

**Submission
No 168**

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

Organisation: Northern Beaches Council

Date Received: 3 November 2023

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Ms Susan Higginson, MLC
Committee Chair, Portfolio Committee No.7
Planning and Environment
NSW Parliament
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Our Ref: 2023/710565

Dear Ms Higginson,

Re: Parliamentary Inquiry – Planning system and the impacts of climate change on the environment and communities

Northern Beaches Council is pleased to submit this response to the Planning Inquiry under Portfolio Committee No. 7, addressing the pressing need for reform to safeguard our people, property, and the natural environment from climate change impacts. The broad scope of the Terms of Reference for this inquiry rightly reflects the intricate and multifaceted challenges we face in the context of climate change. We welcome the holistic review of the planning system and the opportunity to comment on the development of effective strategies.

It is essential that the NSW Government move away from incremental changes to the Planning System addressing climate change risks and achieving net-zero emissions, to a more radical position which directly enhances resilience in response to the escalating severity of climate-related events.

Our submission emphasises our vision for a future where we dramatically reduce impacts to our natural environment and local community by reducing exposure to climate change risks. We propose this is done by 1) restricting increasing population density in locations vulnerable to bushfires, flooding, coastal erosion, and 2) building adaptive responses into our planning system to account for the anticipated changes that our built and natural environment will have to accommodate.

Simultaneously, we support increases in residential development in safer, more appropriate locations in existing centres and in conjunction with a commensurate investment in infrastructure and sustainability measures. We will address the adequacy of planning powers, the need for planning reforms, and alternative regulatory options to adapt to changing conditions.

Our submissions are aligned with the headings for inquiry's terms of reference dated 24 August 2023.

1. Developments proposed or approved:

- a) in flood and fire prone areas or areas that have become more exposed to natural disasters as a result of climate change,**
- b) in areas that are vulnerable to rising sea levels, coastal erosion, or drought conditions as a result of climate change, and**
- c) in areas that are threatened ecological communities or habitat for threatened species**

Like many other Councils, the Northern Beaches faces challenges in “down-zoning” land that has been previously zoned to permit a range of uses that are now considered vulnerable to climate change and hazard risks.

An example of this is in the “deferred lands” area in Oxford Falls and Belrose North. Under Warringah LEP 2000, seniors housing development is permitted in this area. Despite Council opposition, the Land and Environment Court has approved several developments at the bushfire hazard interface. Council has also proposed rezoning of this land in 2011 and 2015 (and again currently) to prohibit seniors housing. On each occasion, some members of the community have successfully lobbied the State Government to oppose these changes on the grounds of economic impact on landowners from the loss of permitted uses on their land.

The existing bushfire planning framework, Planning for Bushfire Protection 2019 (PBP), enforced through the Environmental Planning and Assessment Act (EP&A Act), does not adequately account for the potential impacts of climate change, which is expected to alter the intensity and frequency of bushfires. The document primarily relies on specific bushfire attack levels based on anticipated fire danger. Changing climate increases the likelihood of more frequent bushfire events exceeding these parameters.

The criteria set by PBP for excluding development in bushfire-prone areas includes fire risk, evacuation, potential harm to existing protections or developments, and environmental constraints. It emphasises the importance of assessing the suitability of new development having regard to bushfire risk on a landscape scale and how proposed land uses could impact existing infrastructure e.g., roads. However, it lacks a specific definition for “unacceptable risk” and does not provide clear guidance on how a Planning Proposal for land rezoning should address the criteria for excluding inappropriate development.

Mitigating bushfire risks while preserving the natural bushland has been a particular focus for Council in its review of the current Planning Proposal for Patyegarang (previously known as ‘Lizard Rock’) in Belrose, which is seeking to permit 450 dwellings on undeveloped land in an area subject to high bushfire risk.

The proposal relies heavily on “Asset Protection Zones” or APZs to protect future inhabitants from bushfire hazard. This approach does not respond to the threshold question of whether more people should be in a bushfire prone area, instead focusing on how to keep alive the people we are putting in harm’s way.

In addition, these areas must be cleared and kept that way, resulting in a significant loss of bushland and biodiversity – the very things that can help slow the rate of climate change.

Unresolved concerns about evacuation also create uncertainty for Council. These are critical issues because unfeasible plans could transfer risk to emergency services, landowners, the wider community, and future residents.

Recent major storm events causing coastal erosion along Collaroy-Narrabeen Beach, Fishermans Beach, Newport Beach, and other areas in the Northern Beaches, has highlighted the need to reduce exposure to natural hazards and climate-related risks including coastal cliff hazards, coastal inundation, and erosion from recurrent storm events. The best opportunity for responding to these issues is at a strategic planning level where a wholistic response can be developed and then implemented using clear, objective, consistent controls. Various elements of the NSW coastal management framework lack clarity and strategic direction which leaves substantial differences in interpretation to be resolved in the development assessment process.

Concerns have arisen about the inconsistency between State-imposed Sydney (Regional) Planning Panels and Local Planning Panels. Specifically, only Sydney Planning Panels are required to include members with coastal expertise, even though development applications for coastal protection works are may not be under the jurisdiction of a Sydney Planning Panel.

When designs for coastal protection works cannot be accommodated within private property, Council must coordinate with Crown Lands. This has presented challenges in obtaining relevant approvals in the past, and raises complex policy and liability issues. Concerns have also arisen regarding the potential for coastal protection works to affect 'public amenity,' although there is no clear definition in the State Environmental Planning Policy or the Coastal Management Act 2016. Additionally, issues have been raised regarding 'visual impacts,' with coastal engineering considerations under the State Environmental Planning Policy (Resilience and Hazards) 2021 affecting the potential impact of the works on visual amenity. Council has also identified inconsistencies between the State Environmental Planning Policy (Resilience and Hazards) 2021 and the Coastal Management Act 2016, particularly concerning increased erosion resulting from coastal protection works.

The State should consider the creation of a “hazards” type zone to apply to areas subject to high hazard risks. In the absence of such a zone, Council has proposed to rezone certain areas in the LGA to a “Conservation” zone under its Conservation Zones Review. Whilst still subject to final advice, we understand that the NSW Department of Planning and Environment is unlikely to support “downzoning” of land to a Conservation zone based on hazards.

Council maintains that a more strategic approach is required, specifically by supporting the use of conservation (or similar) zones for high-risk land to prohibit new developments susceptible to natural hazards, particularly in flood-prone, coastal hazard, and bushfire-prone areas. This assessment should consider cumulative and cascading risks, in contrast to the current planning approach, which addresses hazards and risk on an application-by-application basis.

It is also imperative for the NSW Government to take the lead in distinguishing between existing and future risks. Existing risks stem from past decisions, while future risks arise from new development and climate changes. This must be built into the decision-making process.

Finally, it is crucial to acknowledge the persistent residual risk from a variety of natural hazards which, despite mitigation efforts, directly impacts the built environment, and places increasing demands on first responders.

Key recommendations:

1. Restrict Seniors Housing and development accommodating vulnerable communities in natural hazard areas (especially in relation to bush fire).
2. Integrate climate change considerations into key hazard documents such as Planning for Bushfire Protection 2019, including a specific definition for "unacceptable risk," to provide clear guidance on the criteria and process for excluding inappropriate development in such areas.
3. Provide support to local councils in introducing appropriate hazards zones or conservation zones within a Local Environmental Plan to ensure thorough assessments and appropriate but robust restrictions for new developments in areas vulnerable to the effects of climate change and associated hazards.
4. Establish clear criteria and minimum requirements for assessing various impacts of climate change including sea level rise.
5. Provide clearer technical guidance on issues concerning the potential impact of coastal protection works for the purposes of development assessments, especially in areas susceptible to coastal erosion, cliff hazards, coastal inundation, and recurrent storm events.
6. Address the need for consistent expertise within decision-making bodies, such as Planning Panels. Additionally, review the role of NSW Crown Lands and its processes for assessing proposals to accommodate coastal protection works on Crown Land where it provides a better outcome for the coastal environment.

2. 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:

- a) the cumulative impacts of development, b) climate change and natural disasters,
- c) biodiversity loss, and
- d) rapidly changing social, economic and environmental circumstances

As noted, despite Council's proposal to address climate-related risks through the application of Conservation Zones, the NSW Department of Planning and Environment (DPE) has not indicated support for this methodology to date.

State authorities have failed to provide clear direction, and the PBP lacks clear guidance for 'Strategic Bushfire Assessments'. Council emphasises the need for a significant focus on avoiding placing people in harm's way and exploring strategies for relocating existing developments to safer areas.

Council has also recommended the establishment of standard conditions of consent within the NSW Planning Portal for time-limited consents in areas affected by natural hazards once prescribed triggers or thresholds are exceeded, particularly concerning properties impacted by climate change related hazards.

SEPPs, including the Aboriginal Land SEPP (Now Chapter 3 of the *State Environmental Planning Policy (Planning Systems) 2021*), are likely to lead to increased residential development at the hazard interface. This is because many successful land claims encompass large bushland areas that are bushfire prone. Challenges to perceived bushfire risks are common among proponents of major planning proposals and developments. The NSW Rural Fire Service is either not resourced or sufficiently skilled to assess development applications and planning proposals on strategic landuse planning grounds, frequently leaving local councils to challenge proponents on bushfire-related matters.

Land clearing exemptions provided under the Rural Fires Act, including the '10/50 Code' and 'Rural Boundary Clearing Code,' are often misused to facilitate land clearing for purposes unrelated to bushfire protection. Council recognises that these provisions are frequently employed to enable development in bushland areas.

Grounds for the revocation of development approvals are necessarily limited under the Environmental Planning and Assessment Act 1979. It is too late in the planning process. It is far better to focus on strategic landuse planning which has the potential to limit further unrestrained growth in areas subject to hazards, and better control the exposure of existing development.

Key recommendations:

7. Provide clear and comprehensive guidance within natural hazard manuals/policies such as the Planning for Bushfire Protection framework, particularly concerning 'Strategic Bushfire Assessments.'
8. Establish standard conditions of consent within the NSW Planning Portal for time-limited consents in areas affected by natural hazards. These conditions should be triggered or applied when specific risk thresholds related to coastal hazards or other natural hazards are exceeded.
9. Development Delivery Plans submitted under the Planning Systems SEPP should be assessed against the local council's LSPS and local housing strategy, with particular attention to preventing further development in high-risk

areas, such as bushfire-prone land, and avoiding impacts on natural areas/processes.

10. Review and reform land clearing exemptions provided under the Rural Fires Act, such as the '10/50 Code' and 'Rural Boundary Clearing Code,' to ensure that they are primarily focused on addressing genuine bushfire risks and not misused for purposes unrelated to bushfire protection.
11. Explore options for the gradual, progressive removal of development approval in circumstances where the risk to life associated with existing development is considered to be unacceptable and the impact of mitigation measures is also unacceptable.

3. 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

Planning reforms are urgently needed to ensure communities can mitigate and adapt to changing climate conditions. A key concern shared by Council and other local governments across Greater Sydney is the potential for climate change to worsen the urban heat island effect. Council requirements for landscaping and tree planting are critical to reducing this impact, in addition to improved building standards which provide greater resiliency to these conditions.

Yet, landscape requirements are not a mandatory inclusion in Local Environmental Plans and the Department of Planning has recently opposed proposals by Councils (e.g. Willoughby Council) to include these controls in their LEP. Instead, the controls become “guidance” in a Development Control Plan and are given less weight in decision-making as they are not a statutory consideration.

Further, according to the Housing Codes, a Complying Development Certificate only requires a minimum landscaped area ranging from 10% of a lot area for a 200sqm site to 45% of the total lot area for a site that exceeds 1,500sqm and does not mandate any native tree planting requirements.

When compared to Council’s DCPs, which require a higher proportion of landscaped area and native tree plantings for comparable developments, the Codes SEPP falls short in enforcing equivalent requirements to maintain and increase canopy coverage, help mitigate the impacts of climate change such as urban heat and make our suburbs more liveable.

In addition, adaptation pathway guidance (triggers, thresholds, adaptation options) should be developed to assist strategic planning and development assessment for developed areas exposed to the impacts of sea level rise. Coastal management strategies should be dynamic and subject to continuous monitoring and adaptation in response to changing conditions, including climate change impacts and recurrent storm events. This would necessitate a more adaptive regulatory framework.

Legislative changes should ensure that coastal planning considers the broader impacts of climate change, including increased storm events and altered weather patterns, to make plans and designs more resilient. The legislation should explicitly require a

balance between private property interests and the public's interest such as beach access (both access to and along a beach) and the natural environment in coastal management decisions as well as investigating options for maximum setback for seawalls from the shoreline and require an examination of alternative, softer shoreline protection measures to minimise environmental and social impacts. One of the key considerations for managers of coastlines around the world is whether there is a point at which defending private property is considered acceptable regardless of the loss of riparian environments, or whether environmental protection is paramount and at some point, development becomes untenable. Given the complex interplay between public and private lands, and coastal and climatic processes, a Council by Council, or lot by lot approach will lead to inconsistent outcomes (e.g. the foreshores of Sydney Harbour will suffer from perverse outcomes without such consistency, which arguably can only be provided by the NSW government).

Recommendations from various Royal Commissions, such as the 2020 Royal Commission into National Natural Disaster Arrangements and the Final Report of the 2020 NSW Bushfire Inquiry, emphasise the need to consider natural disaster risks in land-use planning at the Strategic Planning Stage.¹ State and Local governments are required to incorporate both current and future natural disaster risks into planning decisions for new developments.

One practical approach to achieving this is through restrictive zoning, such as Conservation Zones. The current approach to hazard assessment, based on hazard “overlays” and with assessments occurring at the development application stage of the process, is unlikely to achieve the same outcomes and does not take into cumulative impacts of development.

The 2020 NSW Inquiry Report identifies several limitations in the current planning system's approach to bushfire protection, including the lack of landscape-scale understanding and consideration of bushfire risks in residential development approvals, an emphasis on hazard-based rather than risk-based approaches, and the reliance on development controls for bushfire-prone land, with less mature provisions for strategic risk management. The report recommends a shift towards strategic planning that appropriately addresses risk, as planning decisions made today can generate potential future risk. Recommendation 19.3 of the 2020 Royal Commission specifically pertains to the mandatory consideration of natural disaster risk when making land-use planning decisions for new development.

Council is currently developing the comprehensive Northern Beaches LEP, which consolidates the Manly, Warringah, and Pittwater LEPs. Simultaneously, it is drafting the Northern Beaches Development Control Plan (DCP), seeking support from the DPE to introduce new LEP provisions for sustainability enhancements in larger-scale developments in strategic centres. This includes a clause addressing urban heat and DCP provisions for environmental sustainability. However, local councils are limited in enforcing requirements beyond those in the BASIX, Sustainable Buildings SEPP, and Nabers. Development standards must be reviewed considering climate change and

¹ Royal Commission into National Natural Disaster Arrangements. (2020). Report. Published 28 October 2020. Retrieved from <https://www.royalcommission.gov.au/system/files/2020-12/Royal%20Commission%20into%20National%20Natural%20Disaster%20Arrangements%20-%20Report%20-%205Baccessible%5D.pdf>

upgraded to protect the future occupants of buildings we build today. Many of the current standards will not deliver this outcome in 2030, let alone 2050 or 2070 – the anticipated life of a new building.

Extensive sustainability improvements have been drafted within the Northern Beaches DCP, aiming to increase tree and landscape coverage, incorporate requirements for healthier, sustainable net-zero all-electric buildings, and ensure the inclusion of EV infrastructure and car-sharing controls to reduce car ownership dependency. Council recognises the importance of the Sustainable Buildings SEPP and the need for further enhancements to combat climate change. Key areas for improvement include implementing penalties for inaccuracies in developers' reporting of embodied carbon data for non-residential buildings to ensure data quality and compliance. Clear, quantifiable absolute emissions reduction targets are recommended instead of percentage-based reductions, with developers required to rectify energy efficiency shortfalls and meet the standard rather than relying solely on offsets for non-compliance. Water-efficient fixtures and systems are also recommended for non-residential buildings to promote water conservation in construction practices.

Council supports the introduction of the low-carbon materials index, regularly updated with the latest options, promoting continuous improvement within the building industry. Shorter review cycles are required to keep the *Sustainable Buildings SEPP* adaptable and aligned with evolving emission reduction goals and technologies. Council supports enhancing Thermal Performance Standards for new residential buildings, requiring higher NatHERS ratings, and aiming for a greater reduction in greenhouse gas emissions.

The mandatory introduction of water recycling and rainwater harvesting systems in new residential builds is fully supported for further reductions in potable water use. A comprehensive embodied carbon database is urged for both residential and non-residential buildings, promoting a wider range of low-carbon building materials with a net-zero threshold.

Key recommendations:

12. Make landscaped area requirements a mandatory “principal development standard” for development in all local Council LEPs
13. Support local councils to appropriately address risk in strategic planning (e.g., through Conservation Zones) rather than relying solely on hazard-based approaches, ensuring that planning decisions made today consider potential future risks, as recommended by Royal Commissions and Inquiries.
14. Support local councils in implementing sustainability requirements within their LEP and DCP that go beyond minimum standards established in BASIX, and apply to all developments, particularly larger-scale projects in strategic centres. This includes addressing urban heat and environmental sustainability.
15. Enforce penalties for inaccuracies in developer-reported embodied carbon data, and require developers, rather than future building owners, such as a strata committee, to rectify energy efficiency shortfalls, ensuring compliance without relying solely on offsets.

16. Require higher NatHERS ratings and aim for a greater reduction in greenhouse gas emissions by enhancing Thermal Performance Standards for new residential buildings.
17. Mandate the installation of water recycling and rainwater harvesting systems in new residential builds to reduce potable water use.

4. 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

While planning can limit new development, the authority to remove existing development is constrained by the principle of 'existing use rights.' These rights limit the effectiveness of planning legislation and controls that may be used for climate change adaptation. Any proposal to remove existing use rights would require Government funding to undertake "buybacks" of private land no longer able to be used for its previously intended purpose.

Council acknowledges that the downzoning or otherwise restricting development of areas subject to hazards will reduce the supply of potential housing and reduce affordability.

Planning mechanisms already in existence are sufficient to plan for increased growth in other areas to compensate for this loss of potential. Precinct and structure planning with subsequent rezoning or upzoning of land to increase development potential, particularly in existing centres, is commonplace. This of course takes time, requiring studies, engagement with the community, and allocation of appropriate infrastructure funding where population is set to increase.

Council's LSPS acknowledges that much of the demand up to 2036 for new housing can be met by development in areas already zoned for growth, including Dee Why, Brookvale, Mona Vale, and the Frenchs Forest strategic centre, as well as some local centres. These established growth areas offer opportunities to increase residential dwelling capacity through new shop-top housing and medium-density housing while avoiding high-risk zones affected by climate change. Notwithstanding the ability to meet the projected demand for housing within our strategic centres, it is important to recognise that Council is also investigating ways to permit an increase in housing diversity within existing residential areas, particularly those zoned as R2 Low Density Residential on the Northern Beaches. These actions align with Council's Housing Principles, which aim to use existing urban land more efficiently to protect the natural environment, limit development where there is an unacceptable risk from natural and urban hazards or an impact on the tree canopy, and locate new housing in strategic and local centres and within walking distance of high-frequency public transport.

Key recommendations:

18. Safeguard bushland and limit development in high-risk areas and encourage increased housing diversity within existing residential areas including strategic and local centres through review of Council's Local Housing Strategies.

5. Any other related matters.

Distinguishing between existing and future risks, where existing risks are tied to past decisions and future risks stem from new development and climate changes, is crucial.

Despite mitigation efforts, residual risk in bushfires continues to impact the built environment. Today's land use planning decisions will influence the risk levels for both present and future communities. The AIDR Planning Handbook underlines the importance of considering natural hazard risk in land use planning to create disaster-resilient communities.² Strategic planning is a critical approach for reducing exposure to natural hazards, guided by best practice principles drawn from state and national inquiries and commissions.

Land use planning processes consider diverse risk dimensions compared to mitigation and building processes, including future insurability, finance availability, government expenditure, and climate adaptation.

The projected disaster costs in NSW over the next 40 years under 'low carbon emissions' are estimated to exceed \$360 billion.³ With population growth potentially driving more housing development in high-risk areas, the need for reform intensifies. The 2019-20 Black Summer bushfires resulted in a total insurance damage cost of \$2.32 billion.⁴ The finance sector's growing interest in comprehending climate change and disaster implications for assets and investments is evident through rising insurance costs, leading to no insurance or under-insurance.

In the context of the Northern Beaches, significant financial costs are associated with beach nourishment along beaches including Collaroy-Narrabeen Beach to combat shoreline recession due to climate change. Both Local and State Governments are responsible for addressing this issue. Council has consistently advocated for a statewide sustainable sand nourishment program supported by a long-term fund to help local councils mitigate sea level rise impacts.

The Committee for Sydney's 'Defending Sydney' document highlights the crucial connection between land use planning, insurance prices, and the level of natural hazard risk confronted by communities.⁵ This linkage holds particular importance as rising insurance costs can directly impact households' capacity to secure mortgage

² Australian Disaster Resilience Handbook Collection. (2020). Land Use Planning for Disaster Resilient Communities (First edition 2020). Retrieved from https://knowledge.aidr.org.au/media/7729/aidr_handbookcollection_land-use-planning-for-disaster-resilient-communities_2020.pdf

³ Deloitte Access Economics and the Australian Business Roundtable for Disaster Resilience and Safer Communities. (2021). Special Report: Update to the Economic Costs of Natural Disasters In Australia. Retrieved from http://australianbusinessroundtable.com.au/assets/documents/Special%20report%3A%20Update%20to%20the%20economic%20costs%20of%20natural%20disasters%20in%20Australia/Special%20report%20_Update%20to%20the%20economic%20costs%20of%20natural%20disasters%20in%20Australia.pdfm

⁴ ICA, MBA, PIA. (2023). Communique: National Industry Roundtable: Land Use Planning and Resilience. Retrieved from <https://masterbuilders.com.au/wp-content/uploads/2023/07/Final-Communique-National-Forum-Land-Use-Planning.pdf>

⁵ Committee for Sydney. (2023). Defending Sydney: Adaptive Planning for Today's Flooding and Tomorrow's Climate Risks. Retrieved from <https://sydney.org.au/wp-content/uploads/2023/10/Committee-for-Sydney-Defending-Sydney-October-2023.pdf>

finance, given that insurance is frequently a prerequisite by banks. It is often the individuals with the least financial means who are most adversely affected, as they may be compelled to reside in high-risk areas and struggle to afford the premiums, leading to inequity.

Council believes that implementing these changes and adapting the NSW planning system will significantly enhance its ability to reduce exposure to natural hazards and climate-related risks. This will help safeguard people, property, and the natural environment, making the region more resilient in the face of ongoing challenges posed by climate change and recurrent storm events.

Should you require any further information or assistance in this matter, please contact my office on

Yours faithfully

Joseph Hill
Acting Director Planning & Place