

**Submission
No 240**

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

Name: Mrs Monica Anderson
Date Received: 30 April 2024

Allan and Monica Anderson

30 April 2024

The Hon Sue Higginson MLC

Chair

Portfolio Committee No. 7 - Planning and Environment Parliament House

Macquarie Street

SYDNEY NSW 2000

Dear Ms Higginson

The Committee and Chair are to be commended for undertaking this inquiry. The issues we will present are complex and we have found seemingly at times impossible to solve. It is inspiring to know that parts of the regional and New South Wales community share some of the difficulties we experience in terms of planning and landscape change.

This submission is set out with a brief contextual overview, following by a response in three of the key areas. Finally, as the inquiry calls for responses on 'other related matters' a brief observation about governance issues is included.

Thank you for taking the time to complete this important work.

Context

In preparing this submission, our context is as a dryland rice and sugar cane farmer on the Newrybar Swamp in Far Northern NSW at Lennox Head. Newrybar Swamp is a low-lying parcel of land forming most of the northern half of the North Creek catchment, which drains to the Richmond River at Ballina. Newrybar Swamp is bounded to the west, north and east by its catchment boundary, and to the south by Ross Lane. The southern end of the Newrybar Swamp, Ross Lane, is also the top of the tidal limit of North Creek. This unique location is vulnerable because it is:

- Flood prone and has become more exposed to natural disasters because of climate change; the February and March 2022 event saw flooding that was above the 1:100 flood level in our local valley.
- In an area vulnerable to rising sea levels; at the top of the tidal reach of North Creek which will continue to encroach upstream towards the farming operations.
- In an area with the endangered subtropical coastal floodplain ecological community and the vulnerable brolga.
- In an area with high acid sulfate soil levels; which we manage very carefully and have successfully been audited to demonstrate our adherence to best practice in acid sulfate soil management.

The Newrybar Swamp has a complex history, which gives us a unique perspective. According to Ballina Shire Council, following at least 6000 years of careful Aboriginal custodianship, population increases in Ballina drove some significant changes in the area during the 19th and 20th centuries: *“As the population expanded more land was occupied, cleared and farmed; this included sections of ground characterised as low or swamp land. At the northern end of North Creek, the farmers occupying land in the vicinity of the Newrybar Swamp, and in accordance with farming practices brought from the United Kingdom, undertook to drain water from inundated land using a system of human-made channels. Such works were considered ‘improvements’ to the land. In 1906, the Newrybar Drainage Trust established – under the NSW Water and Drainage Act – ‘to drain off the flood waters, and so rendering the land fit for grazing and agriculture’. Water was drained from the swamp into North Creek”*.

It is in this context of vulnerability and complexity that we respond to the inquiry.

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:

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

Our experience has been that at complex and vulnerable sites, like where we farm, there are cumulative impacts from multiple developments. In our case, major and minor roadworks, subdivisions, bridges etc. Amongst all the challenges of farming, one of the most challenging is keeping up to date with these developments. Our experience has been that this involves hearing through the neighbours that a potential impact is being considered by Council, scrutinising Council documents to understand the impact and advocating to Council staff and Councillors to be considered in their assessments. To be honest this process is incredibly stressful.

One example is the announcement by Ballina Council that they had successfully received a grant to raise Ross Land to ‘flood proof’ it. This immediately caused alarm to us as raising Ross Lane would form a levee on the downstream end of the area we farm. There was no consultation by Council with us, just a media announcement; examples shown below.



Lennox Head Community

Councillor Kiri Dicker · February 27, 2023 · 🌐

...

🚧 ⚠️ ROSS LANE IS OPEN ⚠️ 🚧

👏 Just got the news we've all been waiting for! Council has finally received a grant from the NSW State Government to flood-proof Ross Lane. It's about time!

😓 Anyone would think a decade of consistent advocacy from Council and the worst flood in living memory would be enough, but no! Turns out it takes an election to get our roads fixed.

🙏 Thanks to our elected representatives at Federal, State and Local levels [Justine Elliot MP](#) [Tamara Smith, MP](#) and Mayor [Sharon Cadwallader](#), and [Councillor Jeff Johnson](#) for your continued advocacy for this critical infrastructure project.

💬 To the surrounding landowners with whom I have been in regular dialogue with for the past 12 months, I am committed to continue to making sure your vital local knowledge is taken into consideration as this project progresses.

📺 Now...about those southbound off-ramps...



In this example, the area we farm is shown to the right. Councillor Kiri Dicker is standing in the middle of Ross Lane, close to an area known as Deadman's Creek, on the Road to be raised. The left side of the road as shown here is 'downstream' or southern side of Ross Lane. The area to the right is 'upstream' or northern side of Ross Lane.



Councillor Kiri Dicker · Follow

February 28, 2023 · 🌐

In case you haven't heard it already, elected representatives who have actually been advocating for the flood-proofing of Ross Lane got snubbed for a sneaky election announcement for almost \$4 million in funding to flood-proof Ross Lane.

Little did they know that news travels fast in our close-knit community, so we gatecrashed it and bought a few locals with us to ask some questions.

Now circus has gone home it's time for us to get the job done.



ECHO.NET.AU

Politicians of all stripes descend on Ross Lane for big announcement

Yesterday a quiet driveway off flood-prone Ross Lane in Lennox Head was the scene of a...



11

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Josh Booyens for Ballina is in Lennox Head.

February 27, 2023 · 🌐

🚗 ROSS LANE TO BE PERMANENTLY OPEN 🚗

🎉 I'm so excited to be joining [Sharon Cadwallader](#), Councillor Ballina Shire Council and [Sam Faraway](#) MLC to announce close to \$4m to flood proof Ross Lane!

👍 This is what happens when all levels of government work together for the greater good of our community

👍 W... [See more](#)





28

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This image shows Mayor Cadwallader standing with National party candidate on the Northern side of Ross Lane, looking south over Ross Lane. The group are standing close to,

if not on, the property of an upstream landholder. Ironically without permission. The same upstream landholder spoke of concern about the raising of Ross Lane.

After we heard about this through our neighbours, we lobbied Councillors and Council staff. Only Councillor Ramsey took the time to meet with us as a group of landholders and hear our concerns. Council staff last promised an update in March 2024; which has not happened so wait in uncertainty as to our future and likely spend more time and effort to seek out an update from Council.

A second example is in the recent amendment by Council of the Cumbalum B Subdivision Development Control Plan. The Cumbalum B Subdivision is a 2500 to 2800 dwelling subdivision on the southern side of Ross Lane. Council recently endorsed amendments for 28 day public consultation, which include the release of the development stormwater into the mid 20th century agricultural drains flowing to the Ballina Nature Reserve and North Creek. Again we lobbied Councillors to reconsider this, the impact of stormwater release into receiving waterways is one of the greatest threats to estuaries and bushland. Further, we encouraged Councillors to consider the low likelihood that increasing the volume and velocity of stormwater runoff into such a vulnerable location is wholly inappropriate and the option is not suitable even for broad community consultation. One Councillor (Ramsey) voted against endorsing the DCP; all others voted to endorse it. We will now be in a position of having to again respond to this DCP; and our response be watered down as part of a broad community response. This is another example where we have to put a lot of effort into advocating for a right to farm this vulnerable and complex site.

The stress this has caused us is immense. Council take a 'trust us we will look after you' approach in terms of addressing our concerns about flood impacts. Ballina, like many Councils does not have a strong track record in predicting local flooding impacts and planning accordingly. So we are constantly living in uncertainty over what will happen, and scrutinising Council in order to have an opportunity to advocate for the continued farming. We have even had to pay for our own hydrologist to advise Council on update required to the model in our local area. This process has been and continues to be incredibly stressful.

We say that Councils should recognise landholders in vulnerable and complex locations, such as ours and proactively consult with them on impacts being considered by Council. The 'trust us we will minimise impacts' approach does not work because of track records of Councils in mitigating local impacts.

We say that Councils should also provide communities with more options when putting forward proposals; so that more authentic consultation can be undertaken.

We say that Development Control Plans when site specific, like a subdivision, should involve a round of consultation with affected landholders similar to a DA process.

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*
- (iii) rapidly changing social, economic and environmental circumstances*

Cumbalum B is a mega-development proposed in a locality north-west of Ballina. The Cumbalum B megadevelopment involves 2500 to 2800 dwellings on an escarpment above North Creek and Ballina Nature Reserve, with some locations having views to the Pacific Ocean. Cumbalum B has a 'sister site' Cumbalum A, which is smaller (less dwellings).

We understand that this site was first identified for urban development by the State Government and Ballina Council in the 1980s. Since then, the site and its 'sister site' Cumbalum A, have progressed through various planning stages with seemingly strong State Government support. I am not a planner, so like many in the community it is hard for me to unravel around 40 years of planning to understand exactly how this Cumbalum B development site came to be rezoned but I am sure that it would not be rezoned by today's standards for the following reasons:

- The identification of the site predates our understanding of climate change; acid sulfate soil issues; stormwater release hazards to receiving waters; importance of wetland ecosystems to waterways; vulnerability of wetland ecosystems and many of the species in them; the importance of habitat connectivity through corridors and stepping stones and many other contemporary understandings of the landscape.
- The intention of the developer to divert stormwater runoff from a 2800 dwelling development into an agricultural drain built in the middle of last century which is currently under capacity and contributing to floodwater backup on agricultural lands and increased frequency and height of flooding on nearby residential properties. To add further to the ridiculous nature of this stormwater management, after the stormwater runs through this antiquated drainage system, it will run into the Ballina Nature Reserve, which is a tidally influenced reserve for protection of fauna and flora, specifically wetland vegetation types including swamp mahogany. The reserve flows into North Creek, one of the most used recreational areas in Ballina. This seems crazy to be honest, especially in light of the 2022 flood events. Council Staff have argued, in their support of the Developer proposed Development Control Plan, that these challenges exist but will be dealt with by the developer. To upgrade the drainage would require major works in one of the Acid Sulfate Soil hotspots of the North Coast (possibly New South Wales according to some experts). Not possible for anyone else on the North Coast, so why should it be for a megadeveloper?
- No doubt there are more houses needed in the Northern Rivers, but the type of housing shortage is affordable and mid-range housing. This development will delivery ocean view, medium residential very high-end housing. This is not the kind of housing we are

short of and using our limited building resources (labour, skills etc) on such a development only makes it more difficult for our region to get housing we need.

- Councillors have on multiple occasions expressed 'pressure' from the State Government to approve this project. This is highly objectionable. Neither Councillors nor Council staff should feel pressured to apply the due diligence necessary to consider a project such as this in the detail required.
- The Council Staff have argued, and I'm sure it is the case in terms of the intention of the Planning frameworks in NSW, that the Development Application will bring information to magically resolve these issues. However, the experience at Cumbalum A is that the development has worsened drainage, flooding and tailwater egress for the very same landholders who raised it as an issue during DA consultation. Cumbalum A has proven that the DA process does not resolve flooding, drainage issues. Cumbalum A and so many other developments have not experienced the minimised stormwater and flooding impacts promised in DA submissions. This indicates that the local government capacity to scrutinise technical reports is limited, and as such, relying on the DA process to address contemporary concerns is not logical.
- There are many important flora and fauna in the area, including mahogany swamp and breeding broilgas. This patch of wetland is significant to our regional wetlands, connecting flora and fauna from the escarpment to the coast. A 1980s style megadevelopment which will drown our North Creek wetlands is entirely inappropriate for this vulnerable location.
- There are far too many detailed concerns to mention here, instead I have opted to highlight the major strategic issues and instead encourage you to reconsider whether this development should even go ahead at this location. It meets neither economic nor environmental values of our community.

We say that Cumbalum B precinct rezoning to urban should be revoked and returned to its original zone.

We say that Councils should be able to review decisions about rezoning like Cumbalum B. Especially when the site was first recognised almost 50 years.

We say that Council should be able to revoke development applications where community work hasn't started first or within one of the leading stages. Some developments never get to that stage or take a long time. Eg put shops, childcare sporting fields in at the start.

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

(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

In terms of where else to place communities, it is important to consider landuse conflict. Landuse conflict is a major problem for us. We have outlined in this submission the difficulties we have faced in scrutinising Council's decisions and their impact on us. We have been forced down this path by an ever-increasing number of nearby and adjoining landholders who demand a right to influence how we operate. There are so many farming operations which require notification of nearby and/or adjoining landholders, some of these are: use of guns to control feral animals; 1080 baiting to control wild dogs; cane fires; stubble burns; dust from cultivation and harvesting; noise from agricultural equipment operation and equipment maintenance; lights from tractors and sheds operating at night and all hours; trucks delivering and receiving goods; chemical spraying to control weeds. With more people moving into the area around my farms I am now forced to notify thousands of people of cane fires for example by Facebook whole of community notification. I am the only farmer in NSW who is required to do this.

Development on prime agricultural land should be avoided; but when considering agricultural land, it is important to consider the area around it. The buffers need to be consistent with the distance the farming operations may impact. Buffers of hundreds of metres are just not sufficient. Buffers do not necessarily need to be free from development, but instead need to be low density and farming oriented so that land users have similar goals and values for their areas and conflicts can be minimised.

Development on sub-prime agricultural land should instead be considered to accommodate developments. In these areas smaller parcels can be sustainable as agriculture. The notion that agricultural parcels should be a minimum of 100 acres is outdated. Contemporary agriculture and especially on the north coast of NSW, could include much smaller operations that could also be strategically planned to align with ecological values. For example, a patchwork landscape of small agricultural holdings interspersed with corridors and stepping stones adding ecological value. This would also provide buffers to prime agricultural operations that would minimise landuse conflicts.

In terms of where else to place communities, the capacity of waterways should be considered. It is becoming obvious that the capacity of waterways to receive stormwater, mitigate flooding, provide drinking water, provide amenity and recreational opportunities is limited.

We say that landuse planning needs to broaden the area set aside for prime agricultural land to include surrounding complimentary landscapes. These complimentary landscapes should include a patchwork of ecological and farming services on small scale.

We say that landuse planning needs to consider the capacity of our waterways to identify areas capable of absorbing the impacts of urban development when identifying urban development areas.

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:

(f) any other related matters.

Ballina Councillors are on record stating that they and Council Staff are under pressure from the State Government to expedite urban developments. Ballina Mayor is also on record stating a concern about being sued in relation to decisions about urban development. This situation is highly objectionable. Councils are the stewards for community values and vision. This is translated into the local landscape through Council decisions made in the context of those values. We have also observed Councillors seeking detailed information on technical local development matters from their staff, and receiving what we would consider confusing responses. We have observed very close, and in some ways unusual relationships between Council staff and developers, and staff 'leaving council' on very short notice. This situation is suggestive of a 'brokenness' in planning governance.

We say that Councillors and Community should be able to access a detailed level of understanding about technical reports used to support developments. This might include for example, detailed articulation of the assumptions; sensitivities and options considered, and comparisons made to other similar scenarios.

We say that Technical Reports used to support development approvals should be prepared independently of the Council or the Developer. That technical reports should be prepared by experts with no relationship to the Council or the Developer.

We say that Councils and Councillors should be indemnified from legal liability regarding development decisions where they can demonstrate they have canvassed community authentically on an issue and have made their decisions in alignment with community values. We expect this would require much more 'consultation' than is current practice; and may mean Councils (or Developers) need to facilitate some level of agreement within the community should they wish a development to proceed.

Thank you for your consideration of these matters.

Yours faithfully
Allan and Monica Anderson