

**Submission
No 174**

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

Organisation: Shoalhaven City Council

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

Introduction

Council welcomes the Inquiry and supports its aim to investigate how best to ensure communities and the environment are protected from the risks and impacts associated with a changing climate.

Council has a strong appreciation of the issues the Inquiry is focussing on. Shoalhaven's communities, natural environment, and infrastructure has been affected by several natural disasters. This includes the 2019/20 bushfires and the storms and flooding of 2022.

Council undertakes a lot of activity to protect the local environment and ensure that Shoalhaven's communities and places are resilient and prepared for the impacts of climate change. Our work includes:

- Setting a [Sustainability and Climate Policy](#) (2022) to govern Council's decisions and activities.
- Facilitating a community-led Adaptation and Resilience Strategy.
- Contemporary flood risk identification studies.
- Collaboration with the NSW Government on its Disaster Adaptation Plans (NSW Reconstruction Authority) and Regional Adaptive Pathways Planning (NSW Planning).

The Climate Council of Australia Limited (an independent organisation providing information on climate change) conducted research about cost implications for local government. The Climate Council's 2021 Climate Costs and Risks to Councils Report ([link](#)) identified that climate inaction at the State and National level may end up costing local governments as much as \$54 million annually. Identified costs included fixing eroding beaches, protecting beachside property or infrastructure, and the recovery effort of fire and flood events.

The Australian Local Government Association recommends that local government advocate for other tiers of government to embrace stronger climate policies, emissions reductions targets, and frameworks for mitigation and adaptation.

Council advocates for greater leadership by the NSW Government noting the potential opportunities to contribute to managing the impacts of climate change provided by amendments to planning legislation, new or updated planning policies, and the publication of contemporary guidance. We also promote the NSW Government increasing its support for related planning activities, including new and increased funding for the preparation and implementation of action plans and strategies.

This submission provides feedback and a series of recommendations for each item of the Terms of Reference set for the Inquiry.

Part A – Developments proposed or approved in flood and fire prone areas, vulnerable to coastal hazards, or in areas affecting biodiversity resources.

That Portfolio Committee 7 inquire into and report on how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes, and in particular:

(a) developments proposed or approved:

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

Shoalhaven City Council Feedback & Recommendations

A changing natural environment is impacting Shoalhaven's communities, ecosystems, and built environment. Land use planning cannot stop these impacts. Identifying risks, understanding impacts, educating stakeholders, and implementing adaptation practices built on the learnings and experience of previous events provide opportunities to lessen effects. The ongoing consideration and assessment of risks, and how different communities and ecosystems can respond, will help improve emergency response, recovery, and resilience to natural events and other disasters. Resilience is further enhanced by appropriately locating new development and ensuring it is suitably designed, constructed, maintained, and supported with necessary infrastructure.

A single source of improved and comprehensive risk and hazard information updating and supplementing current information would be beneficial to planning activity. Quality data and reliable and accurate projections are needed to better inform planning decisions. It will also help educate communities about the type and level of risk affecting current homes and homes they are looking to purchase. State legislation and guidance will reduce local flexibility in assumed levels of risk and managing the impacts of climate change.

Council initiated its *Recovery into Resilience Project* following the devastating impacts of the 2019/20 bushfire season. The Project benefits communities by helping residents and visitors get better prepared for emergencies, be more resilient, and have better access to accurate, timely and authoritative information in times of crisis. The project has delivered a coordinated approach to improving resilience through community-led resilience planning and improved community readiness (including access to risk and emergency management information). Increased support for councils to initiate and continue this level of risk management is required.

Flood Prone Areas

The current practice of floodplain management in New South Wales relies on the identification of risk through Flood Studies and preparation and implementation of Floodplain Management Plans. This work considers the impacts of climate change by assessing rainfall event and sea-level rise scenarios.

Implementation of recommendations from these documents through the land use planning system occurs through the selection of appropriate growth locations in strategic planning documents and the use of planning and development controls to guide new development.

The NSW Government provides expert advice and financial support for Council to prepare floodplain management documents. The resources necessary to prepare, implement, and update these documents is significant, necessitating lengthy programs. Timeframes are exacerbated for large areas with multiple catchments or a lack of resources. Increased support for councils to prepare these documents is required.

In March 2022, the NSW Government commissioned an independent expert inquiry into the preparation for, causes of, response to, and recovery from the 2022 catastrophic flood event across NSW. The inquiry made 28 recommendations. The NSW Government has confirmed

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support for 6 of the recommendations and identified that further work is necessary on the remaining 22.

The Exempt and Complying Development Codes State Environmental Planning Policy permits some forms of exempt development in areas at risk from flooding. This is at odds with the desired catchment-wide risk assessment and management activities.

Fire Prone Areas

Planning for bushfires is guided by the New South Wales Rural Fire Service's *Planning for Bush Fire Protection 2019* document. This provides strategic direction for new development to avoid exposure to bush fire risk and set development standards for building in appropriate areas.

In January 2020, the NSW Government commissioned an independent expert inquiry into the 2019-20 bushfire season to provide input to the Government for future bushfire seasons. The final report recommended a transition to a strategic approach for planning for bush fire and the development of a policy similar to the *NSW Flood Prone Land Policy*. This transition has not yet occurred.

Coastal Areas

Coastal hazards are managed through Coastal Zone Management Plans and Coastal Management Programs. These documents address habitat management, sea-level rise, development, conflict between land-uses, and the impact of land use activities on the health of waterways. Estuary management plans are also prepared for entrance management for the intermittently closed and opened lakes and lagoons. Increased support for councils to prepare these documents is required.

Biodiversity Resources

A changing climate heightens the importance of retaining biodiversity resources, including wildlife corridors. These resources allow the natural environment to adapt to climatic changes and recovery following disasters. Biodiversity resources are recognised by the World Health Organisation as the strongest defence against climate change¹. Key activities include the identification of resources and the management of development and land clearing activities - known risks to resources.

Biodiversity resources are identified in various NSW Government and council documents. Protection and restoration of these resources, especially corridors, would benefit from a robust, strategic management response. Successful conservation and management of identified corridors requires a plan or strategy which elevates the identification of resources and corridors by:

- Confirming the principles and processes for identifying corridors, including detailed mapping and ground-truthing activities.
- Setting implementation mechanisms such as acquisition processes and budgets, strategic off-sets, management plans, incentives, education, and compliance programs.
- Managing development with appropriate planning and development controls.

The 2022 Cumberland Plain Conservation Plan is an example of a contemporary plan.

¹ [Link to United Nations advice about Climate Action and Biodiversity](#)

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Regionally significant wildlife corridors within rural zoned areas are at risk from permissible activities associated with forestry and agriculture. The Independent Review of NSW's biodiversity legislation found approximately 83% of all land clearing between 2018-2021 occurred to support agriculture². Pressure for land clearing is exacerbated in coastal areas experiencing high levels of development pressure. Farm Forestry Agreements, a mechanism supported by the Local Land Services Act 2013, also permit clearing with reduced consideration of maintaining biodiversity resources. Management responses could include adjustment of legislation to restrict extensive clearing, greater protection of wildlife corridors, and landowner education.

Recommendations:

1. *Establish and publish a State-wide, comprehensive set of risk data, mapping and projections to inform planning decisions, educate the community, and influence other stakeholders (e.g., insurance companies).*
2. *Provide financial and technical support for the development and implementation of community-led resilience planning, and the implementation of other community readiness initiatives.*
3. *Increase financial support for programs which identify and manage risk, including funding for new and upgraded risk management infrastructure and the implementation of other interventions recommended by risk management plans.*
4. *Complete the identified work necessary to implement the recommendations of the 2022 Flood Inquiry.*
5. *Accelerate implementation of Recommendation 27 of the NSW Bushfire Inquiry Report.*
6. *Prepare a strategic biodiversity conservation policy (such as a State Environmental Planning Policy) and plan, including biodiversity mapping, to confirm known areas of high environmental value and identify appropriate management interventions, including planning and development controls.*
7. *Amend relevant legislation and associated documents (Local Land Services Act 2013) to provide greater protection for biodiversity resources located on rural zoned land.*
8. *Accelerate NSW Government response to the final reports from the independent review of the Biodiversity Conservation Act 2016 and the Local Land Services Act 2013.*

Part B – Adequacy of Planning Authorities and Powers

That Portfolio Committee 7 inquire into and report on how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes, and in particular:

(b) the adequacy of planning powers and planning bodies, particularly for local councils, to review, amend or revoke development approvals, and consider the costs, that are identified as placing people or the environment at risk as a consequence of:

- (i) the cumulative impacts of development,*
- (ii) climate change and natural disasters,*
- (iii) biodiversity loss, and*

² [Link to Independent Review of the Biodiversity Conservation Act 2016](#)

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

Shoalhaven City Council Feedback & Recommendations

Council has previously investigated opportunities to manage dormant development consents, namely, consents issued many years ago using historic or dated planning controls which have “physically commenced” in some way but appear to be dormant. These approvals could theoretically be “picked back up and carried out”, despite being non-compliant with current planning controls. Examples in Shoalhaven include a large residential subdivision on a vegetated, coastal site and residential flat buildings in coastal villages.

In many cases, the broader community is unaware of the existence of such development approvals due to the time elapsed since the original determination. It is often not until the consent is reinitiated in some way (for example, through the lodgement of a modification application or construction certificate) that stakeholders become aware of the approval and the possibility of it being commenced.

Drivers for these investigations included changed environmental conditions or the emergence of new information about risk suggests potential impacts on the natural environment or increased exposure to risks should such developments now proceed.

There is no current ability to review, amend, or revoke development approvals. This would require new legislation, processes, and a range of support. Any change would need to be phased in, provide a process to appeal proposes, and potential funding for compensation and site acquisition.

A possible example to help manage the impact of development on biodiversity resources is the adjustment of relevant planning and biodiversity legislation to require an updated Test of Significance if a threatened species, population, or ecological community is listed between the date of development approval and the commencement of development.

An alternative to legislative change is the creation of a public register to raise awareness about dormant developments. Benefits include increased transparency around decision making, approval mechanisms and timing, past decisions, and historic planning and development controls. However, the logistical and legal complexities around confirming “physical commencement” and the significant resource required to create such a register present significant challenges to the creation of such a register.

Flexibility of Development Control Plans

Development assessment at a local level is largely guided by Development Control Plans. These plans are increasingly being flexibly applied or varied as development applications are prepared and considered. The elevation of development standards dealing with matters relating to environmental risk to the Local Environmental Plan or State Environmental Planning Policies would minimise flexibility. These would include management of run-off, changes to nutrient loads, risk or erosion and sediments etc.

Managing Extreme Temperatures and Urban Heat

Long-term observations suggest temperatures have been increasing and the number of hot days is projected to increase. Temperature extremes, both hot and cold, occur infrequently but can have various impacts on health, infrastructure, and the environment. Urban areas create their own microclimates by influencing the surrounding atmosphere and interacting with climate processes. The most significant characteristic of this is the urban heat island effect. Urban areas become significantly warmer than surrounding rural or natural areas as there is less green cover and more hard surfaces which absorb, store and radiate heat.

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Green infrastructure provides several benefits including shade, cooling and cleaning the air, the character of an area, increased biodiversity, and regulation of localised flooding.

Greater support for councils to investigate and implement measures to deliver green infrastructure and improve green cover is required. Measures include a broad range of strategies to integrate green, permeable, and reflective surfaces and shade into our urban areas, as well as planting additional or replacement trees to reinstate an urban tree canopy.

Risk Management Option - Managed Retreat

Managed retreat is always considered as a management option in risk management documents, but implementation faces several significant barriers. These include the communities' values or desire to live in certain locations, attachment to homes, relocation challenges, political leadership, and property rights.

Opportunities or initiatives to review planning and development controls in response to newly identified environmental risks or values requires legislative and policy change. It is recommended that the NSW Government sets a framework to enable and guide managed retreat of settlements or developments from areas at risk. Market mechanisms, such as increased insurance costs, may assist but should not be relied on as the only solution.

Recommendations

9. *Investigate opportunities and the mechanisms required to review, amend, and revoke development consents after a certain time or when demonstrated changes to environmental risks, impacts, or values are identified.*
10. *Set a framework to guide the publication of a public register of dormant development consents to raise community awareness and provide greater transparency in relation to approval mechanisms, timing, decisions, and historic planning and development controls.*
11. *Investigate stronger mechanisms to manage the potential impacts of proposed development, for example, elevating development controls to development standards in State Environmental Planning Policies and Local Environmental Plans.*
12. *Provide financial and technical support for the preparation and implementation of urban greening strategies.*
13. *Publish a policy, guidance, and provide support for the use of "managed retreat" to manage the areas most affected by bush fire and flood risk.*

Part C – Short-, Medium-, and Long-term Planning Reforms

That Portfolio Committee 7 inquire into and report on how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes, and in particular:

(c) short-, medium-, and long-term planning reforms that may be necessary to ensure that communities are able to mitigate and adapt to conditions caused by changing environmental and climatic conditions, as well as the community's expectation and need for homes, schools, hospitals and infrastructure.

Shoalhaven City Council Feedback and Recommendations

Council advocates for a suite of strategies or documents setting out the NSW Government's strategy to provide and locate housing and infrastructure.

Of most importance, is a State-wide Strategy confirming targets and preferred locations for new homes to meet identified demand. For example, it could identify suitable areas using a

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set of principles supporting growth in suitable locations (minimal constraints, supported by infrastructure, and close to existing jobs, shops, and services) and restricting growth in areas at risk from natural events or with biodiversity values. The Greater Cities Commission has a significant opportunity to contribute to this in its publication of the City and District Plans.

Local Housing Strategies are also an important tool in identifying appropriate locations for growth to meet the communities needs and managing environmental risks. Council notes the support available through the Regional Housing Development Program, but the preparation of these documents often requires significant resource and time.

The way new homes and buildings are designed and constructed can help manage some environmental risks, especially increased urban heat and the health risks associated with heat waves. The publication of the *Sustainable Buildings State Environmental Planning Policy* is welcomed. Council has long advocated for the review and improvement of BASIX to help influence the siting and orientation of new development and encourage construction techniques that help keep homes cool (glazing, insulation, reflective roofs, effective ventilation etc.). Such measures have the added benefits of reducing household bills and emissions.

Recommendations

14. *Publish a State-wide strategy or policy confirming required housing supply and identifying appropriate locations to accommodate significant growth and constrained areas with less capacity to contribute.*
15. *Accelerate the Greater Cities Commission publication of its Region and District Plans to confirm the NSW Government's position on the provision of homes and supporting infrastructure.*
16. *Continued and increased support for councils to prepare and implement local housing strategies.*
17. *Update BASIX to deliver climate resilient buildings and lower household bills.*

Part D – Alternative Regulatory Options

That Portfolio Committee 7 inquire into and report on how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes, and in particular:

(d) alternative regulatory options to increase residential dwelling capacity where anticipated growth areas are no longer deemed suitable, or where existing capacity has been diminished due to the effects of climate change.

Shoalhaven City Council Feedback and Recommendations

Complete prohibition of development in an area is not feasible and will not meet the needs of existing communities. Development needs to be managed and balanced to ensure it meets the communities' needs. For example, existing communities in areas with limited housing diversity are changing are getting older and the household size is decreasing, generating demand for greater dwelling diversity (smaller homes). The provision of smaller and more diverse types of homes allows communities to age in place. It also helps to improve housing affordability.

Realistically, existing, and future communities will remain at risk from natural disasters requiring future work to focus on two streams of activities:

- i. Locating new development to avoid known environmental risks identified through continued risk identification and strategic land use planning work.

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- ii. Increased work on the strategic management of risks, increasing resilience, emergency response, and event recovery support.

There is also a need to retrospectively service existing communities with improved transport, communications, and green infrastructure.

The NSW Government has already recognised the need for the latter and has several programs underway. This includes:

- NSW Planning's Resilience Adaptation Pathways Planning Project.
- NSW Reconstruction Authority's proposed Disaster Adaptation Planning work.
- Disaster Assistance Arrangements providing a range of financial and non-financial support to assist communities to recover from the impacts.

The NSW Government should also continue to collaborate with the Commonwealth Government on the implementation of the recommendations of the Royal Commission into National Natural Disaster Arrangements.

Recommendations

18. *Complete and consider outcomes and recommendations of Regional Adaptive Pathways Planning Workshops (NSW Planning).*
19. *Complete and implement Disaster Adaptation Plans (NSW Reconstruction Authority).*
20. *The NSW Government continue to collaborate with the Commonwealth Government on the implementation of the recommendations of the Royal Commission into National Natural Disaster Arrangements.*

Part E - Related Matters

That Portfolio Committee 7 inquire into and report on how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes, and in particular:

(e) any other related matters.

Shoalhaven City Council Feedback and Recommendations

Community and Stakeholder Engagement

The Inquiry and NSW Government Agencies undertaking current and subsequent work in land use planning, risk management, and building community resilience need to consult as broadly as possible. This is essential to manage change by identifying, communicating, and seeking feedback, both experiences and ideas, on challenges and opportunities. Of most importance, is the engagement of representative youth organisations and individuals from young age groups as the generation which will inherit and experience the effect of any decisions.

Cost of Managing the Impacts of Climate Change

The Climate Council of Australia Limited's Climate Costs and Risks to Councils Report found:

- Climate Change is an immense challenge for all levels of government, but its impacts are felt most acutely at the local level.
- Two dozen NSW Councils impacted by floods in March 2021 also experienced floods or storms the previous year. Additionally, six of those local governments had more than 40 percent of their region burned in the Black Summer bushfires.

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- Protecting communities from worsening extreme weather, and minimising the costs borne by them, requires climate leadership at all levels of government.

The report recommends, among other things, for councils to advocate with other tiers of government to embrace stronger climate policies, emissions reductions targets, and frameworks for mitigation and adaptation.

The Australian Local Government Association has called on the Australian Government to support communities in their climate change response (strengthen community resilience and reduce recovery costs) by:

- Investing in a Local Government Climate Change Partnership Fund (\$200 million), and
- Establish a targeted disaster mitigation program (\$200m) to strengthen community resilience.

Insurance

The August 2023 Choice Publication *Weathering the Storm: Insurance in a Changing Climate* explores the role of the insurance market in responding to the complex issues of insurance against natural disasters. It identifies consumer problems limiting the affordability and accessibility of home and contents insurance.

Crown Land Management Arrangements

The variety of Crown Land Management arrangements along Shoalhaven's coastline are inconsistent and complicate the management of privately owned waterfront property and the implementation of best practice coastal management. Improvements in consistency would deliver streamlined work and management activity.

Management of Feral and Domestic Animals

The Independent Review of the Biodiversity legislation found feral cats and foxes kill around 7 million native animals every day in Australia. There are limited opportunities in planning considerations, especially the determination of development applications, to manage the impact of domestic animals on local biodiversity. The *Companion Animals Act 1998* provides opportunities to manage this issue, including the regulation of cat and dog ownership in areas adjoining biodiversity resources.

Recommendations

21. *The NSW Government engage with representative youth organisations and younger individuals to consider and incorporate the experiences and ideas of the generation which will inherit decisions about its future.*
22. *The NSW Government prepare and adopt contemporary climate policies, emissions reductions targets, and frameworks for mitigation and adaptation.*
23. *The NSW Government increase funding for local government and communities to respond to climate change with activities which strengthen community resilience and supplement and reduce recovery costs.*
24. *Introduce a consistent Crown Land management framework for privately owned properties in the coastal zone.*
25. *Review opportunities to amend relevant legislation to provide increased opportunities for local government to regulate cat and dog ownership in areas adjoining biodiversity resources.*