

Submission  
No 211

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

**Organisation:** NSW Greens Councillors

**Date Received:** 27 November 2023

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# Submission from Greens Councillors to the NSW Upper House inquiry into the planning system.

## **TERMS OF REFERENCE**

*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:*

  - i) *in flood and fire prone areas or areas that have become more exposed to natural disasters*
  - 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*

- (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*
  - iv) *rapidly changing social, economic and environmental circumstances*
- 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*
- 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*
- e) *any other related matters.*

## **Submission:**

The following issues have been raised by Councillors as issues affecting the planning system in NSW.

## **Governance**

- 1) To effectively respond to climate change the planning system need to be free of conflicts and it needs to be applied to achieve ecologically sustainable development.

A common issue observed by Councillor is that Councillors who are real estate agents, or who have close relationships with real estate agents are active in development and land use planning decisions.

The Green would like to see anyone who is a developer or a real estate agent, or those who have a close relationship with a developer or real estate agent, banned from being an elected councillor or member of a planning panel until at least 5 years has elapsed from the time they were, or had a close relationship with, a developer or real estate agent.

In our view this is a proportionate response which is justified by the need to keep the planning system and the role which local governments play in it, free of conflicts of interest and corruption.

Penalties should apply to both Councillors and their council if these are not filled accurately and the Office of Local Government (OLG) should be resourced to perform random audits of compliance with this requirement.

Recently the Information and Privacy Commission had conducted a desktop study of the [level of compliance with the declarations](#). The results are not satisfactory and do not enhance the reputation of the planning system.

The Greens support greater rigour in the reporting and public availability of the register of interests which Councillors and senior staff are required to disclose. These declarations should include on a yearly basis that the Councillor has not been a property developer or real estate agent, and that they do not have a close relationship with a developer or real estate agent.

- 2) The Green Councillors are concerned that inappropriate arrangements are made by the developer of strata units.

For example developers who make up the corporate body at a time when they own all or a large number of the units in the body corporate make contractual arrangements which last many years and bind the future body corporate into arrangements which are not fair; not sustainable; do not represent the best value for money, or the simple wishes of the current members of the body corporate to adapt to climate change.

For example a contractor who provides the landscaping for a unit development at a cut price may be awarded the ongoing contract for the long term maintenance of the landscaping even though the particular landscaping may not be ecologically sustainable e.g. have high water use; not support endemic species suited to local soils; be aimed at showing casing units for sale rather than providing shade for residents etc.

- 3) There is a general frustration with the BASIX Index and the refusal of the NSW Government to allow Council to set higher standards than those stipulated in the index.

The NSW Government's reasoning is that certainty should be achieved across the planning system. However there are communities who wish for a much higher standard of sustainability in building than the government is allowing. These communities, if their Council votes that way, can act as trial areas for the Minister for Planning to observe how higher standards are received by the community and dealt with by builders.

Currently the NSW Government is preventing the building of standard residential homes with higher standards of energy efficiency and therefore the Government is slowing down the reduction in green house gas emissions which must be achieved to avoid catastrophic climate change.

In addition to BASIX, improvements are required in the Sustainable Buildings SEPP to ban dark coloured roofing, and to require the new thermal performance standard of 7 Star NatHERS WITHOUT air conditioning.

The SEPP should apply to unit developments up to & including 5 storeys (currently exempt).

- 4) The use of the SEPP (Transport and Infrastructure) 2021 to approve large developments without consent.

Councillors are concerned that the Transport and Infrastructure SEPP is being used by Councils to construct large and environmentally damaging developments without consent or public consultation.

Clause 2.70 of the Transport and Infrastructure SEPP is in the following terms:

**2.70 Exempt development**

- (1) *Development for any of the following purposes is exempt development if it is carried out by or on behalf of a public authority on land to which this Division applies—*
  - (a) *roads, cycleways, pedestrian bridges, at grade car parks, ticketing facilities and viewing platforms,*
  - (b) *recreation facilities (outdoor), other than grandstands,*
  - (c) *amenity facilities, including toilets, change rooms and food preparation and related facilities for persons using public spaces within the site,*
  - (d) *information boards and other information facilities (except visitor centres),*
  - (e) *lighting if the lighting minimises light spill and artificial sky glow in accordance with AS/NZS 1158 Set:2010, Lighting for roads and public spaces Set,*
  - (f) *maintenance depots used solely for the maintenance of the land or structures within the site,*
  - (g) *environmental management works,*
  - (h) *landscaping, including landscape structures or features (such as art work) and irrigation systems (whether or not they use recycled water),*
  - (i) *Christmas trees that comply with subsection (2),*

- (j) *demolition of buildings (unless the building is a State or local heritage item or is within a heritage conservation area) so long as the footprint of the building covers an area no greater than 250 square metres,*
- (k) *temporary structures.*

Examples of how this SEPP is being used in ways which are environmentally damaging and reduce our resilience to climate change are:

- a) Bayside Council's construction of playing field using artificial turf. Artificial turf is polluting, uses petro chemicals and contributes to the heat island effect.
- b) The Hills Shire Council proposal to clear Critically Endangered Ecological Community for a rugby union complex at Fred Caterson Reserve.

### **Emphasis on complying development and speed**

- 5) The planning system should be trusted by the community. The planning system should be transparent. The planning system should protect the public interest and a communities shared interests.

The public interest includes preventing climate change and adapting to climate change. In order to achieve the above conditions of consent must be complied with.

The first and most important step that needs to be taken to achieve compliance is to abolish private certifiers. The single most effective action the NSW Government could take to improve the effectiveness of the planning system would be to abolish private certification.

Private certifiers are selected by, and paid for, the developer. Private certifiers are small businesses that need a good reputation amongst developers to have repeat business.

Private certification is a recipe for a lack of compliance with conditions and a lack of performance of the approved buildings.

There are too many examples of Private Certifiers allowing construction to proceed not in compliance with the conditions of consent that were approved. Those examples include entire extra floors on buildings, however the more mundane and more frequent examples include loss of trees and green space in favour of hard surfaces.

The increase in complying development and wish for increased density and speed is highly detrimental to tree cover and greenspace. Despite the rhetoric, tree cover and its benefits in cooling our cities in private and public spaces, is declining in the more dense areas of our towns. This is the case in regional and suburban NSW where the Codes SEPP and the Housing SEPP have allowed a huge growth in complying secondary dwellings to be built on formerly large suburban blocks. No doubt more efficient land use is a good thing however the loss of tree cover is not. The NSW Government need to

ensure tree cover and greenspace is not a victim of profit centred planning that encourages complying development for the sake of speed.

## **Development on floodplains**

- 6) After government rhetoric raised hopes after the March 2022 flood events in the northern rivers Councillors are observing that proposals for residential subdivision and approvals of residential subdivisions are still occurring on the flood plains across NSW.

More emphasis is being given to having a safety evacuation plan, or a flood refuge, however these are not adequate answers to the problematic issue of developing the floodplain.

Councils come under complex local pressures to allow development on floodplains. The NSW Government should legislate a prohibition of development on flood plains with the flood planning level described at a suitable level to allow for at least 200 years of climate change.

## **Zombie Das and older business consents**

- 7) Zombie DAs are a problem. The NSW Government should consider legislation which replaces the 'work is physically commenced' test in Section 4.53 of the EPAA with a requirement that 10% of the development must be completed within 5 Years and 50% within 10 years.

Old industrial and business consents also present a great problem. It is common in regional towns across NSW to observe industries and businesses operating via conditions which are no longer adequate to achieve the necessary actions needed to prevent and adapt to climate change. Nor are the conditions suitable for public safety and pollution reasons.

The planning system must leave behind the idea that a single approval at a fixed point in time continues in perpetuity. We must have time limited development consents for commercial and industrial developments.

All commercial and industrial developments should have a time limit of 25 years, at which time a new approval should be sought. The assessment of the new approval needs to be undertaken in a framework that assumes the development will continue but with updated conditions. However there also needs to be a threshold at which an activity is no longer supportable and a renewed consent can be refused.

Coal mines, quarries and cement facilities are all examples of industries where old consents can allow an operation to continue in an environmentally damaging way.

## **Failure to plan for growth – from Councillor Katrina Willis QPRC**

- 8) Failure to plan for growth has led to numerous negative impacts on communities and the natural environment.

These impacts include: the loss of Crown Land reserves; the erosion of heritage precincts and country character; lack of potable water for population growth; pollution events from land clearing for major road developments and housing permitted in ecologically sensitive sites, new road noise impacts on existing residents that greatly exceed current NSW government standards;

In addition to these impacts, the financial model for supporting growth is crippling local councils by loading them up with many new community assets and infrastructure to be managed, repaired, replaced, insured etc. without the income streams to cover these costs. These additional cost pressures threaten their ability to mitigate and adapt to climate change, provide basic services, and meet legislative obligations to conserve, protect and manage the natural environment.

Some examples from Queanbeyan Palerang Council area are listed below.

### [Bungendore](#)

The NSW Government accepted the Bungendore Structure Plan 2048 that provided for substantial annual population growth and major expansion of dwellings to the north and east of the historic town centre but the government failed to provide a site for a high school.

[This country town has lost](#) part of its Common and Town Park, a community centre, swimming pool and council administration building through compulsory acquisition of land owned by Queanbeyan-Palerang Regional Council (QPRC) and Crown Land that QPRC managed, for the purpose of building a high school for the town and surrounding rural district.

QPRC does not have sufficient funds to replace the assets that have been compulsorily acquired because the compensation paid is insufficient. Council is challenging the compensation payment and that matter is before the NSW Land and Environment Court. In the meantime, numerous community groups are scrambling to find places to provide their services and store their equipment and supplies. A regular NSW health service has been cancelled for lack of a suitable venue.

The Structure Plan was approved on the basis that the NSW government provided access to additional groundwater sources that it assessed as being adequate to supply the needs of the forecast population. However, these bores did not yield the flows required to support the population growth set out in the Structure Plan. Subsequently, the NSW Government has said that it will not progress any planning proposals for new housing unless and until a secure potable water supply has been sourced.

Consequently, QPRC has embarked on a project to [source a potable water supply](#) to pipe from East Queanbeyan to Bungendore at a cost of more than \$65 million. If such a project is technically and financially feasible, the cost of water to the consumer may prove to be prohibitive.

The Structure Plan also envisages minimal new employment in Bungendore and has very little employment land, relying instead on people commuting (predominately by private vehicle) to Queanbeyan and Canberra for work. This creates social, economic and environmental problems and is a poor model for growth.

### [Queanbeyan City](#)

Planning for new roads has caused considerable problems in Queanbeyan City. When Frank Sartor approved the development of Tralee and Googong within Queanbeyan City, he stipulated that transport requirements needed to be settled. Decades on, Tralee / South Jerrabomberra and Googong are growing but transport connections remain unresolved.

The QPRC Administrator approved construction of the [Ellerton Drive Extension \(EDE\)](#), the least preferred option identified in council-commissioned traffic studies. The EDE required the clearing of forest and woodland in good to moderate condition, habitat for several listed fauna species, and segments of endangered [White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland](#).

The Queanbeyan River, which supports platypus and rakali populations in addition to several native fish species and waterbirds, experienced substantial pollution during the construction of the EDE when the coffer dam failed during a major rain event. The standards for these dams need to be reviewed to take account of the change in rainfall intensity under a warming climate.

Dunns Creek Rd was included in the Ministerial Directive former NSW minister Frank Sartor issued in 2007 that initiated the Googong and Tralee Traffic Study.

Dunns Creek Rd was included in the Queanbeyan Residential and Economic Strategy 2008 and is mentioned in the minutes of the technical working group to the traffic study as certain to be constructed. But a technical working group recommended instead that the EDE be built.

One of the biodiversity offsets for the EDE construction was obtained at a private property immediately adjacent to the preferred alignment for Dunns Creek Rd, which the traffic studies referred to above indicated was a better option than the EDE.

Now, because of changes to NSW biodiversity laws, Dunns Creek road alignment is no longer acceptable and QPRC must find another route for



Dunns Creek Rd, likely longer and more expensive. And the council faces the prospect of having to finance, maintain, repair and depreciate not one but two major roads. This could have been avoided if road infrastructure had been resolved before Tralee and Googong commenced planning and development.

Another adverse consequence of constructing the EDE rather than Dunns Creek Rd is that thousands of residents have been exposed to vehicle traffic noise levels well above the modelled noise levels for the road's operation, and well in excess of the current NSW government requirements for new roads. This has caused, and continues to cause, considerable hardship for these residents which QPRC is seeking to alleviate by commissioning a new traffic noise assessment to identify further noise mitigation measures. Funding sources for any further mitigation measures are yet to be identified.

Residents living along Edwin Land Parkway, which connects to the EDE at Cooma St and runs through Jerrabomberra, have also been exposed to substantial vehicle noise since the EDE opened in mid-2020. Council is also investigating further noise mitigation to assist these residents.

Poor planning has exposed QPRC to considerable additional expenses, exposed residents to unacceptable noise levels, and caused substantial adverse impacts on the city's local environment.

## **From Councillor Charles Jago, Canada Bay**

### **Density and infrastructure**

- 9) The government has set planning targets for each council in Sydney to approve new dwellings, so future population growth is locked in. However, the government has neglected the infrastructure that residents need – public transport, public schools, hospitals and more.

Key examples of the infrastructure shortfall in Canada Bay LGA:

- In many places, the previous government did not give planning consideration for new public schools, including Canada Bay LGA. They simply gave greater funds to private schools and substantially neglected public schools. To solve this problem, the government will have to acquire land at great expense (possibly compulsorily, as possible school sites were simply zoned residential). Sydney needs some new public schools immediately, but finding land and building them will take time.
- Similarly, while the government deserves credit for building new metro train lines, some established rail lines (eg the T9 Northern line) have reached full capacity. While COVID has provided a reduction (not necessarily permanent) in passenger numbers, these lines need to be upgraded; the metro lines do not substitute for these routes. The government is supporting even greater housing density along these lines, but must implement the greater rail capacity needed for the current

population, let alone future population numbers. These major upgrades will probably take a decade – they must start now.

- In many areas, green space is totally inadequate. For example, current plans will see Rhodes expand by some 10,000 people over the next ten years – a rise of well over 50%. Yet Rhodes at that time will still not have a single sporting field. Also, the yet-to-be-built Rhodes Public School will have a student density 11 times greater than Concord West Public School down the road!

The infrastructure shortfall will be different in different locations. The government should consider putting population into regional areas if it is unwilling to provide adequate urban infrastructure. This would make sense given the extensive expansion of regional employment in new solar and wind energy infrastructure and the growth of employment in other regional sectors.

### High-rise is inefficient

**High-rise is more expensive and a less efficient solution than medium density, because the both the construction and operating costs are higher, and also they are less energy efficient in both construction and operation.**

High-rise construction requires extensive use of steel and concrete, creating higher costs than for lower buildings which use different – less expensive – building materials. High-rise buildings also show increased energy intensity (ie reduced energy efficiency), due to greater embedded energy in the steel, concrete and other components.

Similarly, the operational cost of high-rise is higher due to the additional building services – primarily water and sewerage pumps, lift operation, air-conditioning and security – which is more than for smaller buildings. Then in their operation, these building services also require greater energy to operate than medium density buildings. A four-storey building requires less power, and will also be able to harvest enough energy from its roof to power a lot of its energy needs, which is far less likely for much taller buildings.

In addition, high-rise towers are intrinsically less safe. In the event of fire or any other emergency, people in a tall building take longer to escape. People trapped on upper floors may be out of reach of rescue vehicles ladders. For these reasons, medium density buildings are physically better than high-rise.

Further, research shows real social problems tend to occur in high-rise. The greater scale reinforces social isolation. This is a generalisation, but buildings of lesser height find it easier to establish a higher perception of community.

Yes, we accept that there will be a range of building heights for different needs, but the love affair with high-rise benefits developers not the needs of Sydney.

### Building efficiency and climate impact

The current BASIX targets (despite recent minor updates) remain inconsistent with climate science advice and Australia's Paris Agreement (2015) commitments. The government must take strong action with much more effective building efficiency standards. With buildings built today expected to last 50 to 100 years, we are locking in climate failure.

In addition, NSW must legislate to phase out its reticulated gas network, which provides a product that is less safe, dangerous for climate, and more costly than than the electric alternative.

### Housing supply

While many have focused on pushing for greater housing approvals by councils, the fact is that councils have approved a record number of dwellings (as required by the NSW government) but developers have not converted these approvals into completed dwellings, in large part because they prefer not to flood the market, thus reducing their sales revenue.

While the media has focused on housing as a raw supply problem, it was welcome to see Housing Minister Jackson acknowledge other factors affecting supply, including built housing which simply remains vacant, as well as the short-term housing market (eg Air-BNB) which leaves housing unused for a substantial number of days per year.

In addition, the focus at a federal level on providing investment incentives such as negative gearing and capital gains discount has largely failed to expand supply.

The most effective strategy for increasing housing supply remains the approach used in Europe (not to mention also used in Australia from the 1940s to the 1960s by the Commonwealth and all states) which is governments directly constructing housing. I understand that the NSW government wants to reduce pressure on its budget. Nevertheless, it should consider the extent of the housing crisis and the substantial failure of current approaches.

Taken together, the needs across NSW for social housing and affordable housing amount to some hundreds of thousands of dwellings. While immediate actions are required, the major approach of the NSW government should be to directly start building medium density housing – first social housing for those in dire circumstances, then affordable housing. Such a strategy will take time but will produce far more reliable results than the indirect incentives which have not been working, and at much greater scale. It will ensure much greater employment and skills development. By implementing higher building efficiency standards in its own large body of housing, the government will also be able to insist on a set of higher building efficiency standards across the building industry.

### Council independence

Councils in Sydney have been turned into appendages of government, with little discretion to set their own strategy where the NSW government has a different view. The government has forced uniform rules on councils, producing poorer environments. The focus on planning immediacy and expediency has especially failed.

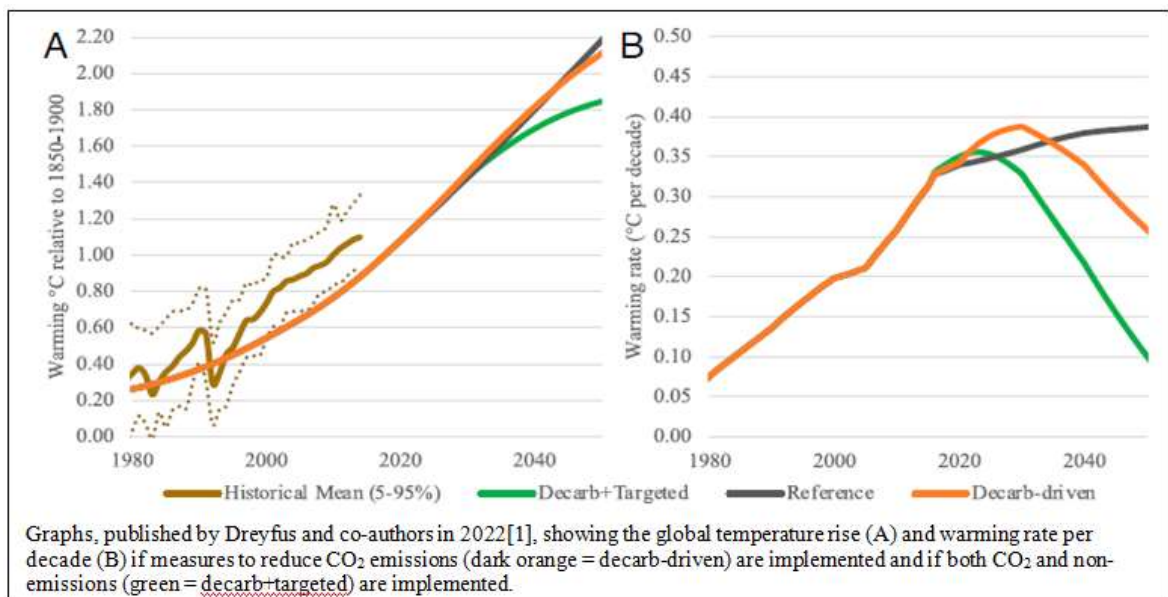
Considering the overall failure of housing supply, the NSW Government cannot claim to be more competent, more efficient or even more honest than local government. Councils must have greater independence to represent their constituents.

### Tackling short-lived climate pollutants via the planning system – from Councillor Dr Dorothy Robinson, Armidale

- 10) Only about half of global warming comes from CO<sub>2</sub> emissions. The **other half** is from non-CO<sub>2</sub> climate pollutants, mainly short-lived climate pollutants (SLCP) such as methane, black carbon and carbon monoxide.

The dark orange lines in the graphs below (published in 2022 in the Proceedings of the US National Academy of Science by Dreyfus and co-authors [1]) show that global temperatures are likely to exceed 2°C by 2050 if we just focus on reducing CO<sub>2</sub> emissions (“decarbonisation”).

But if we implement measures to reduce both CO<sub>2</sub> and SLCP (green lines), the temperature rise per decade falls much more rapidly (graph B) and warming is reduced to just over 1.8°C by 2050, instead of the predicted 2.1°C, if measures to reduce SLCP are not implemented (graph A).



Plugging up leaks from pipelines and oil and gas extraction, reducing food waste, capturing emission from landfills, supporting projects to reduce methane production of livestock, using less fertilizer in farming, switching from

wood heating to reverse cycle heating fuelled by renewable electricity are some of the solutions on hand to reduce methane emissions — solutions that could achieve a large portion of the reductions needed to meet the Global Methane Pledge. Simple measures to reduce black carbon pollution include switching to cleaner fuels and electric transport and adopting more efficient heating and cooking methods, especially phasing out wood heating in developed countries (for both the climate benefits and the estimated health costs exceeding \$10,000 per wood heater per year in Greater Sydney according to the **NSW Government's Sydney air quality study: Stage 2 – Health impact assessment**). More details about reducing SLCP are available at: <https://www.wri.org/insights/short-lived-climate-pollutant-reductions>

Therefore in NSW the planning legislation must be amended to require new (and older) developments to reduce SLCP as well as CO2 emissions. All development should follow Waverley council's lead and not allow wood or gas heaters, or gas cookers (for health as well as climate benefits) and should be required to compost all food waste. If the local council does not already have a FOGO system in place then a condition of consent must be imposed requiring the development to subscribe to a commercially provided system.

For example all unit development should be required to either use the Council FOGO system or, where a public FOGO system is not available, then the Body Corporate is required to subscribe to a commercial composting service.

Requiring far greater assessment of the gaseous emissions from coal mines and coal seam gas wells should be legislated for in the EPAA.

With regard to SLCP from diesel and transport emissions any development of greater value than \$30m (or the level for referral to a Joint Regional Planning Panel) should be required to be completely electrified. For example a quick look at recent development before the JRPPs reveal schools, aged care facilities, subdivisions, low to mid rise medium density housing and commercial developments. The NSW Government should consider a) the operations of any development of this size to be all electrical, e.g. aged care buses, and vehicles associated with a school, equipment associated with developments such as buggies, ride on lawn mowers, leaf blowers, mobility carts could all be required to be electric, and b) all construction could be required to be carried out by electric vehicles, trucks, forklifts, cranes, road construction equipment (for construction of roads in a new subdivision) should all be required to be electric – some provision would need to be made where a particular type of construction equipment was not yet available in an electric version.

James Ryan