

**Submission  
No 108**

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

**Name:** Mark Snell

**Date Received:** 3 November 2023

---

SUBMISSION TO

NSW Parliament  
Portfolio Committee 7 – Planning and Environment

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

**Mark Snell**

Woy Woy  
3 Nov 2023  
(Updated: 5 Nov 2023)

## SUMMARY

This submission argues that having a robust and workable planning system is the best way to ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes, as well as to achieve the other benefits of well-planned land use.

A planning system with integrity supports a pluralist liberal democracy, where a maximum diversity of activities and interests is possible while collective needs and priorities are met.

Climate change is just one factor in this mix, but one that it could be argued does test the capacity of planning systems.

Before extending the powers of councils (for example, to review and amend development approvals), it is worth reviewing what the current system can do, and what should it have been doing already, and why hasn't it.

This submission is written with the benefit of experience of the effect of the NSW planning system on the Woy Woy Peninsula over 30 years, an area particularly vulnerable to climate change.

Even this limited localised experience highlights the shortcomings: Many aspects of the current system either undermine its integrity or allow actions that would, and have, undermined it locally.

The scientific basis for climate change has been known for well over 50 years, as has its expected consequences.

NSW law has made reference to Ecologically Sustainable Development for more than 30 years (since s6, Protection of the Environment Administration Act 1991).

For about 20 years, around 50 NSW Acts and Regulations have referred to Ecologically-Sustainable Development.

The committee should ask why these have not worked to protect people and the environment from the risks of flood, fire and other natural disasters, from rising sea levels and coastal erosion, and to protect endangered ecological communities.

More importantly, it should ask how: How, despite all these provisions and good intentions, have decisions been made that have made us and our environment all the more vulnerable? What are the mechanisms used and processes followed that have made them ineffective?

It is only after examining these that any proposals for change can be assessed for their likely effectiveness.

A case study of the Woy Woy Peninsula would show that the nature of the planning system and its associated processes at both a State and a local government level have combined to leave the Peninsula in a vulnerable position.

The degree of complexity of the issues is high and it seems that for too many of those involved they "do not bear thinking about" and have been consistently put in the "too hard" basket or are treated simply as a matter for hand-wringing.

I would ask the committee to delve into these complexities as part of its deliberation.

## **WOY WOY PENINSULA: A case study**

This submission requests an examination of the Woy Woy Peninsula as a case study.

The Woy Woy Peninsula:

- Is vulnerable to climate change
- Is lacking resilience to deal with it
- Lacks suitable planning provisions
- Suffers from poor planning practice

Among the expected effects of climate change are more variable, volatile and extreme weather, including:

- Higher and lower rainfall years
- Higher rainfall intensities
- Stronger winds/storms
- Hotter summers
- Sea level rise

These are expected to manifest themselves on the Peninsula with:

- More frequent and deeper flooding
- Greater heat island effect
- More storm damage
- Greater tidal inundation and coastal erosion

Among the indirect consequences are:

- Greater energy consumption
- Greater health and financial impacts, particularly on the poor and people renting
- Greater mortality, particularly among the elderly
- Lower quality of life generally, with a less comfortable climate

Among the immediate actions required on the ground are:

- An increase in tree canopy
- An increase in open space
- Implementation of an integrated Peninsula-wide drainage program
- An increase in overland drainage opportunities
- Implementation of a comprehensive UCSW EEC program
- Implementation of an integrated creek maintenance program
- Community-driven emergency planning, including attention to access and local facilities

On-going issues which need to be addressed include:

- The Rule of Law in planning: To ensure planning provisions say what they mean and mean what they say, that they apply equally and consistently to all, and that planning justice is available to all.
- Truth, Honesty and Openness in planning: To ensure the process is open to community scrutiny and participation, and that it serves the community, and that it is structured to minimise opportunity for corruption.
- Responsiveness to local community needs and the local democratic process.
- Integrity of the planning system, and processes to reinforce its integrity.
- Speed of response to and acting with foresight to climate change pressures.

## WOY WOY PENINSULA: Vulnerable to climate change

The Woy Woy Peninsula is defined in two Level 2 Statistical Areas: Woy Woy – Blackwall and Umina – Booker Bay – Patonga.

Despite a strong sense of community identity and common usage, it does not exist according to the Geographic Names Board.

The majority of the 40,000 population of this area – coincidentally the median NSW local government size – lives on the Woy Woy sandplain.

These people represent around just 11 per cent of the population of the Central Coast Council local government area.

The sandplain of around 14 square kilometres is less than seven metres above sea level, with its periphery already subject to tidal inundation.

Hydrophobic sandy soils (and a high water table) mean it is more prone to flooding, particularly from extreme rain events.

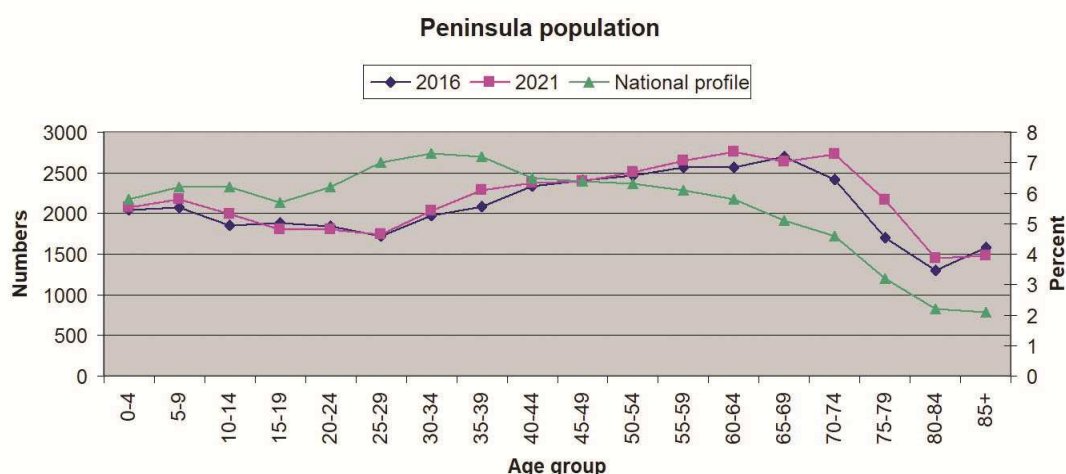
Surrounded by National Park, it can be isolated by and its fringes affected by bushfire.

As a coastal settlement, it is also subject to storm events and surges, arising from "east coast lows".

With half of the sandplain zoned R1, it has the greatest concentration of medium-density-zoned land on the Central Coast and extensive hard-surface areas.

It suffers a heat island effect of up to five degrees, with tree canopy estimated at less than 10 per cent, and reducing.

With a population profile highly skewed to the elderly, with high numbers of people with disabilities and a median income at 80 per cent of the State figure, its population is more vulnerable than most to the consequences of climate change.



## **WOY WOY PENINSULA: Low resilience for a changing climate**

The physical features of the Peninsula which make it vulnerable to climate change also result in it having low resilience.

Without intervention, the altitude of the Peninsula makes it vulnerable to tidal inundation and sea level rise. Some tipping-point scenarios suggesting a seven metre sea level rise would see the entire Woy Woy sandplain under water – returning it to the river delta it was in past millennia.

The lack of tree canopy cover results in the heat island effect and a further reduction in the canopy will further contribute to the effect.

The current drainage infrastructure is such that it has been estimated that it is not viable to enforce the normal one per cent flood standard, and a 10 per cent flood standard has been adopted instead.

Other infrastructure that does not appear to have taken climate change into account includes major access roads, emergency facilities and tourist parking and traffic.

The council has adopted a number of strategies with grand-sounding objectives, including a Greener Places Strategy, a Climate Change Strategy and a Woy Woy Floodplain Risk Management Plan.

But these remain as words, without any current meaningful climate-change actions, no budget allowance and no apparent intention to implement them.

With the recent amalgamation and the council's financial crisis, environmental spending, infrastructure and assets were the target with sell-offs proposed on pocket parks – which ultimately did not occur on the Peninsula.

Council-funded bushcare projects were among the targets, including those maintaining the Umina Coastal Sandplain Woodland endangered ecological community.

Despite claims by the council that it has recovered from its financial crisis, the Council's total tree-planting budget for the whole region remains at just \$40,000.

This is indicative of the actual priority given to mitigating and adapting to conditions caused by changing environmental and climatic conditions.

## Unsuitable and unchanging planning provisions

Meanwhile, Central Coast Council is going backwards with its planning provisions for the Peninsula. Tree canopy provides a useful example.

The provisions created for the Peninsula as the result of the Peninsula Urban Directions Study undertaken 20 years ago are far more appropriate, particularly in relation to medium density development, than those the council introduced (while under administration) just last year.

The previous provisions allowed objectives to be met for boundary trees to be retained, new trees planted and "leafy gardens" to be grown by way of setbacks ensuring adequate deep soil area, as well as private open space.

New planning provisions introduced in May last year saw the reduction of side setbacks from 2.5 metres to 900mm, making it impossible to grow substantial trees (and resulting in the notorious Hamlyn Terrace treeless subdivision).

A number of strategies and plans more recently adopted by the council have recommended changes to planning controls that would help the Peninsula cope with changing climatic conditions. There is no indication that there any intention or a budget to proceed with these.

The Central Coast Local Planning Panel has called on the council undertake a strategic planning review to address inconsistencies in the planning provisions for the Peninsula, but the council does not appear to have responded to this.

A strategic planning review of the Peninsula that had been independently scheduled by the Council to occur early this year appears to have been abandoned and no longer appears on its recently-released 12-month public consultation list.

The Peninsula Urban Directions Strategy did not fully meet its objectives, but its provisions are certainly better than the current provisions.

A strategic review should be willing to learn from past experience, but there is no indication that an assessment of the effectiveness of the Peninsula Urban Directions Strategy will take place.

## **WOY WOY PENINSULA: Planning practice on the Peninsula**

The provisions created for the Peninsula as the result of the Peninsula Urban Directions Study undertaken 20 years ago with extensive community consultation are far more appropriate, particularly in relation to medium density development, than those the council introduced last year.

The objectives of the previous provisions were to keep medium-density areas as leafy, treed neighbourhoods and to encourage the consolidation of lots for well-designed dwellings, and to put an end to the universally-deplored "gun-barrel" unit developments with fence-to-fence concrete and hard surfaces.

The objectives were implemented by way of setbacks to ensure adequate deep soil area, as well as private open space, that would allow boundary trees to be retained, new trees planted and "leafy gardens" to be grown.

With the amalgamation of Gosford and Wyong Councils six years ago, it was decided to adopt "lowest common denominator" planning provisions, which were finally introduced in May last year.

At that time, it was claimed these would be short-lived and be replaced with a place-based "comprehensive" set of planning provisions. These are nowhere on the horizon.

The new provisions have seen the reduction of side setbacks from 2.5 metres to 900mm, making it impossible to grow substantial trees.

These provisions have also facilitated a return to the era of "gun-barrel" developments, now of two storeys.

However, it is not only the provisions which have proved to be inadequate but so has their implementation.

Not long after the Urban Directions strategy provisions were implemented, the State Government introduced the opportunity for "variances" (clause 4.6) to the Local Environment Plan.

At the time, the rationale was that if an applicant could demonstrate that the planning objectives could be met with variation to the "numerical" measures of up to 10 per cent, the development could be approved.

The same principal became applied to Development Control Plan provisions, but without the need for a Clause 4.6 statement.

With the introduction of the variation practice, the planning provisions no longer said what they purported to mean.

New planning provisions were introduced without any explanation that they actually meant 10 per cent less than what they stated. (This would not be tolerated under consumer law.)

This makes realistic feedback from the community almost impossible during the consultation process.

In practice, applicants soon came to claim a 10 per cent variance as of right on the bland assertion that the planning objectives were met.



Council planners likewise accepted the applications with a similar simple assertion.

Neither gave any explanation of how or why a proposal had been asserted or assessed to meet this criterion.

These approvals then became used by planning consultants as claimed precedents for the approval of other non-complying applications, without any demonstration of any similarity to the application in question.

This practice continues now on the Peninsula.

On many occasions, variations were approved that seemed to exceed 10 per cent.

Central Coast Council staff have justified this on the basis that Development Control Plan provisions were "guidelines only" and were discretionary – unlike the Local Environment Plan, which is regarded as enforceable.

The importance of this is that the detail of planning provisions, particularly with climate change implications, are contained within the council's Development Control Plan.

Until the Development Control Plan is regarded as enforceable, it will not be possible to implement effective climate change measures.

The Development Control Plan is hundreds of pages thick and it contains the important detail, which spells out the implementation of the planning objectives for a community or locality.

It is clear that much thought was put into writing it, and at great expense both in terms of consultants' fees and council staff time. Consultation in its drafting consumed hundreds of hours of residents' time and thought.

Why bother to go to this trouble and expense if it can be disregarded? Why have a DCP at all?

The discretion granted to regulatory planning staff and the lack of the ability to hold them to account seems to encourage them to regard themselves as above the law, or at least the DCP.

For example, on other occasions, decisions seem to have been made on the basis of foreshadowed changes before they had actually been adopted.

## WOY WOY PENINSULA: Possible immediate actions

Some specific immediate actions have already been identified by council consultants and recommended and adopted to various degrees.

In many cases, these have resulted in the adoption of grand-sounding "strategies", which frequently fail to meet the definition of a strategy in that there is no definite long-term aim, there are no definite actions, there are no time limits and there are no projected budgets:

The strategies are written with rhetoric capable of wide interpretation (sometimes contradictory), which commit the council to nothing and leave it open to council staff to make ad hoc decisions on implementation as they wish at the time.

Here are some actions that could be implemented immediately, pending a wider review.

### 1. Changes to planning provisions

For greener, cooler, walkable neighbourhoods (inc Greener Spaces recommendations)

- Canopy tree retention and planting provisions
- Building materials – solar reflective index
- Adoption of Naters instead of Basix, with a star rating at least in line with the national average
- Streetscaping standards including both road reserve and private setback from road frontage
- Including hard-surface provisions

For flood mitigation (inc Floodplain Management recommendations)

- Minimum open space and water flow provisions

For heat mitigation in medium-density areas

- Re-introduce Peninsula Urban Direction Strategy setbacks, pending a review of the success/failure factors of those provisions for maintaining tree canopy and vegetated "leafy suburbs".

### 2. Undertake strategic planning review of the Peninsula's suburbs

- As recommended by the Central Coast Local Planning Panel.
- Originally scheduled by Central Coast Council to occur this year, but now abandoned.
- Frame a community-level Peninsula Community Strategic Plan and a Peninsula Local Strategic Planning Statement as part of this exercise.

### 3. Creation of an explicit open space policy for the Peninsula

### 4. A formal three-way adoption of a UCSW management plan – between Central Coast Council, DPIE and the community

### 5. Publication of a formal drainage action plan for the Peninsula

- Providing an overview of the current state of the drainage system
- Implement a 10 per cent flood drainage capacity (floodplain study recommendations)
- Identifying a plan of action with priorities, and the associated budget
- Creating a drainage hierarchy with known drainage flows

### 6. Implement a budgeted fully-fledged creek maintenance plan, using bush regeneration methods – both as integral to effective drainage and for protection of endangered bushland

## **WOY WOY PENINSULA: On-going issues**

An examination of the evolution of the NSW Planning System and its implementation on the Woy Woy Peninsula since the turn of the century reveals the following issues which should be explored and addressed:

### **1. The planning system fails to meet the basic criteria of the Rule of Law:**

- a) That the law and associated regulations and rules do not say what they mean and mean what they say.
- b) They allow non-compliance and variance, so the provisions are not followed. To the ordinary person, new proposed provisions purport one thing where they actually mean another.
- c) The variations are permitted using subjective judgement (which is not demonstrably consistent) rather than objective assessment, opening opportunity for unfairness and corruption.
- d) The Development Control Plan, which purports to provide planning controls, is treated as discretionary "guidelines" only, which council planning staff feel free to ignore – another opportunity for unfairness and corruption.
- e) Planning policies and strategies, in particular, and other planning instruments are laced with (and sometimes comprise entirely) emotive undefined and ultimately meaningless rhetoric, which can be used to justify any state/local government action - to the extent that opposite actions can use the same rhetoric as justification.
- f) Planning law is not direct enough, and therefore has become supported by a body of "case law" which is simply not accessible to the ordinary member of the community.
- g) The costs of enforcing the law is disproportionately expensive for, and often simply unavailable to, ordinary community members.

### **2. The planning laws fail to meet standards of Truth and Honesty, and encourage lying and meaningless box-ticking with unrealistic standards at all levels of implementation**

- a) For example, expecting "ecologically-sustainable development" encourages applicants to lie, claiming their proposal is ecologically-sustainable without substantiation, where often the developments are far from sustainable across a variety of measures (and often justifiably so).
- b) These include "heads of consideration" for development applications, such as "In the public interest", "economic benefit", "social impact". Frequently these are simply asserted to be met, with no requirement for the application to demonstrate it.
- d) Council planning assessments simply agree that these "heads of consideration" are met, without explaining the logic or rationale for coming to that conclusion.
- e) The practice of requiring applicants to hire consultants undermines an independent and objective assessment, when applicants rightly expect that "he who pays the piper calls the tune". The common unquestioning acceptance of these reports by regulatory planners further undermines the truth and veracity of the assessment.

### **3. Local communities have no meaningful ability to participate in and control the local planning process in that:**

- a) They have little opportunity to create or shape planning provisions at a local level,
- b) They have few avenues to oversee their implementation, and cannot make "merits" appeals,
- c) They have little ability to enforce compliance either in the approval process or afterwards,
- d) They have little ability to apply local/cultural performance measures not part of the standard definitions (eg their own measures of "Liveability").
- e) Local communities (ie communities of 40,000 or less) are disregarded by larger councils (particularly the mega-councils) and even more so in those council areas under administration.

#### **4. The system lacks integrity and processes to reinforce integrity:**

- a) There is no low-cost independent administrative appeals process, short of the Land and Environment Court
- b) Compromise to planning standards under the present planning system is easy, common and expected practice. Enforcement and strengthening of integrity in local planning is not.
- c) The rationale for allowing departures from planning provisions is not explained clearly in planning decisions, which then are simply used as the basis for further similar unjustified departures.
- d) Adopted council strategies which require implementation through the planning system (eg with changes to LEPs and DCPs) are not budgeted for or acted upon for years (eg Climate Change, Greener Places Strategy, WW Floodplain Study and Management Plan) if at all.
- e) Much of the assessment information is backward-looking and piecemeal (eg traffic assessments, but also drainage and energy requirements) and does not include any actual or projected cumulative effects. This includes the assessment of the natural environment, where the rare and endangered Umina Coastal Sandplain Woodland is being incrementally diminished, due to the lack of a concerted integrated management plan with measurable objectives and involving the community and other stakeholders.
- f) The Local Planning Panel is often comprised of members who are planning consultants with conflicts of interest (eg currently commercially active in the same area as the applications they are considering).
- g) The Planning Panel "community members" are not elected by the community, but appointed by council staff and include former colleagues of council staff.

#### **5. The system is not responsive enough or acting with enough foresight to climate change pressures**

- a) National models to predict local climate conditions are not adequate.
- b) Community experience and monitoring is ignored.
- c) The consultancy industry seems to be self-serving, impenetrable and unresponsive to community knowledge and needs. It uses copyright claims to prevent information of public benefit entering the public domain. For example, environmental assessments of Ecologically-Endangered Communities are often cumulative and need to be considered in combination to make a fully-informed assessment. These cumulative historical reports should be part of the public record.
- d) Strategies and provisions that may mitigate climate effects have been in place and overridden for years (eg setbacks and vegetation requirements). State and local physical infrastructure planning and maintenance has simply not been done to explicit community-level plans.
- e) Knee-jerk responses to community concerns or political pressure have often resulted in inappropriate outcomes, including those which require higher levels of technology resulting in greater building costs/less affordability/more inequity rather than finding more subtle, affordable and appropriate solutions.

## **WOY WOY PENINSULA: Other matters**

### **Size, bulk and scale of Central Coast Council**

Issues of "size, bulk and scale" apply as much to councils and their ability to manage planning as they apply to buildings.

The planning system on the Woy Woy Peninsula has suffered from the overlay of the amalgamation of two previously-large councils, Gosford and Wyong, into a regional mega-council.

The new council's attempts, particularly under a series of administrators, to undermine local community identity and previous loyalties in the interests of creating a regional identity have prevented pressing local community needs from being addressed on the Peninsula.

The Community Strategic Plan theme of "One" speaks for itself, ignoring local community character and needs, and attempting to impose an administratively-convenient uniform solution across the whole region.

That isn't to say an amalgamated or regional council cannot work, but that if it is to succeed it must operate at scales that are appropriate to the task.

The council has divided its region into what it calls "social planning districts", which in the Peninsula's case coincides with our community boundaries.

This is the appropriate scale to implement "place planning" and create specific planning provisions. It is the scale at which local democratic processes must be put in place to plan the Peninsula's future.

It is the median scale for local government administration of planning in NSW.

The Peninsula community must be left to speak for itself and make its own decisions, not manipulated by polls skewed to the individual rather than the community, or attempts to impose a false community identity on the area for the convenience of council staff.

The planning system has an obligation to accommodate local preferences within the broader planning objectives.

### **The role and power of councils**

The larger and more disconnected the council is from the community, and the poorer the perception of its local track record, the less likely the community will be to welcome additional planning powers or responsibilities being managed by the council.

One side-effect of the creation of the Central Coast's mega-council is its expansion into roles and activities that take resources away from the council's traditional roles and place it in a position of potential conflict of interest.

For example, as it increasingly sees itself as a promoter of local commercial activity and advocate for economic growth, it compromises its role as regulator.

Central Coast Council's membership of the Central Coast chapter of the Urban Design Institute of Australia has this potential.

## **Adequacy of council powers**

The focus of any changes to the planning system to meet the challenges of climate change capacity should focus on making the system robust and workable, addressing the issues raised in this submission.

Until this is achieved, any changes are unlikely to make a difference and any required further changes may not be evident.

There is merit, however, in introducing a sunset provision to a development approval that revokes the approval if the development is not completed within (say) seven years, in addition to the current of starting within five years of approval.

## **UMINA COASTAL SANDPLAIN WOODLAND**

Umina Coastal Sandplain Woodland is a rare endangered ecological community contained almost entirely in just a few hectares of the Woy Woy Peninsula.

Central Coast Council controls most of the land which contains this rare bushland, but other holdings include Education Department land, land owned by a nursing home and Crown land of indeterminate management.

In the case of the nursing home, Gosford Council originally rejected a proposal to build a retirement village on this land, and an appeal was upheld in the Land and Environment Court on the basis that the whole site was endangered ecological community and should not be built on.

Shortly afterwards, the council received a fresh essentially-identical application which it then permitted. The retirement village was ultimately replaced with approval for a nursing home.

If threatened ecological communities are to be protected, Land and Environment Court rulings of this nature must not be able to be over-ridden councils – due to a change in politics or for any other reason.

Fresh applications should be constrained by court findings about previous applications for the same land.

Central Coast Council's management of this woodland in its ownership is not transparent, nor is it in co-operation with the other landholders, or community members supporting its protection.

Its priorities do not correspond with the Save Our Species priorities of the Department of Planning and Environment.

And as proponent of a recent Planning Proposal, it agreed to destruction of a significant private holding of this woodland, against Departmental advice.

The council's attitude to the natural environment including this rare bushland seems to be that it is considered a threat to infrastructure, rather than valuable infrastructure in its own right which contributes to the community's natural resilience to climate change.

In this case, the threshold size of the bushland involved needed to be only marginally less to compel the council to follow departmental advice. One possible action is to reduce this threshold.

## Worth considering

The following are medium to longer term suggestions that should be considered.

1. That the principles of the Rule of Law apply.
2. That higher standards of Truth and Honesty be developed to apply to the planning process.
3. That the practice of allowing "variances" be abandoned.
4. That both applicants and council assessment reports be required to justify assertions of compliance and to provide a full explanation of the rationale underlying the assessment.
5. Give Development Control Plans the same level of enforceability as Local Environment Plans, ensuring their provisions cannot be treated as discretionary or "guidelines only".
6. That standards be developed to ensure all plans and strategies relating to the Regional Plan are meaningful, actionable and measurable and provide a simple and clearly-expressed commitment.
7. That all strategies, including Regional Plans, conform to the ordinary meaning of strategy and provide a clear course of action which resolves potential competing interests.
8. That "merit" appeals to the Land and Environment are allowed and made affordable to community groups.
9. The Peninsula be established as its own local government area.
10. Councils with a population of greater than the state average population (40,000) be required to have wards with populations of less than that.
11. That a Community Strategic Plan and a Local Strategic Planning Statement be prepared for communities of this size which recognise their unique character and challenges.
12. Data be made publicly available at this population level, when data summarised by Local Government Area is prepared and released.
13. All tree removals (whether from private or public property) require a 5:1 planting of endemic native trees, elsewhere on the Peninsula if not within or adjacent to the property itself.
14. That applicants pay the Council for its regulatory planners to make independent informed assessments or for the Council to hire a specialist from a prequalified panel.
15. That pre-lodgement meeting minutes be published along with other development application documents.
16. That the "New approach to rezoning" proposal be implemented.
17. Development application documents, including environmental assessments of endangered and threatening species and communities, should be placed in the public domain on greater public interest grounds (not constrained by copyright or privacy).
18. Proposed living areas in development proposals subject to solar access requirements should be published and subject to public scrutiny for their adequacy.

## CONCLUSION

This submission argues that having a robust and workable planning system is the best way to ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes, as well as to achieve the other benefits of well-planned land use.

A case study of the Woy Woy Peninsula shows how the current planning system and its associated processes at both a State and a local government level can combine against the interests of a local community and the integrity of the planning system itself.

The degree of complexity of the issues is high but the committee is asked to delve into these complexities and consider the suggested actions presented.

Mark Snell  
3 Nov 2023