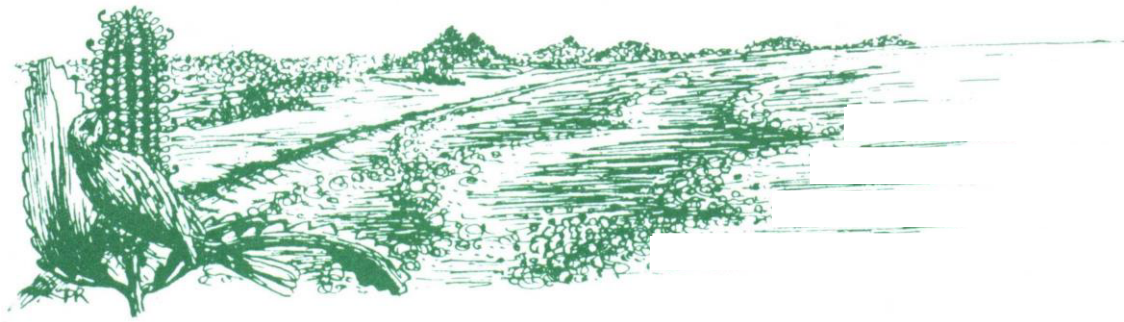


**Submission  
No 52**

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

**Name:** Mr Peter Maslen  
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2<sup>nd</sup> November 2023

Portfolio Committee No. 7 - Environment and Planning  
Attention: Chair Ms Sue Higginson MLC

**SUBJECT: PLANNING SYSTEM AND THE IMPACTS OF CLIMATE CHANGE ON THE ENVIRONMENT AND COMMUNITIES**

This submission is in response to the Portfolio Committee 7 inquiry into 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.

The following comment is made on the terms of reference:

(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,*

With extreme weather events being an accepted result of climate change flooding due to both stormwater and riverine flooding impacts have already become common. The intensity of these events has increased with record flooding occurring in many areas. The flooding which occurred in the Tweed, Richmond, Brunswick and Clarence valleys in 2022 are examples of impacts as shown below.



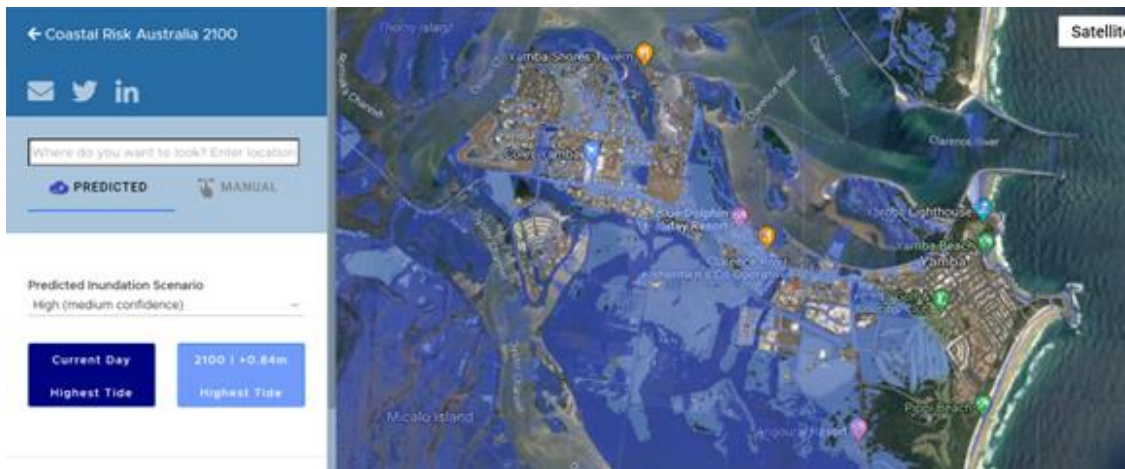
March 2022 Mullumbimby First time flooding of Burringbar Street

West Yamba is a classic example of poor planning under current conditions while having little regard for future impacts of sea level rise and extreme weather events due to climate change as demonstrated by the image below.



March 2022 Carrs Drive west Yamba flawed flood plain planning result with fill

Sea level rises predicted by the end of this century show that much of coastal New South Wales (NSW) will be inundated. Using Yamba as an example the image below shows how under current conditions areas planned for subdivision are negatively impacted by sea levels and along with significant areas of the town will be further impacted this century.



Yamba predicted seal levels by century end

Existing planning is addressing flooding and sea level impacts commonly fail to achieve sustainable outcomes which do not prevent negative impacts on the subsequent land use and the participants, be it residential, commercial or industrial. There is no real assessment of the predicted impacts caused by climate change and the predicted extremes in weather hat are already being experienced. Using west Yamba as an example, filling areas with the potential for flooding, to ensure reduction of impacts of flooding without addressing the impacts on existing areas and the ability to service the proposed subdivisions in flood events is poor planning and lacks responsibility for the residents and the surrounding existing community. Planning for the future impacts of climate change must prevent development in areas where there is a real and known negative impact due to the increased probability of flooding due to natural disasters caused by climate change.

Fire prone areas have increased in recent years from the perspectives of regularity, intensity and locality. High rainfall periods create increased growth of vegetation have been repeatedly followed by periods of below average rainfall resulting in drought conditions with the corresponding high fire danger. Planning in areas where topography and natural vegetation

have a high probability of creating a high risk of human and property damage must ensure that suitable buffers exist without resulting in loss of natural environmental values. Typical of poor past planning exist in the Blue Mountains where housing subdivisions were created along ridges above what is now the Blue Mountains National Park resulting in high risk locations for severe bushfire impacts. Even in areas where what appeared to be adequate boundaries, bushfires will have potentially disastrous impacts as occurred in Canberra in 2003. In such areas if subdivisions are allowed conditions must be applied to dwellings for construction in fire prone areas with enforcement of appropriate management of constructed facilities such as proximity of combustible materials near structures and appropriate fire protection infrastructure such as watering systems for use in the event of fire. Compliance with planning conditions are always problematic in most local government areas. Methods must be developed to ensure compliance with fire protection conditions.

The recent confirmation that the Warragamba Dam would not be raised is a good example of reviewing poor decisions with an appropriate outcome as the dam raising would not have guaranteed no flooding of proposed subdivisions in the Hawkesbury Nepean valley. The use of dams for the dual purposes of water supply and flood mitigation has been proven problematic in many situation sin Australia and through out the world. The impact of extreme weather events would only have further exacerbated the situation.

- (ii) *in areas that are vulnerable to rising sea levels, coastal erosion or drought conditions as a result of climate change,*

Sea level rise has been addressed above. Planning approvals where due consideration of sea level rise due to the effects of climate change must be reviewed fully using current modelling.

Coastal erosion is generally an issue where construction has been permitted in erosion prone areas typified at locations like the Belongil Beach, Byron Bay and Collaroy. In many situations existing dwellings have been upgraded from beach shacks which evolved historically sin areas such as Woolli. With the inevitable sea level rise and the increase in intensity of weather events the probability of increased and more dramatic coastal erosion will occur. Existing areas where coastal erosion exists should have a planned retreat plan to reduce the impact on individuals and cost to the community for flawed continuous attempts at holding back the effects of extreme ocean impacts. The repeated undertaking of various engineering solutions to existing erosion prone areas is an unnecessary imposition to the community. Future planning in areas such as these, must ensure that approvals for any residential or commercial structures are prevented.

*and*

- (iii) *in areas that are threatened ecological communities or habitat for threatened species.*

The existing loss of biodiversity with the resultant loss of species is occurring due to poor planning and management. It is typical of government to ignore future issues and not address these losses until they become critical. A typical example is the expense of protecting and enhancing koala habitat due to failings of government to protect habitat. The advent of climate change increases the need for suitable planning to protect and enhance habitat. There is no existing consideration of these losses under static climate conditions and no consideration is given to the potential impacts of climate change.

The ongoing reduction in forests and native vegetation in smaller lots with its cumulative effects, causing the loss of their ability to store the greenhouse gas. Burning trees release even more carbon into the atmosphere with any controls imposed by existing planning rules lack any compliance activity. Planning approvals commonly have a negative impact of the area of forests and native vegetation resulting in the above. Poor planning of forestry operations have been the standard practice continuing to encroaching into marginal public forests, commonly old growth forests, logging at a greater rate than the forestry industry is replacing it resources. This must change and the remnant publicly owned forests retained in a manner to ensure ecosystem protection and planning undertaken to ensure the increase of the forestry estate to maintain and enhance timber production. The combination of these practices



continues to reduce the biodiversity and area of ecological communities. There is little to no consideration by any authority to ensure the predicted negative impacts of climate change on ecosystems are addressed in current planning. Planning decisions across all levels of government must ensure the protection of existing ecosystems on micro and macro scales, as well as ensuring that connectivity through existing corridors and creation of corridor where they do not exist. Survey must be undertaken to ensure the data is available to make sure appropriate planning can occur. The existence and creation of corridors will allow plant and animal species to migrate to more favourable climate areas as climate changes. The major problem with this theory is that climate is changing at a greater rate than species can migrate, and the corridors do not exist.

*(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,*

A common failing of many local government development approvals is the lack of master planning and the consideration and assessment of the cumulative impacts of an approval. Similarly, many state government decisions have not adequately assessed and considered cumulative impacts of a decision.

A classic example of a poor planning decision is the rezoning of rural flood plain land (RU1 Primary Production zone) in Yamba for residential subdivision (R1 general Residential) known as the West Yamba Urban Release Area (WYURA). The lack of a master plan and limited consideration for the potential impacts of climate change is a cause for this area to be reviewed for amendment and potential revocation. The cost to the existing has been demonstrated by the extreme rainfall event of early 2022 where existing residents were negatively impacted as never before, due to the changes to stormwater flows during the extreme event caused by the fill in WYURA. Without a master plan the cumulative impacts of the subdivision of each lot is not being considered, either in the WYURA or the existing community. Efforts have been made by the community and by some Clarence Valley councillors to rectify this situation without success.

The potential for unforeseen costs to the future larger community is high. The costs to the wider community due to the costs to government in aid to impacted people and the general increase in insurance costs to the whole community. Responsible planning would alleviate many of these impacts.

*(ii) climate change and natural disasters,*

Recent natural disasters such as the 2022 floods have demonstrated that past planning decisions have not adequately considered climate change which has proven to result in more extreme events resulting in natural disasters with a greater impact than in the past. Any planning approvals that have not assessed the potential for this should be reviewed and amended or withdrawn. The throw away comments by council that have been given in planning panel inquiries that these issues have been considered, does not give confidence that adequate assessment has been made.

*(iii) biodiversity loss,*

The documented progressive loss of biodiversity across the state has been caused to a degree by poor planning decisions. Given the ever increasing knowledge on biodiversity and its value to society many development approvals need reviewing with improved environmental assessments. The lack of overall environmental planning for the protection and enhancement of ecosystems in strategic plans, development control plans, local environment plans and other planning documents leads to decisions that are detrimental to maintenance of biodiversity.

An example is the lack of knowledge existing on koala habitat in the Clarence valley resulting in poor approvals which have reduced koala habitat. Some work is being undertaken in this area with the New South Wales Koala Strategy but only in areas where potential urban expansion may occur. It will do nothing for identifying the koala habitat and the lack of connectivity between island populations. This lack of information leads to poor decisions and the need for review of some individual decisions.

and

*(iv) rapidly changing social, economic and environmental circumstances*

With the ever increasing human population resulting in an ever increasing need for additional residential subdivisions, the associated infrastructure and businesses, the impacts of development approvals are generally unknown as too many are considered in isolation to the wider environs. The lack of affordable housing which can only really be supplied by government, the lack of green infrastructure, lack of emergency planning and the loss of native habitats commonly result in an overall degradation of the amenity of a community. It is not uncommon for applications to neglect submitting a needs analysis with enclave developments out of context of adjacent land use with a corresponding loss of biodiversity, lack of public transport and public amenity. Many of these types of rezonings appear to be the result of vested interests in the past with no consideration for the issues which are and will be the result of climate change. A review of many approvals needs to be done to redress these inadequacies.

*(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*

There is limited evidence that current planning approvals pay more than lip service to the potential impacts of climate change. Numerous examples exist where subdivision approvals have been granted on flood plains and bushfire prone areas.

Flood plains must not be permitted to be used for any form of land use other than rural, recreation and conservation. The significant negative social and economic impacts are too great to permit inappropriate land use for the short term benefit of the developer. The prevention of other land uses in flood plains exists in many jurisdictions in Australia and should be mandated in state legislation.

In bushfire prone areas, the loss of biodiversity where natural bushland has been removed beyond the approved development instead of the development area incorporating adequate buffers within the development or the application not being approved at all. With heatwave conditions becoming more frequent, this outcome of climate change will result in higher frequencies of hospital admissions, necessitating the appropriate location of hospitals relative to any approval of residential and industrial areas.

In summary, the assessment of the potential impacts of climate change must be mandated with minimum criteria to ensure that assessment of any development application fully evaluates the potential impacts of climate change and conditions any approval or refuses an application if the potential impacts are too great.

*(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*

The ability for councils to change zoning in areas where negative impacts of climate change have a high probability must be available with limited opportunity of affected land owners to receive compensation. Areas nearby the unsuitable sites could be rezoned to permit higher densities with suitable protection of other aspects of the near area. In current times there is no excuse for low standard approvals that do not appropriately address all issues. Compromises always lead to

negative features of approved subdivisions or rezonings which cause unsuitable future social, economic and environmental problems.

(e) *any other related matters.*

Other aspects of planning regulations while not directly attributed to climate change prevent community input and the ability for the community to have input at all stages of planning approvals or reviews. These impediment need to be rectified so that the community including elected officials, can prevent full evaluation of applications especially when the application is referred to planning panels or courts. The following comments highlight some of these issues.

- Development applications with a cost estimate over \$30m are forwarded to the Regional Planning Panels (RPP) to be approved or refused. More times than not the RPP approves these developments.

Of concern is that the two Councilors representing Council on the RPP are excluded from RPP (as seen in the Planning Panels Code of Conduct, Conflicts of Duties point 3.19) if they have voted on a particular development in a Council Meeting or been present at a Council Meeting at which the development was discussed. Councilors would have a more thorough knowledge of a development and community members' concerns in relation to the development and should not be excluded. This prohibition of elected community representatives must be removed.

- Under the *EP&A Act 1979 s5.27*, review rights for third parties are restricted to the narrow category of State Significant Infrastructure (SSI) which includes large-scale industrial development such as:
  - - new education facilities, hospitals and correctional centres
    - chemical industries
    - manufacturing facilities
    - mining and extraction operations
    - tourist and recreation facilities
    - some port facilities
    - waste management facilities
    - energy generating facilities.

A proposal is considered state significant if it:

- is over a certain size
- is in a sensitive environmental area
- will exceed a specific capital investment value.

A third party can only bring judicial review proceedings against a SSI approval if the SSI is not for critical infrastructure. Any proceedings must commence within 3 months after public notice of the decision was given.

Actions brought by third-party objectors, community groups or public interest litigants serve an important purpose in administrative review processes, placing scrutiny upon controversial decisions and encouraging increased transparency in the decision-making process. The ability for community representatives to be able to have input at all stages of any development approval must be permitted by removing these restrictions. This is especially

the case where a low level of assessment occurs on many applications relative to the potential impacts of climate change.

I look forward to the report of the committee with a hope that the report will lead to the many flawed approvals being reviewed , modified or cancelled where appropriate.

Yours faithfully,

Peter G Maslen BE BSc