

**Submission  
No 159**

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

**Organisation:** Central Coast Council

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1 November 2023

Ms Sue Higgins MLC  
Chair, Portfolio Committee No. 7- Planning and Environment  
NSW Legislative Council  
Macquarie Street  
Sydney NSW 2000

Dear Ms Higgins

**Submission - Inquiry into the Planning System and the Impacts of Climate Change on the Environment and Communities**

Thank you for the opportunity to provide input to your Inquiry into the Planning System and the Impacts of Climate Change on the Environment and Communities. At its meeting of 31 October 2023, Central Coast Council resolved to make this submission.

The Central Coast local government area (LGA) is located immediately north of the Hawkesbury River and is home to around 350,000 residents. The following aspects of the LGA are important to note in the context of our response to this Inquiry:

- Over 100 known threatened species and threatened ecological communities.
- 11% of land area is State Forest managed by the Forestry Corporation of NSW.
- 25% of land area is National Park, State Conservation Area or Nature Reserve managed by the NSW National Parks and Wildlife Area.
- Approximately 70% of land is bushfire prone.
- Central Coast Council receive around 1500-2000 residential development applications each year.

Central Coast Council's action to address climate change impacts

Council has an adopted Climate Change Policy 2018 and Sustainability and Climate Change Action Plan 2022-2025 to support the Central Coast to address climate change. These documents identify Council's commitments and priority mitigation and adaptation actions.

Council is also currently reviewing Development Control Plan provisions relating to flooding and coastal hazards, and its Local Strategic Planning Statement, which provides a 20-year land use planning strategy. Improved management of climate risks is central to these reviews; however, to deliver effective land use planning outcomes for the Central Coast, an holistic approach is needed. This requires coordination across Australia's three tiers of government, as it is clear that many of the levers to reduce the impact of climate change are beyond the remit of local government.



### Development in flood prone areas and the interaction with sea level rise

Interaction between proposed development and flood prone land occurs on the Central Coast in urban areas, usually with proposals for single dwelling houses and on rural or environmental living style properties, where single dwellings or secondary dwellings are proposed. For urban areas, Council has location specific Floodplain Risk Management Plans that provide controls for new development in flood prone areas, where future floor levels factor in sea level rise (based on RCP 8.5) in addition to the current 1% AEP flood level, for a 35-year design life. In urban areas that are flood prone development intensification such as dual occupancy development is not supported; thus the status quo is to be maintained. This position allows the flood prone suburbs to maintain a desirable urban fabric, with well-maintained properties whereas if development was entirely refused, desirability would decrease causing other social problems.

In the long-term while dwelling houses may tolerate flooding, public infrastructure including roads and sewer pump stations will require upgrade if they are to be traversable as a result of sea level rise/ sea level rise in combination with flood events. Council has investigated raising land in some of the flood affected urban areas, however this would be a long-term project and questions around cost and how it is funded remain.

### Development in areas affected by heat stress

Council's *Greener Places Strategy 2020* identifies that most urban suburbs experience heat stress. It is known that vegetation including lawn, shrubs and trees all mitigate the effects of heat to varying degrees, with trees being most effective and lawn being the least effective natural surface but is still more effective than heat absorbing surfaces such as concrete and bitumen.

With increased temperatures from climate change likely to exacerbate heat stress, effective strategies for their mitigation are required. One of the challenges of addressing heat stress in established suburbs through tree planting is the lack of public space to allow large trees to reach maturity. There is minimal space between the footpath and kerb and gutter to support trees that provide exemplar shade without the tree causing infrastructure damage.

For private development while landscape plans can specify trees that reach an advanced mature size, trees planted as part of new development often fail to reach an expected size and canopy spread. Performance targets to define success are lacking and a greater understanding of identifying performance measures of success are needed in this area.

### Development in bushfire prone areas and interaction with ecological constraints

With around 70% of the Central Coast bushfire prone there is a strong interaction between development applications and bushfire constraints including the level of clearing required under *Planning for Bushfire Protection 2019* (PBP). While PBP is a necessary tool to minimise property loss during bushfires, which under climate change will become more frequent and more severe, often the level of clearing required by PBP to reduce canopy coverage in the asset protection zone (APZ) to 15% is high, including almost complete understorey removal.



The Central Coast receives applications for dwellings on conservation zoned land (i.e. C2, C3 and C4 under the CCLEP and deferred matter lands under the former IDO 122) which have high biodiversity value, often including threatened species. Conflict between the intent of the land zoning and PBP occurs and at times development proposals are not consistent with the zone objectives.

#### Impacts on landowners that own land with high biodiversity values

Climate change will require that, large areas of habitat, or any area of habitat that contains known threatened species are appropriately managed into the future if further species declines are not to occur. Large tracts of forested land on the Central Coast are privately held and some of these lands have previously been identified for future acquisition by Council. About half of the parcels that have been identified have been acquired with the remainder being in private ownership, usually with a dwelling house occurring on the lot. Increasing property prices in recent years has reduced the ability of Council to acquire further lands, thus alternative strategies may be more effective for achieving conservation outcomes on these properties.

Land zoning as a C2-C4 zone does not specifically drive effective land management. While Biodiversity Conservation Trust (BCT) programs, such as Biodiversity Stewardship Sites and Conservation Agreements, are mechanisms that overcome this, on the Central Coast very few landowners have established these types of agreements. In an urbanised LGA, often there are multiple landowners of a single patch of vegetation. This will mean that even though the patch is of a high value, the size of an individual parcel is below what will be considered by the BCT. Elsewhere there are very rare species that can occur in even smaller patches, such as an Endangered Orchid that occurs on the edge of a bus depot. A greater emphasis in the planning system is required to support landowners to value and protect this biodiversity.

Council is also aware of clearing that has occurred on land that contains high biodiversity values in particular sites without development consent. Additional resources are required in the NSW Government to investigate and prosecute such breaches of the *Biodiversity Conservation Act 2016*; however, the Act requires that a breach only occurs when a landowner is aware of the biodiversity values that they are harming. The burden of a regulator in demonstrating this is high. Instead, legislation should consider that if an area of native vegetation is being disturbed or cleared that it should be assumed that the works will harm threatened species unless otherwise established by at least desktop investigation.

#### Development in areas of high ecological value and interaction with climate change

Areas with biodiversity values are often zoned under a Local Environmental Plan (LEP) to allow for intensive development, primarily residential and industrial subdivision. In the areas that contain biodiversity values there is a conflict between the land use intended by the LEP such as low-density residential housing and retaining biodiversity values. At times large areas of land zoned for a land use other than biodiversity conservation are avoided, not just on the Central Coast but elsewhere in NSW as clearing the habitat would have either triggered a Species Impact Statement (under the repealed *Threatened Species Conservation Act 1995*) or would need to be avoided land as required under the Biodiversity Assessment Method and current *Biodiversity Conservation Act 2016*. While councils may impose ecological management plans over the avoided land, the land remains zoned for an intended higher use and there is little incentive for a landowner to implement any required management works.



It has been observed that on some sites that have been avoided the management actions are not applied and the threatened species decline.

This issue reinforces the need for strategic biodiversity certification led by the NSW Government that identify no go areas, including potentially in areas that have been zoned for a higher land use. There is the need for a mechanism to appropriately conserve no go areas, as land zoning on its own is not effective management.

Ecological corridors at varying scales are a key component of climate mitigation. There is a need for the protection of effective ecological corridors. Land that is required to provide connectivity among vegetated patches, may be devoid of biodiversity values, thus the standard LEP instrument for conservation zones does not necessarily align to the current biodiversity values of these areas. For example, a cleared area may have very low ecological values but could connect two key areas of habitat. At present there is not a mechanism to support the protection of such areas to allow for future revegetation.

The northern area of the Central Coast contains the habitat for several threatened terrestrial orchids, some of which have an area restricted to an area of less than 1000 hectares. There is a strong interaction between the habitat for the threatened terrestrial orchids and land that is either earmarked for development in having a residential, commercial, or industrial zoning under the Central Coast LEP or areas that have been identified for future growth in strategic documents. One species, the Wyong Sun Orchid occurs in disturbed habitats such as along road reserves that receive slashing, making its conservation difficult. Mechanisms that support landowners that contain areas that have lands that are of a high biodiversity value is required, including on land that has zoning that allows for urban development.

#### The impact of climate change on biodiversity

Climate change has been shown to increase the duration and severity of El Niño conditions, which in turn increase the propensity for extreme and catastrophic fire conditions and heatwaves. These in turn have flow on effects for biodiversity, including plants and animals that occur in formal reserves. An understanding of decline in biodiversity value and ecological function is essential in determining if a proposed biodiversity impact as a result of proposed development is acceptable. There is no formal NSW-wide biodiversity monitoring program that can provide this information and instead Council has committed to specific monitoring programs or resurveys. Council surveys have found the Squirrel Glider, a threatened gliding possum species, has likely declined since studies completed in the early 2000s had recorded very high densities of the species. This result reinforces the importance of any Squirrel Glider habitat, a position that Council took in refusing a development. The applicant appealed Council's decision in the NSW Land and Environment Court, where Council's concerns around the site being important for remaining populations of the Squirrel Glider and presenting a Serious and Irreversible Impact were dismissed and a consent was granted<sup>1</sup>. Based on this decision, it is unclear how declining threatened species such as the Squirrel Glider that occur on development sites should be treated.

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<sup>1</sup> Wallace v Central Coast Council [2022] NSWLEC 1674, available at <https://www.caselaw.nsw.gov.au/decision/184cfe5787cf579c77596e77>

Thank you for considering Council's submission. If you require any further information, please contact Dr Chris McLean, Principal Strategic Planner via

Yours sincerely

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