

Submission
No 243

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

Name: Dr Peter Ashley

Date Received: 7 May 2024

7 May 2024

Ms Sue Higginson MLC
Chair
Portfolio Committee No. 7
NSW Legislative Council

By email: PortfolioCommittee7@parliament.nsw.gov.au

Dear Chair,

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

Please accept this submission. I thank the Committee for the opportunity to submit, and for an extension of time until COB 7 May 2024.

Preamble

Intergovernmental Panel on Climate Change (IPCC) report

The 2022 IPCC report¹ is apropos. With the Iron Gates case study (below) being flood and fire prone, the following warnings² are materially relevant:

Climate trends and extreme events have combined with exposure and vulnerabilities to cause major impacts for some human systems (*high confidence*).

Socio-economic costs arising from climate variability and change have increased. Extreme heat has led to excess deaths and increased rates of many illnesses. Nuisance and extreme coastal flooding have increased due to sea-level rise superimposed upon high tides and storm surges in low-lying coastal and estuarine locations ... Governments, business and communities have experienced major costs associated with extreme weather, droughts and sea-level rise. (Page 11-3).

Climate impacts are cascading and compounding across sectors and socio-economic and natural systems (*high confidence*).

Complex connections are generating new types of risks, exacerbating existing stressors and constraining adaptation options. (Page 11-3).

Increasing climate risks are projected to exacerbate existing vulnerabilities and social inequalities and inequities (*high confidence*).

These include inequalities between Indigenous and non-Indigenous Peoples, and between generations, rural and urban areas, incomes and health status, increasing

¹ *Climate Change 2022: Impacts, Adaptation and Vulnerability*, IPCC WGII Sixth Assessment Report, 3,676 pages.

² *Ibid.* Chapter 11: Australasia [Australia and New Zealand], Executive Summary, pages 11-3 to 11-5.

the climate risks and adaptation challenges faced by some groups and places. Resultant climate change impacts include the displacement of some people and businesses, and threaten social cohesion and community wellbeing. (Page 11-3).

Climate risks are projected to increase for a wide range of systems, sectors and communities, which are exacerbated by underlying vulnerabilities and exposures (*high confidence*). (Page 11-4).

Key cross-sectoral and system-wide risk

Cascading, compounding and aggregate impacts on cities, settlements, infrastructure, supply-chains and services due to wildfires, floods, droughts, heatwaves, storms and sea-level rise. (Page 11-5).

Key implementation risk

Inability of institutions and governance systems to manage climate risks, e.g. the scale and scope of projected climate impacts overwhelm the capacity of institutions, organisations and systems to provide necessary policies, services, resources and coordination to address the socio-economic impacts. (Page 11-5).

Iron Gates – A case study

I refer to the first Terms of Reference (TOR), namely:

- (a) developments proposed or approved:
 - (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

My response to TOR (a) centres around a site of concern, the Iron Gates large-scale residential subdivision proposal at Evans Head. This proposal is covered by Richmond Valley Council DA2015/0096, lodged on 27 October **2014**. Iron Gates is an environmentally sensitive location on the Evans River, a significant local coastal waterway, not too far upstream from the river mouth and ocean.

Iron Gates comes with a long and convoluted legal, planning and environmental history going back to the 1990s, but I have no intent to raise it all here, other than to provide a brief summary of recent events leading to this point to provide context relative to the TOR.

Richmond Valley Council's Independent Assessment Report dated 29 June 2022, recommended that the Northern Regional Planning Panel (NRPP) consent authority refuse DA2015/0096, the Peer Review of the Independent Assessment Report dated July 2022 also recommended refusal, and the NRPP ultimately refused the DA on 7 September 2022. The Council confirmed the refusal on the same date. An appeal was lodged by the developer company – Goldcoral Pty Ltd – with the Land and Environment Court (LEC) on 19 September 2022, case number 2022/00279591. On 1 February 2023, a receiver and manager was appointed to this company, now referred to as Goldcoral Pty Ltd (Receiver and Manager Appointed). The LEC granted a Notice of Motion seeking leave to file for amended plans on 30 November 2023. The Council subsequently notified the amended DA on 29 January 2024 and called for submissions. This was the **sixth time** the Council has advertised the DA. The LEC case goes to trial on 3 June 2024, starting with an onsite viewing.

Flood proneness

The site suffers from severe stormwater flooding (Plate 1), as witnessed by previous illegal constructions of the western and eastern drains to try and drain the site, the latter a massive edifice able to be seen from the entrance to the site



Plate 1: A routine occurrence – stormwater inundation of Iron Gates. Photo: Contributed.

Iron Gates Drive is the only nominated access to the site, it being prone to flooding (Plate 2).

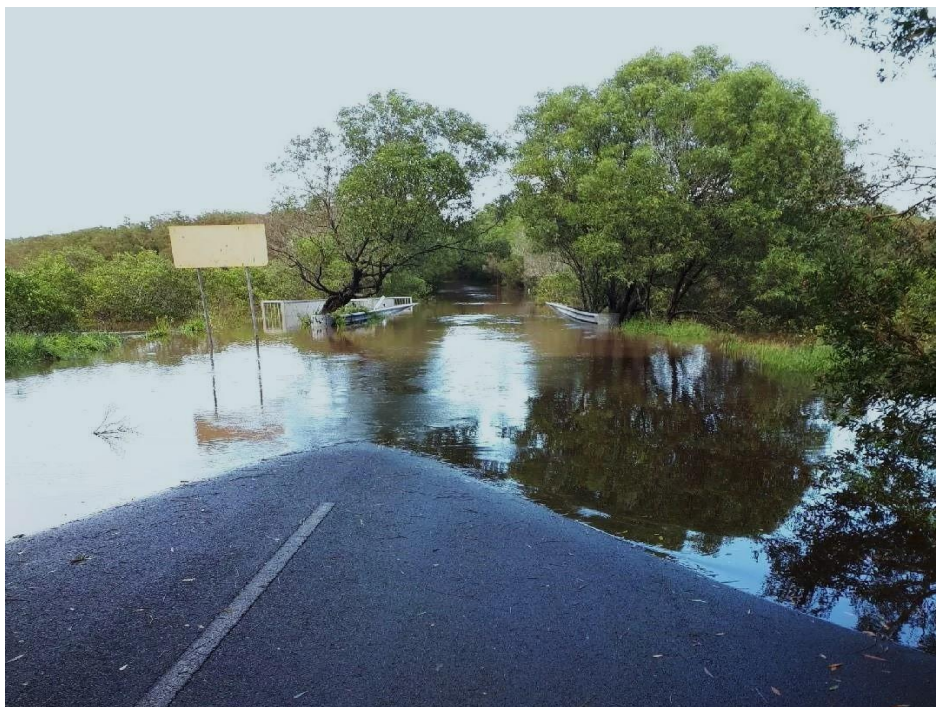


Plate 2: Iron Gates Drive flooded by the Evans River, March 2022. Photo: Contributed.

Evans Head was seriously impacted as result of the 2022 Evans River flooding:

- There was no postal delivery service for over a week.
- The garbage collection service was nearly a week behind schedule, full bins lining the streets in the meantime.
- Shops were shut because of water ingress.
- It was shocking to see all the empty supermarket shelves. No bread, milk, toilet paper, fruit and vegetables etc. for a week.
- Houses were flooded, including those in Bundjalung Street.
- The Evans River bridge had water over both ends, isolating the southside.
- The nearby towns of Woodburn and Broadwater were severely flooded, with displaced residents coming to Evans Head.
- Life as we know it was thrown into chaos.

The extra impact on the Evans Head social and physical infrastructure if it had to accommodate an extra 600³ people from Iron Gates in a climate-induced flood or fire emergency is expected to be overwhelming. Moreover, in its isolated location, who will help out? Evans Head does not have an SES unit.

Fire proneness

Evans Head came close to evacuation during the 2020 fires, and was on high alert, with voluminous smoke plumes coming from the southwest toward the town and Iron Gates. The *Riverside* relocatable home village, close to Iron Gates, was evacuated.

Iron Gates itself is declared bushfire prone land and isolated, triggering special considerations under Planning for Bushfire Protection⁴. It also has only one access road to and from the site, Iron Gates Drive.

As such, “Consideration should be given, where practical, to grouping of rural-residential buildings into clusters which allow for the establishment of APZs [Asset Protection Zones] around a group of dwellings”⁵, and “dual occupancy should be discouraged in isolated locations with poor access”⁶. However, the proposed lots are not clustered, and the application of dual occupancy has been signalled, and therefore expected to be pursued by the developer in this densely packed ‘sardine development’.

BAL – Bushfire Attack Level – ratings

BAL ratings measure heat flux exposure in kW/m² (kilowatts per square metre), and may be BAL-LOW, BAL-12.5, BAL-19, BAL-29, BAL-40, or BAL-FZ (Flame Zone). The fire risk

³ The estimated total population of the Iron Gates development is 618 persons. Source: Engineering Services and Civil Infrastructure Report, Goldcoral Pty Ltd: Iron Gates Residential Subdivision, Arcadis Australia Pacific Pty Limited, dated 14 November 2023; Table 7-2, page 13.

⁴ NSW Rural Fire Service, 2019, *Planning for Bush Fire Protection, A Guide for Councils, Planners, Fire Authorities and Developers*, NSW Rural Fire Service, Sydney.

⁵ *Ibid.* Section 5.1.1, page 40.

⁶ NSW Rural Fire Service, 2006, *Planning for Bush Fire Protection, A Guide for Councils, Planners, Fire Authorities and Developers*, NSW Rural Fire Service, Sydney: page 45.

increases from low risk to very high risk in this sequence. There is also an enforceable building construction standard in fire prone areas, Australian Standard 3959 (AS3959), based on the BAL. Table 1 shows the BAL ratings for the proposed allotments at Iron Gates.

Table 1: Consolidated BAL ratings for the proposed lots at Iron Gates⁷.

BAL rating	Risk	No of Lots	%
BAL-29	High	75	54.0
BAL-19	High	23	16.5
BAL-12.5	Low	41	29.5
	<i>Totals</i>	<i>139</i>	<i>100.0</i>

Table 1 shows that 70.5% of lots have a high-risk BAL. This is a great cause of concern., confirming the reality of the fire situation at Iron Gates.

Flood and fire - refugia

Proposed safety evacuation plans for flood and fire, and a proposed safety refuge so-called, the latter not part of the current DA, are an adaptive approach to known problems at Iron Gates. The answer lies though, in not developing the land in the first place for large-scale residential development. The precautionary principal writ large. It also just plain common sense in my view.

Ecologic – Fauna and flora species and communities at risk

- The site is mapped as a Regional Corridor under the NSW Parks and Wildlife Services Key Habitats and Corridors Dataset, with part of the site mapped as key fish habitat, and some of the north east section of the site designated a SEPP 14 wetland⁸.
- Iron Gates is declared Core Koala Habitat, with koala populations in Queensland, NSW and ACT listed as endangered on 12 February 2022, under the *Environmental Protection and Biodiversity Conservation Act 1999 (Cth)*. Known threats to koalas include loss, modification and fragmentation of habitat, vehicle strike, predation by dogs, and climate change, especially fire and heat stress.
- There is a White-bellied sea eagle (*Haliaeetus leucogaster*) nest on the site, the species classed as Vulnerable under the *Biodiversity Conservation Act 2016 (NSW)*⁹.
- Iron Gates contains Littoral Rainforest and Coastal Vine Thickets of Eastern Australia, Coastal Swamp Sclerophyll Forest of NSW and SEQ, nine threatened fauna species, including various bat species, the Squirrel glider (*Petaurus norfolcensis*) and Brush-tailed phascogale (*Phascogale tapoatafa*). There are an additional 39 threatened fauna species considered possible but habitat dependent¹⁰.

⁷ Supplementary Bushfire Report: Performance based design brief, Bushfire Risk Pty Ltd, dated 16 November 2023; Table 3, page 10.

⁸ Statement of Environmental Effects, Ethos Urban, dated 22 November 2023.

⁹ Supplementary Terrestrial Ecological Assessment, JWA Pty Ltd, dated 16 November 2023.

¹⁰ *Ibid.*

Recommendations

Recommendations, as informed by the Iron Gates case study:

1. Reduce the standard for when a species impact statement is required due to the complexity of climate change and unknowns over future time in vulnerable areas.
2. Implement the need for a Livability Index or similar to account for climate change impacts on communities and therefore people who will live there. The BASIX – Building Sustainability Index – has been used for 20 years for example, so indices are not a new concept.
3. Ensure that Councils have the capacity and competency to assess and defend developments re climate change impacts.
4. Noting that planning panel consent authorities have control and direction of LEC court cases under s8.15(4) of the *Environmental Planning and Assessment Act 1979*, but do not contribute financially to the legal expenses of councils, be required to do so. Councils can then more adequately afford to defend planning decisions.
5. Formalise the concept of residential carrying capacity to improve decision-making and so not create “sardine cities”.
6. Change the legislation so that Land and Environment Court orders and judgments, and others from any other source for that matter, are a burden on the land, and not just a [development] company, as a restriction on title or enforceable caveat or similar. At present, companies are able to go into liquidation and avoid their responsibilities.
7. Ensure that town planning requirements keep pace with planning changes over time to avoid developers only having to meet planning standards that applied at the time their DA was lodged. In the case of Iron Gates, Richmond Valley Council’s Development Control Plan **2012** applies.
8. Derive some sort of cut-off point (time, certain events e.g. legal) for DAs like Iron Gates, that go on and on for years despite a series of planning and legal obstructions. Limit the bites of the cherry that developers can have before development proposals are deemed unsuitable.
9. Re-introduce Class 1 Development Appeals to the Land and Environment Court for the community and objectors.
10. Cumulative modelling be made mandatory for climate change re social and ecologic parameters.
11. Conditions of consent are an easy way out for planning decision-makers to approve marginal and questionable developments. But conditions of consent mean nothing if there is no mechanism to follow up and ensure compliance. And who is going to enforce – local councils? Do they have the staff, the legislative authority, and the will power?
12. Planning decision-makers such as councils are expected to be open to compensation risk should adverse climate change eventualities transpire negatively affecting residents and corporates. Is current legislation adequate here? What about insurance?

13. The bottom line in all of this though, is the huge population pressure on the NSW coast. We need to implement systems and processes that result in plainly unsuitable developments not being pushed through in the rush to build more houses. The negative legacies of such decisions will have to be picked up by somebody, expected to be council's and therefore ratepayers.

I note that Portfolio Committee No. 7 may come to Evans Head. If that should eventuate, I look forward to the possibility of speaking to the Committee directly.

Sincerely,

Dr Peter Ashley