appeals have on local councils, particularly in relation to the costs incurred in defending these appeals and the strain that this has on council resources.

- 4.57** A common concern raised by the majority of local councils over the course of the inquiry, was the lack of weight given to Development Control Plans within the Land and Environment Court. The committee agrees that local councils are in the best position to achieve good placed based planning and implement climate change considerations at a local level and that provisions within Development Control Plans play a fundamental role. However, the committee acknowledge that due to clause 4.15(3A) of the *Environmental Planning and Assessment Act 1979*, Development Control Plans are applied flexibly, are not legally binding, and as a consequence are mostly unenforceable.
- 4.58** Due to the reasons provided above in paragraph 4.57, there was a general consensus from stakeholders throughout the inquiry that there needs to be a shift towards implementing non-approval provisions and that these provisions need to be provided for at the State level and implemented at the local level through DCPs. Therefore, the committee recommends that the government look into strengthening Development Control Plans so that provisions within Development Control Plans bear greater weight when considered in the Land and Environment Court and so that they can be enforced.
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Recommendation 11

That the NSW Government look into strengthening Development Control Plans so that provisions within Development Control Plans bear greater weight when considered in the Land and Environment Court and so that they can be enforced.

- 4.59** The committee understands that local councils can appeal against a decision made by a planning panel or the State Government in the Land and Environment Court but acknowledge that the review of the decision undertaken by the Land and Environment Court is based solely on jurisdiction, not merit. The committee therefore acknowledge the limited nature of third-party appeal rights in the Land and Environment Court.
- 4.60** The committee acknowledge that local councils are unable to monitor mature tree growth and presence compliance within their local areas as well as any ongoing prescribed development approval conditions due to limited funding and resources, which is discussed in greater detail in chapter three of this report.
- 4.61** The committee heard from local coastal councils and the Sydney Coastal Councils Group who addressed the issues that councils are currently facing with respect to coastal hazards and managing these hazards through the development of Coastal Management Plans. The committee understands that in the Sydney region, multiple councils are required to work together collectively to manage their Coastal Management Plans and that this arrangement has
-

proven difficult. The committee agrees that a formalised governance arrangement at the State level could provide leadership and better assist local coastal councils with the management of catchments, funding and administrative constraints.

Recommendation 12

That the NSW Government introduce a formalised governance structure at the State level to provide leadership and better assist local coastal councils with the management of catchments, funding and administrative constraints in relation to their Coastal Management Plans.

Chapter 5 Mitigation and adaptation

This chapter examines how the planning system works to mitigate and adapt to the impacts of climate change, including floods, bush fires, coastal erosion and urban heat. This chapter begins by examining current measures implemented by local councils to mitigate climate change impacts. It then explores two key areas for improvement in regard to mitigation, the urban heat island effect, and resilient infrastructure. The chapter also canvasses opportunities to improve adaptation practices to overcome risks caused by climate change such as land use planning decisions and planned retreat schemes.

Mitigation measures

- 5.1** Mitigation measures are those actions that are taken to reduce and curb greenhouse gas emissions.⁴⁴⁶ While mitigation attends to the causes of climate change, adaptation addresses its impacts.⁴⁴⁷
- 5.2** To plan and coordinate New South Wales's mitigation and risk reduction activities, the NSW Reconstruction Authority (the Authority) was established in December 2022.⁴⁴⁸ The *NSW Reconstruction Authority Act 2022* was established to address the impact of climate related natural disasters and a review of the Act is currently underway.⁴⁴⁹ At the time of the NSW Government's submission, the Authority was preparing the State's first State Disaster Mitigation Plan (SDMP).⁴⁵⁰ The SDMP and Disaster Adaptation Plans (DAPs) specifically call out the need to consider climate change related disasters.⁴⁵¹
- 5.3** However, later in the inquiry, Mr Stephen Hartley, Executive Director Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, updated the committee that the SDMP was released on 23 February 2024, with the document including '37 priority actions to reduce New South Wales's risk from future disasters'.⁴⁵²
- 5.4** Mr Hartley told the committee that the Authority has recently completed a long-term plan to reduce the flood risk in Hawkesbury-Nepean Valley, the most flood exposed region in New South Wales.⁴⁵³ Part of the plan includes a 'Flood Evacuation Model', which provides 'information on' different scenarios and those risks and how to treat those risks'.⁴⁵⁴ However,

⁴⁴⁶ Submission 155, Tweed Shire Council, p 1.

⁴⁴⁷ Submission 155, Tweed Shire Council, p 1.

⁴⁴⁸ Submission 189, NSW Government, p 7.

⁴⁴⁹ Joint Select Committee on the NSW Reconstruction Authority, *Review of the NSW Reconstruction Act 2022*, Terms of Reference; *NSW Reconstruction Authority Act 2022*, s 93.

⁴⁵⁰ Submission 189, NSW Government, p 7.

⁴⁵¹ Submission 189, NSW Government, p 11.

⁴⁵² Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 2.

⁴⁵³ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 9.

⁴⁵⁴ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 10.

for further information about this work Mr Hartley recommended that the committee hear from the Authority directly.⁴⁵⁵

Local council initiatives to mitigate climate change

5.5 Many local councils welcomed the review of the planning systems and the impacts of climate change on the environment and communities.⁴⁵⁶ Throughout the inquiry, the committee heard about initiatives by local councils across New South Wales to mitigate climate change impacts. Initiatives included:

- Solar initiatives, such as installing solar panels on council buildings⁴⁵⁷
- E-mobility, such as introducing electric vehicles into the Council's fleet,⁴⁵⁸ and installing public chargers for electric vehicles⁴⁵⁹
- Installing LED street lighting.⁴⁶⁰ For example, Camden Council has partnered with Endeavour Energy to convert all street lights in the local government area (LGA) to energy efficient LED's to reduce electrical demand⁴⁶¹
- Increasing pedestrian access and mobility. Camden Council has an annual program of works to improve the pedestrian connectivity and mobility throughout the LGA⁴⁶²
- Minimising urban heat impacts through measures such as planting more urban vegetation.⁴⁶³ Woollahra Municipal Council has developed a Draft Urban Forest Strategy to protect and enhance canopy cover and minimise urban heat impacts⁴⁶⁴
- Working with and supporting the community on climate action.⁴⁶⁵

5.6 In addition, several councils have adopted strategies to demonstrate their commitment to mitigate climate change risks, including:

- In July 2019, the Central Coast Council adopted the *Climate Change Policy 2018* and *Sustainability and Climate Change Action Plan 2022-2025* to support the Central Coast to address climate change⁴⁶⁶

⁴⁵⁵ Evidence, Mr Stephen Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure, 8 March 2024, p 10.

⁴⁵⁶ Submission 56, Sydney Coastal Councils Group, p 1; Submission 60, City of Sydney Council, p 1; Submission 67, Mosman Council, p 1; Submission 157, Wollondilly Shire Council, p 1; Submission 174, Shoalhaven City Council, p 1.

⁴⁵⁷ Submission 5, Camden Council, p 1; Submission 10, Woollahra Municipal Council, p 1.

⁴⁵⁸ Submission 5, Camden Council, p 1.

⁴⁵⁹ Submission 10, Woollahra Municipal Council, p 1; Submission 67, Mosman Council, pp 1-2.

⁴⁶⁰ Submission 67, Mosman Council, p 1; Submission 10, Woollahra Municipal Council, p 1.

⁴⁶¹ Submission 5, Camden Council, p 1.

⁴⁶² Submission 5, Camden Council, p 1.

⁴⁶³ Submission 5, Camden Council, pp 1-2, Submission 67, Mosman Council, p 1; Evidence, Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, p 3.

⁴⁶⁴ Submission 10, Woollahra Municipal Council, p 1.

⁴⁶⁵ Submission 67, Mosman Council, p 1.

- In March 2020, Liverpool Council has adopted the local strategic planning statement *Connected Liverpool 2024*, which sets out the Council's 20-year vision for land use across the LGA.⁴⁶⁷
- In April 2021, Mosman Council adopted the *Climate Action Plan – Mitigation Strategy*, which outlines Council's commitment to mitigate environmental impacts by Council and across the Mosman LGA.⁴⁶⁸
- In June 2022, Hornsby Shire Council adopted the *Sustainable Hornsby 2040 Strategy*.⁴⁶⁹
- In November 2022, Shellharbour City Council adopted the *Climate and Sustainability Policy* to support the Shellharbour community to reach net zero emissions by 2050.⁴⁷⁰
- In November 2022, Mosman Council adopted the *Climate Action Plan – Resilience and Adaptation Strategy*, which is a sister document to the Mitigation Strategy and together provide Council's overall response and actions to climate change.⁴⁷¹
- In February 2023, Wollondilly adopted the *Sustainability Policy 2023*, which demonstrates the Council's commitment 'to reducing greenhouse gas emissions, mitigating climate change impacts and building greater environmental and community resilience' in the Wollondilly LGA.⁴⁷²
- In September 2023, Camden Council adopted the *Camden: Towards Net Zero Strategy 2023*, which provides a framework to reduce emissions from Council's operations.⁴⁷³
- Over the last eight years, the City of Sydney Council has adopted the following:
 - *Sustainable Sydney 2030-2050 Continuing the Vision* (2022)
 - *Environmental Strategy* (2021-2025)
 - *Adapting for Climate Change: A long term strategy for the City of Sydney* (2015)
 - *Resilient Sydney – A Strategy for City Resilience* (2018)
 - *City Plan 2036: Local Strategic Planning Statement* (2020)
 - *Draft City of Sydney Resilience Plan 2023*.⁴⁷⁴

5.7 While some councils expressed their enthusiasm to adopt policies and plans to mitigate climate change, there was also a strong push for 'greater leadership' at the State level.⁴⁷⁵ Woollahra Municipal Council called for more support for councils in mitigating climate change risks, stating that:

⁴⁶⁶ Submission 159, Central Coast Council p 1.

⁴⁶⁷ Submission 167, Liverpool City Council, p 3.

⁴⁶⁸ Submission 67, Mosman Council, p 1.

⁴⁶⁹ Submission 71, Hornsby Shire Council, p 1.

⁴⁷⁰ Submission 118, Shellharbour City Council, p 1.

⁴⁷¹ Submission 67, Mosman Council, p 1.

⁴⁷² Submission 157, Wollondilly Shire Council, p 5.

⁴⁷³ Submission 5, Camden Council, p 2.

⁴⁷⁴ Submission 60, City of Sydney Council, p 3.

⁴⁷⁵ Submission 10, Woollahra Municipal Council, p 5; Submission 67, Mosman Council, p 2.

Local government does not have sufficient resources to adequately respond to all policy challenges related to this issue. A best practice approach should be modelled in the statutory framework, with specialised guidance being made available to local government organisations that are experiencing localised climate change impacts (e.g., sea level rise, bushfires or severe heat). Further grant funding should also be made available for local governments to progress policy initiatives related to these challenges.⁴⁷⁶

Urban Heat Island Effect

- 5.8** The committee heard from various stakeholders about the impacts of climate change and increased heat on communities in urban and sub-urban areas.⁴⁷⁷ As several submissions highlighted, in Australia, heat events have killed more people than any other natural disaster in the last 200 years.⁴⁷⁸
- 5.9** While submissions mentioned the impacts of extreme heat events on the community, economy and environment, the focus for a number of submissions was on the 'urban heat island effect'.⁴⁷⁹ This phenomenon is where urbanised areas experience higher temperatures, most commonly caused by materials used in building and infrastructure absorbing more heat than natural environments, as well as lower levels of vegetation and human activities such as transport, industry and electricity usage.⁴⁸⁰ Penrith City Council and the Western Sydney Regional Organisation of Councils Ltd noted that urban heat and the urban heat island effect is a documented and significant issue for Penrith City and Western Sydney generally.⁴⁸¹
- 5.10** In terms of infrastructure to mitigate the urban heat island effect, Sweltering Cities recommended a 'comprehensive ban' on all new black or dark coloured roofs in Western Sydney, noting dark roofs can increase internal temperatures of homes and exacerbate the urban heat island effect.⁴⁸² Similarly, the City of Sydney recommended that the NSW Government consider legislative change to enforce 'lighter colour roofs, external sun shading and solar reflectivity requirements for shading glazed facades'.⁴⁸³

⁴⁷⁶ Submission 10, Woollahra Municipal Council, p 5.

⁴⁷⁷ Submission 8, Penrith City Council, p 2; Submission 60, City of Sydney Council, pp 7, 9; Submission 77, Western Sydney Regional Organisation of Councils Ltd, pp 1-5.

⁴⁷⁸ Submission 203, Eurobodalla Shire Council, p 11; Submission 77, Western Sydney Regional Organisation of Councils Ltd, p 1; Submission 79, Southcoast Health and Sustainability Alliance, p 7.

⁴⁷⁹ Submission 10, Woollahra Council, p 3; Submission 60, City of Sydney Council, p 7; Submission 67, Mosman Council, p 2; Submission 77, Western Sydney Regional Organisation of Councils Ltd, p 3; Submission 85, Sweltering Cities, pp 1-4.

⁴⁸⁰ NSW Government, 'Climate change impacts' *AdaptNSW* (Web page, 2024) <https://www.climatechange.environment.nsw.gov.au/impacts-climate-change/built-environment/urban-heat>.

⁴⁸¹ Submission 8, Penrith City Council, p 2; Submission 77, Western Sydney Regional Organisation of Councils Ltd, p 4.

⁴⁸² Submission 85, Sweltering Cities, p 1.

⁴⁸³ Submission 60, City of Sydney Council, p 9.

5.11 Inquiry participants also emphasised the role that vegetation and water play in limiting excess heat in urban environments. For example, Sweltering Cities explained how removing trees and water bodies contributes to urban heat:

The removal of trees (which shade services and allow water vapour to cool air), greenspaces and parklands has resulted in replacement with man-made structures and buildings of bricks, cladding, metal and glass. Waterways such as lakes and rivers in the region, which act as temperature buffers to convert heat to cooling vapours, are replaced by asphalt and concrete which can reach 80°C surface temperatures.⁴⁸⁴

5.12 In his evidence to the committee, Mr Peter Gillis, Founding Committee Member, Woy Woy Peninsula Residents Association illustrated how a lack of tree planting and negligible tree retention vegetation adversely impacts the Woy Woy Peninsula.⁴⁸⁵ Mr Gillis submitted that the Peninsula has a tree canopy of only 10 per cent, (and some areas have only one canopy tree per hectare), which results in a heat island effect of plus 5 degrees Celsius in the summer months.⁴⁸⁶

5.13 To address urban heat, the Better Planning Network advocated for urban forests, that is, tree-dominated green areas in and around urban areas, as they provide 'significant environmental, ecological, social and economic benefits', such as improving air quality, contributing to biodiversity, and providing habitat and food for wildlife.⁴⁸⁷ This was supported by BirdLife Southern NSW who recommended introducing 'statutory goals and targets aimed at increasing the proportion of land in every suburb of every city and town that may be validly designated as urban forest or urban wetland.'⁴⁸⁸

5.14 Some local councils called for greater direction from the NSW Government to implement legislative planning controls to mitigate urban heat.⁴⁸⁹ The Western Sydney Regional Organisation of Council contended that 'without mandated consideration or control for heat risk, this risk is ultimately passed down to communities and residents'.⁴⁹⁰ They highlighted that the SDMP presents a 'potential mechanism' for the New South Wales's planning system to consider extreme heat.⁴⁹¹ The SDMP also provides an opportunity to consider how New South Wales can adapt to the impacts of climate change.⁴⁹²

5.15 Lake Macquarie City Council recognised that the *State Environmental Planning Policy (Sustainable Buildings) 2022* (Sustainable Buildings SEPP) 'includes some requirements for energy and water use, as well as thermal performance', but it 'does not adequately address matters relating to

⁴⁸⁴ Submission 85, Sweltering Cities, p 3.

⁴⁸⁵ Evidence, Mr Peter Gillis, Founding Committee Member, Woy Woy Peninsula Residents Association, 10 April 2024, p 18.

⁴⁸⁶ Evidence, Mr Peter Gillis, Founding Committee Member, Woy Woy Peninsula Residents Association, 10 April 2024, p 18.

⁴⁸⁷ Submission 184, Better Planning Network Inc., pp 34-35.

⁴⁸⁸ Submission 87, BirdLife Southern NSW, p 4.

⁴⁸⁹ Submission 60, City of Sydney Council, p 7; Submission 77, Western Sydney Regional Organisation of Councils Ltd, p 3.

⁴⁹⁰ Submission 77, Western Sydney Regional Organisation of Councils Ltd, p 3.

⁴⁹¹ Submission 77, Western Sydney Regional Organisation of Councils Ltd, p 5.

⁴⁹² Submission 189, NSW Government, p 11.

urban heat'.⁴⁹³ The City of Sydney argued that section 2.2(1)(b) of the Sustainable Buildings SEPP should be revised to include controls that mitigate urban heat.⁴⁹⁴

5.16 Mr David Schwartz, submission author, contended that the Sustainable Buildings SEPP should include provisions for the incorporation of green infrastructure.⁴⁹⁵ Mr Schwartz said these should include infrastructure such as:

green roofs, vertical gardens, and permeable surfaces, in building design. Additionally, requirements for shade provision and tree planting should be enforced to reduce heat-related health risks and energy consumption.⁴⁹⁶

5.17 The Woollahra Municipal Council and Mosman Council advocated to amend section 2.2 of the Sustainable Buildings SEPP, as it discourages local initiatives to mitigate urban heat.⁴⁹⁷ The provision states that:

(1) A competing provision of an environmental planning instrument or development control plan, whenever made, is of no effect to the extent to which the provision aims—

(a) to reduce consumption of mains-supplied potable water or greenhouse gas emissions related to the use of—

(i) a building, or

(ii) the land on which a building is located, or

(b) to improve the thermal performance of development, or

(c) to quantify and report on the embodied emissions attributable to development.

(2) Subsection (1) does not—

(a) displace a competing provision to the extent to which the provision applies to part of BASIX development or BASIX optional development that will not be used for residential purposes, or

(b) apply to a competing provision that encourages, or offers incentives for, the adoption of measures beyond the measures required by provisions of the kind referred to in the definition of competing provision.⁴⁹⁸

5.18 As described by the Woollahra Municipal Council, the construction of section 2.2 means that:

⁴⁹³ Submission 38, Lake Macquarie City Council, p 6.

⁴⁹⁴ Submission 60, City of Sydney Council, p 7.

⁴⁹⁵ Submission 2, Mr David Schwartz, pp 1-2.

⁴⁹⁶ Submission 2, Mr David Schwartz, pp 1-2.

⁴⁹⁷ Submission 10, Woollahra Municipal Council, pp 3-4; Submission 67, Mosman Council, p 2.

⁴⁹⁸ *State Environmental Planning Policy (Sustainable Buildings) 2022*, section 2.2.

A competing local provision to reduce the consumption of water or greenhouse gas emissions from a building, to improve its thermal performance, or to quantify its embodied emissions is of no effect. In practice, this means Council is unable to enforce environmental standards that exceed those in the Sustainable Buildings SEPP, even when they have been supported by Councillors and the wider community.⁴⁹⁹

- 5.19** The City of Sydney expressed that section 2.2 presents a risk to local council controls, such as 'light-coloured materials, external sun shading and solar reflectivity', as they could be challenged due to their ability to improve thermal performance as well as mitigate urban heat.⁵⁰⁰ Mosman Council reinforced that 'local initiatives should be welcomed and encouraged as a means of addressing the climate emergency' instead of being 'blocked' by the SEPP which 'aims to encourage the design and delivery of sustainable buildings and reduce greenhouse gas emissions'.⁵⁰¹
- 5.20** The NSW Government has introduced changes to the Sustainable Building (BASIX) energy standards to improve the energy and thermal performance of homes.⁵⁰² The changes include:
- raising thermal performance standards up to 7 stars as defined by NatHERS, increasing emissions reduction requirement by 7 to 11 per cent, depending on location and type of dwelling and introducing mandatory assessment and
 - reporting of building material emissions for every new home. These changes cut thermal energy use by at least 20 per cent.⁵⁰³

Resilient infrastructure

- 5.21** Several inquiry participants highlighted the need for infrastructure which is designed to enhance resilience and mitigate the risks posed by climate change.⁵⁰⁴ The NSW Government stated that 'providing infrastructure that is resilient to climate change and natural disasters is important to support community safety and effective responses to natural disaster events'.⁵⁰⁵
- 5.22** In its submission, the Tweed Shire Council observed that the NSW Climate Change Adaptation Strategy, released in June 2022, has as one of its four objectives 'well adapted built environment and infrastructure'.⁵⁰⁶ In the context of the Strategy, this means:

⁴⁹⁹ Submission 10, Woollahra Municipal Council, p 3.

⁵⁰⁰ Submission 60, City of Sydney Council, p 7.

⁵⁰¹ Submission 67, Mosman Council, p 2.

⁵⁰² Media release, the Hon Paul Scully MP, Minister for Planning and Public Spaces, 'Sustainable building reforms offer long-term savings for households,' 1 October 2023.

⁵⁰³ Media release, the Hon Paul Scully MP, Minister for Planning and Public Spaces, 'Sustainable building reforms offer long-term savings for households,' 1 October 2023.

⁵⁰⁴ Submission 9, Insurance Council of Australia, p 5; Submission 43, Planning Institute of Australia, p 13; Submission 79, Southcoast Health and Sustainability Alliance, p 8; Submission 123, Allianz Australia, pp 3-4.

⁵⁰⁵ Submission 189, Department of Planning and Environment, p 24.

⁵⁰⁶ Submission 155, Tweed Shire Council, pp 10-11.

Develop and maintain the built environment and infrastructure to prevent, withstand and recover from climate change impacts, while continuing to perform its function and serve the community. This includes developing more resilient infrastructure after disasters.⁵⁰⁷

5.23 The Planning Institute of Australia also noted that planning for infrastructure resilience is set out in two key documents:

- *Guidelines for Resilience in Infrastructure Planning* by Treasury NSW and Infrastructure NSW, and
- *A Pathway to Infrastructure Resilience* by Infrastructure Australia and Infrastructure NSW.⁵⁰⁸

5.24 Specifically, Allianz Australia encouraged investment in 'retrofitting and upgrading existing infrastructure to withstand climate-related risks.'⁵⁰⁹ To address flooding, Penrith City Council suggested several infrastructure developments including 'works such as road shoulder widening ... road raising, pinch point upgrades, and drainage improvements'.⁵¹⁰ In its submission, Lake Macquarie City Council highlighted the importance of flood resilient housing, that is, housing that has 'in-built adaptability and flexibility to flooding and tidal inundation'.⁵¹¹ In regard to bush fire prone areas, Yamba Community Action Network Inc. recommended that there be 'appropriate fire protection infrastructure, such as watering systems'.⁵¹²

Sustainable building codes and policies

5.25 Stakeholders advocated for reforms to building codes and policies to ensure that residents of New South Wales can live and work in safe, more resilient and sustainable buildings.⁵¹³

5.26 The Public Interest Advocacy Centre recommended that:

planning policies and regulations should incorporate minimum standards for health, safety and water efficiency and zero-carbon readiness, and incentivise the New South Wales property development and building industry to contribute to meeting and outperforming those minimums.⁵¹⁴

5.27 Similarly, Liverpool City Council urged that 'controls should encourage passive and sustainable design'.⁵¹⁵

⁵⁰⁷ Submission 155, Tweed Shire Council, pp 10-11.

⁵⁰⁸ Submission 43, Planning Institute of Australia, p 13.

⁵⁰⁹ Submission 123, Allianz Australia, p 4.

⁵¹⁰ Submission 8, Penrith City Council, p 6.

⁵¹¹ Submission 38, Lake Macquarie City Council, Attachment 1, Lake Macquarie City Council, *Flood Resilient Housing Guidelines*, p 5.

⁵¹² Submission 164, Yamba Community Action Network Inc., p 9.

⁵¹³ Submission 9, Insurance Council pp 4-5; Submission 167, Liverpool City Council, p 5; Submission 79, Southcoast Health and Sustainability Alliance, p 8.

⁵¹⁴ Submission 82, Public Interest Advocacy Centre, p 5.

⁵¹⁵ Submission 167, Liverpool City Council, p 6.

5.28 The Insurance Council of Australia recommended that the 'principle of resilience' in the context of a changing climate be embedded into the National Construction Code (NCC).⁵¹⁶ The Council said the NCC is developed by the Australian Building Codes Board (ABCB) and considers 'building design, construction, performance and liveability that are the minimum necessary to achieve health and safety, amenity and accessibility, and sustainability.'⁵¹⁷ The Council shared that a report commissioned by the organisation found that:

... strengthening the NCC to require that new homes are made more resilient to extreme weather could reduce average annual building costs by an estimated \$2 billion per year for cyclones, \$1.475 billion per year for floods, and \$486 million per year for bushfires. It also makes clear that reforming state and territory planning rules will be essential to preventing new homes being built in high-risk areas.⁵¹⁸

5.29 Camden Council suggested that the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) be reviewed, noting that the Codes SEPP has 'limited design controls that prioritise sustainable outcomes.'⁵¹⁹ Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, called for the 'minimum canopy, vegetation and deep soil' to be mandated in the Codes SEPP, noting that these developments 'provide multiple adaptation benefits.'⁵²⁰

5.30 Improvements to the Codes SEPP were also raised by Liverpool City Council to 'better integrate climate change mitigation and adaptation measures.'⁵²¹ The Council said that the SEPP currently allows for:

higher floor space ratio and less area for landscaping, enabling the development of suburbs containing low density residential developments, with dark roofs and limited landscaping, contributing to urban heat impacts, and adversely impacting amenity.⁵²²

5.31 The Australian Institute of Landscape Architects called for the *State Environmental Planning Policy for Design and Place* (DP SEPP) to be reintroduced.⁵²³ The Nature Conservation Council also expressed disappointment that the DP SEPP was not adopted.⁵²⁴

⁵¹⁶ Submission 9, Insurance Council p 5; Evidence, Ms Alix Pearce, Senior Manager, Climate and Social Policy, Insurance Council of Australia, 15 March 2024, p 38.

⁵¹⁷ Submission 9, Insurance Council p 5.

⁵¹⁸ Submission 9, Insurance Council p 5.

⁵¹⁹ Submission 5, Camden Council, p 3.

⁵²⁰ Evidence, Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverley Municipal Council, p 3.

⁵²¹ Submission 167, Liverpool City Council, p 5.

⁵²² Submission 167, Liverpool City Council, p 5.

⁵²³ Submission 126, Australian Institute of Landscape Architects, p 9.

⁵²⁴ Submission 136, Natural Conservation Council, p 35.

Adaptation

- 5.32** Adaptation refers to 'anticipating the adverse effects of climate change and taking the appropriate action to prevent or minimise the damage they can cause, or taking advantage of opportunities that may arise'.⁵²⁵
- 5.33** In New South Wales, there are several key state government policies and guidelines which provide the framework for adapting to climate change now and over the long-term, including:
- *The Environmental Protection Agency's Climate Change Policy and Climate Change Action Plan: 2023–26*
 - *Net Zero Plan Stage 1: 2020–2030*, and
 - *The NSW Climate Change Adaptation Strategy*.⁵²⁶
- 5.34** Despite these documents, Allianz Australia and Lock the Gate Alliance called for a more comprehensive climate adaptation framework.⁵²⁷ Allianz Australia recommended that the NSW Government establish a framework which:
- integrates climate resilience and preparedness into all aspects of planning and development, prioritising resilient and energy-efficient building design, evacuation and emergency services access, habitat restoration and implementing green corridors and protected areas to enhance ecological connectivity.⁵²⁸
- 5.35** Some local councils noted that the NSW Government should work with local governments to develop and implement climate change adaptation plans for their respective areas.⁵²⁹ Tweed Shire Council detailed that these adaptation plans 'would identify and prioritise the climate change risks that need to be addressed and set out specific actions that will be taken to reduce these risks'.⁵³⁰

Improved land use planning

- 5.36** Several submissions stressed the need for improved land use planning decisions that take into account the risks caused by climate change.⁵³¹ Planning Institute Australia referred to the

⁵²⁵ Submission 130, Name suppressed, p 2, citing European Environment Agency 2017, *Climate change adaptation and disaster risk reduction in Europe*, European Environment Agency, Luxembourg.

⁵²⁶ Submission 189, NSW Government, p 10; Submission 155, Tweed Shire Council, pp 10-11, 25-26; Submission 70, Lock the Gate Alliance, pp 2, 6.

⁵²⁷ Submission 70, Lock the Gate Alliance, p 13; Submission 123, Allianz Australia, p 3.

⁵²⁸ Submission 123, Allianz Australia, p 4.

⁵²⁹ Submission 38, Lake Macquarie City Council, p 8; Submission 155, Tweed Shire Council, p 24.

⁵³⁰ Submission 155, Tweed Shire Council, p 24.

⁵³¹ Submission 2, Mr David Schwartz, p 1; Submission 9, Insurance Council of Australia, pp 2-3; Submission 27, The Committee of Sydney, pp 2-3; Submission 19, Ms Kristyn Glanville, p 1; Submission 98, Floodplain Management Australia, p 3.

National Productivity Commission's statement that 'land use planning is perhaps the most potent policy lever for influencing the level of future disaster risk'.⁵³²

- 5.37** As an example of poor land use planning, Ms Jane Stroud, Chief Executive Officer, Kiama Municipal Council, informed the committee that Jamberoo Preschool is built in a flood plain, which is putting children in danger:

Every time it floods for, literally, about more than 15 to 20 minutes, the entire community knows that it's time to bump in and start pulling out the little kids play area. Every time it rains we go and clean up that site. Recently, after the events two weeks ago, we sat down with the operator—it's a council-built facility, mind you—and said, "We need to talk about you not being here. This is not a viable long-term solution. There's a risk to life if we have heavy rainfall. You're talking about vulnerable little kids who cannot swim—they're three and four, or maybe they can swim a little bit."⁵³³

- 5.38** In its recommendations to the committee, the Insurance Council of Australia encouraged the NSW Government to consider the relationship between land use planning and extreme weather risk.⁵³⁴ In particular, the Insurance Council called for the NSW Government to provide 'clear direction' about where homes can be built, stating that 'housing development in areas prone to extreme weather events ... should not be permitted'.⁵³⁵ Similarly, the Planning Institute of Australia said that planning decisions should recognise that 'not all land is suitable for ... development and not all development types are viable at a particular location'.⁵³⁶
- 5.39** The Northern Beaches Council noted that the existing bushfire planning framework, *Planning for Bushfire Protection 2019* (PBP), already includes criteria for excluding development in bushfire prone areas.⁵³⁷ While the assessment under the PBP relies on a determination of 'unacceptable risk', the Northern Beaches Council highlighted that there is no definition for this phrase within the framework.⁵³⁸
- 5.40** The Insurance Council of Australia supported 'ongoing reviews of land use planning arrangements considering both the likelihood and consequence of extreme weather events'.⁵³⁹ Lake Macquarie City Council suggested rezoning may be necessary in circumstances when areas are 'no longer considered suitable for residential or other purposes due to predicted climate-related risks'.⁵⁴⁰

⁵³² Submission 43, Planning Institute of Australia, p 1 quoting Productivity Commission, *Natural Disaster Funding Arrangements Volume 1*, No. 74, 2014, p 30.

⁵³³ Evidence, Ms Jane Stroud, Chief Executive Officer, Kiama Municipal Council, 3 May 2024, p 14.

⁵³⁴ Submission 9, Insurance Council of Australia, p 3.

⁵³⁵ Submission 9, Insurance Council of Australia, p 3.

⁵³⁶ Submission 43, Planning Institute of Australia, p 3.

⁵³⁷ Submission 168, Northern Beaches Council, p 2.

⁵³⁸ Submission 168, Northern Beaches Council, p 2.

⁵³⁹ Submission 9, Insurance Council of Australia, p 3.

⁵⁴⁰ Submission 38, Lake Macquarie City Council, p 5.

- 5.41** The Planning Institute of Australia also highlighted the need for 'forward and strategic planning' noting that 'historical projections are not always relevant in a changing climate.'⁵⁴¹ Mr David Schwartz agreed with this idea, stating that 'traditional approaches' relying only on historical data 'may not be adequate in the face of evolving climate patterns and the increasing uncertainty associated with climate change impacts.'⁵⁴² Mr Schwartz advocated for a 'forward-looking approach to modelling', where land use planning and development decisions use 'predictive flood and fire risk models that encompass a range of scenarios, accounting for potential variations in rainfall patterns, sea-level rise, and extreme weather events.'⁵⁴³
- 5.42** Similarly, Lake Macquarie City Council recommended that legislation and relevant guidelines be amended to require climate change be considered in the assessment of planning proposals and development applications.⁵⁴⁴ The Council advised that when assessing development applications or planning proposals, climate change considerations may not be present as older bushfire and flood studies do not include climate change considerations, as these risks are 'future, rather than existing risk'.⁵⁴⁵
- 5.43** In its submission, the Planning Institute of Australia advised that there are conflicting purposes of current land use policies regarding flood-prone land, which has led to confusion about current regulatory obligations.⁵⁴⁶ For example, the *Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021* inserts a 'special flood consideration clause' into the *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument LEPP) which prescribes 'decision-making criteria for local government for sensitive or hazardous development between the flood planning area and probable maximum flood.'⁵⁴⁷ Conversely, *Standard Instrument (Local Environmental Plans) Amendment (Natural Disasters) Order 2021* inserts a 'natural disaster clause' into the Standard Instrument LEPP which allows the rebuilding of a dwelling 'which was damaged or destroyed by natural disaster in any circumstance where it was lawfully erected.'⁵⁴⁸
- 5.44** In response to the interaction of these clauses, the Planning Institute of Australia acknowledged that:

communities seek to recover from a natural disaster and a core part of the recovery process is rebuilding. Recovery should incorporate risk-responsive planning principles, which the current Natural Disaster clause fails to offer. These clauses have different objectives and would operate contrary to each other in practice.⁵⁴⁹

⁵⁴¹ Submission 43, Planning Institute of Australia, p 3.

⁵⁴² Submission 2, Mr David Schwartz, p 1.

⁵⁴³ Submission 2, Mr David Schwartz, p 1.

⁵⁴⁴ Submission 38, Lake Macquarie City Council, p 2.

⁵⁴⁵ Submission 38, Lake Macquarie City Council, p 2.

⁵⁴⁶ Submission 43, Planning Institute of Australia, p 7.

⁵⁴⁷ Submission 43, Planning Institute of Australia, p 8; *Standard Instrument (Local Environmental Plans) Order 2006*, clause 5.22.

⁵⁴⁸ Submission 43, Planning Institute of Australia, p 8; *Standard Instrument (Local Environmental Plans) Order 2006*, clause 5.9.

⁵⁴⁹ Submission 43, Planning Institute of Australia, p 8.

5.45 Overall, the Planning Institute of Australia called for the natural disaster clause to be removed from the Standard Instrument LEPP, and an alternative be inserted that incorporates 'risk-responsive planning principles'.⁵⁵⁰

Planned retreat

5.46 Throughout the inquiry, the committee heard support for policies and funding to allow for relocation and 'planned retreat' in areas that are vulnerable to flooding, rising sea levels and coastal erosion.⁵⁵¹ Ms Sue Weatherley, NSW President, Planning Institute of Australia, urged that 'in situations where risks to existing settlement and human life cannot be mitigated, there should be governance and funding arrangements for planned retreat'.⁵⁵²

5.47 In support of planned retreat, Insurance Australia Group Services Pty Ltd referenced the research report *Planned Relocation – Protecting Our Communities*, which examines how planned relocation can protect individuals and communities from severe floods and bushfires.⁵⁵³ The report presents seven key recommendations for planned relocation during natural hazard events:

- Develop national guidance on planned relocation
- Prioritise and fund integration support measures for relocated residents
- Planned relocation should be coordinated by state and territory government agencies while ensuring local government remains a key stakeholder
- Responsible agencies should proactively identify high-risk locations and develop community adaptation plans before a natural hazard event occurs
- Federal and state governments should formalize funding arrangements
- Establish legislative frameworks for accelerated approvals for planned relocation
- Review the outcomes of large-scale implementations of planned relocation (e.g. NSW and Queensland Resilient Homes Funds) to inform the development and refinement of national guidance and frameworks.⁵⁵⁴

5.48 The Committee for Sydney noted that policies for planned retreat need to be 'informed by lessons from the Northern Rivers in New South Wales, Brisbane and overseas'.⁵⁵⁵

5.49 Several stakeholders noted the ongoing relocation in Grantham in the Lockyer Valley Shire of Queensland, which was subject to a significant flood in 2011.⁵⁵⁶ As advised by Mr Yianni Mentis, Executive Manager, Environment and Climate Change, Northern Beaches Council, the relocation of this town:

⁵⁵⁰ Submission 43, Planning Institute of Australia, p 8.

⁵⁵¹ Submission 5, Camden Council, pp 2-3; Submission 51, Insurance Australia Group Services Pty Ltd, p 6; Submission 38, Lake Macquarie City Council, p 5.

⁵⁵² Evidence, Ms Sue Weatherley, NSW President, Planning Institute of Australia, 8 March 2024, p 42.

⁵⁵³ Submission 51, Insurance Australia Group Services Pty Ltd, p 6.

⁵⁵⁴ Submission 51, Insurance Australia Group Services Pty Ltd, p 6.

⁵⁵⁵ Submission 27, The Committee for Sydney, p 6.

⁵⁵⁶ Evidence, Mr Ian Carruthers, 10 April 2024, p 27; Submission 43, Planning Institute of Australia, pp 2, 9; Answers to questions on notice, Mr Yianni Mentis, Executive Manager, Environment and Climate Change, Northern Beaches Council, 12 June 2024, p 2.

comprised a voluntary land swap that resulted in more than 130 houses being relocated on higher ground in an effort to protect the town from future disasters. That land swap was funded by the Lockyer Valley Regional Council and significant contributions from the Queensland and Commonwealth governments.⁵⁵⁷

5.50 In its submission, the Planning Institute of Australia highlighted that the relocation of Grantham offers lessons for New South Wales, including:

- 'the importance of community acceptance of a fair acquisition and land swap process' and
- An example of on 'cost sharing among different tiers of government and different agencies.'⁵⁵⁸

Disadvantages of planned retreat

5.51 Despite the advantages of planned retreat, stakeholders also emphasised that it is not a simple solution. Rather, planned retreat presents many challenges to implementation, including complicated social issues, such as people's desire to move,⁵⁵⁹ significant costs⁵⁶⁰ and restrictive property rights.⁵⁶¹

5.52 When asked for her views on relocation and planned retreat, Ms Sue Ribbons, Communications Director, Floodplain Management Australia, acknowledged that it is a complex social issue, that goes beyond just buying homes and finding new land: 'For example, you've got a town that's half really badly flood-prone and half not flood-prone. Do you split the town in two?'⁵⁶²

5.53 In its submission, Lake Macquarie City Council said that although planned retreat may reduce the exposure of the community to risk, it has 'significant social impacts'.⁵⁶³ For this reason, the Council advised that 'it is crucial that inclusive engagement and collaboration with local communities is undertaken when decisions are made in relation to relocation.'⁵⁶⁴ The Public Interest Advocacy Centre also emphasised the need for consultation, stating that:

particularly where decisions could require the relocation of homes or entire communities, robust early engagement with those communities is essential to ensure that decisions meet people's needs.⁵⁶⁵

⁵⁵⁷ Answers to questions on notice, Mr Yianni Mentis, Northern Beaches Council, 12 June 2024, p 2.

⁵⁵⁸ Submission 43, Planning Institute of Australia, pp 12, 14.

⁵⁵⁹ Submission 174, Shoalhaven City Council, p 6.

⁵⁶⁰ Evidence, Mr Yianni Mentis, Executive Manager, Environment and Climate Change, Northern Beaches Council, 10 May 2024, p 9.

⁵⁶¹ Answers to questions on notice, Mr Yianni Mentis, 12 June 2024, p 1-2.

⁵⁶² Evidence, Ms Sue Ribbons, Communications Director, Floodplain Management Australia, 8 March 2024, p 56.

⁵⁶³ Submission 38, Lake Macquarie City Council, p 5.

⁵⁶⁴ Submission 38, Lake Macquarie City Council, p 5.

⁵⁶⁵ Submission 82, Public Interest Advocacy Centre, p 4.

5.54 The financial cost of planned retreat was also raised by stakeholders in relation to coastal properties. In his evidence to the committee, Mr Yianni Mentis, Executive Manager, Environment and Climate Change, Northern Beaches Council acknowledged that:

the difficulty for council and generally for State and Federal governments is the cost associated with [planned retreat], in particular in locations like the northern beaches or, arguably, Mosman and the other areas where the land values are significantly higher. The consequence of planned retreat would be, I think, astronomical.⁵⁶⁶

5.55 To illustrate the high cost of planned retreat, Mr Terry Fitzgerald, President, Surfrider Foundation Australia, Northern Beaches Branch, recalled in his evidence to the committee that in 1990, a beach management committee was formed by Manly, Warringah and Pittwater, and resolved to proceed with a planned retreat of 54 impacted properties in the area.⁵⁶⁷ Mr Fitzgerald told the committee that at the time, the 54 properties were valued at approximately \$84 million, but he recognised that these days the properties would be in 'the hundreds of millions and beyond'.⁵⁶⁸

5.56 In contrast, Lake Macquarie City Council argued that the 'upfront costs' of planned retreat 'would likely be lower than the long-term costs of disaster response and recovery, or the costs of ongoing sea level rise adaptation works'.⁵⁶⁹ Lake Macquarie City Council stated that retreat 'will eventually become the only viable option at many locations' but said that changes to the NSW legislation 'are required to enable strong enforcement of a planned retreat policy'.⁵⁷⁰

Defence versus planned retreat

5.57 Throughout the inquiry, planned retreat was also compared and contrasted with the use of defences to shield against adverse impacts of climate change.

5.58 In the context of coastal erosion and recession, Mr Angus Gordon OAM, coastal engineer, described defences as 'hard' or 'soft', where hard defences are artificial structures such as sea walls and revetments, and soft defences are more sustainable and natural, such as beach nourishment.⁵⁷¹ Mr Gordon noted that there appears to be a tendency for defence works to become the accepted response as they incrementally 'chase' the adverse impacts of end effects.⁵⁷² However, he argued that the defence approach is not feasible in the long-term, and planned retreat is unavoidable:

Once caught in this trap it becomes very difficult socially, emotionally, economically, and politically to abandon a defence strategy and gain agreement for a retreat

⁵⁶⁶ Evidence, Mr Yianni Mentis, Executive Manager, Environment and Climate Change, Northern Beaches Council, 10 May 2024, p 9.

⁵⁶⁷ Evidence, Mr Terry Fitzgerald, President, Surfrider Foundation Australia, Northern Beaches Branch, 10 May 2024, p 39.

⁵⁶⁸ Evidence, Mr Terry Fitzgerald, President, Surfrider Foundation Australia, Northern Beaches Branch, 10 May 2024, p 39.

⁵⁶⁹ Submission 38, Lake Macquarie City Council, p 5.

⁵⁷⁰ Submission 38, Lake Macquarie City Council, pp 5-6.

⁵⁷¹ Submission 24, Mr Angus Gordon, p 8.

⁵⁷² Submission 24, Mr Angus Gordon, p 8.

approach. Unfortunately, over time the necessary resources to sustain a defence strategy, including offshore and onshore sources of sand for nourishment, can become exhausted and/or the seawalls can no longer be upgraded, or the funding base becomes inadequate for needed maintenance. At such a point in time buildings, and infrastructure, are lost and retreat occurs anyway, often as a haphazard process, as evidenced at Norfolk in England (Brennan 2007). It is instructive to recognize that on a receding coast re-treat is actually inevitable and so defence works simply postpone the timing of the eventuality.⁵⁷³

5.59 Allianz Australia took a more balanced approach, acknowledging that a mix of defence and retreat would be beneficial in the face of climate change.⁵⁷⁴ For example, Allianz Australia supported investment in 'coastal protection infrastructure, such as seawalls, beach nourishment and managed retreat strategies' to mitigate coastal erosion, in addition to 'natural and nature-based solutions, such as dune restoration and wetland preservation.'⁵⁷⁵

5.60 Mr Ian Carruthers considered that whether planned retreat is appropriate will depend on the particular location:

Of course, once you start putting in hard armouring on beaches, then you have sand being stripped away because you have changed the whole energy behaviour of the sea and the sand. People value the beaches for their recreation and all those things. Australians love going to the beach. What are we going to protect? Are we going to protect the future for the beachgoers? Are we going to protect the homes with armoured walls? There is no simple answer to this. You just have to lay out the conundrum and frame a strategy accordingly. There won't be any single approach. In some places there will be seawalls, in other places it will be appropriate to just say, 'Let nature take its course,' and there will have to be retreat. It ought to be on the table up-front as to what future we want in this situation.⁵⁷⁶

5.61 The Northern Beaches Council also raised the issue of public versus private interests when deciding to defend or retreat.⁵⁷⁷ The Council argued that:

legislation should explicitly require a balance between private property interests and the public's interest such as beach access (both access to and along a beach) and the natural environment in coastal management decisions as well as investigating options for maximum setback for seawalls from the shoreline and require an examination of alternative, softer shoreline protection measures to minimise environmental and social impacts. One of the key considerations for managers of coastlines around the world is whether there is a point at which defending private property is considered acceptable regardless of the loss of riparian environments, or whether environmental protection is paramount and at some point, development becomes untenable.⁵⁷⁸

5.62 Similarly, Cr Kristyn Glanville, Northern Beaches Council raised the conflict between public and private interests, noting that public funds have been spent to reinforce the Collaroy

⁵⁷³ Submission 24, Mr Angus Gordon, p 8.

⁵⁷⁴ Submission 123, Allianz Australia, p 3.

⁵⁷⁵ Submission 123, Allianz Australia, p 3.

⁵⁷⁶ Evidence, Mr Ian Carruthers, 10 April 2024, p 24.

⁵⁷⁷ Submission 168, Northern Beaches Council, pp 6-7.

⁵⁷⁸ Submission 168, Northern Beaches Council, pp 6-7.

seawall to the benefit of the landowners, despite the potential for significant public and environmental benefit of a policy of planned retreat.⁵⁷⁹ Mr Peter Maslen also noted that the 'repeated undertaking of various engineering solutions' in erosion prone areas places an 'unnecessary imposition' on the community.⁵⁸⁰

Committee comment

- 5.63** The committee thanks stakeholders for sharing their wealth of experience and expertise in evidence on how the planning system currently works to mitigate and adapt to climate change. The committee also commends the significant efforts that have been, and continue to be, made by local councils in mitigating climate change impacts through various initiatives, plans and strategies. The committee acknowledges that local governments are well placed to understand localised climate change impacts, and there is a need for the NSW Government to support councils to progress policies in this area.
- 5.64** The committee appreciates the significant amount of evidence regarding the impacts of heat and considers there is a need to implement statutory controls to mitigate the urban heat island effect. We note suggestions of mandating heat controls into the legislative framework for planning, including changes to the Sustainable Buildings SEPP. The committee also heard evidence on the additional reforms needed to the National Construction Code and other policies to ensure that infrastructure is resilient to climate change impacts.

Recommendation 13

That the NSW Government:

- implement statutory planning controls to mitigate the urban heat island effect, either through legislation, changes to the Sustainable Buildings SEPP, and/or any other relevant instruments
 - advocate for changes to the National Construction Code, through the Australian Building Codes Board, to help ensure that infrastructure is resilient to climate change impacts.
-

- 5.65** In regard to adaptation, the committee notes the suggestion for a more comprehensive and coordinated climate adaptation framework, which covers climate resilience and preparedness. The committee considers there is a great opportunity to improve land use planning, which presents an important tool to influence the level of future disaster risk. The committee also endorses the view that there should be greater guidance from the NSW Government as to where new development should and should not be located. While not feasible in all circumstances, planned retreat also offers a viable solution in areas that are vulnerable to flooding, rising sea levels and coastal erosion.

⁵⁷⁹ Submission 19, Ms Kristyn Glanville, p 2.

⁵⁸⁰ Submission 52, Mr Peter Maslen, p 3.

- 5.66** The committee notes a consistent theme through all of the evidence received, that there is enormous goodwill and knowledge and many plans including the work of the NSW Reconstruction Authority, the State Disaster Mitigation Plan and the soon to be developed Disaster Adaptation plans, but unless mitigation and adaptation are clearly anchored into the planning system as mandatory considerations, we will not generate the planning decisions we need today for tomorrow.
-

Recommendation 14

That the NSW Government develop a more comprehensive and coordinated climate adaptation framework which can be implemented at local scale which:

- integrates climate resilience and preparedness measures into all aspects of planning and development
 - identifies climate risks and prioritises specific actions being taken to reduce those risks.
-

Recommendation 15

That the NSW Government enhance land use planning processes to take into account climate change risks, including the development of clear guidelines about where homes and infrastructure should and should not be located.

Recommendation 16

That the NSW Government continue to work through the NSW Reconstruction Authority to develop a state policy for managed relocation in situations where this may be a viable solution for communities or specific sites.

Chapter 6 First Nations perspectives

This chapter discusses First Nations' perspectives on the planning system and the impacts of climate change and development on the environment and cultural heritage. It begins by outlining legislation relating to Aboriginal cultural heritage, followed by a discussion of the effects of development and climate change on Aboriginal cultural heritage. The chapter concludes by considering ways in which First Nations perspectives and voices can be included in planning processes.

Legislated protections for Aboriginal cultural heritage

- 6.1** In the *Environmental Planning and Assessment Act 1979* (EP&A Act), an object of the Act is 'to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)'.⁵⁸¹
- 6.2** Aboriginal cultural heritage is primarily protected under the *National Parks and Wildlife Act 1974* (NPW Act) and/or the *Heritage Act 1977* (Heritage Act).⁵⁸² Some examples of Aboriginal cultural heritage include:
- objects used for cultural activities, ceremonial or sacred areas that may feature carved trees, rock art or burial grounds, natural formations, areas of land and waters
 - objects used for past or current activities, such as cultural practices including fishing, hunting and gathering, traditional knowledge, medicine (from native species), language, dance, ceremony and stories
 - buildings or places where important historical events have previously or currently take place.⁵⁸³
- 6.3** Part 6 of the NPW Act establishes protections for 'Aboriginal objects and Aboriginal places'.⁵⁸⁴ The Act designates the relevant department Secretary as being responsible 'for the proper care, preservation and protection' of Aboriginal objects and places'.⁵⁸⁵
- 6.4** The NPW Act also establishes an offence of harming Aboriginal objects or places.⁵⁸⁶ However, the NPW Act also provides for Aboriginal heritage impact permits to be issued allowing activities that may impact Aboriginal objects, places, land, activities or persons.⁵⁸⁷
- 6.5** The Heritage Act establishes the State Heritage Register, which lists places, buildings, moveable objects or precincts which are deemed to be of state heritage significance, including items of Aboriginal cultural heritage.⁵⁸⁸ Items which become listed on the State Heritage Register are protected from harm including, and it is unlawful to:

⁵⁸¹ *Environmental Planning and Assessment Act 1979*, s 1.3.

⁵⁸² Submission 196, Aboriginal Cultural Heritage Advisory Committee, p 3.

⁵⁸³ Submission 196, Aboriginal Cultural Heritage Advisory Committee, p 3.

⁵⁸⁴ *National Parks and Wildlife Act 1974*, Part 6.

⁵⁸⁵ *National Parks and Wildlife Act 1974*, s 85.

⁵⁸⁶ *National Parks and Wildlife Act 1974*, s 86.

⁵⁸⁷ *National Parks and Wildlife Act 1974*, Part 6, Division 2.

⁵⁸⁸ *Heritage Act 1977*, s 31; Submission 196, Aboriginal Cultural Heritage Advisory Committee, p 3.

- (a) demolish the building or work,
- (b) damage or despoil the place, precinct or land, or any part of the place, precinct or land,
- (c) move, damage or destroy the relic or moveable object,
- (d) excavate any land for the purpose of exposing or moving the relic,
- (e) carry out any development in relation to the land on which the building, work or relic is situated, the land that comprises the place, or land within the precinct,
- (f) alter the building, work, relic or moveable object,
- (g) display any notice or advertisement on the place, building, work, relic, moveable object or land, or in the precinct,
- (h) damage or destroy any tree or other vegetation on or remove any tree or other vegetation from the place, precinct or land.⁵⁸⁹

6.6 The listing of an item or place on the State Heritage Register is to be determined by the Minister for Heritage, on recommendation of the Heritage Council, a body also established by the Heritage Act.⁵⁹⁰ The Heritage Act states the nine-member Council must include one person with expertise in Aboriginal heritage.⁵⁹¹

Effects of development and climate change on Aboriginal cultural heritage

6.7 Evidence from First Nations inquiry participants and other stakeholders outlined instances in which they believe Aboriginal cultural heritage was not appropriately considered by planning authorities. Stakeholders overwhelmingly expressed the view that current legislation does not adequately provide for First Nations' input, which has led to adverse outcomes for Aboriginal cultural heritage and the environment.

6.8 In its submission, the NSW Aboriginal Cultural Heritage Advisory Council (ACHAC) stated that 'current powers to review, amend or revoke development approvals (particularly approvals over 20 years old)' that risk harm to Aboriginal cultural heritage, 'are inadequate and should be increased'.⁵⁹²

6.9 Similarly, Mr Alfred Wellington, Chief Executive Officer of the Jerrinja Local Aboriginal Land Council (Jerrinja LALC) said that development, including 'zombie' development applications, 'would have a significant impact on the cultural and ecological value of our land and seascapes'.⁵⁹³ Mr Wellington described the current legislative framework for the protection of Aboriginal cultural heritage as 'deeply flawed', and that the 'process of assessment of our

⁵⁸⁹ *Heritage Act 1977*, s 57.

⁵⁹⁰ *Heritage Act 1977*, s 32.

⁵⁹¹ *Heritage Act 1977*, s 8.

⁵⁹² Submission 196, Aboriginal Cultural Heritage Advisory Committee, p 2.

⁵⁹³ Submission 236, Jerrinja Local Aboriginal Land Council, p 1.

sites and their value being reflected in relation to their scientific classification' is 'completely inappropriate and offensive'.⁵⁹⁴

- 6.10** Mr Wellington also discussed the importance of the ecological landscape to Aboriginal cultural heritage, extending beyond scientific or archaeological understandings:

As we have argued consistently, ecological values are our cultural values, and the value of our cultural landscape is for us to define and quantify. This extends far beyond that which can be measured and excavated by archaeologists or any other scientific field of expertise. the destruction from these developments ..., far outweighs any (questionable) benefits being espoused in economic growth terms.⁵⁹⁵

- 6.11** Likewise, Mr Strini Pillai, Program Manager, Heritage, Ecology and Land Management at the Gandangara Local Aboriginal Land Council spoke of his interactions with the NSW Government in relation to development and environmental preservation as being 'fragmented'.⁵⁹⁶ For example, Mr Pillai said that the LALC had 'confirmation that State is interested in koala preservation and then, on the other side, development laws just bulldoze those intentions'.⁵⁹⁷

- 6.12** In evidence to the committee, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer at the Metropolitan Local Aboriginal Land Council (Metropolitan LALC), raised concerns about the 'lack of legislative parameters for Aboriginal participation in the environment' and claimed that 'legislation and governance have siloed environment separate to cultural heritage'.⁵⁹⁸

- 6.13** Ms Welsh-Jarrett, who is also an ACHAC committee member and Dharawal and Gumbaynggirr woman, said that the legislated provisions for Aboriginal participation in the NPW Act represented a 'very Eurocentric conservation model'.⁵⁹⁹ Ms Welsh-Jarrett said this separation of cultural heritage and environmental considerations 'disempowers Aboriginal people' to participate in 'environmental management' on their country, as well as 'embed' their 'unique cultural knowledge'.⁶⁰⁰

- 6.14** Ms Welsh-Jarrett said, as a result, that there is little opportunity for her community to contribute their knowledge in environmental management:

We know a lot of our tangible cultural heritage is within coastal areas or estuarine areas, or close to water. Our lack of ability or lack of opportunity to participate in

⁵⁹⁴ Submission 236, Jerrinja Local Aboriginal Land Council, p 1.

⁵⁹⁵ Submission 236, Jerrinja Local Aboriginal Land Council, p 2.

⁵⁹⁶ Evidence, Mr Strini Pillai, Program Manager, Heritage, Ecology and Land Management, Gandangara Local Aboriginal Land Council, 6 May 2024, p 3.

⁵⁹⁷ Evidence, Mr Strini Pillai, Program Manager, Heritage, Ecology and Land Management, Gandangara Local Aboriginal Land Council, 6 May 2024, p 3.

⁵⁹⁸ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 41.

⁵⁹⁹ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 41.

⁶⁰⁰ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 41.

environmental cultural management, ... it's got us operating from a deficit. We're unable to have any sort of data to back up, or we have no opportunity to produce or provide data in, specifically, the environmental sector.

Even though we know the interface between cultural heritage and the environment, it's just been ignored. I think I just think it's been a massive—there's been so much environmental degradation.

...

But there's a genuine lack, or there has been a lack, of Aboriginal participation in these conversations or wanting to hear about our aspirations or how we feel it's best to culturally manage an area.⁶⁰¹

- 6.15** Ms Welsh-Jarrett also told the committee there is no framework for Aboriginal peoples' views to be sought in relation to matters affecting 'intangible' cultural heritage.⁶⁰² Ms Welsh-Jarrett said 'it's only if there are tangible' objects, then 'it's placed within that sort of cultural heritage investigative process'.⁶⁰³
- 6.16** Further, Ms Welsh-Jarrett noted there is no inclusion at all in the EP&A Act of opportunities for the local Aboriginal community to contribute their traditional knowledge on planning proposals.
- 6.17** In terms of the effects of climate change on Aboriginal communities, ACHAC noted the following:
- 'Climate change affects the ability of Aboriginal people to access and care for Country, practice culture and establish and maintain relationships with family and communities'
 - The 'increased frequency and intensity of extreme weather events' impacts on the 'health and wellbeing of Aboriginal people, landscapes, plants and animals important to Aboriginal people'
 - That Aboriginal people 'do not consider there to be a separation between the environment and heritage with all pre-European environments being Aboriginal cultural heritage'.⁶⁰⁴
- 6.18** Similar sentiments were echoed by Ms Welsh-Jarrett who told the committee about the impact of climate change on the erosion of sand dunes where her ancestors are buried.⁶⁰⁵ Ms Welsh-Jarrett said the erosion of sand dunes is causing 'our ancestors to be washed up or our ancestors to be impacted' and that her community has had little input in surveying the sand

⁶⁰¹ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 42.

⁶⁰² Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 43.

⁶⁰³ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 43.

⁶⁰⁴ Submission 196, Aboriginal Cultural Heritage Advisory Committee, p 4.

⁶⁰⁵ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 41.

dunes, or the protection of these burial places other than through the Aboriginal Heritage Impact Permit (AHIP) process.⁶⁰⁶

- 6.19** Ms Welsh-Jarrett advised she had been working within current cultural heritage legislation to have these burial places protected, to ensure they have the same protection as 'any other cemetery or sacred place of burial'.⁶⁰⁷ She also gave an example of a seawall upgrade at Little Manly that impacted an Aboriginal burial site, with 'no proposal or processes to get an AHIP permit to acknowledge' the presence of ancestral remains.⁶⁰⁸ Ms Welsh-Jarrett said after further study, 'there have been somewhere between 10 to 20 ancestral remains removed from this place'.⁶⁰⁹
- 6.20** Ms Welsh-Jarrett added that the AHIP process is not 'focused on the cultural rights of Aboriginal people, as these permits provide 'basically consent to destroy'.⁶¹⁰ Instead, the process is 'all about obtaining AHI permits so that you have the consent to remove the cultural heritage from the area'.⁶¹¹
- 6.21** In its submission, Save Myall Road Bushland Inc (SMRBI) outlined its concerns with a proposed development by Landcom to develop 66 housing lots and 3 'super lots' in a coastal eucalypt forest area at Myall Road, Garden Suburb.⁶¹² SMRBI states that there are 'significant Aboriginal heritage sites within the development footprint' and that the site adjoins an Aboriginal hostel named Kirinari, 'which provides housing for Aboriginal people from rural NSW'.⁶¹³
- 6.22** SMRBI raised concerns with Landcom's consideration of potential impacts on Kirinari and cultural heritage within the site:

Landcom's conclusion to the clear felling of 12 hectares of bushland adjoining the hostel is, that there will be not impact. The approach from Landcom to cultural impacts of this development seems to be the same as the environmental impacts, Landcom's approach seems to be, we are not sure what is actually in that bushland area, but as we bulldoze it, we will tell you and then work it out.⁶¹⁴

⁶⁰⁶ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 41.

⁶⁰⁷ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 41.

⁶⁰⁸ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 41.

⁶⁰⁹ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 42.

⁶¹⁰ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 43.

⁶¹¹ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 43.

⁶¹² Submission 106, Save Myall Road Bushland Incorporated, p 1.

⁶¹³ Submission 106, Save Myall Road Bushland Incorporated, p 2.

⁶¹⁴ Submission 106, Save Myall Road Bushland Incorporated, p 2.

- 6.23** In evidence to the committee, Ms Lillian Warham, Member, SMRBI said that there has been a 'lack of consultation' with the Aboriginal community and that carers and residents of the hostel and Aboriginal education officers should be consulted, given they have a 'level of authority in that space' and have been in the area for many years.⁶¹⁵
- 6.24** Save Westleigh Park Alliance raised concerns that as part of the Westleigh Park redevelopment, a scar tree of high Aboriginal cultural significance is being relocated and a rock shelter, considered part of the cultural landscape placed under a proposed mountain bike track.⁶¹⁶ Save Westleigh Park Alliance said that despite the opposition of local Aboriginal groups to relocation of the scar tree and mountain bike track, Hornsby Shire Council's report 'simply said that they had liaised with ... [Aboriginal parties] ... and Council would be relocating the scar free'.⁶¹⁷ Save Westleigh Park Alliance said there 'should be more respect shown for Aboriginal heritage, culture and landscape'.⁶¹⁸
- 6.25** Southcoast Health & Sustainability Alliance expressed concerns with Aboriginal community consultation on the Eurobodalla Rural Lands Planning Proposal (ERLPP) and draft Rural Lands Strategy (RLS) by Eurobodalla Shire Council.⁶¹⁹ The ERLPP was a 'major planning amendment to the Eurobodalla Local Environmental Plan which affected more than 90,000 hectares'.⁶²⁰ The Alliance said despite the local Aboriginal community having 'strong links to Eurobodalla's coastal landscapes', they were not 'formally consulted about the impacts on, or conservation of, their heritage in relation to either the ERLPP or RLS'.⁶²¹
- 6.26** The committee heard that Aboriginal peoples' view have been 'disregarded' as part of the Coffs Harbour Jetty Foreshore Precinct revitalisation project.⁶²² Dr Sally Townley, Deputy Mayor of Coffs Harbour City Council and volunteer with Let's Own Our Future – Jetty Foreshores told the committee that a survey undertaken on behalf of Property Development NSW found that 'privately owned residential development was generally not supported' by local Aboriginal people, and that part of the land immediately north of the project has been granted as freehold title to the Coffs Harbour and District Local Aboriginal Land Council.⁶²³ Dr Townley indicated there is no recognition of these factors in the concept plans for the project, despite the 'significance of the jetty foreshores to the Aboriginal community', and that Property Development NSW's plans are 'incongruous with those values'.⁶²⁴

⁶¹⁵ Evidence, Ms Lillian Warham, Member, Save Myall Road Bushland Incorporated, 17 June 2024, p 39.

⁶¹⁶ Submission 244, Save Westleigh Park, p 3.

⁶¹⁷ Submission 244, Save Westleigh Park, p 3.

⁶¹⁸ Submission 244, Save Westleigh Park, p 3.

⁶¹⁹ Submission 79, Southcoast Health and Sustainability Alliance, p 4.

⁶²⁰ Submission 79, Southcoast Health and Sustainability Alliance, p 2.

⁶²¹ Submission 79, Southcoast Health and Sustainability Alliance, p 4.

⁶²² Submission 231, Let's Own Our Future – Jetty Foreshores, p 7.

⁶²³ Evidence, Dr Sally Townley, Let's Own Our Future – Jetty Foreshores, 17 June 2024, p 13.

⁶²⁴ Evidence, Dr Townley, 17 June 2024, p 13.

Inclusion of First Nations perspectives and knowledge in planning processes

- 6.27** Stakeholders offered a variety of ideas on how to incorporate First Nations' peoples perspectives and knowledge in the planning process. These included better empowering Aboriginal communities in the land claims process and requiring consent authorities to consider First Nations' peoples' perspectives when assessing a planning proposal.⁶²⁵
- 6.28** ACHAC said that when considering developments, planning authorities 'should be required to consider the impacts of climate change on Aboriginal cultural heritage including risks posed by fire, flood, erosion' and other effects.⁶²⁶
- 6.29** ACHAC further stated that actions to address climate change on Aboriginal cultural heritage values 'must be based on Aboriginal community engagement and comprehensive analysis of current climate science, and climate change projections'.⁶²⁷
- 6.30** ACHAC concluded that 'any proposed reforms should be consistent with relevant international law', nominating the United Nations Declaration on the Rights of Indigenous People and the Dhawura Ngilan: A Vision for Aboriginal and Torres Straight Islander Heritage in Australia.⁶²⁸
- 6.31** In her evidence, Ms Welsh-Jarrett noted there is an ongoing Aboriginal cultural heritage reform process being conducted by the NSW Government which would be 'very important' to watch.⁶²⁹ Ms Welsh-Jarrett said the reform process presented an 'opportunity' to get a 'clear line of sight so that environment and cultural heritage can feed the necessary information into development and planning'.⁶³⁰
- 6.32** In its submission, the Nature Conservation Council said that the adoption of the 'nature positive' approach to biodiversity in New South Wales (previously referred to in Chapter 3) would ensure that biodiversity laws 'effectively integrate Aboriginal ecological knowledge' and ensure funding for 'country owned and managed by First Nations peoples to be cared for'.⁶³¹ The Council said 'nature positive' reforms would strengthen environment assessments to 'better consider the potential impacts on biodiversity based on science and First Nations people's knowledge'.⁶³²
- 6.33** Similarly, Evans Head Residents for Sustainable Development said that planning laws need to recognise 'oral histories' and 'different ways of communicating knowledge & decision making':

⁶²⁵ Evidence, Ms Leanne Atkinson, Chief Executive Officer, Bega Local Aboriginal Land Council, 2 May 2024, p 2; Submission 196, Aboriginal Cultural Heritage Advisory Committee, p 2.

⁶²⁶ Submission 196, Aboriginal Cultural Heritage Advisory Committee, p 2.

⁶²⁷ Submission 196, Aboriginal Cultural Heritage Advisory Committee, p 4.

⁶²⁸ Submission 196, Aboriginal Cultural Heritage Advisory Committee, p 4.

⁶²⁹ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 47.

⁶³⁰ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 47.

⁶³¹ Submission 136, Nature Conservation Council, p 18.

⁶³² Submission 136, Nature Conservation Council, p 19.

Historically, First Nations Peoples knowledge is held only by those entitled to it. It is different from the European centric idea of knowledge where anyone can access knowledge and history simply by having the ability to read, the time and access to a library of some sort. Today, in western culture, we are used to knowledge being available to all but this is not true for First Nations cultures. So, to get a full picture and a real idea of the attachment to country you need to listen to many knowledge holders for an area. Not doing this smacks of a continuation of colonial attitudes.

Unscrupulous developers still exploit this scattering of knowledge within first nations communities to bypass existing planning constraints by only consulting one or two persons who possess only part of the knowledge.⁶³³

- 6.34** Further, the Australian Institute of Landscape Architects said in its submission that the 'loss of traditional owner cultural burning practices' had partly contributed to catastrophic fires in Australia, including the 2019-20 bushfires.⁶³⁴ The Institute said current hazard reduction burns conducted by the Rural Fire Service 'may actually be increasing hazards, by encouraging the regrowth of hot fire species.'⁶³⁵ The Institute recommended the NSW Government engage with Aboriginal knowledge keepers to 'develop strategies to re-introduce indigenous cultural burning practices to protect properties and valuable natural sites.'⁶³⁶
- 6.35** The Public Interest Advocacy Centre also argued Aboriginal peoples should be better recognised and included in planning reforms, as part of their rights to self-determination.⁶³⁷ The Centre said that Aboriginal peoples 'should be actively equipped with resources and capacity to realise those rights,' which it said included 'encouraging and enabling Aboriginal leadership in relevant policy-making.'⁶³⁸

Aboriginal Land claims process

- 6.36** In evidence to the committee, Ms Leanne Atkinson, Chief Executive Officer of the Bega Aboriginal Land Council (Bega LALC) said there was an opportunity for the Aboriginal land claims process to assist in identifying and activating suitable land for 'adaptable housing'.⁶³⁹ Ms Atkinson noted that 'many Aboriginal people' in the Bega Valley area are 'living in old and poorly insulated social housing' that 'no-one should be living in as we transition to hotter summers with more unpredictable weather patterns'.⁶⁴⁰

⁶³³ Submission 245, Evans Head Residents for Sustainable Development, pp 11-12.

⁶³⁴ Submission 126, Australian Institute of Landscape Architects, p 4.

⁶³⁵ Submission 126, Australian Institute of Landscape Architects, p 4.

⁶³⁶ Submission 126, Australian Institute of Landscape Architects, p 5.

⁶³⁷ Submission 82, Public Interest Advocacy Centre, p 2.

⁶³⁸ Submission 82, Public Interest Advocacy Centre, p 2.

⁶³⁹ Evidence, Ms Leanne Atkinson, Chief Executive Officer, Bega Local Aboriginal Land Council, 2 May 2024, p 2.

⁶⁴⁰ Evidence, Ms Leanne Atkinson, Chief Executive Officer, Bega Local Aboriginal Land Council, 2 May 2024, p 2.

- 6.37** Ms Atkinson was of the view that the Department of Planning, Housing and Infrastructure (DPHI) should have earlier visibility and involvement in the Aboriginal land claims process with relevant local Aboriginal land councils and Crown Lands.⁶⁴¹
- 6.38** While there is a lot of Crown land that is 'claimable', Ms Atkinson advised that the zoning of that land prohibits it from being developed due to a 'failure to enable rezoning within the current claims assessment process'.⁶⁴² According to Ms Atkinson, there is 'no consideration' in the current land claims process to 'fact that existing land use zones are often an impediment to development'.⁶⁴³
- 6.39** Ms Atkinson said the only way to activate land for development after a land claim has been granted is to attain a 'spot rezoning', which is 'often impossible to achieve'.⁶⁴⁴ Ms Atkinson believes the involvement of DPHI in the land claim process 'while land claims are under assessment, working hand in hand with Crown Lands', could enable land councils to 'identify opportunities for housing development and get the process of rezoning happening' before the land claim is determined.⁶⁴⁵
- 6.40** Ms Atkinson said such a reform would help empower Aboriginal people economically and socially, as is part of the intent of the *Aboriginal Land Rights Act 1983*, and 'enable Aboriginal organisations to become part of the housing solution in the face of a changing climate'.⁶⁴⁶

Connecting with Country framework

- 6.41** In her evidence to the committee, Ms Welsh-Jarrett advocated in favour of the Connecting with Country framework released by the NSW Government Architect.⁶⁴⁷ The framework is designed for 'project clients, project teams and the communities they serve' and outlines 'practical ways for responding to changes and new directions in planning policy relating to Aboriginal culture and heritage', as well as aiming to 'help better support a strong and vibrant Aboriginal culture in our build environment'.⁶⁴⁸

⁶⁴¹ Evidence, Ms Leanne Atkinson, Chief Executive Officer, Bega Local Aboriginal Land Council, 2 May 2024, p 2.

⁶⁴² Evidence, Ms Leanne Atkinson, Chief Executive Officer, Bega Local Aboriginal Land Council, 2 May 2024, p 2.

⁶⁴³ Evidence, Ms Leanne Atkinson, Chief Executive Officer, Bega Local Aboriginal Land Council, 2 May 2024, p 2.

⁶⁴⁴ Evidence, Ms Leanne Atkinson, Chief Executive Officer, Bega Local Aboriginal Land Council, 2 May 2024, p 2.

⁶⁴⁵ Evidence, Ms Leanne Atkinson, Chief Executive Officer, Bega Local Aboriginal Land Council 2 May 2024, p 2.

⁶⁴⁶ Evidence, Ms Leanne Atkinson, Chief Executive Officer, Bega Local Aboriginal Land Council, 2 May 2024, p 3.

⁶⁴⁷ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 43.

⁶⁴⁸ Department of Planning and Environment, *Connecting with Country: Good practice guidance on how to respond to Country in the planning, design and delivery of built environment projects in NSW*, November 2023, p 14.

6.42 Ms Welsh-Jarrett said the Connecting with Country framework is 'relatively new', and its impact not yet clear, but it had been 'one of the only segues that has allowed Aboriginal people to come back into that conversation around sustainability and the built environment'.⁶⁴⁹ However, Ms Welsh-Jarrett clarified that the framework does not interact with the development of planning policies or strategic plans.⁶⁵⁰

Committee comment

6.43 The committee has sought to listen and learn from First Nations' people as part of this inquiry to assist us in our understanding of how climate change affects Aboriginal cultural heritage, how their perspectives are incorporated within the planning system, and how their experiences and knowledge can better inform planning outcomes. The committee thanks all First Nations people and organisations who have given evidence to the inquiry through submissions, hearings and site visits.

6.44 The committee is concerned that there are limited opportunities for First Nations people to contribute to planning decisions affecting their communities. While we note the objects of the *Environmental Planning and Assessment Act 1979* there is no requirement in the Act for planning authorities to consider the knowledge and expertise of First Nations when assessing planning proposals.

6.45 The committee notes the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977* provide some protection of Aboriginal cultural heritage. However, the committee considers these insufficient in protecting Aboriginal cultural heritage and in providing culturally appropriate ways for Aboriginal communities to participate in the protection of First Nations culture and heritage and Country. The committee notes the NSW Government is currently developing reforms for the protection of Aboriginal cultural heritage and looks forward to seeing these proposals when announced.

6.46 The committee therefore recommends that the NSW Government improve consultation with First Nations peoples and groups in the planning system, including providing opportunities for more culturally appropriate consultation and conducting consultation earlier in the process.

⁶⁴⁹ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 43.

⁶⁵⁰ Evidence, Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, 10 May 2024, p 43.

Recommendation 17

That the NSW Government give effect to the right of First Nations people to self-determination and the principle of free, prior, informed and ongoing consent in the New South Wales planning system, including in relation to:

- development applications and planning proposals
 - culturally appropriate consultation and
 - protection of cultural heritage and connection to Country.
-

- 6.47** The committee also notes the specific recommendation of Bega Local Aboriginal Land Council (Bega LALC) to involve the Department of Planning, Housing and Infrastructure (DPHI) at the commencement of the land claims process to give them visibility of land that Aboriginal communities may wish to develop. The committee considers this a logical recommendation which should be considered by the NSW Government.
-

Recommendation 18

That the NSW Government in partnership with local Aboriginal land councils and other Aboriginal land holders, in land claims processes to identify and activate land suitable for development and progress any necessary rezonings to enable that development and where parties agree, consider land swaps where lands are not suitable for development due to biodiversity and climate change constraints.

Appendix 1 Submissions

No.	Author
1	Name suppressed
2	Mr David Schwartz
3	Surfrider Foundation Australia, Northern Beaches Branch
4	Saving Sydneys Trees
5	Camden Council
6	Beecroft-Cheltenham Civic Trust
7	Voice of Wallalong and Woodville (VOWW)
8	Penrith City Council
9	Insurance Council of Australia
10	Woollahra Municipal Council
11	Callala Matters
12	Dr Barbara Davis
13	Ms Sue Tolley
14	Janet Harwood
14a	Janet Harwood
14b	Janet Harwood
15	Ms Carol Sparks
16	Ms Louise Gordon
17	Mrs Lee Szlachetka
18	Mr Peter Temby
19	Ms Kristyn Glanville
20	Mrs Jacqui Melck
21	Maureen Boller
22	Mr Daniel McConell
23	Mr Nigel Howard
24	Mr Angus Gordon
25	Miss Julie Vint
26	Dr Suzanne Allen
27	The Committee for Sydney
28	Mrs Helen Hannah
29	Mr Douglas Williamson
30	Mr Harry Johnson

No.	Author
31	Mr Justin Hickey
32	Mr Martin Fallding
33	Sandy Beach Action Group
34	Mrs Penny Smith
35	Mr Roger Hart
36	Mr John O'Donnell
37	Professor Warwick Giblin
38	Lake Macquarie City Council
39	Ryde Hunters Hill Flora & Fauna Preservation Society Inc
40	Mr Ian McKenzie
41	Stringy Bark Creek Residents Association
42	350 Australia
43	Planning Institute of Australia
44	Mr Philip Carkagis
45	WinZero - Wingecarribee Net Zero Emissions
46	Mrs Cita Murphy
47	Dr Kym Kilpatrick
48	Mr Ian Carruthers
49	Ms Kathryn Jarzabek
50	Bushfire Survivors for Climate Action
51	Insurance Australia Group Services Pty Ltd (IAG)
52	Mr Peter Maslen
53	Our Future Shoalhaven
54	Mr Ian Foskett
55	Mrs Naomi James
56	Sydney Coastal Councils Group
57	-
58	Central NSW Joint Organisation
59	Mr Joseph Earl
60	City of Sydney Council
61	Law Society of NSW
62	Dalmeny Matters
63	Urban Development Institute of Australia, New South Wales (UDIA)
64	Singleton Council
65	Pacific Palms Community Association

No.	Author
66	Cumberland Bird Observers Club
67	Mosman Council
68	Business NSW.
69	Peninsula Residents Association
70	Lock the Gate Alliance
71	Hornsby Shire Council
72	Kingscliff Ratepayers and Progress Association Inc
73	Wilton Action Group Inc
74	Australian Parents For Climate Action
75	Bushfire Protection Association of Australia
76	Confidential
77	Western Sydney Regional Organisation of Councils Ltd
78	Western Sydney University
79	Southcoast Health & Sustainability Alliance
80	National Parks Association of NSW
81	UNSW, University of Sydney and Western Sydney University
82	Public Interest Advocacy Centre
83	Save Sydneys Koalas
84	The Australia Institute
85	Sweltering Cities
86	Mudgee Region Action Group
87	BirdLife Southern NSW
88	Save Balickera Incorporated
89	Name suppressed
90	Mrs Jayne Bentivoglio
91	Miss Joanne Threlfo
92	Total Environment Centre
93	Ms Megan Jobson
94	Ms Catherine Brady
95	Dr Gregory Clancy
96	Mr Michael Boller
97	Mrs Sarah Inglis
98	Floodplain Management Australia
99	Vincentia Matters
100	Dr Magali Goirand

No.	Author
101	Mr Ross Popplewell
102	Ms Deborah Stevenson
103	Mrs Fiona Bullivant
104	Dr Andrew Rawson
105	Mr Robert Barrel
106	Save Myall Road Bushland Incorporated
107	Dr David Durney
108	Mark Snell
109	Manyana Matters Environmental Association Inc
110	Ms Jade Peace
111	Ms Elizabeth Dray and Mr Ian Foskett
112	Brian Moir and Elisabeth O'Daly
113	Mrs Margarete Ritchie
114	Dr Greta Werner
115	Bronwyn Wannan
115a	Bronwyn Wannan
115b	Bronwyn Wannan
115c	Bronwyn Wannan
115d	Bronwyn Wannan
116	Ms Janet Walk
117	Mrs Sue Gay
118	Shellharbour City Council
119	Australian Institute of Architects
120	Grow Urban Shade Trees GUST
121	Lungs of Leichhardt Working Group
122	Martins Creek Quarry Action Group
123	Allianz Australia
124	Wando Conservation and Cultural Centre
125	Southern Sydney Regional Organisation of Councils
126	AILA - Australian Institute of Landscape Architects
127	Name suppressed
128	Name suppressed
129	Name suppressed
130	Name suppressed
131	Name suppressed

No.	Author
132	Name suppressed
133	Institute of Australian Consulting Arboriculturists
134	Name suppressed
135	Name suppressed
136	Nature Conservation Council
137	Name suppressed
138	Name suppressed
139	Name suppressed
140	Name suppressed
141	Name suppressed
142	Name suppressed
143	Name suppressed
144	Name suppressed
145	Name suppressed
146	Confidential
147	Confidential
148	Ms Anna Everts
149	Name suppressed
150	Confidential
151	Confidential
152	Lithgow Environment Group
153	Dr Peter Bentivoglio
154	Blacktown City Council
155	Tweed Shire Council
156	Robyn Flynn
157	Wollondilly Shire Council
158	Randwick City Council
159	Central Coast Council
160	Duncan Marshall
161	Name suppressed
162	Protecting Your Suburban Environment Inc.
163	Callan Park Bushcare Inc.
164	Yamba Community Action Network Inc
165	Emma Brooks Maher
166	Name suppressed

No.	Author
166a	Name suppressed
167	Liverpool City Council
168	Northern Beaches Council
169	Ku-ring-gai Council Staff Submission
170	Judy Gordon
171	Peta Hanvey
172	Jerry Cornford
173	Name suppressed
174	Shoalhaven City Council
175	Coastal Environment Association
176	Confidential
177	Ian Warlters
178	Confidential
179	Adrienne Shilling
180	Rosie Toth
181	Friends of Ku-ring-gai Environment Inc.
182	Name suppressed
183	Name suppressed
184	Better Planning Network Inc
185	Central West Environment Council
186	Chris Jones
187	Environmental Defenders Office
188	Queanbeyan Landcare Group
189	NSW Government
190	Craigh Mcneill
191	Clarence Valley Conservation Coalition Inc
192	Culburra Residents & Ratepayers Action Group Committee
193	Name suppressed
194	Miranda Korzy
195	Name suppressed
196	NSW Aboriginal Cultural Heritage Advisory Committee
197	Friends of Coila
198	Friends of CRUNCH Inc
199	David Schwarz
200	South West Rocks Inc

No.	Author
201	Mark Ellis
202	Wamberal Beach Save Our Sands and No Wamberal Beach Seawall Inc.
203	Eurobodalla Shire Council
204	Valley Watch
205	RAA Architects
206	Col Shephard
207	Local Government NSW
208	Mark Lamont
209	Name suppressed
210	STEP Inc
211	NSW Greens Councillors
212	Friends of Lane Cove National Park Inc.
213	Sydney Basin Koala Network
214	Kempsey Shire Residents Association Inc.
215	Confidential
216	Stan Keifer
217	Merran Warlters
218	Name suppressed
219	Jamie Bradley
220	Leslie Reeves
221	Name suppressed
222	Name suppressed
223	Name suppressed
224	Name suppressed
225	Name suppressed
226	Name suppressed
227	Name suppressed
228	Name suppressed
229	Name suppressed
230	Grant Jennings
231	Let's Own Our Future - Jetty Foreshores
232	SAM Consulting
233	Grevillea Waters Retirement Village Yamba
234	Campbelltown City Council
235	Paul and Janeen Scully

No.	Author
236	Jerrinja Local Aboriginal Land Council
237	NSW Smart Sensing Network
238	Western Sydney Leadership Dialogue
239	Mr Rod Edwards
240	Mrs Monica Anderson
241	Mr Dave Rowe
242	Confidential
243	Dr Peter Ashley
244	Save Westleigh Park
245	Evans Head Residents for Sustainable Development
246	Mary Pianka
247	Solar Citizens

Appendix 2 Witnesses

Date	Name	Position and Organisation
Friday 8 March 2024 Jubilee Room Parliament House, Sydney	Mr Steven Hartley	Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure
	Mr Clay Preshaw	Executive Director, Energy, Resources and Industry Assessments, NSW Department of Planning, Housing and Infrastructure
	Mr Matthew Riley	Director, Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water
	Mr Sean Sloan	Acting Director General, Department of Primary Industries, Department of Regional NSW
	Ms Kate Lorimer-Ward	Deputy Director General, Department of Primary Industries Agriculture, Department of Regional NSW
	Dr Grahame Douglas	School of Engineering, Design and Built Environment, Western Sydney University
	Professor Warwick Giblin	Adjunct Professor, Faculty of Science, Agriculture, Business & Law, University of New England Fellow, Environment Institute of Australia & New Zealand
	Dr Patrick Harris	Acting Director, Centre for Health Equity Training, Research and Evaluation, University of New South Wales
	Professor Nicky Morrison	Professor of Planning, Western Sydney University

Date	Name	Position and Organisation
	Dr Jennifer Kent	Senior Research Fellow and Urbanism Discipline Research Lead, School of Architecture, Design and Planning, University of Sydney
	Mr Angus Gordon OAM	Principal Consultant, Coastal Zone Management and Planning
	Mr Martin Fallding	Principal, Land and Environment Planning
	Mr John Brockhoff	National Policy Director, Planning Institute of Australia
	Ms Sue Weatherley	NSW President, Planning Institute of Australia
	Mr Gavin Melvin	Acting CEO, Urban Development Institute of Australia NSW
	Ms Julie Bindon	Life Member, Urban Development Institute of Australia NSW
	Ms Rachel Walmsley	Head of Policy and Law Reform, Environmental Defenders Office
	Mr Jasper Brown	Solicitor, Environmental Defenders Office
	Mr Paul Grech	Land Use Planning Director, Floodplain Management Australia
	Ms Sue Ribbons	Communications Director, Floodplain Management Australia
Monday 15 March 2024 Macquarie Room Parliament House, Sydney	Ms Suzanne Dunford	Manager, Sustainability and Resilience, Waverley Municipal Council
	Cr Philipa Veitch	Mayor, Randwick City Council
	Ms Stella Agagiotis	Acting Manager, Sustainability, Randwick City Council
	Cr Clover Moore	Lord Mayor, City of Sydney Council
	Mr Benjamin Pechey	Executive Manager, Strategic Planning and Urban Design, City of Sydney Council

Date	Name	Position and Organisation
	Ms Monica Barone	CEO, City of Sydney Council
	Mrs Sarah Joyce	Executive Officer, Sydney Coastal Councils Group
	Mr Saul Deane	Urban Sustainability Campaigner, Total Environment Centre
	Mr Jeff Angel	Director, Total Environment Centre
	Ms George Woods <i>(via videoconference)</i>	Lock the Gate Alliance
	Ms Sally Hunter <i>(via videoconference)</i>	People for the Plains
	Ms Bev Smiles <i>(via videoconference)</i>	Mudgee Coal Alert
	Mr Mathew Jones	General Manager, Public Affairs, Insurance Council of Australia
	Ms Alix Pearce	Senior Manager, Climate & Social Policy, Insurance Council of Australia
	Mr George Karagiannakis	Executive Manager, Government and Industry Affairs, Insurance Australia Group
	Mr Andrew Dyer	Manager, Land Planning Hazards, Insurance Australia Group
Wednesday 10 April 2024 Parkview Room, Central Coast Leagues Club, Gosford	Dr Chris McLean	Principal Strategic Planner and Senior Ecologist, Central Coast Council
	Ms Deanne Frankel	Acting Unit Manager, Strategic Planning, Central Coast Council
	Ms Jen Wilder	Co-founder, Grow Urban Shade Trees (GUST)
	Mrs Debbie Sunartha	Co-founder, Grow Urban Shade Trees (GUST)
	Mrs Lesley Harvey	Member, Grow Urban Shade Trees (GUST)

Date	Name	Position and Organisation
	Mr Mark Snell	Chairman, Woy Woy Peninsula Residents Association
	Mr Peter Gillis	Founding Committee Member, Woy Woy Peninsula Residents Association
	Mr Ian Carruthers	Individual
Thursday 2 May 2024	Cr Russell Fitzpatrick	Mayor, Bega Valley Shire Council
Biamanga Room	Mr Anthony McMahon	CEO, Bega Valley Shire Council
Bega Valley Commemorative Civic Centre, Bega	Mrs Emily Harrison	Director, Community Environment and Planning, Bega Valley Shire Council
	Ms Leanne Atkinson	Chief Executive Officer, Bega Local Aboriginal Land Council
	Mr David Dixon	Board Member, Bega Local Aboriginal Land Council
	Ms Gillian McNamara	Committee Member, Friends of Coila
	Mr Nick Summers	Convenor and Committee Member, Friends of Coila
	Mr Sam Tierny	Solicitor, Friends of CRUNCH Inc.
Friday 3 May 2024	Mr Gordon Clark	Manager, Strategic Planning, Shoalhaven City Council
Studio Room,	Mr Matthew Rose	Coordinator, Strategic Planning, Shoalhaven City Council
Shoalhaven Entertainment Centre, Nowra	Cr Chris Homer	Mayor, Shellharbour City Council
	Mr Michael Park	Executive Director, Planning and Environment, Shellharbour City Council
	Ms Jane Stroud	CEO, Kiama Council
	Mr Alfred Wellington	CEO, Jerrinja Local Aboriginal Land Council
	Dr Penelope Davidson	Secretary, Our Future Shoalhaven
	Mr Bruce McKenzie	President, Our Future Shoalhaven

Date	Name	Position and Organisation
	Mrs Rebecca Sleath	Secretary, Culburra Residents and Ratepayers Action Group Committee
	Mr Kingston Anderson	Treasurer, Culburra Residents and Ratepayers Action Group
	Mr William Eger	President, Manyana Matters Environmental Association
	Ms Jorj Lowrey	Founder and Committee Member, Manyana Matters Environmental Association
Monday 6 May 2024 Opal and Emerald Room Campbelltown RSL, Campbelltown	Mr Strini Pillai	Program Manager, Heritage, Ecology and Land Manager, Gandangara Local Aboriginal Land Council
	Mr Charles Casuscelli RFD	CEO, Western Sydney Regional Organisation of Councils
	Ms Kelly Gee	Policy and Projects Officer, Western Sydney Regional Organisation of Councils
	Mr Kerry Robinson OAM	CEO, Blacktown City Council
	Mr Nelson Nolan	Coordinator, Sustainability and Resilience, Blacktown City Council
	Ms Lina Kakish	Director, Planning and Compliance, Liverpool City Council
	Mr Mark Hannan	Manager, City Planning, Liverpool City Council
	Ms Nicole Magurren	Director, Planning and Environment, Camden Council
	Mr Jamie Erken	Manager, Statutory Planning, Camden Council
	Cr Matt Gould	Mayor, Wollondilly Shire Council
Ms Sanaa Shah	Community Campaigner, Sweltering Cities	
Ms Shailja Chandra	Multicultural Communities Campaigner, Sweltering Cities	

Date	Name	Position and Organisation
Friday 10 May 2024 Oaks Room Dee Why RSL, Dee Why	Mr Joseph Hill	Executive Manager, Strategic & Place Planning, Northern Beaches Council
	Mr Yianni Mentis	Executive Manager, Environment & Climate Change, Northern Beaches Council
	Mr Dominic Johnson	General Manager, Mosman Council
	Mr Craig Covich	Director Environment & Planning, Mosman Council
	Mr Steven Head	General Manager, Hornsby Shire Council
	Mr James Farrington	Director, Planning and Compliance, Hornsby Shire Council
	Mr Mark Brisby	Director, Planning and Sustainability, Lane Cove Council
	Ms Bernadette Riad	Manager, Sustainability, Lane Cove Council
	Cr Tanya Taylor	Mayor, Willoughby City Council
	Mr Dyalan Govender	Acting Head of Planning, Willoughby City Council
	Mr David Roberts	Environment Manager, Willoughby City Council
	Ms Bron Hanna	Member, Friends of Lane Cove National Park Inc
	Ms Jill Steverson	Member, Friends of Lane Cove National Park Inc
	Mrs Kathy Cowley	President, Friends of Ku-ring-gai Environment Inc
	Ms Janine Kitson	Vice President, Friends of Ku-ring-gai Environment Inc
Mr Brendan Donohoe	President, Surfrider Foundation Australia, Northern Beaches Branch	

Date	Name	Position and Organisation
Monday 17 June 2024 Jubilee Room Parliament House, Sydney	Mr Terry Fitzgerald	National Director, Surfrider Foundation Australia
	Ms Rowena Welsh-Jarrett	Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council
	Mrs Corinne Lamont	Volunteer, Wamberal Beach Save Our Sands
	Mr Mark Lamont	Volunteer, Wamberal Beach Save Our Sands
	Mr Justin Hickey	Volunteer, Wamberal Beach Save Our Sands
	Ms Larah Kennedy <i>(via videoconference)</i>	Member, Voices of South West Rocks Inc
	Mr Bruce Weir <i>(via videoconference)</i>	Media Liaison, Let's Own Our Future – Jetty Foreshores
	Ms Helen Weir <i>(via videoconference)</i>	Secretary, Let's Own Our Future – Jetty Foreshores
	Dr Sally Townley <i>(via videoconference)</i>	Environmental Scientist, Let's Own Our Future – Jetty Foreshores
	Mrs Lynne Cairns	Secretary, Yamba Community Action Network Inc
	Ms Helen Tyas Tunggal	Member, Yamba Community Action Network Inc
	Mr Paul Scully	Maclean local resident
	Ms Janeen Scully	Maclean local resident
	Dr Peter Ashley <i>(via teleconference)</i>	Evans Head Conservationist, and local resident
Dr Richard Gates <i>(via videoconference)</i>	Evans Head local resident	
Mr James Barrie <i>(via videoconference)</i>	Founder, Save Wallum	
Mr Stephen Warham	President, Save the Myall Road Bushland Inc	
Ms Lillian Warham	Member, Save the Myall Road Bushland Inc	

Date	Name	Position and Organisation
	Mr Eber Butron	Chief Community Officer, Lismore City Council
	Mr Andy Parks	Co-ordinator, Strategic Planning, Lismore City Council

Appendix 3 Minutes

Minutes no. 4

Thursday 24 August 2023

Portfolio Committee No. 7 – Planning and Environment

McKell Room, Parliament House, Sydney at 1.38 pm

1. Members present

Ms Higginson, *Chair*

Mr Ruddick, *Deputy Chair*

Mr Buttigieg

Mr D'Adam

Mr Farlow

Ms Munro

Mr Primrose

2. Previous minutes

Resolved, on the motion of Ms Munro: That draft minutes no. 3 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 17 August 2023 – Letter from Ms Sue Higginson, Mr Scott Farlow and Ms Jacqui Munro requesting a meeting of Portfolio Committee No. 7 – Planning and Environment to consider a proposed self-reference into the planning system and the impacts of climate change on the environment and communities
- 12 July 2023 – Email from five individuals to the committee, raising concerns about the Sydney Growth Centres Strategic Assessment Program Report November 2010.

Resolved, on the motion of Mr Farlow: That the committee keep the following correspondence confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information and are not related to an inquiry:

- 12 July 2023 – Email from five individuals to committee, raising concerns about the Sydney Growth Centres Strategic Assessment Program Report November 2010.

4. Consideration of terms of reference

The Chair tabled a letter proposing the following terms of reference for the inquiry into the planning system and the impacts of climate change on the environment and communities:

That Portfolio Committee 7 inquire into and report on how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes, and in particular:

- (a) developments proposed or approved:
 - (i) in flood and fire prone areas or areas that have become more exposed to natural disasters as a result of climate change,
 - (ii) in areas that are vulnerable to rising sea levels, coastal erosion or drought conditions as a result of climate change, and
 - (iii) in areas that are threatened ecological communities or habitat for threatened species

- (b) the adequacy of planning powers and planning bodies, particularly for local councils, to review, amend or revoke development approvals, and consider the costs, that are identified as placing people or the environment at risk as a consequence of:
 - (i) the cumulative impacts of development,
 - (ii) climate change and natural disasters,
 - (iii) biodiversity loss, and
 - (iii) rapidly changing social, economic and environmental circumstances
- (c) short, medium and long term planning reforms that may be necessary to ensure that communities are able to mitigate and adapt to conditions caused by changing environmental and climatic conditions, as well as the community's expectation and need for homes, schools, hospitals and infrastructure
- (d) alternative regulatory options to increase residential dwelling capacity where anticipated growth areas are no longer deemed suitable, or where existing capacity has been diminished due to the effects of climate change
- (e) any other related matters.

Resolved, on the motion of Mr Primrose: That the committee adopt the terms of reference.

Mr Ruddick noted the United Nations Secretary-General has warned that the 'era of global warming has ended and the era of global boiling has arrived'.

5. Conduct of the inquiry into the planning system and the impacts of climate change on the environment and communities

5.1 Closing date for submissions

Resolved, on the motion of Mr Ruddick: That the closing date for submissions be Friday 3 November 2023.

5.2 Stakeholder list

Resolved, on the motion of Mr Farlow: That

- the secretariat circulate to members the Chair's proposed list of stakeholders to be invited to make a submission
- members have two days from when the Chair's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5.3 Approach to submissions

Resolved, on the motion of Ms Munro: That, to enable significant efficiencies for members and the secretariat while maintaining the integrity of how submissions are treated, in the event that 50 or more individual submissions are received, the committee may adopt the following approach to processing short submissions:

- All submissions from individuals 250 words or less in length will:
 - have an individual submission number, and be published with the author's name or as name suppressed, or kept confidential, according to the author's request
 - be reviewed by the secretariat for adverse mention and sensitive/identifying information, in accordance with practice
 - be channelled into one single document to be published on the inquiry website

- All other submissions will be processed and published as normal.

5.4 Hearing dates and site visits

Resolved, on the motion of Mr Ruddick: That the timeline for hearings and site visits be considered by the committee following the receipt of submissions. Further, that hearing dates and site visits be determined by the Chair after consultation with members regarding their availability.

5.5 Departmental briefings

Resolved, on the motion of Mr Primrose: That the secretariat, in consultation with the Chair, arrange for the Committee to receive Departmental briefings before the end of the year.

6. Adjournment

The committee adjourned at 1.50 pm, *sine die*.

Holly Rivas Perdomo
Committee Clerk

Minutes no. 12

Monday 20 November 2023
Portfolio Committee No. 7 – Planning and Environment
Room 1043, Parliament House, 10.01 am

1. Members present

Ms Higginson, *Chair* (until 11.20 am)
Mr Ruddick, *Deputy Chair* (via videoconference)
Mr Buttigieg
Mr D'Adam (via videoconference)
Ms Munro
Mr Primrose

2. Apologies

Mr Farlow

3. Private briefing from departmental representatives

The committee received a private briefing from the following representatives:

- Steve Hartley, Executive Director, Environmental Infrastructure Planning and Resilient Places, NSW Planning
- Ben Lusher, Director, Systems and Productivity Policy, NSW Planning
- Malcolm McDonald, Executive Director, Regional Planning, NSW Planning
- Michelle Fletcher, Director Marine, Coastal, Estuaries and Flood, NSW Department of Planning and Environment
- Matthew Riley, Director, Energy and Resources Policy, NSW Department of Planning and Environment
- Maree Abood, Executive Director - Adaptation and Mitigation, NSW Reconstruction Authority
- Scott Hansen, Director General, Department of Primary Industries
- Julia Ryan, Director at Department of Regional NSW
- Lee Mulvey, Executive Director, Region Plan, Strategic Planning, Greater Cities Commission

The Chair left the meeting towards the end of the briefing.

Resolved, on the motion of Mr Primrose: That with the Deputy Chair attending via videoconference, Ms Munro act as Chair when the Chair leaves the meeting during the private briefing.

In the absence of the Chair, the Acting Chair took the Chair for the purposes of the meeting.

Mr D'Adam left the meeting.

4. Previous minutes

Resolved, on the motion of Mr Primrose: That draft minutes no. 11 be confirmed.

5. Correspondence

The committee noted the following items of correspondence:

Received

- 27 September 2023 – Email from Mr Patrick Doyle, A/Director, Parliamentary and Government Services for Planning and Homes portfolios, Department of Planning and Environment to secretariat, advising of the names of Department of Planning and Environment representatives who will attend private briefing on 20 November 2023 for the inquiry into the planning system and the impacts of climate change on the environment and communities
- 31 October 2023 – Email from Mr James McMahon to committee, regarding concerns about the feral deer population in the Nirimba Education Precinct.

Sent

- 20 September 2023 – Email from secretariat to Mr Patrick Doyle, A/Director, Parliamentary and Government Services for Planning and Homes portfolios, Department of Planning and Environment, inviting representatives from the Department of Planning and Environment to brief the committee on areas relating to the terms of reference for the inquiry into the planning system and the impacts of climate change on the environment and communities.

6. Inquiry into the planning system and the impacts of climate change on the environment and communities

6.1 Public submissions

Resolved, on the motion of Mr Buttigieg: That submission nos. 2-13, 15-48, 50-56, 58, 60-70, 189 be published.

6.2 Partially confidential submissions

Resolved, on the motion of Mr Primrose: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submission no. 1.

7. Other business

Resolved, on the motion of Mr Buttigieg: That the committee consider whether a further departmental briefing is required at a later stage in the inquiry.

8. Adjournment

The committee adjourned at 12.02 pm, until *sine die*.

Teneale Houghton
Committee Clerk

Minutes no. 13

Thursday 25 January 2024

Portfolio Committee No. 7 – Planning and Environment

Via videoconference and Room 1136, Parliament House, Sydney, 1.01 pm

1. Members presentMs Higginson, *Chair* (via videoconference)Mr Ruddick, *Deputy Chair*

Mr Buttigieg (via videoconference)

Mr D'Adam (via videoconference)

Mr Farlow (via videoconference)

Mr Lawrence (via videoconference) (substituting for Mr Primrose)

Mrs Ward (via videoconference) (substituting for Ms Munro)

2. Previous minutes

Resolved, on the motion of Mr Buttigieg: That draft minutes no. 12 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 20 November 2023 – Email from five individuals to the committee (in addition to the Hon Chris Minns MP, the Hon Mark Speakman MP, and various media outlets) raising concerns about the rezoning of their properties as part of the North West Growth Centre
- 22 December 2023 – Email from Rathna Rana, Senior Urban Planner at Ku-ring-gai Council to committee, providing a copy of a presentation made by the Council to the North Sydney Planning Panel (SNPP) regarding a development application, a copy of Council's notes about the development application, and a copy of the SNPP's decision
- 15 January 2024 – Email from Clare Cordingley, Government & Industry Affairs Manager, Insurance Australia Group (IAG), to committee, providing copy of a report referred to in IAG's submission and a fact sheet
- 19 January 2024 – Email from the office of Sue Higginson MLC to the secretariat, providing proposed amendments to the Terms of Reference for the inquiry into the planning system and the impacts of climate change on the environment and communities.

Resolved, on the motion of Mr D'Adam: That the committee keep the following correspondence confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information and are not related to an inquiry:

- 20 November 2023 – Email from five individuals to the committee (in addition to the Hon Chris Minns MP, the Hon Mark Speakman MP, and various media outlets) raising concerns about the rezoning of their properties as part of the North West Growth Area.

4. Inquiry into the planning system and the impacts of climate change on the environment and communities**4.1 Public submissions**

The committee noted the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 14, 14a, 14b, 57, 59, 71-75, 77-88, 90-126, 133, 136, 140-141, 148, 153-160, 162-165, 167-172, 174, 175, 177, 179-181, 184-188, 190-192, 194, 196-201, 203-208, 210-212, 214, 216, 217, 219, 220 and 230.

Resolved, on the motion of Mr D'Adam: That the committee authorise the publication of submission no. 49.

4.2 Partially confidential submissions

The committee noted the following submissions were partially published by the committee clerk under the authorisation of the resolution appointing the committee: 89, 127-132, 134-135, 137-139, 142-145, 149, 161, 166, 166a, 173, 182, 183, 193, 195, 209, 218 and 221-229.

Resolved, on the motion of Mr D'Adam: That the committee keep the following information confidential as per the request of the authors: names in submission nos. 89, 127-132, 134-135, 137-139, 142-145, 149, 161, 166, 166a, 173, 182, 183, 193, 195, 209, 218 and 221-229.

Resolved, on the motion of Mr D'Adam: That the committee authorise the publication of submission nos. 152, 202 and 213 with the exception of potential adverse mention and sensitive material as highlighted by the secretariat.

4.3 Confidential submissions

Resolved, on the motion of Mr D'Adam: That the committee keep submission nos. 76, 146, 147, 150, 151, 176, 178 and 215 confidential, as per the request of the authors.

4.4 Amendment to Terms of Reference

Resolved, on the motion of Mr Buttigieg: That the committee amend the Terms of Reference by omitting paragraph (e) 'any other related matters', and inserting the following new paragraphs:

- (e) listening to, and learning from, Aboriginal voices and experiences to better inform planning outcomes
- (f) any other related matters.

4.5 Further submissions

Resolved, on the motion of Mr Buttigieg: That the committee re-open public submissions specifically in relation to clause (e) of the Terms of Reference only, until 30 April 2024, with the Chair to notify stakeholders via media release.

4.6 Stakeholder list

Resolved, on the motion of Mr Buttigieg: That:

- the secretariat circulate to members the Chair's proposed list of stakeholders to be invited to make a submission
- members have two days from when the Chair's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5. Adjournment

The meeting adjourned at 1.18 pm, until *sine die*.

David Rodwell
Committee Clerk

Minutes no. 17

Friday 8 March 2024

Portfolio Committee No. 7 – Planning and Environment

Jubilee Room, Parliament House, Sydney, 9.05 am

1. Members present

Ms Higginson, *Chair*

Mr Ruddick, *Deputy Chair* (via videoconference)

Mr Buttigieg (until 3.41 pm)

Mr D'Adam (until 12.45 pm, and from 3.44 pm)

Mr Farlow (until 3.40 pm)

Mrs MacDonald (substituting for Ms Munro)

Mr Primrose (until 10.48 am)

2. Correspondence

The committee noted the following items of correspondence:

Received

- 6 February 2024 – Email from Ms Rathna Rana, Senior Urban Planner, Ku-ring-gai Council, requesting that the attachments to their submission no. 169 be uploaded to the inquiry's webpage
- 20 and 22 February 2024 – Emails from Ms Sonja Hewison, Policy Lawyer, Law Society of New South Wales, declining the committee's invitation to appear as a witness for the inquiry into the planning system and the impacts of climate change on 8 or 15 March 2024 as they do not have any available representatives
- 26 February 2024 – Email from Ms Olivia Francis, Administration Officer, Woollahra Municipal Council, declining the committee's invitation to appear as a witness for the inquiry into the planning system and the impacts of climate change on 15 March 2024 as they do not have any available representatives.
- 4 March 2024 – Email from Mr David Smith, Manager Strategic Planning, Bayside Council, declining the committee's invitation to appear as a witness for the inquiry into the planning system and the impacts of climate change on 15 March 2024 due to other commitments.

3. Inquiry into the planning system and the impact of climate change on the environment and communities

3.1 Public Submissions

Resolved, on the motion of Mr D'Adam: That the committee authorise the publication of submission no. 115b.

Resolved, on the motion of Mr D'Adam: That the committee accept and authorise the publication of submission no. 231.

3.2 Partially confidential submissions

Resolved, on the motion of Mr D'Adam: That the committee authorise the publication of submissions nos. 115a, 115c and 115d with the exception of potential adverse mention as highlighted by the secretariat.

3.3 Attachments to submissions

Resolved, on the motion of Mr Buttigieg: That the committee authorise the publication of attachments to submission no. 169.

3.4 Pro forma responses

Resolved, on the motion of Mr D'Adam: That the committee publish one copy of each pro forma response on its website, noting the number of copies that have been received.

3.5 Site visit itinerary and hearing schedules – Central Coast and South Coast

Resolved, on the motion of Mr Farlow: That the secretariat prepare a revised draft schedule providing for a 2-day trip to the South Coast, to be distributed to members via email, along with an itinerary for the Central Coast for agreement.

3.6 Public hearing

Sequence of questions

Resolved, on the motion of Mr D'Adam: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the media and the public were admitted at 9.19 am.

The following witnesses were sworn and examined:

- Mr Steven Hartley, Executive Director, Resilience and Urban Sustainability, NSW Department of Planning, Housing and Infrastructure
- Mr Clay Preshaw, Executive Director, Energy, Resources and Industry Assessments, NSW Department of Planning, Housing and Infrastructure
- Mr Matthew Riley, Director, Climate and Atmospheric Science, Science Economics and Insights Division, Department of Climate Change, Energy, the Environment and Water
- Mr Sean Sloan, Acting Director General, Department of Primary Industries, Department of Regional NSW
- Ms Kate Lorimer-Ward, Deputy Director General, Department of Primary Industries Agriculture, Department of Regional NSW.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Grahame Douglas, School of Engineering, Design and Built Environment, Western Sydney University.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Professor Warwick Giblin, Adjunct Professor, Faculty of Science, Agriculture, Business & Law, University of New England and Fellow, Environmental Institute of Australia & New Zealand.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Dr Patrick Harris, Acting Director, Centre for Health Equity Training, Research and Evaluation, University of New South Wales
- Professor Nicky Morrison, Professor of Planning, Western Sydney University
- Dr Jennifer Kent, Senior Research Fellow and Urbanism Discipline Research Lead, School of Architecture, Design and Planning, University of Sydney.

Dr Patrick Harris tendered the following document:

- Health and climate: co-benefits infographic, UK Health Alliance on Climate Change, published by the British Medical Journal.

The evidence concluded and the witnesses withdrew.

In the absence of the Chair, the Deputy Chair took the Chair for the purposes of the meeting.

The following witnesses were sworn and examined:

- Mr Angus Gordon OAM, Principal Consultant, Coastal Zone Management and Planning
- Mr Martin Fallding, Principal, Land and Environment Planning.

The Chair returned to the hearing.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John Brockhoff, National Policy Director, Planning Institute of Australia
- Ms Sue Weatherley, NSW President, Planning Institute of Australia
- Mr Gavin Melvin, Acting CEO, Urban Development Institute of Australia
- Ms Julie Bindon, Life Member, Urban Development Institute of Australia NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office
- Mr Jasper Brown, Solicitor, Environmental Defenders Office.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Paul Grech, Land Use Planning Director, Floodplain Management Australia
- Ms Sue Ribbons, Communications Director, Floodplain Management Australia.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.37 pm. The public and the media withdrew.

3.7 Tendered documents

Resolved, on the motion of Mr D'Adam: That the committee accept the following document tendered tabled by Dr Patrick Harris:

- Health and climate: co-benefits infographic, UK Health Alliance on Climate Change, published by the British Medical Journal.

4. Public hearing - 15 March 2024

Resolved, on the motion of Mr D'Adam: That the secretariat invite Sydney Coastal Councils Group to give evidence at the committee's hearing on Friday, 15 March 2024.

5. Adjournment

The committee adjourned at 4.40 pm until Friday 15 March 2024 (Inquiry into the planning system and the impact of climate change on the environment and communities – public hearing).

David Rodwell
Committee Clerk

Minutes no. 18

Friday 15 March 2024

Portfolio Committee No. 7 – Planning and Environment

Macquarie Room, Parliament House, Sydney, 8.49 am

1. Members present

Ms Higginson, *Chair*

Mr Buttigieg (from 8.59 am until 10am, then from 12.14 pm)

Mr D'Adam

Mr Farlow
 Ms Munro
 Mr Primrose (*via videoconference*)

2. Apologies

Mr Ruddick

3. Election of acting Deputy Chair

The Chair called for nominations for acting Deputy Chair for the purposes of today's hearing.

Mr Farlow moved: That Ms Munro be elected as acting Deputy Chair for the duration of the public hearing.

There being no further nominations, the Chair declared Ms Munro elected acting Deputy Chair.

4. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 17 be confirmed.

5. Correspondence

The committee noted the following items of correspondence:

Received

- 7 February 2024 – Email from Mr David Henry, Environmental Assessment Planner, Wollondilly Shire Council to the secretariat, expressing interest in giving evidence at an upcoming hearing for the inquiry into the planning system and the impacts of climate change on the environment and communities
- 8 March 2024 – Email from Ms Beth Morris, Senior Policy Advisor, Strategic Planning, Sutherland Shire Council, declining the committee's invitation to appear as a witness for the inquiry into the planning system and the impacts of climate change on the environment and communities due to other commitments.

6. Inquiry into the planning system and the impacts of climate change on the environment and communities

6.1 Public submissions

Resolved, on the motion of Mr D'Adam: That the committee accept and authorise the publication of submission no. 232.

6.2 Site visit itinerary and hearing schedule – Central Coast

The committee noted it agreed via email to adopt itinerary for the site visit and hearing on the Central Coast on 10 April 2024.

6.3 Public hearing

Sequence of questions

Resolved, on the motion of Mr D'Adam: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the media and the public were admitted at 9.00 am

The following witnesses were sworn and examined:

- Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverly Municipal Council
- Cr Philipa Veitch, Mayor, Randwick City Council
- Ms Stella Agagiotis, Acting Manager, Sustainability, Randwick City Council.

Ms Suzanne Dunford tendered the following documents:

- Waverly Development Control Plan 2022, Part B
- Future Proofing Residential Development to Climate Change.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Cr Clover Moore, Lord Mayor, City of Sydney Council
- Mr Benajmin Pechey, Executive Manager, Strategic Planning and Urban Design, City of Sydney Council
- Ms Monica Barone, CEO, City of Sydney Council.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mrs Sarah Joyce, Executive Officer, Sydney Coastal Councils Group.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Saul Deane, Urban Sustainability Campaigner, Total Environment Centre.

Mr Saul Deane tendered the following document:

- The Blue Green Grid – Sydney's Open Space Vision & Implementation Strategy.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Bev Smiles, Mudgee Coal Alert, via videoconference
- Ms Sally Hunter, People for the Plains, via videoconference
- Mr Nic Clyde, NSW Coordinator, Lock the Gate Alliance, via videoconference.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Matthew Jones, General Manager, Public Affairs, Insurance Council of Australia
- Ms Alix Pearce, Senior Manager, Climate & Social Policy, Insurance Council of Australia
- Mr Andrew Dyer, Manager, Land Planning Hazards, Insurance Australia Group
- Mr George Karagiannakis, Executive Manager, Government and Industry Affairs, Insurance Australia Group.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1.42 pm.

6.4 Tendered documents

Resolved, on the motion of Mr Buttigieg: That the committee accept and publish the following documents tendered during the public hearing:

- Waverly Development Control Plan 2022, Part B, tendered by Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverly Municipal Council
- Future Proofing Residential Development to Climate Change, tendered by Ms Suzanne Dunford, Manager, Sustainability and Resilience, Waverly Municipal Council
- The Blue Green Grid – Sydney's Open Space Vision & Implementation Strategy, tendered by Mr Saul Deane, Urban Sustainability Campaigner, Total Environment Centre.

7. Adjournment

The committee adjourned at 1.43 pm until Wednesday 10 March 2024, TBC, Parliament House (Inquiry into the planning system and the impact of climate change on the environment and communities – public hearing and site visit to Central Coast).

Gerard Rajakariar
Committee Clerk

Minutes no. 19

Wednesday 10 April 2024

Portfolio Committee No. 7 – Planning and Environment

Parkview Room, Central Coast Leagues Club, Gosford, 10.14 am.

1. Members present

Ms Higginson, *Chair*

Mr Ruddick, *Deputy Chair*

Mr Buttigieg (from 10.15 am)

Mr Farlow (from 10.26 am, until 3.31 pm)

Mr Primrose

2. Apologies

Mr D'Adam

Ms Munro

3. Previous minutes

Resolved, on the motion of Mr Primrose: That draft minutes no. 18 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 14 March 2024 – Email from Ms Amy De Lore, Government Relations Lead at Lake Macquarie City Council, declining the committee's invitation to appear as a witness at the 10 April 2024 hearing of the inquiry into the planning system and the impacts of climate change on the environment and communities, as it does not have available representatives
- 22 March 2024 – Email from Ms Ashleigh McTackett, Principal Planner, Singleton Council declining the committee's invitation to appear as a witness at the 10 April 2024 hearing of the inquiry into the planning system and the impacts of climate change on the environment and communities, as it does not have available representatives
- 4 April 2024 – Email from Ms Kylie Reay-Reilly, Executive Assistant at Newcastle City Council, declining the committee's invitation to appear as a witness at the 10 April 2024 hearing of the inquiry into the planning system and the impacts of climate change on the environment and communities.

5. Inquiry into the planning system and the impact of climate change on the environment and communities

5.1 Site visit itinerary and hearing schedule – South Coast

The committee noted it agreed via email to adopt the itinerary for the site visits and hearings on the South Coast on 2 May and 3 May 2024.

5.2 Site visit itineraries and hearing schedules – Western Sydney and Northern Beaches

Resolved, on the motion of Mr Primrose: That the committee adopt the itineraries for the hearings and site visits in Western Sydney on 6 May 2024 and the Northern Beaches on 10 May 2024.

5.3 Public hearing

Sequence of questions

Resolved, on the motion of Mr Ruddick: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the media and the public were admitted at 10.36 am.

The following witnesses were sworn and examined:

- Dr Chris McLean, Principal Strategic Planner and Senior Ecologist, Central Coast Council
- Ms Deanne Frankel, Acting Unit Manager, Strategic Planning, Central Coast Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Jen Wilder, Co-founder, Grow Urban Shade Trees (GUST)
- Mrs Debbie Sunartha Co-founder, Grow Urban Shade Trees (GUST)
- Mrs Lesley Harvey, Member, Grow Urban Shade Trees (GUST).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Mark Snell, Chairman, Woy Woy Peninsula Residents Association
- Mr Peter Gillis, Woy Woy Peninsula Residents Association.

Mr Peter Gillis tendered the following document:

- Woy Woy Peninsula Residents Association Submission of Evidence.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Ian Carruthers, Individual.

The evidence concluded and the witness withdrew.

The public hearing concluded at 2.14 pm.

5.4 Tendered documents

Resolved, on the motion of Mr Ruddick: That the committee accept and publish the following document:

- Inquiry into the Planning System and the impacts of Climate Change on the Environment and Communities – Woy Woy Peninsula Residents Association Submission of Evidence, tendered by Mr Peter Gillis, Woy Woy Peninsula Residents Association.

5.5 Site visit to Wamberal Beach

The committee visited Wamberal Surf Life Saving Club and Wamberal Beach to meet with the following members of Wamberal Beach Save Our Sands and No Wamberal Beach Seawall Inc:

- Ms Corrine Lamont
- Mr Mark Lamont
- Mr Justin Hickey.

6. Adjournment

The committee adjourned at 4.01 pm until Thursday 2 May 2024, Sydney Domestic Airport T2 (South Coast public hearings and site visits).

David Rodwell
Committee Clerk

Minutes no. 20

Thursday 2 May 2024

Portfolio Committee No. 7 – Planning and Environment

Biamanga Room, Bega Commemorative Civic Centre, Bega, 12.52 pm

1. Members present

Ms Higginson, *Chair*

Mr Buttigieg (via videoconference)

Mr D'Adam (via teleconference from 12.52 pm until 1.10 pm, then from 4.15 pm until 4.25 pm)

Mr Farlow

Ms Munro

Mr Primrose

2. Apologies

Mr Ruddick, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Primrose: That draft minutes no. 19 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 4 April 2024 – Letter from Mr Steven Hartley, Executive Director, Resilience and Urban Sustainability, Department of Planning, Housing and Infrastructure to the committee, providing clarifications to his evidence at the hearing for the inquiry into the planning system and the impacts of climate change on the environment and communities on 8 March 2024
- 16 April 2024 – Email from Ms Magdalena Przybylo, Executive Assistant to the Mayor, Campbelltown City Council to the secretariat, advising that the Council will not appear as a witness at the hearing for the inquiry into the planning system and the impacts of climate change on the environment and communities on 6 May 2024
- 24 April 2024 – Email from Ms Gillian MacNamara, Committee Member, Friends of Coila to the committee correcting an error in Friends of Coila's submission no. 197
- 24 April 2024 – Email from Ms Linda Davis, Director Planning + Environment, Wollongong City Council, to the secretariat advising that the Council will not appear as a witness at the hearing for the inquiry into the planning system and the impacts of climate change on the environment and communities on 3 May 2024
- 29 April 2024 – Email from Ms Danielle Birkbeck, Senior Sustainability Programs Coordinator, North Sydney Council to the secretariat advising that the Council will not appear as a witness at the hearing for the inquiry into the planning system and the impacts of climate change on the environment and communities on 10 May 2024.

5. Inquiry into the planning system and the impact of climate change on the environment and communities

5.1 Future inquiry activities

The committee considered the following future hearings and sites visits for the inquiry:

- 23-24 May, Mid North Coast
- 30-31 May, Far North Coast.

The committee deliberated.

Resolved, on the motion of Mr D'Adam: That the committee defer consideration of the scheduling of future hearings and site visits for the inquiry to the deliberative at 9.45 am, Monday 6 May 2024.

5.2 Public hearing

Sequence of questions

Resolved, on the motion of Mr Farlow: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the media and the public were admitted at 2.27 pm.

The following witnesses were sworn and examined:

- Cr Russel Fitzpatrick, Mayor, Bega Valley Shire Council
- Mr Anthony McMahon, CEO, Bega Valley Shire Council
- Mrs Emily Harrison, Director, Community Environment and Planning, Bega Valley Shire Council
- Ms Leane Atkinson, CEO, Bega Local Aboriginal Land Council
- Mr David Dixon, Board Member, Bega Local Aboriginal Land Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Gillian McNamara, Committee Member, Friends of Coila
- Mr Nick Summers, Convenor and Committee Member, Friends of Coila
- Mr Sam Tierny, Friends of CRUNCH Inc.

Mr Nick Summers tendered the following documents:

- Screenshot – ESC Mapping Tool Coastal Management SEPP
- Photographs of Lot 325, Anderson Avenue, Tuross Head
- Desktop ecological assessment conducted of development at Tuross Head, NSW for Friends of Coila.

The public hearing concluded at 4.11 pm. The public and the media withdrew.

5.3 Tendered documents

Resolved, on the motion of Mr Farlow: That the committee accept and publish the following documents:

- Screenshot – ESC Mapping Tool Coastal Management SEPP
- Photographs of Lot 325, Anderson Avenue, Tuross Head
- Desktop ecological assessment conducted of development at Tuross Head, NSW for Friends of Coila.

5.4 Public submissions

Resolved, on the motion of Ms Munro: That the committee accept and authorise the publication of submissions nos. 233, 234 and 235.

5.5 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mr Matthew Riley, Director Climate and Atmospheric Science, Department of Climate Change, Energy, the Environment and Water, received 4 April 2024
- Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, received 8 April 2024

- Dr Patrick Harris, Acting Director, Centre for Health Equity Training, Research and Evaluation, University of New South Wales, Professor Nicky Morrison, Professor of Planning, Western Sydney University and Dr Jennifer Kent, Senior Research Fellow and Urbanism Discipline Research Lead, School of Architecture, Design and Planning, University of Sydney, received 16 and 17 April.

5.6 Transcript clarifications – 8 March 2024 – Mr Steven Hartley

Resolved, on the motion of Mr Farlow: That the committee authorise:

- the publication of Mr Steven Hartley, Executive Director, Resilience and Urban Sustainability, Department of Planning, Housing and Infrastructure's letter clarifying his evidence; and
- the insertion of footnotes to pages 11 and 14 of the transcript of evidence from 8 March 2024 providing a hyperlink to Mr Hartley's correspondence.

5.7 Correction to submission no. 197, Friends of Coila

Resolved, on the motion of Mr Primrose: That the committee publish Ms McNamara's correspondence correcting the error in submission no. 197 on the inquiry webpage.

5.8 Interim reporting date

Resolved, on the motion of Mr D'Adam: That the committee defer consideration of tabling an interim report by 23 August 2024, to the deliberative at 9.45 am, Monday 6 May 2024.

6. Adjournment

The committee adjourned at 4.28 pm until 8.45am, Friday 3 May 2024, Studio, Shoalhaven Entertainment Centre, Nowra (public hearing and site visit).

David Rodwell
Committee Clerk

Minutes no. 21

Friday 3 May 2024

Portfolio Committee No. 7 – Planning and Environment

Studio, Shoalhaven Entertainment Centre, Nowra, 8.46 am

1. Members present

Ms Higginson, *Chair*

Mr Farlow

Dr Kaine, until 8.51 am (substituting for Mr Buttigieg via videoconference)

Ms Munro

Mr Primrose

Ms Suvaal, until 8.51 am (substituting for Mr D'Adam via videoconference)

2. Apologies

Mr Ruddick

3. Inquiry into the planning system and the impact of climate change on the environment and communities

3.1 Declarations

Dr Kaine made a declaration that she owns property in Culburra Beach.

3.2 Public hearing

Sequence of questions

Resolved, on the motion of Mr Primrose: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the media and the public were admitted.

The following witnesses were sworn and examined:

- Mr Gordon Clark, Manager, Strategic Planning, Shoalhaven City Council
- Mr Matthew Rose, Coordinator, Strategic Planning, Shoalhaven City Council
- Cr Chris Homer, Mayor, Shellharbour City Council
- Ms Jane Stroud, CEO, Kiama Council
- Ms Jessica Rippon, Director, Planning, Environment and Communities, Kiama Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Rob Barrel, President and Convenor, Callala Matters
- Mr Bruce McKenzie, President, Our Future Shoalhaven
- Dr Penelope Davidson, Secretary, Our Future Shoalhaven.

Mr Rob Barrel tendered the following document:

- Collection of photographs and map – Callala Bay habitat.

Mr Bruce McKenzie tendered the following document:

- Map of proposed development, Moona Moona Creek.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mrs Rebecca Sleath, Secretary, Culburra Residents and Ratepayers Action Group Committee
- Mr Kingston Anderson, Treasurer, Culburra Residents and Ratepayers Action Group.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr William Eger President, Manana Matters Environmental Association
- Ms Jorj Lowrey, Founder and Committee Member, Manyana Matters Environmental Association.

Mr William Eger tendered the following document:

- Analysis of development proponent's EIS, tabled by Mr William Eger.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.39 pm.

3.3 Tendered documents

Resolved, on the motion of Mr Primrose: That the committee accept and publish the following documents:

- Collection of photographs and map – Callala Bay habitat, tendered by Mr Rob Barrel
- Map of proposed development, Moona Moona Creek, tendered by Mr Bruce McKenzie
- Analysis of development proponent's EIS, tendered by Mr William Eger.

3.4 Site visit to Culburra Beach

The committee visited Culburra Beach and met with the following volunteers from the community group Culburra Residents & Ratepayers Action Group (CRRAG) and Jerrinja Local Aboriginal Land Council:

- Ms Claire Haywood, President, CRRAG
- Mrs Rebecca Sleath, Secretary, CRRAG

- Mr Kingston Anderson, Treasurer, CRRAG
- Mr Kevin Brady, Committee Member, CRRAG
- Mr Alfred Wellington, CEO, Jerrinja Local Aboriginal Land Council.

Resolved, on the motion of Mr Farlow: That the committee:

- agree to the secretariat recording Mr Alfred Wellington at the site visit for the purposes of assisting the secretariat's notetaking, and that the recording be destroyed once the report is drafted
- authorise the secretariat to draft a summary report of the site visit for potential use in the final report.

3.5 Site visit to Callala Bay

The committee visited Callala Bay and met with the following individuals from the community group Callala Matters and the Jerrinja Local Aboriginal Land Council:

- Mr Rob Barrel, President/Convenor, Callala Matters
- Mr Alfred Wellington.

4. Adjournment

The committee adjourned at 3.57 pm until Monday 6 May 2024, Campbelltown RSL, Campbelltown.

David Rodwell
Committee Clerk

Minutes no. 22

Monday 6 May 2024

Portfolio Committee No. 7 – Planning and Environment

Emerald and Opal Room, Campbelltown RSL, Campbelltown, 9.51 am

1. Members present

Ms Higginson, *Chair*

Mr Ruddick, *Deputy Chair*

Mr Buttigieg (via videoconference until 9.54 am)

Mr D'Adam

Mr Farlow (via teleconference until 9.54 am)

Ms Munro

2. Apologies

Mr Primrose

3. Correspondence

The committee noted the following items of correspondence:

Received

- 29 April 2024 – Email from Ms Diana Pryde, Secretary, Save Sydney's Koalas to the secretariat, providing a copy of a paper titled Review of the 'Urban Heat Island and Climate Change Impacts on Cumberland Plain Biodiversity' by Peter Ridgeway, for the committee's attention.

4. Inquiry into the planning system and the impacts of climate change on the environment and communities

4.1 Future inquiry activities

Mr D'Adam moved: That the committee allocate two days for future inquiry activity following the planned activities on 10 May 2024, the dates of which are to be determined by the Chair in consultation with members regarding their availability.

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mr Farlow, Ms Munro and Mr Ruddick.

Noes: Ms Higginson.

Question resolved in the affirmative.

4.2 Interim report date

Resolved, on the motion of Mr D'Adam: That the committee

- table an interim report by 23 August 2024
- hold an interim report deliberative in August 2024, the date of which is to be determined by the Chair after consultation with members regarding their availability.

4.3 Public hearing

Sequence of questions

Resolved, on the motion of Mr D'Adam: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the media and the public were admitted at 10.00 am.

The following witnesses were sworn and examined:

- Mr Strini Pillai, Program Manager, Heritage, Ecology and Land Manager, Gandangara Local Aboriginal Land Council.

Mr Pillai tendered the following documents:

- Gandangara Local Aboriginal Land Council – Summary of evidence
- Gandangara Local Aboriginal Land Council – Supporting Maps
- Gandangara Local Aboriginal Land Council – Responses to Terms of Reference.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Charles Casuscelli RFD, CEO, Western Sydney Regional Organisation of Councils
- Ms Kelly Gee, Policy and Projects Officer, Western Sydney Regional Organisation of Councils
- Mr Kerry Robinson OAM, CEO, Blacktown City Council
- Mr Nelson Nolan, Coordinator, Sustainability and Resilience, Blacktown City Council
- Ms Lina Kakish, Director, Planning and Compliance, Liverpool City Council
- Mr Mark Hannan, Manager, City Planning, Liverpool City Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Nicole Magurren, Director, Planning and Environment, Camden Council
- Mr Jamie Erkern, Manager, Statutory Planning, Camden Council
- Cr Matt Gould, Mayor, Wollondilly Shire Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Sanaa Shah, Community Campaigner, Sweltering Cities
- Dr Shailja Chandra, Multicultural Communities Campaigner, Sweltering Cities.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1.00 pm. The public and the media withdrew.

4.4 Tendered documents

Resolved, on the motion of Mr Farlow: That the committee accept and publish the following document:

- Gandangara Local Aboriginal Land Council – Summary of evidence, tabled by Mr Strini Pillai
- Gandangara Local Aboriginal Land Council – Supporting Maps, tabled by Mr Strini Pillai
- Gandangara Local Aboriginal Land Council – Responses to Terms of Reference, tabled by Mr Strini Pillai.

5. Adjournment

The committee adjourned at 1.02 pm until 9.15 am, Friday 10 May 2024, Oaks Room, Dee Why RSL, Dee Why (public hearing and site visit - inquiry into the planning system and the impacts of climate change on the environment and communities).

David Rodwell
Committee Clerk

Minutes no. 23

Friday 10 May 2024

Portfolio Committee No. 7 – Planning and Environment
Oaks Room, Dee Why RSL, Dee Why, 9.12 am.

1. Members present

Ms Higginson, *Chair*
Mr Ruddick, *Deputy Chair*
Mr Buttigieg (until 3.45 pm)
Mr Farlow (from 9.21 am, until 3.45 pm)
Ms Munro

2. Apologies

Mr D'Adam
Mr Primrose

3. Correspondence

The committee noted the following items of correspondence:

Received

- 2 May 2024 – Email from Ms Lucilla Kong, Hunters Hill Council to the secretariat, advising that the Council will not have available representatives to give evidence the hearing for the inquiry into the planning system and the impacts of climate change on the environment and communities on 10 May 2024
- 7 May 2024 – Email from Ms Sandy Ryrle, Administration Team Leader and PA – Director, Strategy and Environment to the secretariat advising that due to unforeseen circumstances, the Council will not have representatives available to give evidence at the hearing for inquiry into the planning system and the impacts of climate change on the environment and communities on 10 May 2024
- 7 May 2024 – Letter from Mr Craigh McNeill to the committee, requesting public hearings be held in the Clarence Valley area for the inquiry into the planning system and the impacts of climate change on the environment and communities.

4. Inquiry into the planning system and the impacts of climate change on the environment and communities

4.1 Answers to questions on notice

The following answers to questions on notice and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Ms Bev Smiles, Mudgee Coal Alert, received 4 April 2024
- Insurance Council of Australia, received 11 April 2024
- Randwick City Council, received 22 April 2024.

4.2 Future inquiry activities

The Chair updated the committee on her proposal for the committee to travel to the North Coast on 30-31 May 2024 and advised that the secretariat would distribute a draft itinerary to the committee for agreement.

4.3 Public hearing

Sequence of questions

Resolved, on the motion of Mr Buttigieg: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the media and the public were admitted at 9.29 am.

The following witnesses were sworn and examined:

- Mr Joseph Hill, Executive Manager, Strategic & Place Planning, Northern Beaches Council
- Mr Yianni Mentis, Executive Manager, Environment & Climate Change, Northern Beaches Council
- Mr Dominic Johnson, General Manager, Mosman Council
- Mr Craig Covich, Director, Environment & Planning, Mosman Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Steven Head, General Manager, Hornsby Shire Council
- Mr James Farrington, Director, Planning and Compliance, Hornsby Shire Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Mark Brisby, Director, Planning and Sustainability, Lane Cove Council
- Ms Bernadette Riad, Manager, Sustainability, Lane Cove Council
- Cr Tanya Taylor, Mayor, Willoughby City Council
- Mr Dyalan Govender, Acting Head of Planning, Willoughby City Council
- Mr David Roberts, Environment Manager, Willoughby City Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Bron Hanna, Member, Friends of Lane Cove National Park Inc
- Ms Jill Steverson, Member, Friends of Lane Cove National Park Inc
- Mrs Kathy Cowley, President, Friends of Ku-ring-gai Environment Inc
- Ms Janine Kitson, Vice President, Friends of Ku-ring-gai Environment Inc.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Terry Fitzgerald, National Director, Surfrider Foundation Australia

- Mr Brendan Donohoe, President, Surfrider Foundation Australia, Northern Beaches Branch.

Mr Donohoe tendered the following document:

- Collection of Photographs – Collaroy Beach and seawall information graphics.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Rowena Welsh-Jarrett, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council.

The evidence concluded and the witness withdrew.

The public hearing concluded at 2.42 pm. The public and the media withdrew.

4.4 Tendered documents

Resolved, on the motion of Mr Buttigieg: That the committee accept and publish the following document:

- Collection of Photographs – Collaroy Beach and seawall information graphics, tabled by Mr Brendan Donohoe.

4.5 Site visit – Collaroy Beach

The committee visited Collaroy Beach and met with representatives of Surfrider Foundation Australia and a representative of Coastal Zone Management and Planning:

- Mr Brendan Donohoe, President, Surfrider Foundation Australia, Northern Beaches Branch
- Mr Paul Maddock, Committee Member, Surfrider Foundation Australia, Northern Beaches Branch
- Mr Stephen Titus, Committee Member, Surfrider Foundation Australia, Northern Beaches Branch
- Mr Angus Gordon OAM, Principal Consultant, Coastal Zone Management and Planning.

4.6 Site visit – Westleigh Park

The committee visited Westleigh Park and met with representatives of local community groups:

- Ms Jan Primrose, President, Protecting Your Suburban Environment Inc, and Convenor of Save Westleigh Park community alliance
- Ms Sue Fredrickson, Member, Australian Native Plant Society and Member, Westleigh Progress Association
- Ms Katrina Emmett, Member, Protecting Your Suburban Environment Inc and wildlife carer and rescuer.

5. Adjournment

The committee adjourned at 5.29 pm until Thursday 30 May 2024, Sydney Domestic Airport (North Coast site visits).

David Rodwell
Committee Clerk

Minutes no. 25

Thursday 30 May 2024

Portfolio Committee No. 7 – Planning and Environment

Sydney Kingsford Smith Domestic Airport T3 at 8.04 am

1. Members present

Ms Higginson, *Chair*

Mr Buttigieg (via teleconference from 8.04 am until 8.08 am)

Mr D'Adam

Ms Munro
Mr Primrose

2. Apologies

Mr Ruddick, *Deputy Chair*
Mr Farlow

3. Previous minutes

Resolved, on the motion of Mr Primrose: That draft minutes no. 20, 21, 22 and 23 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 30 April 2024 – Correspondence from Ms Debbie Sunartha, Grow Urban Shade Trees (GUST), providing additional information for the inquiry into the planning system and the impacts of climate change on the environment and communities.

5. Inquiry into the planning system and the impacts of climate change on the environment and communities

5.1 Public submissions

Resolved, on the motion of Mr D'Adam: That the committee accept and authorise the publication of submission nos. 236, 237, 238, 239, 240, 241, 243 and 244.

5.2 Confidential submissions

Resolved, on the motion of Ms Munro: That the committee keep submission no. 242 confidential, as per the request of the authors.

5.3 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Central Coast Council, received on 3 May 2024.

5.4 Further Sydney hearing – June 2024

Resolved, on the motion of Mr D'Adam: That the committee hold a further public hearing in Sydney on 17 June 2024 and invite community groups, local councils and other potential witnesses to give evidence who have not had the opportunity to do so.

5.5 Site visits – audio recordings and summary reports

Resolved, on the motion of Mr D'Adam: That the committee authorise:

- the secretariat to prepare a summary report of the site visits undertaken on 30 and 31 May 2024, to be considered for publication by the committee
- recordings of the site visits be taken (where possible, and subject to the consent of participants), solely for the purpose of assisting the secretariat with the preparation of the summary report.

5.6 Site visit – South West Rocks

The committee visited several locations at South West Rocks, accompanied by members of the community group Voices of South West Rocks Inc and South West Rocks Figtree Descendants Aboriginal Corporation:

- Ms Larah Kennedy, Member, Voices of South West Rocks
- Ms Anna Greer, Member, Voices of South West Rocks
- Mr Warren Bailey, Member, Voices of South West Rocks
- Mr Richard Phillips, Ecologist
- Mrs Nancy Pattison, Member, South West Rocks Figtree Descendants Aboriginal Corporation.

5.7 Site visit – Coffs Harbour Jetty Foreshore

The committee visited Coffs Harbour Jetty Foreshore accompanied by members of the community group Lets Own Our Future – Jetty Foreshores:

- Mr Bruce Weir, Media Liaison, Let's Own Our Future – Jetty Foreshores
- Ms Helen Weir, Secretary, Let's Own Our Future – Jetty Foreshores
- Dr Sally Townley, Environmental Scientist
- Uncle Reg Craig, Gumbaynggirr Elder, Garlambirla Guuyu-Girrwa Coffs Harbour Aboriginal Elders Corporation.

6. Adjournment

The committee adjourned at 5.46 pm until 8.15 am, Friday 31 May 2024, Twin Pines Motel, Yamba (continued North Coast site visits).

Alice Wood

Committee Clerk

Minutes no. 26

Friday 31 May 2024

Portfolio Committee No. 7 – Planning and Environment

Twin Pines Motel, Yamba, at 8.17 am

1. Members present

Mr Higginson, *Chair*
Mr D'Adam
Ms Munro
Mr Primrose

2. Apologies

Mr Buttigieg
Mr Farlow
Mr Ruddick, *Deputy Chair*

3. Inquiry into the planning system and the impacts of climate change on the environment and communities

3.1 Site visit – elevated development mounds, Yamba

The committee visited Yamba and met with representatives of Yamba Community Action Network (Yamba CAN) and a local Aboriginal Elder:

- Mr Col Shephard, Chairperson, Yamba CAN
- Mrs Lynne Cairns, Secretary, Yamba CAN
- Ms Helen Tyas Tunggal, Member, Yamba CAN
- Dr Greg Clancy, Community Member
- Mr Robert Mylchreest, Member, Yamba CAN
- Mr Kenn (Fox) Laurie, Yaegl Elder

3.2 Site visit – Riverglen Development, Maclean

The committee visited Maclean and met with concerned local residents and two local Aboriginal Elders:

- Mr Paul Scully, local resident
- Ms Janeen Scully, local resident

- Ms Elizabeth Smith, Yaegl Elder
- Ms Lenore Parker, Matriarch and Senior Yaegl Elder

3.3 Site visit – Iron Gates Development, Evans Head

The committee visited Evans Head and met with concerned local residents:

- Dr Peter Ashley, local resident
- Ms Elaine Saunders, environmental activist
- Dr Richard Gates, Chair, Evans Head Memorial Aerodrome Committee
- Mr Tim Smith, local resident and Member, Dirawong Reserve Board (NSW Crown Lands)

3.4 Site visit – Wallum Development, Brunswick Heads

The committee visited Brunswick Heads and met with members of community group Save Wallum and First Nations representatives:

- Mr James Barrie, Save Wallum
- Ms Arabella Douglas
- Mr Mark Cora
- Aunty Karen.

4. Adjournment

The committee adjourned at 3.07 pm, until Friday 7 June 2024, Jubilee Room, Parliament House (inquiry into the development of the Transport Oriented Development Program – public hearing).

Gerard Rajakariar
Committee Clerk

Minutes no. 28

Monday 17 June 2024

Portfolio Committee No. 7 – Planning and Environment

Jubilee Room, Parliament of NSW, 9.17 am

1. Members present

Ms Higginson

Mr Ruddick, *Deputy Chair* (via videoconference)

Mr Buttigieg

Mr D'Adam (via videoconference) (until 12.36 pm)

Mr Farlow (from 9.17 am until 10.45 am, then from 11.56 am until 12.57 pm, then from 1.38 pm until 2.57 pm)

Mr Primrose (via videoconference) (until 12.33 pm)

2. Apologies

Ms Munro

3. Previous minutes

Resolved, on the motion of Mr Buttigieg: That draft minutes no. 25 and 26 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 31 May 2024 – Email from Ms Arabella Douglas, Member, Save Wallum to the secretariat, providing additional information for the inquiry into the planning system and the impacts of climate change on the environment and communities
- 1 June 2024 – Email from Ms Arabella Douglas, Member, Save Wallum to the secretariat, providing additional information for the inquiry into the planning system and the impacts of climate change on the environment and communities
- 12 June 2024 – Email from Ms Lisa Kolinac, Member, Wamberal Protection Association to the secretariat, declining to attend 17 June 2024 hearing for the inquiry into the planning system and the impacts of climate change on the environment and communities
- 12 June 2024 – Email from Mr Matthew Wood, Director of Planning and Environmental Health, Ballina Shire Council to the secretariat, declining to attend 17 June 2024 hearing for the inquiry into the planning system and the impacts of climate change on the environment and communities.

Resolved, on the motion of Mr Farlow: That the committee keep the correspondence from Ms Arabella Douglas, regarding additional information dated 31 May and 1 June confidential, as per the request of the author.

5. Inquiry into the planning system and the impacts of climate change on the environment and communities

5.1 Answers to questions on notice and supplementary questions

The following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Sweltering Cities, received on 14 May 2024
- answers to questions on notice from Shoalhaven City Council, received on 20 May 2024
- answers to questions on notice from Camden Council, received on 20 May 2024
- additional information from Western Sydney Regional Organisation of Councils, received on 31 May 2024
- answers to questions on notice from Our Future Shoalhaven, received on 2 June 2024
- answers to questions on notice from Bega Local Aboriginal Land Council, received on 3 June 2024
- answers to questions on notice from Gandangara Local Aboriginal Land Council, received on 3 June 2024
- answers to questions on notice from Bega Valley Shire Council, received on 4 June 2024.

5.2 Timeframe for answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Buttigieg: That:

- members provide any supplementary questions to the secretariat within 24 hours of receiving the transcript of evidence for today's hearing
- witnesses be required to provide answers to questions on notice/supplementary questions within 7 days.

5.3 Confidential meeting with First Nations representatives – 25 July 2024

Resolved, on the Mr Buttigieg: That:

- the committee hold an *in camera* roundtable meeting(s) on 25 July 2024 to receive evidence from Ms Arabella Douglas, First Nations representative, and other traditional owners from the Bundjalung Nation with respect to significance of the Wallum development site at Brunswick Heads
- members arrange substitutes where required for these meetings, so as to enable separate sessions to be held for women and men
- the secretariat discuss with those attending the roundtable meetings the proposed publication of some or all of their evidence where possible, subject to further consultation after the meetings.

The committee noted that Mr Buttigieg intends to nominate other First Nations stakeholders to participate in a separate session, including representatives of local Aboriginal land councils and title holders.

5.4 Public hearing

Resolved, on the motion of Mr Buttigieg: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the media and the public were admitted at 9.30 am.

The following witnesses were sworn and examined:

- Mrs Corinne Lamont, Volunteer, Wamberal Beach Save Our Sands
- Mr Mark Lamont, Volunteer, Wamberal Beach Save Our Sands.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Larah Kennedy, Member, Voices of South West Rocks
- Mr Bruce Weir, Media Liaison, Let's Own Our Future – Jetty Foreshores
- Dr Sally Townley, Environmental Scientist, Lets Own Our Future – Jetty Foreshores.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mrs Lynne Cairns, Secretary, Yamba Community Action Network Inc
- Ms Helen Tyas Tunggal, Member, Yamba Community Action Network Inc.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Paul Scully, Maclean local resident
- Mrs Janeen Scully, Mclean local resident.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Peter Ashley, Evans Head conservationist and local resident
- Dr Richard Gates, Evans Head local resident.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr James Barrie, Founder, Save Wallum.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Stephen Warham, President, Save the Myall Road Bushland Inc
- Ms Lillian Warham, Member, Save the Myall Road Bushland Inc.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Eber Butron, Chief Community Officer, Lismore City Council
- Mr Andy Parks, Strategic Planning Coordinator, Lismore City Council.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.03 pm. The public and the media withdrew.

5.5 Tendered documents

Resolved, on the motion of Mr Buttigieg: That the committee accept and publish the following documents:

- Documents tabled by Mr Mark Lamont – Collection of documents related to proposed Wamberal Beach seawall
- Documents tabled by Mrs Lynne Cairns – Collection of documents related to development proposals in Yamba
- Document provided by Yamba CAN, tabled by Ms Helen Tyas Tunggal – Clarence catchment maps
- Documents tabled by Mrs Janeen Scully – Maclean flooding photographs.

6. Adjournment

The committee adjourned at 3.07 pm until 11.00 am Monday 24 June 2024 (Portfolio Committee No. 7 Budget Estimates report deliberative).

Alice Wood

Committee Clerk

Minutes no. 32

Friday 16 August 2024

Portfolio Committee No. 7 – Planning and Environment

Room 1043, Parliament House, Sydney at 10.02 am

1. Members present

Ms Higginson, *Chair*

Mr Donnelly (substituting for Mr Buttigieg)

Mr D'Adam (via videoconference)

Mr Farlow

Ms Munro

Mr Primrose

2. Apologies

Mr Ruddick

3. Inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

3.1 Terms of Reference

The committee noted the following terms of reference referred by the House on 15 August 2024:

- (1) That the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 be referred to Portfolio Committee No. 7 – Planning and Environment for inquiry and report.

(2) That the committee report by 11 October 2024.

3.2 Proposed timeline

Resolved, on the motion of Ms Munro: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close – Friday 6 September 2024
- Hearing – Thursday 12 September 2024
- Report deliberative – Tuesday 8 October 2024
- Report tabling – Friday 11 October 2024.

3.3 Stakeholder list

Resolved, on the motion of Mr Farlow: That

- all stakeholders who made submissions to, or appeared as witnesses in, the 2021-22 inquiry into the Integrity of the NSW Biodiversity Offsets Scheme be invited to make submissions, with the secretariat to circulate a list of these stakeholders to members
- members have two days from when this list is circulated to nominate additional stakeholders
- the committee agree to any additional stakeholders by email, unless a meeting of the committee is required to resolve any disagreement.

3.4 Approach to submissions

Resolved, on the motion of Mr Primrose: That, to enable significant efficiencies for members and the secretariat while maintaining the integrity of how submissions are treated, in the event that 50 or more individual submissions are received, the committee may adopt the following approach to processing short submissions:

- All submissions from individuals 250 words or less in length will:
 - have an individual submission number, and be published with the author's name or as name suppressed, or kept confidential, according to the author's request
 - be reviewed by the secretariat for adverse mention and sensitive/identifying information, in accordance with practice
 - be channelled into one single document to be published on the inquiry website
- All other submissions will be processed and published as normal.

3.5 Online questionnaire

Resolved, on the motion of Mr Primrose: That:

- the committee use an online questionnaire to capture individuals' views, and that the draft questions for this questionnaire be circulated and agreed by the committee over email, unless a formal meeting is needed to resolve any disagreement
- the closing date for the online questionnaire be Friday 6 September 2024
- the online questionnaire be promoted in the media release announcing the establishment of the inquiry and on the inquiry webpage
- individual responses to the online questionnaire be kept confidential
- the secretariat prepare a summary report of responses to the online questionnaire, with this report circulated and agreed by the committee over email, unless a formal meeting is needed to resolve any disagreement
- the committee not accept proformas.

4. Previous minutes

Resolved, on the motion of Mr Primrose: That draft minutes no. 28 be confirmed.

5. Correspondence

The committee noted the following items of correspondence:

Received

- 31 July 2024 – Email from Dr Richard Gates, Evans Head Residents for Sustainable Development Inc to the committee providing an update on the Irons Gate development approval at Evans Head
- 9 and 12 August 2024 – Emails from Mr Brendan Donohoe, President, Surfriider Foundation Australia, Northern Beaches Branch, providing the committee an update to his evidence about the Narrabeen/Collaroy Beach seawall

Sent

- 15 July 2024 – Email from the secretariat to Ms Arabella Douglas, Member, Save Wallum, regarding her request for the committee to travel to the North Coast to meet with traditional owners of the Bundjalung Nation.

6. Inquiry into the planning system and the impacts of climate change on the environment and communities

6.1 Public submissions

Resolved, on the motion of Mr Primrose: That the committee accept and authorise the publication of submission no. 247.

6.2 Answers to questions on notice and additional information

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of answers to questions on notice and their attachments from:

- Mosman Council, received 14 May 2024
- Kiama Municipal Council, received 12 June 2024.

The following answers to questions on notice and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Hornsby Shire Council, received on 29 May 2024
- answers to questions on notice from Northern Beaches Council, received on 14 June 2024
- answers to questions on notice from Willoughby City Council, received on 7 June 2024
- additional information from Let's Own Our Future - Jetty Foreshores, received on 27 June 2024
- answers to questions on notice from Wamberal Beach Save Our Sands, received on 28 June 2024
- answers to questions on notice from Lismore City Council, received on 2 July 2024.

6.3 Documents received at site visits

Resolved, on the motion of Ms Munro: That the committee accept the following documents provided to the committee during site visits:

- Documents from Let's Own Our Future – Jetty Foreshores, received on 30 May 2024 at Coffs Harbour Jetty Foreshore site visit
- Documents from Yamba Community Action Network Inc, received on Friday 31 May 2024 at Yamba site visits
- Documents from Mr Paul and Ms Janeen Scully, received on 31 May 2024 at Maclean site visit
- Documents from Evans Head Residents for Sustainable Development Inc, received on 31 May 2024 at Evans Head site visit.

6.4 Site visits – audio recordings and summary reports

Resolved, on the motion of Mr Farlow: That the secretariat not prepare a summary report of site visits undertaken on 3, 30 and 31 May 2024, as the community groups in attendance at these site visits subsequently gave evidence to the committee at a hearing on 17 June 2024.

6.5 Future conduct of inquiry

Mr D'Adam moved: That the committee authorise the secretariat to redraft the interim report to be reflected as the final report of the inquiry.

The committee deliberated.

Mr Farlow moved: That the motion of Mr D'Adam be amended by inserting at the end: 'and that the committee table its final report by 19 November 2024.'

Amendment of Mr Farlow put.

The committee divided.

Ayes: Mr D'Adam, Mr Donnelly, Mr Farlow, Ms Munro, and Mr Primrose.

Noes: Ms Higginson.

Original question of Mr D'Adam, as amended, put and passed.

7. Adjournment

The committee adjourned at 10.39 am until Thursday 29 August 2024, Macquarie Room, Parliament House (public hearing – Budget Estimates).

David Rodwell

Committee Clerk

Draft minutes no. 39

Monday 11 November 2024

Portfolio Committee No. 7 – Planning and Environment

Room 1043, Parliament House, 10.04 am

1. Members present

Ms Higginson *Chair*

Mr Ruddick, *Deputy Chair*

Mr Buttigieg

Mr D'Adam (via videoconference)

Mr Farlow

Ms Munro

Mr Primrose

2. Previous minutes

Resolved, on the motion of Ms Munro: That draft minutes nos. 32, 37 and 38 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 23 September 2024 – Email from Jo Davey, Secretary, Manyana Matters Environmental Association Inc regarding approval of Manyana residential development under the *Environmental Protection and Biodiversity Conservation Act 1999 (Cth)* and attaching:
 - Federal approval of controlled action (Notification of approval – Manyana Residential Development)
 - Letter from Hon Tanya Plibersek MP, Commonwealth Minister for the Environment and Water dated 20 September 2024 to Hon Paul Scully MP, Minister for Planning and Public Spaces regarding the approval
 - Letter from William Eger to the Legislative Assembly Committee on Environment and Planning raising concerns that the impact of historical development consents will not be addressed by

Government following the Legislative Assembly committee's roundtable meeting on 10 September 2024 for its inquiry into historical planning consents in NSW at Shoalhaven Library, Nowra

- 15 October 2024 – Email from Mr Martin Walsh, Senior Ministerial Liaison Officer, Department of Planning, Housing and Infrastructure, providing a response to the supplementary question put to the department during the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024
- 27 October 2024 – Email from Joanne Warren, Public Officer, Huskisson Heritage Association attaching correspondence regarding a roundtable meeting of the Legislative Assembly Committee on Environment and Planning on 10 September 2024 for its inquiry into historical planning consents in NSW at Shoalhaven Library, Nowra
- 5 November 2024 – Email from Jo Davey, Secretary, Manyana Matters Environmental Association Inc to Chair, raising concerns about the Legislative Assembly Committee inquiry into Historical Development Consents.

Resolved, on the motion of Ms Munro: That the committee authorise the publication of correspondence received from Mr Walsh dated 15 October 2024 providing a response to a supplementary question during the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024.

4. Inquiry into the planning system and the impacts of climate change on the environment and communities

4.1 Consideration of the Chair's draft report

The Chair submitted her draft report entitled *Planning system and the impacts of climate change on the environment and communities*, which, having been circulated, was taken as being read.

Resolved, on the motion of Mr Buttigieg: That the following new paragraph be inserted after the introduction to Chapter 1: 'The committee acknowledges that the Legislative Assembly Standing Committee on Environment and Planning is currently conducting a public inquiry into Historical development consents in NSW and notes that it will also draw findings and recommendations on this issue for the NSW Government to consider.'

Mr Buttigieg moved: That paragraph 1.79 be omitted: 'The committee is concerned that given the evidence of the increasing frequency and intensity of natural hazards including bush fire, floods and coastal erosion the absence of direct and express reference to these matters in the evaluation of development and in the provisions for plan making under the Environment Planning and Assessment Act 1979 is of concern', and the following new paragraph be inserted instead:

'The committee notes the evidence of the increasing frequency and intensity of natural hazards including bush fire, floods and coastal erosion. Given this, the NSW Government should consider making express reference to these matters in the evaluation of development and in the provisions for plan making under the *Environmental Planning and Assessment Act 1979*.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mr Farlow, Ms Higginson, Ms Munro, Mr Primrose.

Noes: Mr Ruddick.

Question resolved in the affirmative.

Resolved, on the motion of Mr Buttigieg: That paragraph 1.80 and Recommendation 1 be amended by omitting 'that the NSW Government implement a public and transparent test for occasions where the Minister for Planning may consider requesting the Independent Planning Commission to conduct a public

hearing for any development' and insert instead 'that the NSW Government consider implementing a system for when the Minister for Planning may request the Independent Planning Commission to conduct a public hearing for any development'.

Resolved, on the motion of Mr Buttigieg: That the following new paragraph be inserted in 'Case study 11 – Wallum development, Brunswick Heads' after 'Mr Barrie said it appears Minister Plibersek will only consider the matter if it is referred by Minister Scully':

'The committee notes that Minister Scully in response to a question without notice from the Member for Ballina on 20 March 2024 stated: "The compliance unit of the Commonwealth department is also aware of those activities. My department has also been advised that the Commonwealth was aware of the Wallum Estate development and was in discussions with the proponent in the requirements and their responsibilities under the Commonwealth Act. This matter is now with the Commonwealth, which can complete its own assessment as to whether a controlled action has been carried out and, if it was triggered, undertake compliance action where there is an identified breach. With that in mind, I have asked my department to engage regularly with the Commonwealth on this matter".'

[FOOTNOTE: Hansard, Legislative Assembly, 20 March 2024, p 13 (Paul Scully).]

Resolved, on the motion of Ms Munro (on behalf of Mr Farlow): That paragraph 2.3 be amended by inserting at the end: 'It should be noted that the committee only received evidence from members of the community who had concerns about the developments, the subject of these case studies'.

Ms Munro (on behalf of Mr Farlow) moved: That paragraph 2.4 be amended by omitting: 'that are being placed under threat from inappropriate development' and inserting instead 'that are impacted by development proposals.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mr Farlow, Ms Higginson, Ms Munro, Mr Primrose.

Noes: Mr Ruddick.

Question resolved in the affirmative.

Resolved, on the motion of Mr Farlow: That paragraph 2.4 be amended by inserting 'it is argued' after 'are proposed to occur, where'.

Resolved, on the motion of Mr Buttigieg: That paragraph 3.112 be amended by:

- a) omitting 'but notes we have' and inserting instead 'and notes we have'
- b) omitting: 'Both letters say that they were informed that the "remit of the [i]nquiry was only to examine policy so solutions can be found into the future" and that the "Government has 'no appetite' to address community concerns about the impact of historical development consents on cultural, indigenous or environmental heritage or on community safety"' and inserting instead 'While the committee has agreed to publish the correspondence from the Manyana Matters Environmental Association Inc and Huskisson Heritage Association Inc and refers to it in this paragraph, the committee will not make any findings in relation to the intentions or conduct of the public inquiry into Historical development consents in NSW of the Legislative Assembly Standing Committee on Environment and Planning.'

Resolved, on the motion of Mr Buttigieg: That paragraph 3.113 and Recommendation 2 be amended by omitting: 'provide a mechanism for the reassessment of historical development consents' and inserting

instead: 'consider a mechanism with appropriate thresholds for consent authorities to assess whether a historical development consent should be reassessed.'

Mr Buttigieg moved: That paragraph 3.113 and Recommendation 2 be amended by omitting 'give power to all consent authorities to revoke or modify, and when in the public interest without compensation, historical development consents, where it can be demonstrated that the development will have an impact not identified or that has changed from the time of its approval' and inserting instead: 'consider giving power to consent authorities to revoke or modify historical development consents, where it can be demonstrated that the development will have significant social, environmental or cultural impact not previously identified or that has been changed from the time of approval.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mr Farlow, Ms Munro, Mr Primrose, Mr Ruddick.

Noes: Ms Higginson.

Question resolved in the affirmative.

Mr Farlow moved: That paragraph 3.118 be amended by omitting: ', but urges the NSW Government to consider going further in its response and follow the recommendation to place biodiversity conservation and nature repair ahead of planning and development' after 'conducted by Ken Henry AC'.

Question put.

The committee divided.

Ayes: Mr Ruddick, Mr Buttigieg, Mr D'Adam, Mr Farlow, Ms Munro, Mr Primrose.

Noes: Ms Higginson.

Question resolved in the affirmative.

Mr Farlow moved: That Recommendation 4 be amended by omitting: 'all of the recommendations of the statutory review of the *Biodiversity Conservation Act 2016*' after 'That the NSW Government implement'

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick.

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Mr Buttigieg moved: That:

- a) paragraph 3.119 be amended by omitting 'the government to implement guidelines' and inserting instead 'the government to consider implementing guidelines'
- b) Recommendation 4 be amended by omitting 'That the NSW Government implement' and inserting instead 'That the NSW Government consider implementing'

- c) paragraph 3.119 and Recommendation 4 be amended by omitting 'in relation to matters of national environmental significance' after 'the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)'.

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mr Farlow, Ms Munro, Mr Primrose, Mr Ruddick.

Noes: Ms Higginson.

Question resolved in the affirmative.

Resolved, on the motion of Mr Buttigieg: That paragraph 3.120 be amended by:

- a) inserting 'necessarily' after 'The committee believes that the current EP&A Act does not'
- b) omitting 'authorities to meaningfully consider' and inserting instead 'authorities to sufficiently consider'.

Resolved, on the motion of Mr Buttigieg: That paragraph 3.121 be amended by inserting 'consideration should be given to whether' after 'The committee believes that'.

Mr Buttigieg moved: That paragraph 3.123 and Recommendation 5 be amended by omitting 'that the NSW Government introduce legislation amending the Environmental Planning and Assessment Act 1979 or a State Environmental Planning Policy to make climate change central to the planning system, including:

- specifying the goals of protecting against and preparing for the impacts of climate change in the objects of the Environmental Planning and Assessment Act 1979
- making climate change a primary consideration in decision-making at all levels of the planning system including requiring consideration of the need to mitigate greenhouse gas emissions and adapt to the impacts of climate change as mandatory relevant considerations within the evaluation of development that requires consent, and within all planning instruments
- empowering councils to be the decision makers regarding planning decisions in their local areas, giving them the necessary powers to reject and/or challenge inappropriate development and to be able to refer their decision making powers to the Secretary.'

and inserting instead: 'that the NSW Government review the need for legislation amending the *Environmental Planning and Assessment Act 1979* or a state environmental planning policy to consider climate change within the planning system alongside the need to deliver development outcomes, including housing diversity, supply of industrial land and critical infrastructure.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mr Farlow, Ms Munro, Mr Primrose, Mr Ruddick.

Noes: Ms Higginson.

Question resolved in the affirmative.

Mr Buttigieg moved: That paragraph 3.124 and Recommendation 6 be amended by omitting: 'that the NSW Government should consider introducing a scheme to provide for this, including consideration of

arms length consultancy arrangements brokered and management through the NSW Department of Climate Change, Energy, the Environment and Water' and inserting instead: 'that the NSW Government consider ways to improve the independence of the assessment of planning proposals and development applications, without increasing the time taken to assess such proposals.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mr Farlow, Ms Munro, Mr Primrose, Mr Ruddick.

Noes: Ms Higginson.

Question resolved in the affirmative.

Mr Buttigieg moved: That:

- a) paragraph 3.127 be amended by omitting 'that the NSW Government investigate ways to support councils, such as increasing funding and/or seconding staff to assist in the assessment of large or complex planning proposals, as well as provide continuous and ongoing updates of all risk assessments' and inserting instead: 'that the NSW Government continue to support councils to undertake their functions in respect of addressing climate change where necessary, such as:
 - assessing the need for additional funding
 - making sure councils have appropriate skills to assess large and complex proposals'
- b) Recommendation 8 be omitted: 'That the NSW Government investigate ways to support councils to undertake their functions in respect of addressing climate change where necessary, such as:
 - increasing funding
 - seconding staff to assist in the assessment of large or complex planning proposals
 - continuous and ongoing updates of all risk assessments'

and the following new recommendation be inserted instead:

'That the NSW Government continue to support councils to undertake their functions in respect of addressing climate change where necessary, such as:

- assessing the need for additional funding
- making sure councils have appropriate skills to assess large and complex proposals.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mr Primrose, Mr Ruddick.

Noes: Mr Farlow, Ms Higginson, Ms Munro.

Question resolved in the affirmative.

Mr Buttigieg moved: That Recommendation 16 be omitted: 'That the NSW Government develop a framework for the governance and funding of planned retreat in New South Wales in situations where this may be a viable solution for communities or specific sites' and the following new recommendation be inserted instead:

'That the NSW Government continue to work through the NSW Reconstruction Authority to develop a state policy for managed relocation in situations where this may be a viable solution for communities or specific sites.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mr Farlow, Ms Munro, Mr Primrose.

Noes: Ms Higginson, Mr Ruddick.

Question resolved in the affirmative.

Mr Farlow moved: That Recommendation 17 be omitted: 'That the NSW Government give effect to the right of First Nations people to self determination and the principle of free, prior, informed and ongoing consent in the New South Wales planning system, including in relation to:

- development applications and planning proposals
- culturally appropriate consultation and
- protection of cultural heritage and connection to Country'

and the following new recommendation be inserted instead:

'That the NSW Government improve consultation with First Nations peoples and groups in the planning system, including providing opportunities for more culturally appropriate consultation and conducting consultation earlier in the process.'

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick.

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Mr Primrose moved:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, tabled documents, submissions, correspondence, proformas, documents received at site visits and answers to questions taken on notice and supplementary questions relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled correspondence, proformas, documents received at site visits and answers to questions taken on notice and supplementary questions, and correspondence related to the inquiry be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report on Tuesday 19 November 2024.

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mr Farlow, Ms Higginson, Ms Munro, Mr Primrose.

Noes: Mr Ruddick.

Question resolved in the affirmative.

5. Adjournment

The committee adjourned at 11.05 am, until *sine die*.

David Rodwell
Committee Clerk

Appendix 4 Dissenting statement

The Hon John Ruddick MLC, Libertarian Party

This dissenting report objects to the integration of climate change as a central focus within the NSW planning system. The Libertarian Party rejects climate change orthodoxy and calls for a swift removal of bogus climate science from the planning system entirely. The recommendations proposed in the Chair's Report will slow developments and further increase costs.

I am greatly concerned that climate science has been engineered and exaggerated by political actors and the renewable energy industry. I will refer to renowned author and environmentalist Michael Shellenberger who argues that climate science has been misrepresented by activists to promote a hyperbolic narrative of an impending climate apocalypse.

The Chair's report into the *Planning system and the impacts of climate change on the environment and communities* report demands a dramatic shift towards incorporating climate resilience and climate mitigation as primary objectives within planning processes. However, there is a growing body of scientific opinion, as highlighted by Shellenberger and other qualified scientists, that challenges the assumptions underpinning the foundation for the recommendations. This dissenting displays an understanding of environmental responsibility combined with economic priorities and scientific rigor whilst also shining a light on cynical alarmist interpretations of climate data.

Shellenberger highlights Assessment Report 6, known as AR 6 - a detailed report to the United Nations (UN) by the Intergovernmental Panel on Climate Change, prepared by Working Group One, which is the only group of climate scientists who report to the UN. Nowhere in the report is there anything close to what could be described as a catastrophic world-ending climate emergency.

Shellenberger says about his work in Working Group 1 that:

"Not in Working Group 1 of the IPCC is there anything mentioning an apocalyptic scenario and in fact all the trends are going in the right direction..."

"The primary or top scientific data, peer-reviewed scientific papers, doesn't support any extreme statements."

Schellenberger remarks that the tide is turning on climate change science

"Since 2020... there's been a trend... of many climate scientists themselves wanting to emphasize that climate change is not the end of the world..."

He continues:

"(This) illiberalism has seen the labelling of any political disagreement as tantamount to holocaust denial and other tactics that we now associate with cancel culture censorship... a kind of totalitarianism trying to control every aspect of our lives in the name of basically what is an apocalyptic religion..."

He points out this has always been the case:

"We saw this in the 1960s with the population scare. We also saw it with the nuclear scare in the 1970s. Then we see it in the climate change scare. So it's a really selfish discourse. It's a way of people trying to get societal power for themselves by frightening other people including children."

Schellenberger is concerned that calls of an environmental apocalypse are "anti-civilization" and the result of "rising secularism, rising narcissism and rising infantilism".

He then goes on to say that:

“The foundations of liberal Democratic Western Civilization are under attack by the radical or woke left with a view... that we need to radically reduce our energy and food consumption and actually and supposedly harmonize with the natural environment even though that involves expanding our environmental footprint (via renewables like solar and wind farms.”

He sees the movement of climate activists as “*spiritual seekers*”; the final chapter in his book ‘*Apocalypse Never*’ is called “*False gods for lost souls*”. This is because Schellenberger sees these activists who are in need some sort of purpose and in failing to find that purpose through conventional means, namely through work and love, have resorted to engaging in political extremism

He also sees this being a sees the climate change movement as:

“A creation of the media to create alarmism and to generate fear because fear sells newspapers”

To conclude, I am greatly concerned that the recommendations of this report are based on faulty and disingenuous ‘climate science’ that will make commercial and residential development longer to complete and cost more in the process.

