

**Submission
No 19**

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS
OF CLIMATE CHANGE ON THE ENVIRONMENT AND
COMMUNITIES**

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Submission

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

I am a Councillor on Northern Beaches Council and lawyer practising in the area of environment and planning law. This submission is written in a personal capacity and not on behalf of Council or my employer.

I believe there is much that the State Government must do to ensure that our planning laws are fit for purpose to deal with the very real and imminent threat of climate change.

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:

developments proposed or approved:

- 1) **in flood and fire prone areas or areas that have become more exposed to natural disasters as a result of climate change,**
 - a) Where properties carry an ordinary "R" zoning, it is possible to undertake development via CDC which does not include merits assessment around risk management. It is possible to undertake development via CDC on bushfire and flood prone lots. The criteria for CDCs should at least exclude those properties to ensure they undergo independent assessment by Council.
 - b) Some Councils have not undertaken comprehensive flood studies, and more government funding to allow Councils to undertake these studies would assist to identify potential areas of risk and plan accordingly.
 - c) The New South Wales Bushfires Inquiry and Federal Royal Commission into Disaster preparedness noted the need to incorporate bushfire risk management and prevention measures into land use planning and building standards. Progress on implementation of both the inquiry and Royal Commission continue to be slow.
 - d) Overall there continues to be a focus on seeking to manage bushfire risk through clearing, such as APZs and 10:50 rules, rather than through other measures such as planned retreat, cultural burning, and maintaining planting patterns which inhibit bushfire.
 - e) NSW should give serious consideration to a moratorium on any new greenfields development or upzoning on land which is considered as bushfire risk.
 - f) NSW should give serious consideration to inclusion of hazards as a criteria for determining zoning. For example, it is inappropriate that land which is bushfire risk should continue to be R2 and be able to rely on the Code SEPP to intensify use: a C3 or C4 zoning would provide a greater restriction on land use intensification.

2) in areas that are vulnerable to rising sea levels, coastal erosion or drought conditions as a result of climate change, and

- a) A key issue in terms of management of rising sea levels is the difficult interface between coastal management legislation and planning legislation. The current coastal management legislation almost entirely delegates to Council the role in managing local coastal environments, however, the expertise required to genuinely understand assess impacts on the design of coastal protection works is a niche and highly specialised area. It is unclear that all coastal councils would have the highly specialised in house capability to determine such applications.
- b) There is significant community interest in minimizing the extent of vertical seawalls that exist, given the potential impacts on, for example, surf behaviour and the visual amenity impacts.
- c) Standard Council notification processes for development applications apply poorly to coastal protection works DAs. It is typical that a DA on private land will only be notified to adjacent owners, however many Council Community Participation Plans do not include direction to staff to undertake a broader notification process where the DA concerns coastal protection works on private land which directly abut the beachfront. I have, for example, received complaints from community members that the DAs for the Collaroy Sea Wall were only notified to adjacent lot owners (who also had submitted DAs relating to their land or intended to) and not the broader community with an interest in the beachfront.
- d) One learning from the Collaroy Sea Wall is that our planning system and bureaucratic machinery is not adept at managing coastal management risks which are spread across private and public land. For example, a rock revetment form of sea wall is considered by local coastal engineering expert Angus Gordon as the most ideal design for reinforcing land along a coast. However, landowners consent is required from Crown Lands for the part of such a revetment which would be on public land. Building and maintaining such a revetment across private and public land was unable to be progressed within Crown Lands. As a consequence, the only 'way forward' was for a vertical sea wall where individual lot owners submitted individual DAs on their own land, sharing a common design.
- e) There appears to be no policy emphasis or funding available for planned retreat. As water front properties are expensive in value, it is seen as too difficult to acquire these properties. Instead, as with the Collaroy Sea Wall, considerable public funds have been spent to reinforce the economic investment of relatively well-off private landowners. This is despite there being the potential for significant public and environmental benefit by a policy of planned retreat which returned beachfront properties to the community and environment.

3) in areas that are threatened ecological communities or habitat for threatened species

- a) Unfortunately, the nature of our planning system is that we continue to put pressure on the environment through a system of a 'death by a thousand papercuts' where remnant habitat and tree canopy on private land continues to be eroded through greenfields housing development, 10:50 clearing rules, growing tastes for larger houses and smaller manicured yards, and a fairly flawed biodiversity offsetting scheme.
- b) Sydney and many regional centres across NSW continue to expand outwards rather than more wisely using infill development to meet housing targets. The outward expansion of means that our remaining pieces of urban habitat are continually being lost. These new suburbs tend to be car centric due to the lack of public transport infrastructure, contributing

to carbon emissions. The impacts of greenfields development are exacerbated by construction methodologies which totally level and clear sites, rather than creating subdivision plans designed around the natural topology and designed to retain native vegetation.

- c) In general, it is difficult to see how NSW can meet its 30x30 commitments and reverse trends towards extinction unless there is a moratorium on greenfields housing expansion.
- d) These problems are also exacerbated by weak biodiversity offsetting legislation, which allows for a net loss of bushland. Credits are not necessarily retired in the same or similar locations where clearing takes place, and may be retired somewhere entirely different in the state to where the loss takes place. The system may allow for greater protection of existing biodiversity values in the area where the credit is generated, but there is still a net loss of actual bushland. The biodiversity offsetting system must be reformed to guarantee there is no net loss of bushland, and that there is a geographical nexus between where credits are generated and the development which retires the credits.
- e) We should further consider how we are offsetting losses which fall short of BDAR requirements or the trigger points to require offsetting. There is a cumulative impact, for example, of loss of more ordinary tree canopy in suburbia, and growing tastes for larger houses with smaller yards and limited opportunities for deep planting. Again, planning rules should mandate no net loss of tree canopy or vegetation even for smaller developments, for example, through more flexible and simplistic local offsetting schemes for smaller developments to offset vegetation removal. Planning rules could also offer incentives (such as greater flexibility on height) if a development cleverly retains existing significant vegetation.

4) rapidly changing social, economic and environmental circumstances

- a) There is some need for our planning system to have greater capacity to flexibly respond to unanticipated crisis. The timeframe for assessment of planning proposals to change zoning or to approve a DA are significant, and there may be circumstances during particularly natural disasters where these rules may need to be expedited or temporarily departed from.
- b) There are provisions in the Infrastructure SEPP and Code SEPP which allow some greater flexibility for maintaining/repairing/demolition structures or infrastructure damaged by natural disasters. However this is primarily directed at expediting repair and restoration of existing assets.
- c) The standard instrument LEP only allows a temporary new use which is otherwise prohibited for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months. This would, for example, mean that Council would be unable to obtain a DA to temporarily use an RE1 zone community centre as crisis accommodation longer than 52 days: however, the time required to reconstruct areas following natural disasters may run into the months or years.
- d) There is also the related issue of “zombie DAs” approved during a regulatory environment where ecological risks and natural hazards were less known or adequately managed. Under the status quo, if a consent has been physically commenced prior to the lapse date, although the development may not be started in earnest (for example by obtaining a construction certificate) the consent will operate in perpetuity. While for the most part this issue does not result in particularly significant impacts, in the case of large subdivisions this becomes more problematic as the issue is not isolated to a single house but an entire housing estate. This may carry issues such as the approved conditions not including adequate provision for

infrastructure, a lack of consideration of natural hazards in a changing climate, and involve significant clearing or loss of habitat. As such, consideration should be given to a moratorium or greater mandate put on Councils to cancel approvals for large subdivisions where the subdivision has not been actioned within, say, ten years since the approval was granted.

5) 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

- a) It is important that LEPs and DCPs include consideration of promoting cool places in urban areas. As we hit high climate temperatures, it is likely that people will need public areas of respite that don't require them to spend money. For example, shaded parks and shaded community centres and libraries, and incorporating these elements into the public domain in areas undergoing urban renewal.
- b) Consideration may need to be given to creating mechanisms to require or promote upgrading of existing facilities or assets to provide these areas of respite. For example, establish grants funds to install passive cooling or air conditioning, or a mechanism to require upgrades (for example, comparable to triggers for upgrading to BCA standards or provide disability access).
- c) The State Government also needs to highly encourage or mandate use of blue-green infrastructure approaches, to maximise opportunities for groundwater discharge and filtration through vegetation. This also may mitigate the issue that stormwater running over concrete changes its pH to make it more neutral, with adverse impacts for water quality as native riparian vegetation favours slightly acidic pH whereas weed species favour more neutral water.

6) 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

- a) The State Government could better resource Councils to undertake strategic planning work to identify suitable places within their LGA which can accommodate additional development, particularly within walking proximity to high capacity train and bus routes. I would favour use of targets where the Council has flexibility in how to achieve those targets, than more heavy handed approaches where a SEPP overrides local rules without any strategic planning work underlying the outcomes.
- b) Planning rules should favour more compact, walkable, development patterns, rather than on greenfields expansion of suburbia.
- c) More flexibility should be allowed for owners to build stacked dual occupancies and multi-generational housing on a single title.

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