

Submission
No 136

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

Organisation: Nature Conservation Council

Date Received: 3 November 2023



Nature Conservation Council

The voice for nature in NSW

3 November 2023

Portfolio Committee no. 7 – Planning and Environment
NSW Parliament House
Macquarie Street
Sydney NSW 2000

Submitted via online form.

Dear Chair and Committee members,

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

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 160 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

NSW is at the forefront of the climate emergency. This state is a significant emitter in terms of domestic emissions and the most populous state, it bears a responsibility to take swift and decisive action to reduce emissions in this crucial decade. Effective action means reducing emissions by 75% from 2005 levels by 2030 and achieving net-zero emissions by 2035 nationally. NSW can play an important role in achieving these targets to protect its residents – and all Australians – from further climate harm.

We welcome the NSW Government's recognition that the accelerating loss of flora and fauna under current laws and regulations impacts the health, wellbeing and identity of the NSW community, and is causing devastating harm to the rich cultural heritage of First Nations peoples. The destruction occurring has an impact on food production, water quality and carbon emissions. We welcome the Government's commitment to turning that around and protecting biodiversity in this state. The recently released reviews of the state's land management framework and impending changes to national nature laws present a welcome moment of opportunity for taking important steps towards a nature positive NSW.

Our planning system should be designed to ensure the ecological sustainability and resilience of our environment in the face of climate change.

We require a system that protects and sustainably manages ecosystem services and biological diversity, including our water resources, fragile coastlines and agricultural land for the benefit of present and future generations.



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This vision must be met by a paradigm shift in the way nature and climate change are prioritised in planning decisions in NSW. Nature and the climate can no longer be peripheral considerations in the planning process, but a primary determinant of what is approved, and what is refused. This submission will outline those changes; from the fundamental reworking of our biodiversity conservation and climate laws and how they interact with planning decisions, to specific changes to processes across planning for bushfire, protecting wetlands and strengthening the assessment of environmental impacts.

We thank our expert Planning Working Group for their contributions to this submission. We also commend to the Committee the submissions of our member organisations and allies, including the Better Planning Network, the Environmental Defenders Office and Sweltering Cities. We further encourage the Committee to take heed of the experiences submitted by the Coastal Residents United groups, whose coastlines, forests and remaining natural places are at risk from developments approved decades ago, under very different circumstances.

Thank you for the opportunity to participate in this inquiry.

Your key contact point for further questions and correspondence is Executive Officer, available via _____ and _____. We welcome the opportunity to appear before the committee on this matter.

Yours sincerely,

Nature Conservation Council NSW

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



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Summary of Recommendations

Planning for climate and biodiversity

1. That the NSW Government accept a paradigm shift and reform the NSW planning system to meet the climate and biodiversity crises. That shift must implement nature positive approaches and climate-focused policies above other considerations. The community needs more comprehensive and inclusive planning which prioritises the wellbeing of ecosystems, and respects and defers to Aboriginal knowledge.
2. That the NSW Government:
 - make necessary consequential amendments to Environmental Planning and Assessment Act 1979 and other relevant legislation to explicitly embed the key elements of the Climate (Net Zero Future) Act's principles, targets, objectives & purpose in all government decision-making.
 - develop a detailed planning policy (or policies) on climate change, which elevates climate considerations as a key decision driver.
3. That the NSW Government:
 - reform the Biodiversity Conservation Act as described by the Henry Report.
 - include marine, freshwater, terrestrial, and all other organisms including algae, fungi and invertebrates in legislative definitions of biodiversity.
 - require consultation with Indigenous groups on developments, particularly in strategic planning stages, and incorporate cultural knowledge and heritage into all planning decisions.
 - implement the ten recommendations of the Stand Up for Nature Alliance ['Path to a Nature Positive NSW'](#).
4. Update the NSW Biodiversity Offsetting Scheme to comply with best practice standards, including genuine last resort use, like for like principles, additionality, the exclusion of money in lieu of offsets, and ruling out time lags.
5. That the NSW planning system incorporate 'red lines' around areas of ecological significance where development will always be refused.
6. That Environmental Impact Assessments, across all project types explicitly assess connectivity impacts, and that wildlife corridors are identified and protected.



Nature Positive Planning for Bushfire

7. Implement Recommendation 27 of the Final Report of the NSW Bushfire Inquiry and develop a new NSW Bush Fire Strategy similar to the NSW Flood Prone Land Policy. Such a strategy should include identifying areas where the bushfire risk is so high that it cannot be mitigated and development is prohibited.
8. Simplify the process for developments requiring bushfire protection measures by including a planning process in the EP&A Act that drives assessment for all natural hazards i.e. bushfires, floods, coastal inundation etc. and includes the ongoing impact of climate change.
9. Include principles for bushfire planning and considerations similar to the list provided for flooding in the template for Local Environmental Plans in NSW (Standard Instrument – Principal Local Environmental Plan 2006).
10. Investigate the feasibility of amending EP&A Act Division 4.3 to have two separate sections for 2 different development categories – residential and non-residential.

Protecting coastal wetlands

11. Coastal lowlands – the ‘buffers’ towards which coastal wetlands can retreat with sea level rise - must be provided for in planning laws. Migration pathways that allow for coastal wetlands to adapt to forecasted climate change-induced sea level rise must be kept off-limits to new development, and instead be reserved to allow for the retreat of these systems.
12. Stock and domestic water use must be capped in each water source through coastal water sharing plans.
13. No new developments should be approved where they threaten the health or extent of any coastal wetland ecosystem.
14. Rules that give effect to the Objects of the Coastal Management Act 2016 part (f) must be written into planning laws at all levels to mitigate current and future risks from coastal hazards and the effects of climate change.

A thoughtful approach to renewable energy infrastructure



15. Work with communities to determine pathways that achieve a better balance between biodiversity and climate impacts and visual amenity to accelerate the renewable energy transition at the scale and pace required to achieve climate targets.

Rule out 'Zombie' developments

16. Councils must be given additional financial or legislative protection to allow them to challenge inappropriate developments, including zombie developments, without the fear of significant financial loss such as legal fees.
17. The NSW government should impose a moratorium on all coastal development until the following steps are taken:
 - Regional Planning Panels are scrapped, and development approvals are again considered by local councils.
 - Property developers and real estate agents are banned from sitting on councils.
 - Existing zombie developments more than 5 years old are subject to reassessment under current planning laws. Inappropriate approvals must redesign, take a land swap or receive compensation.
 - Developments are banned in areas that are vulnerable to floods, bushfires and sea level rise.
 - Roads and developments that impact ecologically sensitive areas are banned.
 - LGA masterplans that assess the cumulative impact of development on threatened species habitat are required.

Building standards that match the scale of the climate and biodiversity crisis

18. The NSW government should impose a moratorium on all coastal development until the following steps are taken:
 - Regional Planning Panels are scrapped, and development approvals are again considered by local councils.
 - Property developers and real estate agents are banned from sitting on councils.
 - Existing zombie developments more than 5 years old are subject to reassessment under current planning laws. Inappropriate approvals must redesign, take a land swap or receive compensation.
 - Developments are banned in areas that are vulnerable to floods, bushfires and sea level rise.
 - Roads and developments that impact ecologically sensitive areas are banned.
 - LGA masterplans that assess the cumulative impact of development on threatened species habitat are required.

Urban density has a role in protecting nature, if done well



19. Establish a clear and consistent vision and strategy for urban density in NSW:

- Develop and implement a state-wide urban density strategy that sets out the vision, goals, targets, and indicators for urban density in NSW, aligned with the objectives of the NSW Planning Reform Action Plan and the Greater Sydney Region Plan.
- Review and update regional and district plans to ensure they are consistent with the state-wide urban density strategy and provide clear and specific guidance and direction for urban density in each region and district.
- Prohibit all further land clearing for subdivisions and suburban development.
- Support a range of housing choices and develop better models of low rise, denser housing forms.

20. Streamline and simplify the planning processes and instruments for urban density in NSW.

Other relevant matters

21. End public native forest logging.

22. That the NSW Government:

- restore third-party merits appeal rights that were once enshrined in the EP&A Act.
- apply public appeal and review rights to all State Significant Development (SSD) and State Significant Infrastructure (SSI).
- continue to accept community submissions to development consultation via email and post.
- require the concurrence of relevant expert agencies for significant developments.



Nature Conservation Council NSW submission to the Upper House Inquiry into the Planning System and the Impacts of Climate Change on the Environment and Communities

Introduction

The overall objective of the planning legislation should be to protect and rehabilitate the natural environment in NSW and to reduce and mitigate climate change. NSW is failing badly in this respect. The recently released Report on the Independent Review of the Biodiversity Conservation Act (the Henry Report) found that NSW is never likely to achieve these objectives on the current trajectory. The Henry Report points out that:

- Biodiversity is declining across NSW due to a range of environmental threats.
- Clearing of native vegetation, intensifying land use, a growing population and associated urban and infrastructure development has led to the destruction, alteration and fragmentation of habitat across the state and ever-increasing pressure on the health of already stressed river systems in many areas of NSW.
- The effects of climate change on natural ecosystems are already being felt and will become more pronounced.
- Extreme weather events such as bushfires, droughts, heatwaves, storms and floods will become more frequent and severe throughout NSW. Species and ecosystems are already being impacted, limiting their ability to adapt.
- Some of the biggest fires in NSW have occurred since 2002. The 2019–20 bushfires had a profound impact on biodiversity. Fires affected more than 5 million hectares of habitat in NSW. These burnt habitats are more prone to altered fire regimes, particularly large-scale fires that burn at high intensity.
- The state's major inland river systems continue to be affected by water extraction, altered river flows, loss of connectivity and catchment changes such as altered land use and vegetation clearing. These affect water availability, river health and ecosystem integrity.
- Native forest logging is damaging forest ecosystems and the habitat of native species.

The impacts of climate change, including extreme weather such as bushfire and flood, coastal sea-level rise, and the biodiversity crisis, are symptoms of a crisis that the current NSW



planning system – as well as the economic and developmental models that inform it – is failing to address.

The Henry Report found that it is imperative that action is taken to give primacy to considerations of biodiversity – both as an environmental necessity, and as a crucial element to underpin any future economic growth and wellbeing.¹

A paradigm shift is required for the NSW planning system to meet the climate and biodiversity crises: decisions must be made with climate and biodiversity impacts as the primary determinant.

However, NSW climate laws are still in the making, and we lack effective climate planning principles and policies. There are also serious flaws with the Biodiversity Conservation Act including:

- its reliance on biodiversity offsetting, which results in a loss of local habitat each time an offset is approved, even if a developer were to make a 'commitment' to conserving 120% of the amount of lost habitat (as recommended in the Henry Report), and
- that it only addresses a fraction of biodiversity by excluding fungi and aquatic organisms.

As such, any changes to the planning system aimed at better protecting communities and nature from the impacts of climate change must be underpinned by effective implementation of climate policy that meets the challenge of emissions reductions targets across sectors, and reforms to the *Biodiversity Conservation Act*.



What do we know?

[TOR: 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 (b) the adequacy of planning powers and planning bodies, particularly for local councils, to review, amend or revoke development approvals]

Lived experience describes a system that is driven by profit rather than the health and wellbeing of nature and communities.

A recent survey of 50 000 people found that 71% of respondents select that 'elements of the natural environment' are important in their ideal neighbourhood.²

When asked, NCC supporters reveal that they fear the future impacts of planning decisions made today. A particular flashpoint is the retention of important old trees, for their ecosystem contributions and cooling effects.

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The Central Coast, particularly the area called The Peninsula is one of the hottest areas in the Sydney basin because of the destruction of trees in the area. Planning laws are not protecting the few mature trees that are left... NSW Planning laws, if they were strong enough, would stop [the sale of] property ... [and] listen to community concerns and... the long-term environmental effect they have on the total community. Stronger planning laws that could not be ignored by greedy Councils would put a stop to this race to get the most dollars.

- Victoria, Central Coast NSW

“

... land across from our house was zoned E2 conservation because of 43 known threatened species. A developer was able to get it rezoned.

The DA stated that mature trees were to be left wherever possible, at the developer's discretion, which of course meant they knocked every tree down. This clause in the DA is a massive failure by NSW Planning, which allows developers to destroy the green that makes our suburb awesome. It's also a lot hotter in summer.

- Richard, Glenning Valley NSW



NCC's expert working group, referring to their lived experiences of working with the planning system, posit the following challenges:

- Dependence upon GDP as an indicator of growth, rather than indicators which address the wellbeing of people and the natural environment, has resulted in excessive exploitation of natural resources and biodiversity loss.
- Urban and suburban sprawl have been facilitated by “simplified” exempt and complying housing and subdivision codes.
- The lack of infrastructure and services put in place as new development occurs has resulted in a reliance on roads and private car use. Planning requirements for off street carparking have led to congestion and reduced pressure to provide public transport options.
- There is an absence of data with which to inform planning decisions, particularly for cumulative impacts on air quality, water availability, biodiversity loss, extent of paved surfaces and forest cover.
- Large scale investment (big end of town developers) has been promoted by government without proper policy and legislative constraints to ensure protection of human wellbeing and the environment.
- Urban housing development has lead to imbalanced density: there is comparatively very little housing in the 3-9 storey range, now known as the over regulated “missing middle”.
- We are witnessing a loss of land for food production close to urban centres, for example the Hawkesbury floodplains.
- Expansion of coastal developments has been accelerating with disregard for forest and bush ecosystems, wetlands, and wildlife corridors.
- The slow response to sea level rise and storm surges in coastal communities, disregard for coastal retreat strategies and absence of action to address threats to private land vulnerable to coastal erosion are leaving many vulnerable.

“

An environmentally sustainable future requires planning for land use and development in NSW to respond and adapt to heat, storms, fire and flood, to protect and rehabilitate natural systems and to reduce CO2 emissions to zero by 2035. The future wellbeing of the people of NSW and Australia relies on turning around the multiple indicators of declining biodiversity. -
NCC Planning Working Group



Review of the literature: barriers and challenges hindering progress towards a 'nature positive' NSW, & planning principles for a sustainable future

The NSW planning framework has treated the relationship between the built and natural environments as one that requires the balancing of economic, social, and environmental considerations. This concept of 'ecologically sustainable development', however, has failed to give adequate weight to the natural world and the right of future generations to thriving ecosystems.³

A pivot to nature positive and nature-based solutions

Use of the term 'nature positive' has become popular. The phrase refers to a global goal for nature, developed in 2019, to restore biodiversity to pre-2020 levels by 2030.⁴ Endorsed by both the Henry Report and the World Economic Forum (WEF), the idea of moving away from a human-centric approach to urban futures and instead towards a nature positive economy involves the development of a built environment that puts "whole ecosystems rather than humans alone at the centre of design".⁵

This initiative informs the Henry Review as well as the federal Department of Climate Change, Energy, the Environment and Water's [Nature Positive Plan](#). It aims for the active improvement of the environment through regeneration and restoration, rather than simply halting degradation.

While the term 'nature positive' has a distinct biodiversity focus, the alternate concept of nature-based solutions is gaining traction in both literature and practice. The concept of nature-based solutions is defined by the European Commission as "solutions based on (i.e. inspired and supported by or imitating) natural processes that address the current key socio-ecological challenges".⁶ This concept is addressed in Australia's [Strategy for Nature](#), which claims that nature-based solutions are "critical to build the resilience of our unique nature". However, this strategy fails to provide a definition for the term. The [NSW Climate Change Policy Framework \(2020\)](#) similarly embraces nature-based solutions, but also fails to define the idea directly.

Nature-based solutions are generally understood as a multifunctional approaches to addressing various urban sustainability challenges – such as "biodiversity habitat...cooling cities, treating water and air, and providing space for social connections and mental and physical health and wellbeing".⁷ Consensus across the literature is that activities such as ecosystem services, green infrastructure and natural capital can be reoriented as planning solutions to societal challenges – while simultaneously addressing the climate emergency and other environmental crises.⁸



A key principle of nature-based solutions is that local government should be at the forefront of listening to community and climate change adaptation planning.

A comparative case-study that explored climate action plans across cities internationally identified local government as critical to climate adaptation plans. The study identifies three key areas that typically increase the efficacy of climate adaptation plans:

- the prompt integration of public feedback,
- increased flexibility and the consideration of multiple projections to develop robust strategies, and
- the establishment of specific metrics, timelines, and strategies for monitoring and evaluating progress towards goals and objectives.⁹

Other research identifies three tenets for prioritising nature in Australian cities:

1. the mainstreaming of new planning tools that “safeguard and foreground urban nature”,
2. the standardisation of collaborative planning and inclusive governance that prioritises Aboriginal knowledge systems, and
3. “empowering communities to innovate with nature”.¹⁰

Findings such as these are part of the consensus in the literature that the current NSW planning system is fractured, bureaucratic, and complex.

Indeed, emerging from a series of interviews with respondents “selected for their public profile” within and surrounding the state planning system, Allan & Plant argue that key challenges to the effective functioning of the system include:

- a lack of trust and communication between federal, state, and local government,
- difficulty in implementing or collaborating for new ideas or compromises arising from compartmentalised decision-making across institutions with disciplinary boundaries, and
- shifting priorities according to political cycles with out of sync strategies.¹¹

Other commentary on the state of the planning system addresses the shift from strategic spatial planning to statutory planning.¹² The consequence of these shifts for the climate and biodiversity have largely been the loss of local power. Decisions are standardised and being made on managerial or state levels, with the Minister for Planning having “the authority to limit local planning bodies and determine the outcome of planning”.¹³



A study by Falling & Kelly into the NSW Standard Instrument Local Environment Plan [LEP], for example, found that regulatory reform designed to simplify regulations through standardisation, consistency, and conformity to “improve processing times for development applications”, has had the consequence of replacing nuanced local information with generality. There has been no reduction in development application processing times.¹⁴

This loss of locally specific environment plans and an increased rigidity of land-use concepts and definitions is problematic for several reasons. As identified by Falling & Kelly, the Standard Instrument LEP “does not relate to future land uses or key issues such as climate change mitigation”, nor does it acknowledge the unique and place-based character of nature and ecosystems.¹⁵

Ultimately catering to development and developers over ecological or environmental concerns, this combination of elements exposes the planning system as making decisions based on private investment opportunities rather than being based on “good planning”, and as a system where infrastructure – rather than ecosystems – are seen as a good investment.¹⁶ It is this conceptualisation of planning that has permitted schemes such as the dysfunctional biodiversity offsetting scheme and the continuation of zombie developments in coastal regions.

Embedded in the use of nature-based solutions when it comes to planning for climate change adaptation and mitigation are considerations of local approaches to the governance and management of ecosystems, green spaces, and green infrastructure.

Local approaches provide scope for greater inclusion of community needs and give agency to nature – existing good practices include the [Yara River Protection Act \(2017\)](#), the City of Adelaide’s [Managing with Fire Programme](#), and the [Chain of Ponds Initiative](#) for Moonee Ponds Creek in Melbourne.

A tool at the local level already being utilised that could be integrated into existing planning practices is the [City of Melbourne’s Green Factor Tool](#). It assists with the design and construction of environmentally friendly buildings including green infrastructure.

The greatest barrier to implementing nature-based solutions in Australia is a lack of policy framework, resources, and the need for collaborative governance.

Good and bad examples of local council planning decisions exist. More work is necessary to give local councils the tools they need to make effective decisions that bring nature-based solutions to fruition and bridge the gap between local government policy and practice, and flexible statewide policy and programs.¹⁷ Scott & Moloney argue that this work includes paying



greater attention to building knowledge in local government to effectively monitor and evaluate their efforts.¹⁸

The resources available to local governments and communities play a significant role in their capacity to protest unwanted developments and manage climate change impacts.

In a study on power in NSW's urban planning system, Uddin & Piracha identify a gap between the capabilities of local government in higher and lower socio-economic areas.¹⁹ Residents in wealthier local government areas (LGAs) are more successful in halting unwanted developments and generally have a larger role in urban planning for their area. Residents involved in these forms of anti-development community resistance are also more likely to be "high-salaried, educated, skilled, and mostly homeowner[s]".²⁰

In comparison, public participation is "weaker or non-existent in less affluent areas of the city, where the majority of residents lack the time and resources required for adequate participation".²¹ Indeed, inner-city councils are generally wealthier and more capable of standing up to state government – as evidenced by the higher success of these LGAs in protesting local council amalgamations – in comparison to suburbs in Greater Western Sydney.²² However, it is in these lower socio-economic areas where some of the most problematic urban developments and expansions are occurring.

More troubling is the increased frequency of our most significant climate challenges occurring in areas such as Greater Western Sydney or regional NSW: extreme weather in the summer of 2019 saw Penrith as the hottest place on earth, and disastrous floods crossed the state in 2022.²³ In the case of Greater Western Sydney, impacts of the climate crisis are exacerbated by development and sprawl onto peri-urban regions, which serve important functions "for a swathe of ecosystem services" including urban heat and flood mitigation.²⁴

The most effective action that can be taken by the planning system to 'best ensure that people and the natural and built environment are protected from climate change impacts' is to explicitly embed consideration of climate change and its impacts into planning legislation.

In doing this so, it is also important for Aboriginal knowledge and perspectives to be foregrounded and inform sustainable practices through, for example, Caring for Country Principles.²⁵

Approaches to reform on a state level have also been suggested by Cole, Doherty & Leadbeter. They recommend the following features to be included into the NSW land-use planning system:



1. Explicit reference in the relevant planning legislation (the primary Act) to climate change, its impacts and the role of land-use planning in addressing this issue;
2. Objects in the primary Act specifying that planning processes are a principal driver of climate change mitigation and adaptation and must be a primary vehicle for the implementation of state/territory climate change policy and emission targets;
3. A requirement in the primary Act for a detailed and overriding planning policy (or policies) to be prepared on climate change;
4. Explicit and comprehensive reference to climate change in the planning rules to be applied by relevant authorities in the development assessment process;
5. A mandatory requirement in the primary Act that planning rules which planning authorities must consider when determining development applications should explicitly reflect the requirements of the detailed planning policy on climate change; and
6. A statutory requirement that, in circumstances of competing planning provisions applicable to a development assessment, climate change criteria take priority.²⁶

Currently, NSW lacks any form of a climate change state environmental planning policy.

Explicit reference is made only once to climate change across the existing Biodiversity and Conservation, Resilience and Hazards, and Planning Systems SEPPs.²⁷ Comparatively, the Victorian and South Australian Governments have developed planning and schemes for climate change adaptation and mitigation. These include flood protection infrastructure and building design, sustainable transport, renewable energy, urban forest, and complete communities,²⁸ schemes for managing coastal hazards and the coastal impacts of climate change, as well as a built environment adaptation action pl.²⁹

Gaps in knowledge exist for planning in regional areas

Significant knowledge that was found missing from the literature includes urban planning strategies for regional areas – with most studies centred around development in the Sydney region. Furthermore, as knowledge on nature-based solutions was typically targeted to urban issues, additional research is necessary into nature-based solutions in the context of river, wetland, and agriculture ecosystems.

Recommendation: That the NSW Government accept a paradigm shift and reform the NSW planning system to meet the climate and biodiversity crises. That shift must implement nature positive approaches and climate-focused policies above other considerations. The community needs more comprehensive and inclusive planning which prioritises the wellbeing of ecosystems, and respects and defers to Aboriginal knowledge.



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Planning for climate and biodiversity

[TOR: (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]

Climate change is having a growing impact on NSW biodiversity

Climate change is having profoundly negative impacts on nature in NSW. Our heating climate and more extreme weather are changing the fundamental conditions our species and ecosystems have adapted to for survival.

All plants and animals have a limited tolerance for heat, cold, fire, and salinity, and all animals need certain food sources at precise times of the year. When these conditions change, species must move or face extinction. Some species, however, cannot move fast enough, while the critical conditions some need will simply cease to exist. The 2017 report '[Hot, Dry and Deadly](#)' articulates the impact a heating climate will have on various regions and ecosystems across NSW. Increasing temperatures, declining rainfall and changed rainfall patterns, rising sea levels, and more intense bushfires are happening across the state, already pushing species to the edge.

Since the publication of that report, the 2019-20 Black Summer demonstrated that billions of animals and millions of hectares can be lost in a single fire season.

A planning system that fails to take heed of these threats will continue to accelerate the decline of nature in NSW, and in turn exacerbate the impact of climate change on communities.

It's crucial that the planning system follows laws that protect and restore biodiversity and Indigenous heritage during strategic planning, rezoning, and development application decisions.



Climate change mitigation and biodiversity conservation must be the primary objectives driving the planning system

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... "the fact of humanity's dependence upon the quality of the biosphere, in both social and economic dimensions, is as immutable as the laws of physics. The case for giving primacy to environmental repair is inescapable. Our future depends upon it. A nature positive vision implies a substantial re-crafting of the [Biodiversity Conservation] Act, and also of other pieces of legislation affecting land use in the State."

- Dr Ken Henry, 2023, Independent Review of the Biodiversity Conservation Act 2016

It's time to align with international and national commitments

The NSW land management framework as it stands is substantially inconsistent with global agreements and targets regarding the importance of protecting forests and other vegetation to conserve important ecosystems and places, to reverse biodiversity loss, to sequester land carbon and to support climate action. Our laws must reflect our nation's commitments, including:

- the 2020 Leaders Pledge for Nature which commits signatories to reverse biodiversity loss by 2030
- the 2021 Declaration on Forests and Land Use, which pledges signatories to stop deforestation by 2030
- The 2022 Kunming-Montreal Global Biodiversity Framework
- The Ramsar Convention on Wetlands and bilateral migratory bird treaties.

We must reach 30 by 30

Effective "nature positive" reform must explicitly work toward and mandate the goal of protecting at least 30 per cent (%) of lands and waters by 2030. This must include each bioregion of terrestrial and inland, marine and coastal waters (as no take zones), especially areas of particular importance for biodiversity and ecosystem functions and services.

Restoring a further 30% of degraded terrestrial, inland water, coastal and marine systems by 2030 is an essential element of this commitment.



It's time to embed climate action into planning laws

Dealing with the threat of climate change should be a top government priority because it poses a serious threat with negative impacts on all other goals.

The *Climate (Net Zero Future) Bill* (the Bill), currently before the parliament, sets an important legislative framework to set NSW on a path to do its fair share towards mitigating climate change impacts and supporting people and natural ecosystems to adapt to the worsening effects of the changing climate.

By aligning to the Paris Agreement commitments to keep warming temperatures to 1.5 °C, NSW has a significant job ahead to ensure this happens. An assessment of Australia's emissions reduction targets by Climate Resource in June 2023 found that Australia must reduce emissions by 90% by 2035 and reach net-zero by 2038 to meet a 1.5 degree aligned carbon budget with a generous share of global emissions.³⁰ A fairer share of global emissions would require even faster action.

The government must be bold and ambitious in ensuring this legislative framework, the Net-Zero Commission and subsequent policies are guided by the best available science and responsive to the escalating climate risks and stressors we face.

The Climate Bill would be significantly improved by a series of consequential amendments to ensure the guiding principles, targets and objectives are embedded in related legislation. The bill's principles, targets and objectives should be mandatory considerations in planning assessments under the Environmental Planning and Assessment Act 1979, and forestry operations under the Forestry Act 2012. One potential model is the Victorian Climate Change Act (Part 3) which embeds climate considerations into seven other acts.

Recommendations: That the NSW Government:

- Make necessary consequential amendments to Environmental Planning and Assessment Act 1979 and other relevant legislation to explicitly embed the key elements of the Climate (Net Zero Future) Bill's principles, targets, objectives & purpose in all government decision-making.
- Develop a detailed planning policy (or policies) on climate change, which elevates climate considerations as a key decision driver.



It's time to re-write biodiversity conservation laws to protect nature and provide clarity for decision-making

Across NSW laws, conservation and resource management outcomes are in direct competition with each other. The status quo is rife with conflicts of interest. Ministers and departments are tasked with protecting the very resource that is their commercial imperative.

Conservation measures embedded in the *Forestry Act 2012*, and the *Local Land Services Act 2013* are demonstrably failing, resulting in vast destruction and ballooning numbers of species becoming threatened and endangered.^{31,32}

The same inherent contradiction pervades the planning system. At best, biodiversity is a secondary issue to the generation of housing and infrastructure. At worst, biodiversity and natural places are resources to be exploited. Yet, ecosystem services such as climate regulation, clean water, and fertile soil, are crucial for our well-being and our economy.

The Henry Report is an opportunity for the NSW government to vastly improve the status quo.

The Stand Up for Nature Alliance (SUFN), a coalition of over 20 environmental organisations has determined a [10-step plan](#) for a "nature positive NSW".

The SUFN plan would see planning decisions deferring to strong biodiversity laws with the clear objective of ending deforestation, enhancing biodiversity, saving species, and avoiding more extinctions, free from the conflict of market imperatives. Further, the SUFN plan would ensure nature laws and related policies in NSW effectively integrate Aboriginal ecological knowledge, and more than that, provide dedicated funding pathways for Country owned and managed by First Nations Peoples to be cared for.

Such reform would necessitate actions in planning processes such as:

- using "cradle to the grave" analysis of proposed projects to properly determine what carbon emissions they will produce.
- setting appropriate protection for threatened species and ecological communities including no go zones.



- encouraging the incorporation of nature-based climate adaptation strategies, such as urban greening, green infrastructure, coastal wetland and floodplain management in planning and development.
- reviewing all zoning in NSW for conflicts with biodiversity conservation, wetlands, coastal vulnerability and Indigenous heritage objectives, including buffers. Identifying conflicts with permitted uses within zones and making amendments.
- strengthening environmental impact assessment to better consider the potential impacts on biodiversity based on science and First Nations people's knowledge.
- requiring the restoration of degraded ecosystems and the creation of wildlife corridors to enhance connectivity and genetic diversity in any development approvals, for example for infrastructure such as roads, railways, power lines etc
- including provisions which ensure that developments do not result in a net loss of biodiversity.
- actively supporting the establishment and management of protected areas, including national parks and nature reserves and archaeological sites by, for example, rezoning lands to protected status where endangered plant and animal communities are identified.
- promoting community engagement and education programs to raise awareness about the importance of biodiversity conservation.

A Biodiversity Conservation Act that includes all biodiversity (marine, freshwater, terrestrial, and all other organisms including algae, fungi and invertebrates) would be consistent with the Convention on Biological Diversity and with the Australian federal jurisdiction, Victoria, Queensland and Tasmania, which all have a single framework for listing and conserving terrestrial and marine biodiversity.

It is also essential that any NSW biodiversity conservation legislation has strong objectives that go beyond protecting what's left. Victoria's Flora and Fauna Guarantee Act 1998 provides a good example. The Objectives of this Act 'guarantee that all taxa of Victoria's flora and fauna, other than tax specified in the Excluded List, can persist and improve in the wild and retain their capacity to adapt to environmental change'.³³

Recommendations: That the NSW Government:



- reform the Biodiversity Conservation Act as described by the Henry Report
- include marine, freshwater, terrestrial, and all other organisms including algae, fungi and invertebrates in legislative definitions of biodiversity
- require consultation with Indigenous groups on developments, particularly in strategic planning stages, and incorporate cultural knowledge and heritage into all planning decisions
- implement the ten recommendations of the Stand Up for Nature Alliance ['Path to a Nature Positive NSW'](#)

The faulty and ineffective biodiversity offsetting scheme must be fixed

The NSW offsetting system has delivered a market mechanism that enables development approval to be granted in almost every situation. The NSW biodiversity offsetting scheme often results in “questionable ecological outcomes” when biodiversity losses in one place are offset in another.³⁴ Current offsetting rules – particularly in Metropolitan Western Sydney, for example – encourage the destruction of vegetation to create open spaces for new developments.³⁵ This has multiple consequences. Firstly, it does not account for the ‘place-based’ value of nature. Secondly, it results in a loss of biodiversity in the areas that people are living in – which is linked to a number of negative mental wellbeing impacts and contributes to the urban heat island effect in this area.³⁶

Biodiversity has become a cost of doing business, not a decisive factor in whether a proposal should be permitted or refused. The scheme has evolved to facilitate development, is far from best practice and has little regard to whether genuine environmental outcomes are being delivered.³⁷

To solve the extinction crisis, we must stop habitat destruction at its source, not continue to allow it by permitting offsets to act as ‘compensation’. Biodiversity offsetting as a concept compromises nature. Offsets do not repair nature and they do not result in ‘biodiversity gains’ because they destroy at least as much as they protect.

A working planning system is one that puts a stop to unsustainable developments.

If a biodiversity offsetting scheme is to persist in NSW, anything less than internationally agreed best practice is unacceptable.

NSW needs to lead the way in offsetting standards:

1. Legislation and policy must set clear limits on the use of offsets.
2. Biodiversity offsets must only be used as a last resort, after consideration of alternatives to avoid, minimise or mitigate impacts.



3. Offsets must be based on genuine like-for-like principles.
4. Offsets must be designed to *improve* biodiversity outcomes.
5. Time lags in securing offsets and gains should be avoided, including a requirement that credits are shown to be available before habitat is removed. For example, growing a forest in the future is not an acceptable offset. Mine site rehabilitation in the future is not an acceptable offset.
6. Indirect offsets must be avoided or strictly limited – money in lieu of actual offsets is always unacceptable.
7. Discounting and exemptions must not be permitted.
8. Offsetting must achieve benefits in perpetuity and there must be an avenue for reporting inappropriate use of offsets.
9. Offsets must be additional.
10. Offset arrangements must be transparent and legally enforceable.
11. Offset frameworks must include monitoring and reporting requirements to track whether gains and improvements are being delivered.
12. Offset frameworks should build mechanisms responding to climate change and sudden events.³⁸

These reforms are substantial, but purely economic and electoral imperatives are now overly narrow and cannot supercede the preservation of nature. Our governments must develop the ability to reflect this in laws and regulations and take responsibility for explaining this to the community, the vast majority of whom want to see more done to protect the environment.³⁹

Recommendation: Update the NSW Biodiversity Offsetting Scheme to comply with best practice standards, including genuine last resort use, like for like principles, additionality, the exclusion of money in lieu of offsets, and ruling out time lags.

We cannot protect our state's biodiversity without 'red lines' beyond which approval will be refused.

Biodiversity legislation, and therefore its subservient planning law, should include provisions that describe situations where the presumption is of assumed refusal; a 'red line' that excludes all development. This must apply to individual projects, state significant developments, state significant infrastructure, and regional plans.

Biodiversity laws should prohibit access to development and offsets in:

- all protected areas including areas of outstanding biodiversity value (AOBVs)
- lands subject to stewardship agreements and existing offset areas
- where any threatened species or ecological community is found
- situations that disrupt the integrity of, or connectivity between, protected areas and areas subject to conservation agreements
- situations that would result in the local, regional or outright extinction of species



- climate refugia.

Part of successfully implementing development 'red lines' will be publicly available mapping that shows areas where the loss of any biodiversity is prohibited.

Recommendation: That the NSW planning system incorporate 'red lines' around areas of ecological significance where development will always be refused.

Connectivity across habitats is of increasing importance as the climate heats and extreme weather events become more common.

Development, resource exploration and extraction that divide ecosystems must stop. Much bushland has already become fragmented due to roads and clearing for housing and infrastructure. An increased focus on wildlife corridors is critical to enable the safe movement of species.

Important changes to planning rules include:

- subjecting the same high-quality assessment and approval standards to all projects; no exceptions for state significant development, state significant infrastructure or regional conservation plans.
- assessing development impacts extending beyond the footprint of a given application by including cumulative impact and landscape scale environmental impact assessments in development applications.
- identifying, protecting and creating wildlife corridors, including in regional planning processes.
- assessing the impact of climate change on species and ecological communities that are subject to environmental impact assessments.

Recommendation: That Environmental Impact Assessments, across all project types explicitly assess connectivity impacts, and that wildlife corridors are identified and protected.



Nature positive planning for bushfire

[TOR: (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, and (iii) in areas that are threatened ecological communities or habitat for threatened species]

Strategic bushfire planning must move past currently identified and mapped prone areas.

A dilemma facing all governments is developing a strategic approach that addresses recovery, rebuilding and/or relocation after natural disasters. This is particularly the case in residential areas.

The *Environmental Planning and Assessment Act 1979* (EP&A Act) requires that consideration of bushfire protection occur during both the strategic planning and development assessment stages. The EP&A Act provides that bushfire must be considered in the preparation of Local Environment Plans and planning proposals only for lands that have been identified and mapped as Bush Fire Prone Lands. On bushfire prone land, the NSW Rural Fire Service (RFS) document *Planning for Bush Fire Protection 2019* (PBP 2019) must be applied at the strategic and the specific development level.

The RFS advised the NSW Bushfire Inquiry (2020) that the Black Summer Fires in 2019-20 destroyed 387 homes and other buildings located on lands not identified as bushfire prone land or bushfire prone land buffers. There are now many areas where existing mapping does not require plans or proposals to consider bushfire.

Site-by-site bushfire management planning leaves gaps and prevents landscape scale action. NSW requires a Bushfire strategy like the NSW Flood Prone Land Policy.

The Final Report of the NSW Bushfire Inquiry (July 2020) recommended Government shift to a more strategic approach in planning for bushfire to address climate change and the increased likelihood and impact of severe bushfires on communities. The strategy would aim to increase community resilience and decrease costs associated with recovery and rebuilding. A strategic approach should also include provisions to prohibit development in areas where the bushfire risk is assessed as too great and unable to be mitigated.

As outlined in the Bushfire Inquiry Report, bushfire planning is currently undertaken predominantly at an individual site level via the application of PBP 2019, as well as the



applicable building standards and conditions of consent. As a result, varying conditions are scattered across the landscape.

Considering these shortcomings, the Bushfire Inquiry Report suggests the existing NSW Flood Prone Land Policy be used as a model and tailored to meet the requirements for a similarly structured NSW Bush Fire Strategy. NSW requires a bushfire strategy that provides guidance across the planning system to build increased bushfire resilience. The strategy should ensure all relevant factors are fully considered when assessing the location of new developments, and how bushfire resilience in existing settlements can be strengthened.

A bushfire strategy should also take into account:

- existing and potential land use and management factors,
- emergency services requirements,
- the environmental characteristics and values of an area, and
- how the environment can best be managed and protected over the long term.

Recommendation: Implement Recommendation 27 of the Final Report of the NSW Bushfire Inquiry and develop a new NSW Bush Fire Strategy similar to the NSW Flood Prone Land Policy. Such a strategy should include identifying areas where the bushfire risk is so high that it cannot be mitigated and development is prohibited.

Assessment of bushfire for new developments needs to be simplified.

Under Division 4.3 of the EP&A Act there are five pathways by which a consent authority can assess a development application that occurs on lands considered as bushfire prone. Four of those pathways are relevant to obtaining approvals on identified bushfire prone land. The fifth pathway can be relevant for development applications which although not on land identified as bushfire prone, must still have all matters of relevance to the development application considered by the consent authority, including bushfire protection requirements.

All developments which occur on bushfire prone land must be assessed according to the specifications and requirements outlined in PBP 2019. For developments unable to comply, consent may still be granted provided the consent authority consults with the RFS. State Significant Development is not required to comply with the requirements of PBP 2019 and no authorisation from the RFS is required.



To improve transparency the EP&A Act should have a set of principles relevant to bushfire which simplifies the development assessment process for all development applications, including State Significant Developments.

Division 4.3 of the EP&A Act requires a section that drives the planning process for all natural hazards i.e. bushfires, floods, coastal inundation and other events, and provides for evaluation of all potential natural hazards that may impact a development. It should incorporate the ongoing influence of climate change. Additionally, the template for Local Environmental Plans in NSW (Standard Instrument – Principal Local Environmental Plan 2006) should include principles for bushfire planning and considerations like those listed for flooding.

It would also be useful to separate developments into two categories and sections of the EP&A Act – those that are for residential purpose developments and those that are other developments i.e. not for residential purposes. The existing sections 4.13 and 4.14 in the Act could be amended to achieve this outcome.

Recommendation: Simplify the process for developments requiring bushfire protection measures by including a planning process in the EP&A Act that drives assessment for all natural hazards i.e. bushfires, floods, coastal inundation etc. and includes the ongoing impact of climate change.

Recommendation: Include principles for bushfire planning and considerations similar to the list provided for flooding in the template for Local Environmental Plans in NSW (Standard Instrument – Principal Local Environmental Plan 2006).

Recommendation: Investigate the feasibility of amending EP&A Act Division 4.3 to have two separate sections for 2 different development categories – residential and non-residential.



Protect coastal wetlands

[TOR: (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]

Coastal wetlands are critical to ensuring NSW communities and environments, both built and natural, are resilient to the worsening effects of climate change.

Coastal wetlands are the estuaries, lagoons, marshes, lakes, floodplains and mangrove forests that connect the land to the sea. They possess profound standalone biodiversity and conservation value, while providing enormous benefit to local communities. They make significant contributions to local recreation and tourism economies and have long held significant cultural value to Australia's First Nations peoples.⁴⁰

Coastal wetlands provide:

- substantial climate mitigation,
- enhanced resilience to climate change impacts,
- additional ecosystem services,
- productive and biodiversity-rich habitat for threatened species.

Coastal wetlands are an invaluable tool in the fight against climate change, sequestering carbon at a per-hectare rate over 20 times higher than forests, together contributing to over 10% of the world's ecosystem-led carbon sequestration.⁴¹ Incredibly, it is thought that they hold over a quarter of the world's organic carbon stores,⁴² referred to as "blue carbon". In Australia, much blue carbon is sequestered in areas with high human population densities.⁴³ Australia harbours up to 11% of the world's 'blue carbon' stock, according to the federal government.⁴⁴

Coastal wetlands are also a highly effective (and cost-effective) mechanism for maximising climate adaptation and resilience within communities. In Australia, a median of \$236 million AUD worth of damage – approximately 90% of the possible total - is averted per storm because of the presence of coastal wetlands⁴⁵. This importance is only set to increase as storms (including cyclones) become more frequent and severe, and as human populations and activities intensify along the Australian coast. Their role as a "BioShield" is crucial to the



resilience of coastal communities in the face of climate change. Coastal wetlands act as nature-based defences that can reduce the effects of extreme weather events and erosion, with coastal habitats reducing wave heights by up to 71%.⁴⁶

In monetary terms, estuaries and wetlands are estimated to provide services worth a combined \$31.6 trillion to the global economy.⁴⁷

Biologically, they are some of the most productive ecosystems on the planet, in many cases matching or exceeding the primary productivity of tropical rainforests⁴⁸. They support over two thirds of all marine animals, from fish to turtles, during at least one life stage⁴⁹, as a result contributing over \$35 million to Australia's fisheries⁵⁰. Coastal wetlands, particularly coastal saltmarsh, also act as critical summer roosting and feeding habitat for numerous species of migratory shorebirds (as well as non-migratory species), many of which are threatened with extinction⁵¹.

Wetland systems are critically undervalued by policymakers and are being failed by current legislative frameworks.

Coastal wetlands have declined by over 50% worldwide in the 20th century alone. The ongoing global contraction is up to 1.5% annually.⁵² In NSW, the most recent 'State of the Environment' report showed that wetlands are declining in both health and extent, including a marked decline in saltmarsh extent within 38% of mapped estuaries from 2016 – 2021.⁵³

Coastal wetlands are primarily threatened by two mechanisms, both of which are relevant to this inquiry:

- The worsening climate change that they themselves aid in mitigating and protecting against.
- Inappropriate or ill-considered coastal developments that directly or indirectly jeopardize their survival, including by preventing natural adaptations to the threat of climate change and resultant sea level rise.

In response to climate change-induced sea level rise, coastal wetlands that are not hindered by surrounding development can retreat inland to maintain their relative ecological positioning.⁵⁴ However, if this process of coastal retreat is blocked by human development or artificial boundaries, these systems are unable to adapt and survive. This phenomenon of a blocked retreat is referred to as "coastal squeeze".



Current planning frameworks, which identify wetlands as discrete mapped locations, risk “obsolescence in dynamically evolving landscapes”⁵⁵ because planning mechanisms don't consider the coastal squeeze effect. It has been long understood and reported by the NSW Government⁵⁶ that inappropriate foreshore development will lead to the disruption or destruction of intertidal marine ecosystems. To avoid this effect, research has stressed the importance of medium to long-term ‘migration pathways’ being made available to mangroves and saltmarsh systems, to allow them to migrate backwards with sea level rise and avoid inundation.⁵⁷

Recommendation: Coastal lowlands – the ‘buffers’ towards which coastal wetlands can retreat with sea level rise - must be provided for in planning laws. Migration pathways that allow for coastal wetlands to adapt to forecasted climate change-induced sea level rise must be kept off-limits to new development, and instead be reserved to allow for the retreat of these systems.

Upstream, NSW’s coastal river systems are also suffering under inadequate planning frameworks. Unlike in the Murray-Darling Basin, there is no cap on growth in total water use in coastal catchments. This means that as rural subdivisions, additional developments, and coastal populations increase, so do the total allocated water volumes for town water and basic landholder rights.

The consequences of this are that water sharing for the environmental health of coastal rivers is compromised, and competition for water use (especially for agricultural production) increases, leading to negative outcomes for both downstream farmers and the environment alike. The planning system must therefore better consider impacts on coastal river flows and water availability needs in all development decisions, including a robust consideration of the projected impacts of climate change.

Recommendation: Stock and domestic water use must be capped in each water source through coastal water sharing plans.

In some localised instances, it is understood that the rate of human-induced sea level rise will exceed the natural capacity of coastal systems to retreat.⁵⁸

Species-level responses to changes in sea level and temperature are predicted to differ, likely leading to changes in ecosystem dynamics and putting into question the viability of some species of coastal flora and fauna to survive into the future.⁵⁹ Some coastal wetland system types are predicted to fare much better than others – most notably, mangrove forests are noted as being more adaptable to sea level rise than coastal saltmarsh, already leading to the climate



change-driven encroachment of mangroves into saltmarsh environments, resulting in the destruction of saltmarsh systems.⁶⁰

Coastal wetlands face extensive and continued direct threats from inappropriate developments due to an ever-expanding concentration of human population that lives along the coast.

80% of Australia's population lives in the coastal zone.⁶¹ The need for a robust, nature-positive planning system that prioritises the persistence of these already struggling ecosystems above other considerations is obvious. Without adequate protections, they threaten to be entirely overwhelmed by high-density human activity and development.

We should, as a priority, give these environments the best chance possible at surviving the effects of climate change, given the substantial benefits they provide us, and the substantial negative effects that would be felt by coastal communities throughout NSW if they were condemned to destruction by inappropriate, short-sighted developments.

The loss of coastal wetlands has profound effects on coastal communities, including:

- a loss of livelihoods (fisheries and oysteries, tourism),
- reduced climate resilience (including increased vulnerability to climate impacts such as extreme weather events),
- and the irreversible loss of the biodiversity and ecosystem functions that these systems support.

Rules that give effect to The Objects of the Coastal Management Act 2016 part (f) must be written into planning laws at all levels in order to give these ecosystems a chance:

The objects of this Act are to manage the coastal environment of New South Wales in a manner consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State, and in particular -

.... (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change

Recommendations:

- No new developments should be approved where they threaten the health or extent of any coastal wetland ecosystem.



Nature Conservation Council

The voice for nature in NSW

- Rules that give effect to the Objects of the Coastal Management Act 2016 part (f) must be written into planning laws at all levels to mitigate current and future risks from coastal hazards and the effects of climate change.



A thoughtful approach to renewable energy infrastructure

[TOR: (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]

In most cases, action on climate change supports biodiversity goals. However, as the renewable energy transition gathers pace, conflicting objectives must be coherently managed.

Communities are grappling with the challenges of the transition. A sensitive, consultative and strategic approach must be taken to ensure energy projects are developed in areas of the lowest biodiversity values, along with a hierarchy for decision-making focussing on avoidance of high conservation value sites on public and private land.

Research suggests that with appropriate policy and regulatory controls, we can continue to pursue the crucial climate intervention of transitioning our energy systems and protect areas that are rich in biodiversity.⁶² Standards and guidance have been developed to support projects to avoid and minimise nature impacts, including mitigating impacts on biodiversity such as migratory birds, and maximising renewable potential.⁶³

The planning system should achieve a better balance between biodiversity and climate impacts and visual amenity. Constructive new biodiversity laws and approval pathways will pay heed to the work being done in this space.

Currently, renewable energy developers report that NSW is the worst jurisdiction for securing development approvals. Wind farm assessments are particularly slow.

There is a risk that clean energy projects are unnecessarily delayed or moved to areas with higher biodiversity impacts because visual amenity concerns are trumping climate and environment considerations.

As one of the most coal-dependent electricity grids in the world, there is an urgent need for NSW to generate more energy from clean sources. Delays to wind, solar and transmission developments threaten our ability to reduce emissions in time to achieve climate targets and goals.

Recommendation: Work with communities to determine pathways that achieve a better balance between biodiversity and climate impacts and visual amenity to accelerate the renewable energy transition at the scale and pace required to achieve climate targets.



Rule out 'zombie' developments

[TOR: (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]

Zombie developments (or 'zombie DAs') refer to development applications approved under historical planning regimes that have been left dormant without substantial progress towards the completion of the approved development. In many cases, such developments would not be approved under contemporary planning laws.

There has been an influx of zombie developments being activated up and down the coast of NSW in recent years. These developments place communities at unacceptably high risk from worsening natural disasters such as floods and bushfires. The cumulative impact of these developments along the coast is an extreme and direct threat to threatened species habitat.

The character, culture and natural values of coastal communities is also under threat by these developments. Communities have been vocally distressed at the implications of looming developments. Many local campaigns have sprung up as communities impacted by Zombie Developments do what they can to protect their environment and communities.

Examples facing ongoing community opposition include:

Tuross Heads: A development approved in 1983 which threatens endangered ecological communities, flora and fauna, and is susceptible to flood damage.

South West Rocks: A development approved in 1993 which will result in the clearing of biodiverse wetlands home to threatened species, and is susceptible to flood damage.

Brunswick Heads: A development approved in 2013 under now outdated planning legislation which puts biodiversity and threatened ecological communities at risk for the purpose of a luxury housing estate.

Hallidays Point: A development approved in 2004 for an aged care facility, which has subsequently morphed into a high-density retirement village risking both local biodiversity and vulnerable aged residents of the proposed development due to significant bushfire and disaster risks.



And many, many more...

This 'boom' in zombie DA activation has been triggered by the previous NSW's government's actions intended to address the housing crisis. The terms of reference, report or recommendations of the Regional Housing Taskforce (established in June 2021) to find solutions to the housing crisis did not consider environmental or climate change assessment or approval.

Rules that give effect to the objects of the *Coastal Management Act 2016* are necessary to protect our coastal environments and communities.

To achieve the objectives of any law, its subsidiary processes and rules must follow those objectives. In the case of coastal developments under the *Coastal Management Act 2016*, local councils are primarily responsible for halting inappropriate developments including zombie developments. However, councils often lack the capacity to absorb the financial risks involved in challenging the developers responsible for activating zombie DAs. The threat of expensive legal action limits the steps councils can realistically take.

For example, the developer of the South West Rocks Zombie DA forced Kempsey Shire Council to defend itself against an appeal in the Land and Environment Court after the Council refused to issue a construction certificate for the development.

Local governments are facing significant pressure and, in some cases, large financial incentives from the state government to approve developments even where inappropriate or damaging, to meet allocated housing targets. Yet, in most cases, these zombie developments are for luxury holiday style accommodation, and do nothing to solve the crisis in unaffordable housing.

The result is extensive environmental damage, reduced climate resilience, increased risk from natural disasters, and adverse social and economic outcomes from inappropriate developments, many of which would not be allowed to take place under contemporary regimes.

The *Environmental Planning and Assessment Regulation 2021* has strengthened rules regarding survey work, vegetation removal, and specified minor preparatory works, which no longer qualify as 'physical commencement' to prevent a development consent from lapsing. However, further action is needed to ensure that zombie developments align with responsible planning requirements, and to stop them when they do not.

Recommendation: Councils must be given additional financial or legislative protection to allow them to challenge inappropriate developments, including zombie developments, without the fear of significant financial loss such as legal fees.



Recommendations: The NSW government should impose a moratorium on all coastal development until the following steps are taken:

- Regional Planning Panels are scrapped, and development approvals are again considered by local councils.
- Property developers and real estate agents are banned from sitting on councils.
- Existing zombie developments more than 5 years old are subject to reassessment under current planning laws. Inappropriate approvals must redesign, take a land swap or receive compensation.
- Developments are banned in areas that are vulnerable to floods, bushfires and sea level rise.
- Roads and developments that impact ecologically sensitive areas are banned.
- LGA masterplans that assess the cumulative impact of development on threatened species habitat are required.



NSW needs building standards that match the scale of the climate and biodiversity crises

[TOR: (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.]

Three years ago, former planning minister Rob Stokes proposed a Design and Place State Environment Planning Policy (DP SEPP) that would have dragged urban design standards into the 21st century and prepared communities for the impacts of climate change, including extreme heat.

However, just weeks before extensive public consultation was due to end, the developer lobby intervened to protect its financial interests by having the minister removed and the proposed SEPP scrapped. After a decade of stagnation in this important policy area, years of progress have been lost.

The NSW government must urgently set requirements across a range of factors that shape the built environment for millions of people in a heating climate. This must include energy efficiency, rooftop solar, electrification, tree canopy cover and greenspace.

Policies such as the DP SEPP were a crucial opportunity to reduce emissions from buildings. Buildings account for almost a quarter of Australia's emissions – from embodied carbon in building materials and then ongoing electricity and gas use.

Research indicates that net zero emissions buildings can be realistically achieved: the technology exists, it can be deployed at scale, and it is cost effective. NSW needs planning rules that help make it happen. By maximising energy efficiency and meeting remaining energy needs with renewables, all new buildings can achieve net zero emissions from electricity. By removing fossil fuel gas connections and regulating embodied carbon in building materials, buildings can achieve net zero emissions.

Net zero emissions buildings are cheaper to run, more comfortable and healthier for people. NSW is already experiencing more hot days, and climate projections show this will intensify. NSW needs planning rules that confront this reality and mandate new homes and workplaces be built for future conditions.



To adequately meet these challenges, reforms to the planning system must pass two crucial tests. Firstly, rules must be robust and consistently raise standards across the sector. A 'principles-based' approach is unacceptable because it raises uncertainty around enforceability and loopholes for developers. Secondly, the level of ambition must be consistent with what the science tells us is needed to reduce emissions and adapt to climate change.

NSW needs a robust planning system that sets strong standards, including:

- Non-discretionary quantitative standards for environmental performance.
- Any flexibility provisions to include clear, legally unambiguous directions that reject poor performance, avoid offsets, and aim to do better than standards. No developer loopholes.
- Recognition that the medium- and long-term environmental, health and financial benefits outweigh the likely small, short-term costs.
- A commitment to review and improve the effectiveness of the standards in achieving emissions reductions objectives within the first five years.

NSW needs a future ready planning system meets the climate challenge, including:

Net zero emissions from energy for all new buildings: This should cover residential as well as non-residential buildings, including an eight-star NatHERs energy efficiency rating and onsite renewables requirements in BASIX.

Full electrification: no new fossil fuel gas connection.

Recognition of embodied carbon and setting a pathway to regulation: This should include comprehensive, credible and transparent reporting frameworks that show emissions from building materials, such as steel and cement, and prepare industry for future decarbonisation.

Comprehensive electric vehicle charging and cycling infrastructure.

Mature tree and bushland retention, canopy cover and green space requirements:

Requirements should align with a minimum 40% tree canopy cover target, preference diverse native planting, drought tolerant plants and wildlife corridors; and ensure equitable access across the city.



Urban heat-ready buildings, which realistically plan for future heat stress. Building standards must be kept updated with best available future climate projections.

Recommendations: That the NSW Government:

- set strong, clear building standards for environmental performance.
- require new buildings and developments to be net zero, fully electrified and include electric vehicle and cycling infrastructure
- require at least 40% tree canopy cover in communities
- keep building standards up to date with best available future climate projections to cope with urban heat



Increasing urban density has a role in protecting nature, if done well

[TOR: (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.]

Urban density refers to the number of people and the amount of floor area that occupies a given urban area. Low density housing development often results in urban sprawl, land reshaping and clearing, which is highly destructive of native vegetation, habitat, natural drainage and biodiversity.

Higher urban density can bring many benefits, if partnered with increased focus on green building requirements and green infrastructure. Important factors include:

Remnant vegetation: Within existing, older low-density suburban housing developments remnant vegetation and ecosystems should not be destroyed and should be respected when designing sites for redevelopment to a higher density.

Green spaces and corridors: Medium density housing, as well as industrial and commercial development sites, if well designed, can contribute to providing increased land for green spaces, not only for active and passive recreation, but importantly also to provide wildlife corridor links, improved habitat for native animals, birds, reptiles and insects, and the protection of riparian zones.

Greenhouse gas emissions: Medium density housing, when combined with transport-oriented design and investment in public transport and active travel infrastructure (regional and local bikeways and footpaths), should reduce car dependence and emissions.

Community participation: All development, including medium density, should aim to have the support of the community and be planned with the community in a participatory and meaningful way, with properly considered options.

Medium Density Requirements: To provide a benefit, medium density housing, factory, commercial and institutional developments, must:

- maintain existing nature corridors connections between existing remnant habitats.



- result in land being set aside for conservation, including the means to conserve old trees.
- result in more green space for recreation and habitat near the development than would result from the development of an equivalent number of low-density residences.
- be supported by frequent and readily accessible, safe, public and active transport infrastructure along shady, tree lined and logical routes.
- maintain or improve native urban ecology and biodiversity to provide healthy ecosystems. This includes providing urban tree canopy cover using a range of drought tolerant endemic species that provide optimum livability for communities and habitat for wildlife.

The following actions, based on the principles and objectives of the NSW Planning Reform Action Plan, as well as best practices and experiences from other jurisdictions will overcome some impediments to densification and promote more urban density in NSW.

Recommendation: Establish a clear and consistent vision and strategy for urban density in NSW

- Develop and implement a state-wide urban density strategy that sets out the vision, goals, targets, and indicators for urban density in NSW, aligned with the objectives of the NSW Planning Reform Action Plan and the Greater Sydney Region Plan.
- Review and update regional and district plans to ensure they are consistent with the state-wide urban density strategy and provide clear and specific guidance and direction for urban density in each region and district.
- Prohibit all further land clearing for subdivisions and suburban development.
- Support a range of housing choices and develop better models of low rise, denser housing forms.

Recommendation: Streamline and simplify the planning processes and instruments for urban density in NSW.

End industrial native forest logging to achieve emissions reduction

[TOR: (e) Any other related matters.]

The native forests of eastern Australia are some of the most carbon-dense in the world. Native forest logging is a major contributor to NSW greenhouse gas emissions, with a 2023 report highlighting that NSW generates 3.6 million tonnes of carbon from its native forestry operations



in a year.⁶⁴ Stopping this industry would be the equivalent of 840,000 cars being taken off the road, and a significant step towards achieving climate goals in this state.

Recommendation: End public native forest logging.

Restore community power and expert agency concurrence

[TOR: (e) Any other related matters.]

Community input into planning and development decisions has diminished over the past 10 years while the rights of property developers have increased.

With the twin climate and extinction crises upon us, it has never been more important to reform our planning system to serve the interests of the people by empowering communities to determine what shape their world takes.

To ensure the planning system serves the interests of the community, not developers, it must be reformed to guarantee public participation at key moments in strategic planning and development assessment.

This includes restoring third-party merits appeal rights that were once enshrined in the EP&A Act so that communities affected by development have at least equal standing with the property development industry.

Public appeal and review rights should apply to all State Significant Development (SSD) and State Significant Infrastructure (SSI), including mining, coal seam gas, and petroleum extraction and exploration proposals.

Public submissions for all projects, including those where the Minister has consent authority, must continue to be accepted by means such as email and post. For some project types to require submissions via an account on the Planning Portal is exclusionary and reduces the ability of individuals to contribute to the decisions that affect their communities.

Significant developments must not be approved by the Planning Department without concurrence of agencies with expertise in health, water, biodiversity, bushfire, heritage and other disciplines. Delay in approval is not an acceptable reason to bypass the expertise of concurrence agencies, particularly where serious, catastrophic or irreversible impacts are at stake, or affect EPBC protected Matters of National Environmental Significance.



Recommendations: That the NSW Government

- restore third-party merits appeal rights that were once enshrined in the EP&A Act.
- apply public appeal and review rights to all State Significant Development (SSD) and State Significant Infrastructure (SSI).
- continue to accept community submissions to development consultation via email and post.
- require the concurrence of relevant expert agencies for significant developments.



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