



Portfolio Committee No. 7 – Inquiry report into the planning system and the impacts of climate change on the environment and communities

NSW Government response

February 2025



Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Introduction

The New South Wales climate is changing, impacting on communities and the environment. These changes are projected to become more pronounced over this century, with extreme floods, dangerous fire weather and heatwaves predicted to increase in duration, magnitude and frequency.

The NSW land use planning system plays an important role in managing, mitigating, and adapting to the effects of climate change. The decisions made today directly affect the economic prosperity, health and well-being of the people of NSW and our unique native plants and animals, now and into the future.

The purpose of this report is to respond to the recommendations made in [Report No. 24 - Portfolio Committee No. 7 - Planning system and the impacts of climate change on the environment and communities](#). This report also provides information about how the Government is helping prepare for, manage, and mitigate the impacts of climate change on communities, infrastructure and the environment.

NSW Government response

Recommendation 1

That the NSW Government consider implementing a system for when the Minister for Planning may request the Independent Planning Commission to conduct a public hearing for any development.

NSW Government Response – Not Supported

Section 2.9(1)(d) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides the Minister with the authority to request the Independent Planning Commission (IPC) to hold a public hearing into **any matter** the Minister considers appropriate. It is not proposed to review these functions under the Act.

The EP&A Act sets out the key roles and functions of the IPC. The IPC makes independent and objective decisions on state significant development applications in circumstances where there is considerable community opposition, the local council objects, or a reportable political donations disclosure has been made. Amongst other things, the IPC also provides planning advice when requested by the Minister for Planning and Public Spaces (Minister) or the Planning Secretary.

Recommendation 2

That the NSW Government seek to amend provisions of the *Environmental Planning and Assessment Act 1979* relating to historical developments to:

- i. increase the threshold required for developers to have undertaken action in commencing physical works in order to prevent their development consent from lapsing after 5 years
 - ii. consider a mechanism with appropriate thresholds for consent authorities to assess whether a historical development consent should be reassessed, and
 - iii. consider giving power to consent authorities to revoke or modify historical development consents, where it can be demonstrated that the development will have significant social, environmental or cultural impact not previously identified or that has been changed from the time of approval.
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NSW Government Response – Noted

Awaiting the report of the Legislative Assembly Parliamentary inquiry

The Legislative Assembly Standing Committee on Environment and Planning is conducting a public inquiry into historical development consents in NSW. This inquiry commenced in March 2024 and is examining possible policy and legal options to address historical development consents.

The NSW Government will further consider this recommendation in the context of the findings and recommendations in the report produced by the Legislative Assembly Standing Committee on Environment and Planning once published in 2025.

The Department of Planning, Housing and Infrastructure made a public submission to this inquiry that covered some of these issues – see here – [Submission 45 - Department of Planning, Housing and Infrastructure.pdf](#)

Recommendation 3

That the NSW Government consider amending the *Environmental Planning and Assessment Act 1979* to make the powers to consent authorities to modify or revoke development consents in the public interest, and that if a consent authority exercises the power to revoke a development consent, that no compensation is to be paid by the consent authority to the aggrieved person.

NSW Government Response – Noted

Awaiting the report of the Legislative Assembly Parliamentary inquiry

The Legislative Assembly Standing Committee on Environment and Planning is conducting a public inquiry into historical development consents in NSW. This inquiry commenced in March 2024 and is examining possible policy and legal options to address historical development consents and is scheduled to report in 2025.

The NSW Government will further consider this recommendation in the context of the findings and recommendation in the report by the Legislative Assembly Standing Committee on Environment and Planning once published in 2025.

The Department of Planning, Housing and Infrastructure made a public submission to this inquiry that covered some of these issues – see here – [Submission 45 - Department of Planning, Housing and Infrastructure.pdf](#)

Recommendation 4

That the NSW Government consider implementing:

- all of the recommendations of the statutory review of the *Biodiversity Conservation Act 2016*
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- planning instruments that provide for the retention and creation of deep soil, native tree cover and habitat in urban areas
- guidelines for a clear and transparent process for when the Minister for Planning will refer a development to the Federal Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

NSW Government Response for 4(1) – Noted

The NSW Government published the ‘NSW Plan for Nature’ following the independent review of the *Biodiversity Conservation Act 2016* and the review of the native vegetation provisions of the *Local Land Services Act 2013*. The NSW Plan for Nature commits to taking immediate and longer-term action to turn around the loss of nature and restore habitats and biodiversity. Stage one involved reform to the Biodiversity Offset Scheme by introducing a Bill into Parliament on 15 August 2024. The Bill was passed by both Houses of Parliament on Friday 22 November 2024 and is awaiting commencement via proclamation.

NSW Government Response for 4(2) – Supported

The NSW Government is committed to maintaining and enhancing tree canopy in our urban spaces and incorporating relevant provisions in planning instruments and guidance. To support these goals, the NSW Government has integrated canopy and deep soil objectives, guidance and targets into key housing reforms and planning guidelines, including:

- a. Urban Design Guides for accelerated TOD precincts
- b. Low and Mid-Rise Housing Reforms Explanation of Intended Effect
- c. Western Sydney Aerotropolis Development Control Plan
- d. Greener Neighbourhoods Guide.

NSW Government Response for 4(3) – Noted

Section 69 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) establishes the legal framework through which matters may be referred to the Federal Minister for review. As such, the responsibility for establishing criteria for referral is a matter for the Commonwealth Government. The Minister for Planning and Public Spaces, may on behalf of the NSW Government, refer proposals to the Federal Minister for the Environment under s69 of the EPBC Act for a decision, whether or not the action is a controlled action under the EPBC Act, if the NSW Government has administrative responsibilities relating to the action. The NSW Government is not considering implementing any guidelines for such a referral process as any referrals would always be on a case-by-case basis and undertaken in consultation with other relevant NSW Government agencies.

Recommendation 5

That the NSW Government review the need for legislation amending the *Environmental Planning and Assessment Act 1979* or a state environmental planning policy to consider climate change within the

planning system alongside the need to deliver development outcomes, including housing diversity, supply of industrial land and critical infrastructure.

NSW Government Response – Supported-in-principle

The NSW Climate Change Adaptation Action Plan 2025-2029 was prepared to help NSW move towards achieving the Parliament’s shared legislated adaptation objective under the *Climate Change (Net Zero Future) Act 2023*, and to ensure that NSW is more resilient to a changing climate. The Plan includes actions to review the NSW land-use planning framework and ensure climate resilience is embedded in the decision-making process for local authorities and assessment officers, including reviewing the land-use planning requirements to better embed climate change risk and adaptation considerations in relation to urban heat, flooding, bush fire, and coastal hazards (CCAAP Action 1).

The NSW Environment Protection Authority’s (EPA’s) Climate Change Assessment Requirements and Guide outlines the information to be included in environmental impact statements, if the proposed development is likely to emit more than 25,000 tonnes of greenhouse gas emissions per annum once operational. The Guide allows for climate change mitigation to be considered as part of these development assessment processes.

Section 4.15(1) of the EP&A Act requires a consent authority to take into consideration environmental planning instruments and environmental impacts of the proposed development when determining a development application. There are already several regulatory and legislative frameworks that govern land use, natural hazard and climate change responses, these frameworks establish clear roles and responsibilities and are appropriate to the matters under consideration. The NSW Government will continue to ensure coordination across relevant frameworks and undertake periodic reviews to avoid red tape for landholders, land managers or households.

Recommendation 6

That the NSW Government consider ways to improve the independence of the assessment of planning proposals and development applications, without increasing the time taken to assess such proposals.

NSW Government Response – Noted

The NSW Government’s Local Environmental Plan Making Guide outlines the roles and responsibilities of councils, proponents, and the Department of Planning, Housing and Infrastructure (the Department) in rezoning decisions. In addition, the relevant legislation, Ministerial Directions and Planning Circulars provide clear separation between decision makers and applicants.

The Department conducts thorough merit based assessments of state significant development and state significant infrastructure, which includes input from the community, Council and Public Authorities. The Independent Planning Commission (IPC) makes decisions on significant and contentious development applications in NSW. Local and regional planning panels determine certain local and regional development across NSW (outside Sydney), maintaining an independent and transparent decision-making process.

Recommendation 7

That the NSW Government investigate the establishment of a centralised source for all government held planning data accessible to all councils across New South Wales, including:

- flood, coastal inundation and fire
- biodiversity
- climate modelling
- any other relevant data.

NSW Government Response – Supported

The NSW Government maintains and continues to develop data systems to allow for planning decisions to better utilise best available information on natural hazards, biodiversity and climate modelling. The NSW Reconstruction Authority (NSWRA) is working to make disaster risk information centralised and accessible to councils through the Disaster Adaptation Planning Process. This work will build on the Department of Planning, Housing and Infrastructure's existing Land IQ platform that provides an interface to hazard data for councils and the SEED Portal that hosts critical datasets on floods, coastal inundation, fire, biodiversity, climate modelling, geospatial mapping, utilities and farming data.

Recommendation 8

That the NSW Government continue to support councils to undertake their functions in respect of addressing climate change where necessary, such as:

- assessing the need for additional funding
- making sure councils have appropriate skills to assess large and complex proposals.

NSW Government Response – Supported

As part of the NSW Climate Change Adaptation Action Plan 2025-2029, the Department of Planning, Housing and Infrastructure is implementing actions that will support councils to undertake their functions in respect of addressing climate change, including developing guidance, as well as education and capability building programs, for planners, agency and consent authority staff (CCAAP Action 12).

AdaptNSW recently released NARCLiM 2.0 data, which provides highly accurate data for risk assessments and adaptation planning in NSW at a four-kilometre (grid) scale over a continuous period from 1950 to 2100. Guidance and support resources are available via the AdaptNSW website for councils to utilise.

The NSWRA is developing options to support resourcing and capability-building in councils as part of Action 25 of the State Disaster Mitigation Plan (SDMP). The NSWRA is working across the NSW Government to ensure councils have the skills and capacity to embed climate change considerations in their own plans and to implement actions identified in disaster adaptation plans.

The NSW Government will continue to support councils to build resilience to climate change by providing funding, data and policy guidance, such as that provided to date under the Greening our City program. This program has provided over \$35 million to Greater Sydney councils for 131 urban greening and urban heat mitigation projects. A total of \$97.5 million has been allocated to this program under the Climate Change Fund from 2019 to 2030.

Recommendation 9

That the NSW Government implement enforceable measures and progress legislative change to ensure planning authorities:

- better reach communities using ongoing access to modern tools and a central database to inform them about development proposals in their local areas and
- provide increased, meaningful and impactful opportunities for community participation in the planning process.

NSW Government Response – Noted

The NSW planning system provides clear and consistent opportunities for community involvement in planning processes. Schedule 1 of the EP&A Act sets out mandatory community participation requirements, minimum public exhibition periods for development applications and other matters, and mandatory notification requirements for applications and decisions.

In April 2024, the Department of Planning, Housing and Infrastructure published the [Community Participation Plan](#) which states how and when the community has opportunities to participate in planning matters. The NSW Planning Portal provides a centralised resource for engagement with communities. The NSW Government has allocated \$20.4 million to improve NSW Planning Portal operations, including works to improve the user experience, enhancing accessibility and inclusivity for all Portal users, and fixing complex legacy issues through codesign with stakeholders.

Recommendation 10

That the NSW Government review deemed refusal appeals under section 8.17 of the *Environmental Planning and Assessment Act 1979* and consider the impacts that deemed refusal appeals have on local councils, particularly in relation to the costs incurred in defending these appeals and the strain that this has on council resources.

NSW Government Response – Noted

The EP&A Act provides for appeals to planning decisions, with clear processes. Deemed refusal appeals are aimed at preventing unnecessary delays in planning processes. It is not currently proposed for the NSW Government to review deemed refusal appeal rights under the EP&A Act.

Recommendation 11

That the NSW Government look into strengthening Development Control Plans so that provisions within Development Control Plans bear greater weight when considered in the Land and Environment Court and so that they can be enforced.

NSW Government Response – Not Supported

The NSW planning framework provides guidance to consent authorities regarding the consideration of provisions in Development Control Plans (DCPs). A consent authority is required to consider the provisions of a DCP when determining a development application under s 4.15 of the EP&A Act. It is not proposed to review this settled area of law regarding DCPs.

The Land and Environment Court has released a planning principle regarding the factors to consider when determining the weight to be given to a DCP. This planning principle and the relevant case law are the leading authority on the application of DCPs and indicates that there are varying factors that will determine how much weight is appropriate to give to a DCP in each specific case.

Recommendation 12

That the NSW Government introduce a formalised governance structure at the State level to provide leadership and better assist local coastal councils with the management of catchments, funding and administrative constraints in relation to their Coastal Management Plans.

NSW Government Response – Noted

The NSW coastal management framework provides an existing legislative, risk-based governance framework and strategic planning process to support councils to manage the coast and the impacts of climate change. Councils are provided funding assistance and technical advice to implement the framework under the Coastal and Estuary Management Program.

As part of the NSW Climate Change Adaptation Action Plan 2025-2029, the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) is working with partner agencies to review the NSW framework for managing coastal hazards under the *Coastal Management Act 2016* to assess if it is achieving its objectives in relation to responding to current and future coastal hazards under climate change (CCAAP Action 4). DCCEEW will also continue to implement the NSW Coastal Management Framework and Program, and the NSW Flood Risk Framework and Floodplain management Program, to identify and manage climate change risks to our communities from coastal and flood hazards (CCAAP Action 42).

Recommendation 13

That the NSW Government:

- implement statutory planning controls to mitigate the urban heat island effect, either through legislation, changes to the Sustainable Buildings SEPP, and/or any other relevant instruments
- advocate for changes to the National Construction Code, through the Australian Building Codes Board, to help ensure that infrastructure is resilient to climate change impacts.

NSW Government Response – Supported

The NSW Government will consider opportunities to implement changes to statutory planning controls to mitigate the urban heat island effect.

These opportunities may include updating provisions in state-wide instruments such as SEPPs as well as providing support to councils to update local policies and planning controls.

In developing the State Disaster Mitigation Plan (SDMP), detailed analysis was undertaken to determine the biggest threats to NSW. The results showed that heatwaves (along with bushfires) present the greatest risk to life. The NSWRA is developing local Disaster Adaptation Plans (DAP), and these will include actions relating to a range of natural hazards, including heatwaves, and can identify place-based adaptation actions specifically for addressing the impact of the heat as a growing risk.

The Building Sustainability Index (BASIX) is an existing sustainability assessment tool that applies to all NSW residential buildings and sets minimum standards for water and energy efficiency, and thermal performance. The NSW Government increased the BASIX requirements for energy and thermal performance on 1 October 2023 and these increases align with the National Construction Code update of 2022.

It is noted the Building Ministers have agreed to add climate resilience to the Australian Building Codes Board's (ABCB's) objectives. The expectation is that changes will result in fewer Australians being displaced and lower rebuilding and recovery costs for Australian communities following a natural disaster. The NSW Government will work with the ABCB to support the development and implementation of new building standards for resilience in the National Construction Code, and an associated enabling policy for application of the codes within NSW.

Recommendation 14

That the NSW Government develop a more comprehensive and coordinated climate adaptation framework which can be implemented at a local scale which:

- integrates climate resilience and preparedness measures into all aspects of planning and development
 - identifies climate risks and prioritises specific actions being taken to reduce those risks.
-

NSW Government Response - Supported

The NSW Climate Change Adaptation Strategy (CCAS) has established whole-of-government objectives and principles to make NSW more resilient and adaptive to the impacts of climate change. This strategy will support the development and implementation of a coordinated climate adaptation framework across the NSW Government.

This work is also being supported by the sector-wide Climate Change Risk Officer Program appointed to embed climate risk and adaptation across Government actions and decisions. This program assists agencies to identify climate risks and prioritise specific actions to reduce those risks.

Under the NSW Climate Change Adaptation Action Plan 2025-2029, the Department of Planning, Housing and Infrastructure is comprehensively considering climate risk in the planning system at the local scale. As noted above, this includes reviewing the land-use planning framework to better identify and respond to climate change risk, including for urban heat, flooding, bush fire and coastal hazards. The NSWRA is developing regional DAPs that will align with the CCAS objectives and principles to prepare place-based adaptation plans relating to natural hazards and to embed climate change adaptation concepts in decision-making.

The EPA is also working to integrate climate resilience and preparedness, and adaptation into the planning process via their Climate Change Policy and Action Plan. The EPA will develop requirements and guidance for planning proponents to assess climate risks and identify adaptation measures to reduce impacts to human health and the environment.

DCCEEW will also continue to implement the NSW Coastal Management Framework and Program and the NSW Flood Risk Framework and Floodplain Management Program to identify and manage climate change risks to our communities from coastal and flood hazards (CCAAP Action 42).

Recommendation 15

That the NSW Government enhance land use planning processes to take into account climate change risks, including the development of clear guidelines about where homes and infrastructure should and should not be located.

NSW Government Response – Supported

The Department of Planning, Housing and Infrastructure (the Department) is implementing Actions 1 and 12 from the NSW Climate Change Adaptation Action Plan 2025-2029, which includes reviewing the land-use planning framework to better embed climate change risk into planning and development decisions, including considerations for urban heat, flooding, bush fire and coastal hazards.

The NSWRA and the Department are partners on the preparation of policies regarding managed relocation and tolerable risk, in response to Action 2 and Action 7 of the State Disaster Mitigation Plan. These policies will assist councils and planning authorities to make land use planning decisions, with consideration to climate change, regarding where homes and infrastructure should be located.

The NSWRA is developing DAPs, which will consider tolerable risk within a region and potential options for managed relocation, and include consideration of climate change impacts, to enable planning for future risk.

Recommendation 16

That the NSW Government continue to work through the NSW Reconstruction Authority to develop a state policy for managed relocation in situations where this may be a viable solution for communities or specific sites.

NSW Government Response - Supported

The NSWRA and the Department of Planning, Housing and Infrastructure are developing a state policy for large-scale multi-hazard managed relocation. This policy is expected to draw on the experience of the Northern Rivers, the Central West and other jurisdictions, and will include mechanisms to identify criteria for areas where risks are not tolerable. This process will also provide guidelines to allow strong community involvement and decision making (pre-disaster, post disaster) and funding principles between governments, councils, households and businesses.

Recommendation 17

That the NSW Government give effect to the right of First Nations people to self-determination and the principle of free, prior, informed and ongoing consent in the New South Wales planning system, including in relation to:

- development applications and planning proposals
- culturally appropriate consultation and
- protection of cultural heritage and connection to Country.

NSW Government Response – Noted

It is acknowledged that the EP&A Act does not explicitly mention the principle of Free, Prior, and Informed Consent. However, proponents in NSW must obtain the landowner's consent prior to lodging a development application to carry out development. Landowner's consent requirements for development applications or applications for State significant infrastructure are set out in the Environmental Planning and Assessment Regulation 2021. This aspect of the EP&A Act is not currently under review. Proponents must also gain legal access to a development site before they can carry out development on the land. The general property law regulates this process, not the EP&A Act.

From a strategic perspective, the Department of Planning, Housing and Infrastructure (the Department) is providing ongoing partnership and support to Aboriginal people to improve processes of self-determination

through the NSW planning system including planning processes, case management, consultation, and Aboriginal cultural heritage processes. The Department is designing and delivering strategies aimed at Closing the Gap, improving Aboriginal outcomes and customer service. The Department is also reviewing the Aboriginal Land SEPP to ensure the approval pathway is tailored to Aboriginal people, creating a responsive planning framework that contributes to closing gaps in economic, social, and cultural outcomes.

Recommendation 18

That the NSW Government in partnership with local Aboriginal land councils and other Aboriginal land holders, in land claims processes to identify and activate land suitable for development and progress any necessary rezonings to enable that development and where parties agree, consider land swaps where lands are not suitable for development due to biodiversity and climate change constraints.

NSW Government Response - Noted

The NSW Government has worked with Aboriginal Land Councils and Native Title groups to identify and activate land that is suitable for development. The NSW Government and Aboriginal stakeholders are using mechanisms such as negotiated agreements which are available through land rights and native title legislation. The NSW Government is also working to provide more planning support to Aboriginal groups to help realise opportunities to activate land transferred to Aboriginal communities, as well as land already owned by those communities.

The NSW Government is working to improve consideration of Aboriginal cultural heritage and Aboriginal outcomes in NSW by leading reforms to Aboriginal cultural heritage legislation and providing ongoing partnership support with Aboriginal Land Councils and Aboriginal Land managers during claims and development activation processes.

Implementation of the [NSW Plan for Nature](#) commits the NSW Government to working with Aboriginal organisations, communities and people to explore options to address biodiversity-related constraints and opportunities for land returned under the NSW *Aboriginal Land Rights Act 1983* to ensure social, economic and cultural aspirations can be met from that land.

The Aboriginal Lands SEPP prioritises identifying and progressing proposals, including rezoning, for land development aligning with economic and community development goals. Amendments to the Aboriginal Lands SEPP will support land claims and activation processes.
