

Submission
No 72

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

Organisation: Kingscliff Ratepayers and Progress Association Inc
Date Received: 3 November 2023



KINGSCLIFF RATEPAYERS AND PROGRESS ASSOCIATION INC.
Established 1933

PO Box 1164, Kingscliff NSW 2487

Parliament of NSW
Portfolio Committee No. 7 – Planning and Environment
SYDNEY NSW 2000
Email: portfoliocommittee7@parliament.nsw.gov.au

Dear Ms Higginson

Re: Inquiry into the planning system and the impacts of climate change on the environment and communities

The Kingscliff Ratepayers and Progress Association Inc (KRPA) thanks you for the opportunity to contribute to the Portfolio Committee No 7 (Planning and Environment) inquiry into the planning system and the impacts of climate change on the environment and communities.

We would like to highlight two matters for consideration by the Committee:

- the impact and threat to our community from legacy/zombie developments as our area becomes more exposed to natural disasters, particularly floods, as a result of climate change, and;
- the ongoing protection of climate resilient State Significant Farmland.

Legacy/Zombie Developments

This scourge on coastal communities along the entire NSW coast, has been very well documented in the report 'Concreting our Coast: The developer onslaught destroying our coastal villages and environment' by Greens MP Cate Faehrmann. Our Association contributed to, and is featured in, this report.

A large area of currently vacant land within the Kingscliff township, with a DA approval dating back to 2008, was completely inundated during the 2022 flood events. The flooding of this land also contributed to the flooding of streets and homes within Kingscliff that had never previously been impacted by flood waters. There is a legacy DA approval to add extensive fill to this land, risking further inundation of existing homes. The proponent currently has an amended DA before Council to change the type of fill from sand to a non-specified imported fill.

You may recall that the Association appeared before the '*Select Committee on the Response to Major Flooding across New South Wales in 2022*' and highlighted the impact of legacy development approvals, such as the one referenced above. We have since continued to express our view that there should be no further development on flood plains and low-lying/wetlands until all recommendations of the two NSW flood inquiries have been implemented. We know that these flood events are happening more frequently and that each event is having a more devastating impact. Extending the built environment in these flood prone areas will exacerbate these terrible impacts.

As we stated during our engagement with the Select Committee, we need to look beyond solutions that are only focused on ensuring safe evacuation from flood zones. While this is a critically important element, consideration must also be given to the broader environmental, economic and psychological impact on our communities. While people may have been safely evacuated, the emotional impact on our community members who lost everything is as raw today as it was in February/March 2022. The financial cost of recovery to communities and governments is eye watering. We need to shift the emphasis from spending on flood recovery to spending on flood prevention and mitigation. This may require billions in compensation for acquiring land from developers, but we need to start somewhere. This cost cannot be met by Councils (and therefore ratepayers) and needs to be addressed at the State and Federal Government levels.

Despite the existence of highly consultative local planning frameworks, our Council and community have very limited leeway in responding effectively to legacy developments, most of which would not meet current standards and would likely be rejected. A two-pronged approach is required to address the issue of legacy developments – firstly addressing the inadequacies and threats associated with existing approvals; followed by changes to the planning system to ensure that local planning authorities can apply current frameworks to new developments.

By way of providing additional information, please find attached (attachment 1) for your consideration a joint letter from KRPA and our neighbouring community associations to the then NSW Premier regarding the concerns outlined above.

We request that this Committee consider any recommendations that would assist communities to ensure that the impact of climate related events are identified and addressed within a reasonable timeframe of the commencement of a development, hopefully putting an end to the relentless impact of legacy developments.

Note: The urban land release referenced above is not required to meet the Tweed Shire's housing targets as referenced in the North Coast Regional Plan 2041.

Protection of State Significant Farmland

The State Significant Farmland on the Cudgen Plateau provides high quality, drought resistant, rich volcanic soil for a variety of agricultural initiatives – one of the few such areas in the State. As the impact of climate change becomes more evident, this already limited and valuable resource will become more crucial as a food source.

Unfortunately, the previous State government rezoned a section of our SSF to accommodate the building of the Tweed Valley Hospital. While we accept that this occurred, our Association is passionate about protecting the remaining SSF on the Cudgen Plateau. We have had numerous 'iron clad guarantees' from our State Member and various Planning Ministers that there will be no further rezoning of any of the remaining SSF on the Cudgen Plateau. Our State Member has been particularly vocal and supportive of our community in this regard.

In providing feedback on the draft North Coast Regional Plan 2041 (NCRP 2041), our Association recommended that SSF be separated from the more generically termed 'Important Farmland'. This recommendation was aimed at removing any arguments from potential developers relating to *Appendix B: Urban Growth Area Variation Principles (Important Farmland)* in the NCRP 2041.

Unfortunately, this recommendation was not implemented which has now left our community fighting off the next land banker planning to seek a rezoning of SSF under the guise of affordable housing and other facilities.

For your information, please find attached (attachment 2) a copy of the KRPA submission to the draft NCRP 2041. The consortium associated with the insinuated Cudgen Connection development (referred to in the attached draft NCRP 2041 submission) recently referenced the provisions in Appendix B of the NCRP 2041 as a pathway to rezoning part of the SSF on the Cudgen Plateau. The threat is real.

We respectfully ask the Committee to recommend a minor change to the NCRP 2041, the lead planning framework for our region, to separate State Significant Farmland from Important Farmland, thus rendering the provisions of Appendix B irrelevant to State Significant Farmland.

Note: The facilities outlined in the proposed Cudgen Connection development are not referenced in any local planning frameworks or studies and the housing component is not required to meet the Tweed Shire's housing targets as referenced in the North Coast Regional Plan 2041.

Thank you again for the opportunity to contribute to the work of the Committee. Like many others, we firmly believe that there is an urgent need for planning reform within NSW and that the impact of climate change needs to be a key focus of this reform. We thank the Committee for the work being undertaken in relation to this.

Yours sincerely

Peter Newton
President
Kingscliff Ratepayers and Progress Association Inc.

W: www.kingscliff.org.au

13 October 2022

The Hon. Dominic Perrottet MP
GPO Box 5341
SYDNEY NSW 2001

Re: Development in Flood-Prone Areas and Legacy Development Approvals (Tweed Shire)

Dear Premier

We are writing as Presidents of the Kingscliff Ratepayers and Progress Association Inc., the Chinderah District Residents Association Inc., and the Tumbulgum Community Association Inc. – all community associations situated in the Tweed Shire on the Far North Coast. This letter and the issues addressed are also endorsed by the following community groups; Cabarita Beach/Bogangar Residents Association, Fingal Head Community Association Inc. and Tweed District Residents and Ratepayers Association.

Premier, we seek your support and intervention in halting, or at the very least pausing, any further development of flood prone, low-lying land in our communities. We also request your support in calling for a review and changes to State planning legislation/instruments to negate the creation of so-called 'legacy development approvals'.

In the interests of clarity, we will use Kingscliff as an example, on the understanding that any development in Kingscliff has a flow on effect for Chinderah and upstream at Tumbulgum. Other communities across the Tweed Shire face similar issues.

Kingscliff has areas of low-lying land historically slated and/or approved for development. This includes proposed developments which have been on the drawing board since the 1970s, some with approvals from 2008. These historic development approvals were naturally framed by the then contemporary views of land management, climate and the environment. Our knowledge and understanding of these matters has changed dramatically, particularly in light of the destructive floods of 2022.

As you are aware Premier, many members of the Tweed community were significantly impacted by the flood waters of February/March 2022 – many in places always considered 'flood-safe'. Almost eight months after the event, our communities are still trying to recover. We remain deeply concerned about the increased impact that further development of low-lying land will have on existing residential areas and, of course, on those who will move to the new areas should development proceed. The lowlands being referenced not only flooded in 2022 but also contributed to the flooding of adjacent built environments.

Our communities are united in the belief, based on extensive local knowledge, that should the proposed developments in Kingscliff proceed as planned we are simply doomed to repeat the cycle and endure even greater and more devastating impacts. The catastrophic flood events of 2022 clearly illustrate that real and substantive change needs to occur including the way in which developments are considered and approved.

We fully understand that, should the proposed residential and industrial development be halted, there would be a significant cost to government in acquiring the land from the current landowners. However, balanced against the cost associated with the February/March 2022 floods alone, this may prove to be the bargain of a lifetime for all levels of government. Certainly, from the moral

perspective of any government facilitating locating more people in harm's way and the psychological and social impact on people and communities, stopping these developments as they are currently proposed would be a winner.

Understandably, the Tweed Shire Council is hamstrung in providing any reassurance to our communities. Because of the requirements Council must meet under the State planning legislation and regulations, they have no option but to proceed with 'business as normal' in relation to these developments. Of course, since the 2022 floods, life is anything but 'normal'. Only the state government, through the planning legislation, has the power to provide relief for our communities. It is for this reason that we implore you to consider our request to immediately halt the development process related to these flood prone lands at least until we have clear information from the recommendations of the two flood inquiries and from the CSIRO Northern Rivers Resilience Initiative.

To date, in addition to our submissions and presentations to the two flood inquiries, we have had personal visits from Ms Cate Faehrmann MLC, Mr Chris Minns MP and the Hon John Graham MLC who have spoken with flood affected residents and viewed first-hand the areas of concern in Kingscliff. All have lent their support to the recommendations from the flood inquiries and to your early post- flood comments that there should be no further development on flood prone lands. The safety of our residents, the social and economic impact of major flooding and the need to at least pause further development of flood prone lands is indeed an issue that crosses all political boundaries.

We have also recently met with our State Member, Mr Geoff Provest MP, to discuss these flood related and legacy development approval issues and our concerns. Having been fully involved 'on the ground' from the initial rescue effort and through all stages of recovery, Mr Provest clearly understands and shares the concerns we have raised above. He has given an undertaking to present our issues to the Minister for Planning on our communities' behalf.

In support of our communities and with regard to existing and future development in flood-prone locations, we respectfully ask you, Premier, to:

- Immediately halt future development and approvals on low lying, flood prone land in the Tweed Shire until the findings of the two flood inquiries and the CSIRO Northern Rivers Resilience Initiative have been considered and actions determined by both state and local government.
- Conduct a review and make suitable changes to State planning legislation and instruments to effectively remove the ability for developers to hold legacy development approvals. This might include a deferred zoning model with strict timeframes for commencement once zoning has been applied.

In considering our request, it is worth noting that despite the current housing crisis, the Tweed is in an enviable position regarding the need to push forward with housing development. Three major developments (Kings Forest, Cobaki Lakes and Donloe Park) have the capacity to allow the Tweed to meet the housing growth targets outlined in the North Coast Regional Plan (2036) and beyond. This allows both local and state government an opportunity to pause and make thoughtful decisions which reflect the findings of current flood research and inquiries. The Tweed could in fact provide a perfect model for other areas of the State to follow.

Thank you, Premier, for your consideration of the critical issues facing our communities should development on flood-prone land continue without substantive change.

We look forward to your response and extend an invitation to you to visit our community to view first-hand the areas under discussion and to hear our residents' concerns and ideas.

Yours sincerely,

Peter Newton
President, Kingscliff Ratepayers & Progress Association Inc.

Jenny Kidd
President, Tumbulgum Community Association Inc.

Felicia Cecil
President, Chinderah District Residents Association Inc.

Supported and endorsed by:

Cabarita Beach/Bogangar Residents Association
Jenny O'Brien, President

Fingal Head Community Association Inc.
Larry Woodland, President

Tweed District Residents and Ratepayers Association
Lindy Smith, President



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PO Box 1164, Kingscliff NSW 2487

RE: Response to the Draft North Coast Regional Plan 2041

The following submission is provided by the Kingscliff Ratepayers and Progress Association Inc (KRPA). The Association represents the communities of the 2487 postcode including the residents and ratepayers of Kingscliff, Cudgen, Chinderah and Fingal.

Generally speaking, we believe that this draft provides a logical progression from the North Coast Regional Plan 2036 and the aspirations support our highly consultative local planning documents.

The Association would like to make a strong recommendation regarding an amendment to Objective 8 and consideration of our comments regarding Objective 5 of the draft.

1. Regarding Objective 8 'Support the Productivity of Agricultural Land':

The Association strongly recommends that the draft plan clearly differentiates State Significant Farmland from 'Important Farmland'.

Our particular concerns are for the ongoing protection of the State Significant Farmland (SSF) on the Cudgen Plateau. KRPA believes that it is critical that State Significant Farmland be identified separately to 'Important Farmland' in the draft North Coast Regional Plan 2041. This could be achieved within the draft by adding another category (State Significant Farmland) to the legend for 'Figure 4: Important Farmland' (p47 of the draft) and by including an additional explanatory statement to the discussion of Objective 8.

The Northern Rivers Farmland Protection Project 2005 provides a clear and concise description of the importance of this differentiation, which is still as true of the Cudgen SSF today, and may serve as the basis of the additional explanatory statement.

*'The distinction between state and regionally significant farmland was established to recognise the diversity within the region's 'important' farmland. There was a need to distinguish between **very high quality and unique agricultural soils/lands** and other lands that were also important to agriculture, but which were more extensive and less productive generally per unit area.'*

The distinction allows greater flexibility in planning controls. Rules about urbanisation of farmland can afford stronger levels of protection to smaller unique significant areas compared to expansive areas that contain a more diverse range of soils, landscapes and opportunities for agriculture.'

Northern Rivers Farmland Protection Project 2005 (p11)

Section 9.4 of a Department of Planning and Environment Ministerial Directive (commenced on 1 March 2022) supports our communities objectives related to this request. The Ministerial Directive also highlights the importance of the contents of the NCRP as a reference point for decision making in these planning matters. For consistency and unequivocal protection of SSF, we believe that the mapping of Important Farmland in the draft needs to mirror the differentiation of SSF as indicated in the Northern Rivers Farmland Protection Project 2005 and the recent Ministerial Directive.

Further Justification

Adjoining Kingscliff, and an area that is represented by KRPA, is the area of State Significant Farmland (SSF) on the Cudgen Plateau. A strong focus for KRPA over the years has been the protection of this precious asset, which is constantly under attack from development proposals.

While members of the Kingscliff/Cudgen communities fought hard against the loss of SSF to the Tweed Valley Hospital (TVH) development - led by some of our amazing generational farming families - we have mostly accepted the outcome. This level of acceptance has been reached in a large part due to the ongoing guarantee from the NSW Government, in particular our State Member, Mr Geoff Provest, that there will be no further development on the SSF at Cudgen. Media reports from February 2022 (see link below) confirm that both the NSW Planning Minister, Mr Anthony Roberts, and Minister for Agriculture, Mr Dugald Saunders, support Mr Provest's position.

<https://www.echo.net.au/2022/02/planning-ministers-support-sought-to-protect-cudgen-state-significant-farmland-from-development/>

Despite all the guarantees and the very strong support of the Tweed Shire Council for the protection of the SSF at Cudgen, developers are still proposing non-agricultural uses for this land. A current proposed development on a parcel of land to the western boundary of the TVH, referred to as 'Cudgen Connection' provides a current case study and exemplifies community concern for ongoing assaults by developers on the Cudgen SSF.

The consortium associated with 'Cudgen Connection' is currently spruiking a proposed development for this site on a website of the same name and in multiple advertisements and presentations. It is very important to note that, in addition to the fact that the land in question is zoned as SSF, the proposed Cudgen Connection development is not identified in any of our local planning instruments including the Kingscliff Locality Plan or the Tweed Tweed Local Environmental Plan 2014.

The consortium is insinuating, to our community, that this proposal is a done deal. The arguments being put forward by the consortium rely heavily on a number of the 'Important Farmland Interim Variation Criteria' included in the North Coast Regional Plan 2036 (p86) including 'the land ... is not capable of supporting sustainable agricultural production'. Local farmers and the community have identified a range of suitable agricultural activities for this particular parcel of SSF, all of which contribute to the goals and objectives of the NCRP 2036 and the draft NCRP 2041.

Alarming, NSW Health Infrastructure recently accepted a consultant's report that included the Cudgen Connection's proposed development as a compelling reason to reduce the required buffer zone for the TVH development. The threat is real.

The differentiation requested in Objective 8 of the draft would 'withdraw' SSF from the various considerations outlined in Appendix B 'Important Farmland Interim Variation Criteria' (p86 North Coast Regional Plan 2036) and Appendix B: Urban Growth Area Variation Principles – Important Farmland (p139 of the draft). While these variation criteria and principles provide a level of reasonable flexibility around 'Important Farmland', we firmly believe that they should not be applicable to areas designated as SSF. The simplest way to achieve this is to clearly differentiate SSF from Important Farmland. Given the very small amount of SSF, compared to Important Farmland, SSF deserves unequivocal protection from any use other than agricultural activities.

Our strongly recommended change to Objective 8 will enable communities to advocate and government to enable the strengthening of legislation around SSF and provide a pathway to other processes which incentivise the agricultural use of these lands while disincentivising land banking and developer interest.

Our community is heartened to see that the draft (p44) acknowledges that the preservation of our agricultural land is not limited to economic factors. For the Kingscliff/Cudgen community the *'scenic and environmental qualities attributed to rural lands used for agriculture'* unequivocally do *'make a significant contribution to the character and natural beauty of the region'*. After many, many years of fighting against various proposed developments on the SSF at Cudgen, our community would like to feel completely confident that these precious farmlands are not up for grabs and will continue to develop as a significant food bowl for current and future generations.

As a community, we feel as though we've been involved in a never-ending game of 'Whack a Mole' in our attempts to stop non-agricultural development on the Cudgen SSF. We want to stop looking over our shoulder knowing that our precious SSF is, without exception, protected. Our community sees the clear differentiation between 'State Significant Farmland' and 'Important Farmland' in the draft NCRP 2041 as a giant step forward in achieving this goal.

2. Regarding Objective 5: 'Manage and improve resilience to shocks and stresses, natural hazards and climate change'.

We acknowledge and appreciate the references made in the plan to the devastating floods of 2022, where like other communities we experienced unprecedented levels of flooding and resultant trauma. We are grateful that the NSW Government has acknowledged that development in flood prone areas requires a different mindset. We also welcome the fact that recommendations from the flood inquiries will be included in the final version of the draft.

Like other communities of the North Coast, our Council and community is dealing with legacy issues associated with historic approvals that were granted in the absence of appropriate flood data. Some of the land approved for these so called 'zombie developments' experienced high levels of flooding during the 2022 flood events. Currently our Council, and therefore our community, is locked into what now might be considered as inappropriate zoning or approvals given the extent of the 2022 flooding.

While a strategic plan at this level may not be the appropriate place to address these concerns, and we acknowledge that at the very least it would only be one of many elements that would contribute to managing future risks, it would be remiss not to flag what is a grave concern for our community.

We are familiar with a number of other NSW Planning documents and packages which address development on flood prone land including the 'Flood Prone Land Package' and 'Planning for a more resilient NSW' document. These documents, although developed prior to the major events of 2022, do provide excellent guidance regarding the need for broader community input to determine 'acceptable risk'.

All of this aside, should there be recommendations from the flood inquiries that could contribute to at least an acknowledgement of the issues of legacy approvals and zoning for Council and the community, then an inclusion of a relevant strategy would be most reassuring. For example, the following recommendations from the 2022 NSW Flood Inquiry may provide an opportunity for the draft to support Councils trying to address legacy issues associated with historic approvals:

- 19. Recommendation – disaster adaptation plans for all towns
- 20. Recommendation – floodplains as assets

- 21. Recommendation – simplify the planning system disaster provisions
- 23. Recommendation – housing and development funding options

We acknowledge that this issue may also be addressed in other areas and actions from the draft plan. For example, during the implementation of Action 8 (Undertake housing and employment land reviews for the Northern Rivers and Mid North Coast subregions to assess future supply needs and locations) perhaps consideration could be given to managing legacy approvals.

We appreciate the opportunity to provide feedback on the draft North Coast Regional Plan 2041. I would welcome an opportunity to discuss our submission in greater detail and can be contacted on 0409 778 642.

Yours sincerely
Peter

Peter Newton
President
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