

**Submission  
No 187**

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

**Organisation:** Environmental Defenders Office

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Environmental  
Defenders Office

**Submission to the Inquiry into the planning system and  
the impacts of climate change on the environment and  
communities**

**November 2023**

## **About Environmental Defenders Office (EDO)**

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law.

Our reputation is built on:

***Successful environmental outcomes using the law.*** With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

***Broad environmental expertise.*** EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

***Independent and accessible services.*** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

**[www.edo.org.au](http://www.edo.org.au)**

### **Submitted to:**

Portfolio Committee No 7 – Planning and Environment.  
Legislative Council  
NSW Parliament  
By email: [PortfolioCommittee7@parliament.nsw.gov.au](mailto:PortfolioCommittee7@parliament.nsw.gov.au)

### **For further information, please contact:**

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### **Acknowledgement of Country**

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

## Introduction

The Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission to Standing Portfolio Committee No. 7, on the Inquiry into the Planning system and the impacts of climate change on the environment and communities.

Australia's climate has warmed by just over one degree Celsius (°C) since 1910 and average temperatures are projected to rise further. Impacts that are the result of a changing climate are already occurring. These include the warming and acidification of oceans, sea level rise, changes in rainfall patterns, and an increase in extreme weather events including fires, flooding and drought. And the impacts of climate change are not just environmental; there will be significant implications across all sectors, including health, the economy and national security.

In light of the unequivocal scientific evidence of the impacts of anthropogenic climate change, the international community agreed in late 2015 to keep the increase in global average temperature to well below 2°C above pre-industrial levels; and to pursue efforts to limit the increase to 1.5°C. Despite this, the legal and governance frameworks needed to reduce emissions, limit warming and adapt to 'locked-in' climate change are still emerging. EDO has previously identified two major legal barriers to NSW taking effective action to combat climate change. The first is a lack of an effective, whole-of-government legal and governance framework in NSW for responding to climate change. The second is the failure of the NSW planning system (encompassing strategic land-use planning, environmental impact assessment and development assessment) to adequately incorporate climate change considerations into planning and development decisions.

Overcoming these two barriers with clear requirements for decision makers will provide certainty to investors, industry, proponents and the community, who are already living with the impacts of climate change.

This submission draws from existing work that EDO has undertaken in recent years and recommends that NSW needs overarching climate legislation – a new Climate Change Act that: sets specific targets for reducing greenhouse gas emissions and increasing renewable energy; imposes duties on decision makers to reduce greenhouse gas emissions and make decisions consistent with limiting the increase in global heating to no more than 1.5°C, and puts in place processes (such as climate adaptation plans) for building resilience to the impacts of climate change. In this context we refer the committee to our recent [submission on the Climate Change \(Net Zero Futures\) Bill](#) to Portfolio Committee No. 7 – Planning and Environment, which is available online,<sup>1</sup> and evidence provided at the Inquiry hearing.<sup>2</sup>

This submission also makes specific recommendations for planning law reform including to better integrate climate change considerations into planning decisions and strengthen strategic land-use planning.

As a community legal centre specialising in public interest environmental and planning law, EDO's submission addresses the terms of reference (**ToRs**) through an environmental law lens. We focus on how the planning system should be developed in ecologically sustainable, science-based laws, regulations and strategies to protect life, property and the environment from the impacts of

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<sup>1</sup> EDO, Submission to the Inquiry into the Climate Change (Net Zero Future) Bill 2023, September 2023, <https://www.parliament.nsw.gov.au/lcdocs/submissions/82412/0044%20Environmental%20Defenders%20Office.pdf>.

<sup>2</sup> <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3016#tab-hearingsandtranscripts>

climate change. This submission focusses on **ToR (c)**, and provides a number of recommendations for reform. We then provide further recommendations in relation to **ToR (a) and (b)**.

## Summary of Recommendations

### 1. Recommendation: Develop a clear overarching legal and governance framework for taking action on climate change

Enact a **NSW Climate Change Act** (or strengthen the proposed Climate Change Net Zero Future) Bill) to establish an overarching framework for climate action – both mitigation and adaptation - in NSW law. This includes legislating: objects for reducing emissions to meet temperature goals and facilitating a just transition; targets to reduce emissions; ensuring a whole of government approach embedding climate change in all relevant decision-making processes; establishing duties on decision-makers; establishing guiding principles for decision-making; requiring independent expert advice; adopting a high level process for statewide risk assessment as well as policies for high risk sectors; statewide, sectoral and regional adaptation planning; review and adaptive management provisions, and clear governance arrangements.

### 2. Recommendation: Integrate climate change considerations into the NSW planning system

#### Objects

- Amend the EP&A Act to insert a new object that sets out the explicit twin roles of the planning system in reducing emissions and protecting NSW against climate change impacts, and facilitating climate adaptation and resilience. Objectives in planning legislation should be consistent with, and give effect to, the objectives and targets of the abovementioned Climate Change Act/proposed Climate Change (Net Zero Future) Bill.

#### Strategic Planning

- Develop and implement an overarching and comprehensive **Climate Change SEPP**. A Climate Change SEPP would integrate climate change mitigation or adaptation considerations into decision-making under the EP&A Act and ensure they meet the revised objects of relevant planning legislation and the Climate Change Act.
- **Review all relevant SEPPs** to identify risks, processes and solutions for climate mitigation and adaptation to ensure they are fit for purpose for a climate-impacted future. For example, this ranges from reviewing and updating the *State Environmental Planning Policy (Resources and Energy) 2021* for consistency with emissions reduction targets, to reviewing the Building SEPP to ensure that new buildings are contributing positively to the liveability of our communities and there are incentives to retrofit buildings and design landscapes to address heatwaves.
- Legislate **mandatory considerations** for plan making. This would involve requiring all planning authorities to address climate change considerations when preparing and making strategic plans such as SEPPs, regional and district plans, local strategic planning statements and LEPs.
- Provide guidance for **plan making**. This would involve providing additional guidance, funding and support to planning authorities preparing strategic plans.
- Review and update the **Standard LEP** to assist Councils implementing best practice climate adaptation measures at the local level. We also recommend that expert guidance, advice and resourcing be made available to help local Councils to do this.

- Introduce specific reforms to provide for **green infrastructure** requirements to reduce climate impacts and facilitate adaptation in local communities.

### **Environmental Impact assessment**

- Clarify and implement **climate impact assessment pathways**. These would be standardised and would scale according to the size, intensity or type of development being undertaken.
- Legislate a requirement for a **climate impact statement** for major projects. This includes full disclosure of all emissions.
- Publish **greenhouse gases assessment guidelines** to ensure consistent, robust assessment based on best available science. These guidelines would advise on how to assess direct and indirect greenhouse gas emissions, apply an ‘avoid, mitigate and offset’ hierarchy for reducing emissions, achieve best-practice carbon offsetting, and advise on best practice adaptation principles.
- requiring the **accreditation of environmental consultants** who prepare climate impact assessment reports, and independent appointment of those accredited consultants.

### **Development decisions**

- Legislate a duty on decision makers to **refuse projects with unacceptable climate impacts** and risks. This will involve the strengthening of decision-making requirements to, among other things, assess greenhouse gas emissions and their impacts, including cumulative impacts. It will also involve requiring decision-makers to assess and respond to climate change impacts, including new duties to impose conditions to ameliorate identified impacts of climate change, and apply best practice guidelines for climate change adaptation.
- In relation to **flood or bushfire-prone land**, ensure decision-makers have an explicit mandatory requirement to consider climate risks when assessing development proposals.
- Implement a requirement to properly **assess the impact of project modifications**. That is, to consider the impacts of a modification in the context of existing impacts and operations, including cumulative impacts.
- Developing **standard conditions of consent** aimed at reducing emissions and ameliorating impacts of climate change. These could include time-limited or threshold bound development consents and conditions; and
- Improve **BASIX standards**.
- Introduce/strengthen powers to allow decision makers to **vary, suspend or revoke approvals** in response to major events, updated climate change modelling and forecasts, and in response to a listing event.
- Implement standard conditions of consent that trigger a review of approvals or approval conditions after a **major event**.
- Reform the EP&A Act provisions relating to **“zombie” development consents**.

### **Other laws and approvals**

- Review and amend **mining legislation** to take into consideration likely emissions in the context of drawing down a state or national carbon budget – explicitly linking decision-making to targets in the Climate Change (Net Zero Future) Act.
- Explicitly and effectively **regulate greenhouse gases as pollutants** under NSW pollution control laws to recognise their contribution to environmental degradation and

encourage behavioural change. Then, in the absence of a carbon price, introduce load-based licensing fees for greenhouse gas emissions, consistent with the polluter pays principle.

- Ensure all relevant legislation is climate ready. This would involve **reviewing all relevant legislation** with a view to incorporating clear requirements for climate change mitigation and adaptation, which would integrate with requirements under the NSW planning system and any stand-alone climate legislation.
- Ensure an explicit requirement that climate change risks be considered in decision-making (particularly in relation to **bush fire planning**) under the *Rural Fires Act 1997 (RF Act)*, and addressed consistent with the principles of ESD. Ensure local councils and the Rural Fire Service have sufficient capacity and capability to continually update mapping and responsiveness to reflect the best available science and technology, including in relation to climate change projections, to inform decision-making.

#### **Compliance and enforcement**

- Establish a comprehensive **greenhouse gas monitoring and auditing register** to report on individual high-impact facilities in NSW.
- Committing **funding** to continuously improve climate adaptation planning, monitoring and report, and auditing of **compliance with conditions of consent**.
- Strengthen **merits appeal rights** for third party objectors, by removing restrictions on merits appeals following public hearings of the Independent Planning Commission and expanding the range of the projects subject to merits review in line with recommendations of the Independent Commission against Corruption.

***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***

For years, EDO has argued that NSW laws need to be climate-ready. We have monitored law and policy developments in Australia and overseas and have produced reports relating to the NSW planning system and preparing for, and adapting to, impacts of climate change.<sup>3</sup> Despite the NSW Government introducing broad policies and directions (see for example the NSW Climate Change Adaptation Strategy (2022)), there are currently limited legislative mechanisms in place to ensure NSW is climate ready.

We have previously identified the two main barriers to NSW taking effective action to combat climate change as:

1. a lack of an overarching legal and governance framework for responding to climate change; and
2. a failure to integrate climate change considerations into the NSW planning system.

Both of these failures need to be addressed with law reform for NSW to ensure both climate change mitigation and adaptation.

**Recommendation: Develop a clear overarching legal and governance framework for taking action on climate change**

Evidently, high-level policy commitments are not enough. Meaningful action to reduce greenhouse gas emissions and adapt to the impacts of climate change requires legal and institutional support. As provided in evidence to the recent committee inquiry hearing on the Climate Change (Net Zero Future) Bill 2023, EDO has long called for a NSW Climate Change Act and reforms to ensure that key NSW laws are climate-ready, and we've long recommended a whole-of-government approach to climate change be established by enacting new laws that deal with both climate change mitigation and adaptation in a clear and coordinated way.

An overarching Climate Change Act is a missing piece in the statute book and, if strongly drafted, will provide a clear framework for ensuring decisions across NSW government are consistent with meeting emissions reduction targets, carbon budgets and temperature goals. A clear legal framework is also needed for planning, risk assessment, and building resilience to help the NSW community, economy and environment adapt to the significant impacts of climate change.

In this context, we welcome the introduction of the Climate Change (Net Zero Future) Bill 2023 as an important step. However, the legislation must be strengthened to provide an overarching State framework with a clear objective for a rapid and responsible transition to a low-carbon economy in NSW, and specific requirements to reduce emissions and build resilient communities able to adapt to the impacts of climate change. We recommend that to achieve this, NSW requires a robust and enforceable legal framework that coordinates and links to every level of decision

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<sup>3</sup> See, EDO NSW, *Planning for climate change: how the NSW planning system can better tackle greenhouse gas emissions* (July 2016), [https://www.edonsw.org.au/planning\\_for\\_climate\\_change](https://www.edonsw.org.au/planning_for_climate_change); EDO NSW, *Climate-ready planning laws for NSW: Rocky Hill and beyond* (March 2019), <https://www.edo.org.au/wp-content/uploads/2019/11/EDO-CC-FINAL-full-report-double-spreads.pdf>.



making with clear responsibilities for achieving and reporting against the legislative objectives and purpose.

We refer the Committee to EDO's recommended key elements of climate change legislation set out in **Box 1**, and to the 27 recommendations in our submission to this Committee on the Climate Change (Net Zero Future) Bill 2023,<sup>4</sup> and evidence provided at the Inquiry hearing that provides further analysis on the key elements.<sup>5</sup>

**Box 1: Key elements of Climate legislation – Climate Ready Planning Laws for NSW:**

- **Objects:** set a clear overarching objective to reduce greenhouse gas emissions and make decisions consistent with limiting the increase in global warming to no more than 1.5 degrees Celsius above pre-industrial levels. The objects should also refer to planning for a rapid and just transition away from fossil fuel production and use consistent with IPCC advice, and establishing a whole-of-government approach to addressing climate change impacts;
- **Targets:** impose duties on Government Ministers to set short, medium and long-term emissions reduction targets and carbon budgets and a legislated renewable energy target for NSW electricity use, based on expert advice consistent with internationally agreed climate goals, best available science, and the principles of ecologically sustainable development;
- **Whole of government approach:** for the targets to be meaningful, there needs to be requirements in other relevant NSW legislation to explicitly require decisions to be consistent with the targets in the Climate Change Act. Accordingly, a Schedule must be included in the Climate Change Act to amend any related legislation to include a reference to the guiding principles and targets of the Climate Change Act. This is particularly important for decisions made under NSW planning and environment legislation.<sup>6</sup> There should also be a relationship provision with other Acts and laws stating that it will prevail to the extent of any inconsistency with another Act or law.
- **Duties:** create a duty on Ministers and relevant decision-makers to make decisions consistent with relevant climate change legislative objects and targets when exercising prescribed functions, particularly in relation to planning functions.
- **Guiding principles:** in addition to the objects, any guiding principles contained in the Climate Change Act should reflect the need to facilitate a rapid transition from fossil fuels to renewable energy. Any such principles should be a mandatory consideration for decision-makers when making decisions on development consents.
- **Independent expert advice:** formalise a skills-based independent statutory *Climate Change Advisory Council* to advise the Government and the Parliament based on the best available science for climate mitigation, and assess and report on progress in relation to meeting targets and implementing adaptation plans, and require decision makers to not act inconsistently with this advice (*See also, our recent recommendations on the proposed Net Zero Commission in the Climate Change (Net Zero Future) Bill 2023*);
- **Risk assessment:** adopt a high-level process for statewide climate risk assessments, and require specific policies and initiatives for sectors identified at high risk from

<sup>4</sup> EDO, Submission to the Inquiry into the Climate Change (Net Zero Future) Bill 2023, September 2023, <https://www.parliament.nsw.gov.au/lcdocs/submissions/82412/0044%20Environmental%20Defenders%20Office.pdf>.

<sup>5</sup> <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3016#tab-hearingsandtranscripts>

<sup>6</sup> Including, but not limited to, the *Environmental Planning and Assessment Act 1979* and the *Protection of the Environment Operations Act 1997*.

climate change impacts (such as housing, infrastructure, agriculture, energy, insurance);

- **Adaptation Plans:** require a statewide Adaptation Plan to be made, published, and periodically reviewed by the Climate Change Advisory Council; sectoral and regional adaptation plans could also be made consistent with the statewide adaptation plan;
- **Monitoring progress:** develop statewide indicators, including for emissions reduction in line with set targets, adaptation planning and climate readiness of legislation; and regularly report against those indicators. There should also be a review provision in the Climate Change Act to review whether the Act has achieved/is achieving its objects;
- **Governance:** allocate Ministerial responsibility specifically for climate change, and create a climate change division in the Department of Premier and Cabinet that administers an overarching Climate Change Act (assisted by advice from the independent Climate Change Advisory Council) and supports interagency collaboration on emissions reduction and adaptation; and
- **Timeline for reforms:** to ensure the above duties, targets and legislative reform are enlivened, there needs to be a concrete roadmap and timeline for those reforms.

Importantly, we recognise the need to facilitate the review and amendment of relevant NSW legislation in line with the **principle of a just transition**. That is, to ensure that no one is left behind during the transition to a low carbon renewable energy future as facilitated by new legislation and necessary amendments to the NSW planning system. Although social impacts are considered in the assessment of some individual development applications in the *Environmental Planning and Assessment Act 1979 (EP&A Act)* through the principles of ESD, the Act is otherwise silent on adaptation considerations or principles to specifically facilitate and ensure a just transition.

### **Recommendation: Integrate climate change considerations into the NSW planning system**

EDO recommends that comprehensive law reform is needed to address the failure of the NSW planning system (encompassing strategic land-use planning, environmental impact assessment and development assessment) to adequately incorporate climate change considerations into planning and development decisions.

The EP&A Act is the apex of the NSW planning system – it deals with both large-scale strategic land-use planning and site-scale development assessment, and sets out provisions encompassing strategic and site-level environmental impact assessment (EIA), public participation, and criteria for decision-making. The EP&A Act is supported by a series of regulations, Ministerial Directions and planning instruments (e.g. SEPPs, Regional Plans, District Plans and Local Environmental Plans). However, the EP&A Act currently contains neither an explicit reference to climate change, nor specific provisions for mitigating greenhouse gas emissions or implementing adaptation measures.

We identify a series of potential legislative amendments that would integrate climate change considerations into the NSW planning system, below.

### **Objects**

The objects of an Act set out that Act's aims and guide how the Act applies. The current objects of the EP&A Act contain no explicit reference to climate change or the need to reduce greenhouse gas

emissions or plan effectively for climate change adaptation. As such, we **recommend** that the EP&A Act and other relevant planning and environment legislation must be explicit about the planning system's role in reducing emissions and protecting NSW against climate change impacts. Objectives in planning legislation should be consistent with, and give effect to, the objectives and targets of the abovementioned Climate Change Act/proposed Climate Change (Net Zero Future) Bill.

## Strategic Planning

Part 3 of the EP&A Act establishes the legal framework for strategic planning in NSW. This Part contains no explicit requirement to consider climate change in the NSW strategic planning framework, despite strategic planning having been widely identified as an important area for improvement in NSW planning laws. As such, there must be clear requirements for planning authorities to consider and plan for climate change impacts when developing strategic plans, such as SEPPs, regional and district plans and LEPs. Strategic planning reforms should include:

- The development of an overarching and comprehensive **Climate Change SEPP**. A Climate Change SEPP would integrate climate change mitigation or adaptation considerations into decision-making under the EP&A Act and ensure they meet the revised objects of relevant planning legislation and the Climate Change Act.
- In addition, it would also be necessary to review all other relevant SEPPs (such as the *State Environmental Planning Policy (Resources and Energy) 2021* (**Resources SEPP**) to identify risks, processes and solutions for climate mitigation and adaptation to ensure they are fit for purpose for a climate-impacted future;
- Introducing **mandatory considerations** for plan making. This would involve requiring all planning authorities to address climate change considerations when preparing and making strategic plans such as SEPPs, regional and district plans, local strategic planning statements and LEPs; and
- Providing guidance for **plan making**. This would involve providing additional guidance, funding and support to planning authorities preparing strategic plans.

## Environmental Impact assessment

NSW planning laws have different pathways for environmental impact assessment that broadly reflect the scale of development impacts. Generally, climate change impacts will be considered by decision makers when determining development or activity proposals. However there are a range of concerns with the current framework.

A key problem is that there is no standard legal provision or policy statement on how the impacts of greenhouse gas emissions are to be assessed, or adaptation addressed, for particular sectors or project types for different development pathways. This is an area in need of reform.

We note that some progress has been made through BASIX and the Sustainable Buildings SEPP as identified in **Box 2** below.

## Box 2 - BASIX and the Sustainable Buildings SEPP

We note that the BASIX scheme for housing efficiency and some minimum standards for certain types of non-residential development in the Sustainable Buildings SEPP provide some guidance.<sup>7</sup>

The Sustainable Buildings SEPP (implementing the amended BASIX standards) commenced simultaneously with the National Construction Code on 1 October 2023. The Sustainable Buildings SEPP implements an amended BASIX for residential development which imposes higher thermal performance standards and reduces greenhouse gas emission while still facilitating choice of fuel sources. It aims to minimise the consumption of energy and potable water; reduce greenhouse gas emissions from energy use; monitor the embodied emissions of building materials; and deliver buildings that are comfortable in summer and winter. However it is mostly focused on mitigating emissions rather than adaptation measures.

In relation to non-residential development, the Sustainable Buildings SEPP provides a minimum, baseline standard. Councils may implement higher standards in relation to those buildings to which the Sustainable Buildings SEPP applies. Chapter 3 of the Sustainable Buildings SEPP sets out the standards for non-residential buildings. Section 3.2 provides:

- (1) in deciding whether to grant consent, the consent authority must consider whether the development is designed to enable:
  - ...
  - (b) a reduction in peak demand for electricity, including through the use of energy efficient technology,
  - ...
  - (d) the generation and storage of renewable energy.
  - (e) the metering and monitoring of energy consumption.
- (2) Development consent must not be granted to non-residential development unless the consent authority is satisfied the embodied emissions attributable to the development have been quantified.

There are further specific standards for large commercial development (s 3.3) and for certain types of state significant development (s 3.4). For example, the consent authority must consider whether large commercial development and relevant state significant development minimised the use of on-site fossil fuels, as part of the goal of achieving net zero emissions in NSW by 2050 (sections 3.3(1) and 3.4(2)).

However, there remains some key concerns gaps that need to be addressed. These include:

- It is widely recognised that **cumulative impact assessment** is a key inadequacy of environmental impact assessment in the NSW planning system;
- The EP&A Act does not require developers to build-in reasonable **adaptation and resilience measures** to deal with climate change risks (although we note there is some legislation that goes some way to addressing this, such as the *Coastal Management Act 2016*);

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<sup>7</sup> Improving on BASIX is important for smaller-scale urban development which drive cumulative impacts.

- Where development controls do exist, there is no requirement to periodically **review impacts or continually update standards** in response to regional climate projections or best available science;
- **Modification applications** require varied assessments based on a discretionary threshold (i.e., whether a modification will have “minimal environmental impact”) – this can fail to take into account cumulative impacts; and
- The environmental impact assessment process is generally geared towards assessment of new development proposals, but does not consider increasing **climate change impacts on existing development**.

Accordingly, we **recommend**:

- implementing climate impact assessment pathways. These would be standardised and would scale according to the size, intensity or type of development being undertaken;
- implementing a requirement for a climate impact statement for major projects;
- publishing greenhouse gases assessment guidelines to ensure consistent, robust assessment based on best available science. These guidelines would advise on how to assess direct and indirect greenhouse gas emissions, apply an ‘avoid, mitigate and offset’ hierarchy for reducing emissions, achieve best-practice carbon offsetting, and advise on best practice adaptation principles;
- requiring the accreditation of environmental consultants who prepare environmental impact assessment reports, and independent appointment of those accredited consultants.

## **Development decisions**

Aside from one limited requirement in the *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)* in relation to coastal hazards,<sup>8</sup> there is no explicit requirement in the EP&A Act or EP&A Regulation for decision-makers to consider climate change impacts when assessing a development proposal. Accordingly, **we recommend**:

- That a duty be imposed for decision makers to refuse projects with unacceptable climate impacts and risks. This will involve the strengthening of decision-making requirements to, among other things, assess greenhouse gas emissions and their impacts, including cumulative impacts. It will also involve requiring decision-makers to assess and respond to climate change impacts, including new duties to impose conditions to ameliorate identified impacts of climate change, and apply best practice guidelines for climate change adaptation;
- Implementing a requirement to properly assess the impact of project modifications. That is, to consider the impacts of a modification in the context of existing impacts and operations, including cumulative impacts;
- Developing standard conditions of consent aimed at reducing emissions and ameliorating impacts of climate change. These could include time-limited or threshold bound development consents and conditions; and
- Improving BASIX standards.

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<sup>8</sup> For Part 5 activities, such as local council works, the EP&A Regulation requires consideration of “any impact on coastal processes and coastal hazards, including those under projected climate change conditions”.

## Other laws and approvals

The NSW planning system interacts with various laws that are relevant to addressing specific impacts of climate change, such as mining law, natural hazard law, pollution law, biodiversity law, local government law and sector-specific law. These laws will have a significant bearing on the readiness of NSW to respond to current and emerging threats and risks from a climate changed world.

To ensure these laws are also climate-ready, we **recommend**:

- Reviewing and amending mining legislation to take into consideration likely emissions in the context of drawing down a state or national carbon budget;
- Explicitly adding greenhouse gases as pollutants in NSW pollution control laws to recognise their contribution to environmental degradation and encourage behavioural change. Then, in the absence of a carbon price, introduce load- based licensing fees for greenhouse gas emissions, consistent with the polluter pays principle; and
- Ensure all relevant legislation is climate ready. This would involve reviewing all relevant legislation with a view to incorporating clear requirements for climate change mitigation and adaptation, which would integrate with requirements under the NSW planning system and any stand-alone climate legislation.

## Compliance and enforcement

There are concerns that NSW does not effectively monitor and enforce development approvals and conditions of consent and other licence conditions. There is also a very real structural imbalance in a fundamental accountability mechanism for the NSW planning system: appeal rights. Specifically, developers in NSW have a very wide right to appeal a decision (by way of merits appeal), whereas third parties (such as community objectors) have this right in a very narrow set of circumstances. Although some of these problems might be exacerbated by limited resources (i.e., money, staffing and staff skill/experience), compliance with approval conditions and third party appeal mechanisms are critically important for climate mitigation and adaptation.

As such, we **recommend** the following:

- Establish a comprehensive greenhouse gas monitoring and auditing register to report on individual high-impact facilities in NSW;
- Committing funding to continuously improve climate adaptation planning, monitoring and report, and auditing of compliance with conditions of consent; and
- Strengthen merits appeal rights for third party objectors, by removing restrictions on merits appeals following public hearings of the Independent Planning Commission and expanding the range of the projects subject to merits review in line with recommendations of the Independent Commission against Corruption.

The above ideas are explored in greater detail in our report, [\*Climate-ready planning laws for NSW: Rocky Hill and beyond.\*](#)

## **Recommendation: Introduce specific reforms for green infrastructure to reduce climate impacts and facilitate adaptation in local communities**

In addition to the legislative reforms recommended for each stage of the NSW planning process as outlined above, we make further recommendations in relation to climate-friendly local planning, including for green infrastructure.

### ***Green Infrastructure***

The introduction of the recommended Climate Change SEPP and amendment of other relevant legislation would galvanise the implementation of green infrastructure. For example, but for the lobbying from the property development industry, the State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP) may have contained provisions relating to the incorporation of landscaping and green roof infrastructure into new developments. This is a missed opportunity to promote green infrastructure in NSW. We note that some countries and major cities around the world are promoting green roofs and green spaces in new developments,<sup>9</sup> and some are even mandating this type of development.<sup>10</sup> It is reported that these types of development changes can mitigate the urban heat island effect by up to 4 degrees, save on air conditioning use, cool surrounding environments, reduce noise levels and improve air quality, biodiversity and the built environment and community.<sup>11</sup>

### ***Holistic climate adaptation***

In terms of responding to climate adaptation we need to change the way we build and plan. In practice, this requires both a fundamental rethink of planning laws (as outlined above), and the undertaking of a range of activities from changing the way communities are planned and suburbs are developed, through to increasing our tree cover, and reducing our use of dark roofs. It will also require a rethink about how open and vegetated spaces are valued, how space is allocated, our reliance on cars, the size of homes and the use of materials used to construct them and water harvesting and reuse in design.<sup>12</sup>

Research shows that the built environment can positively impact the health and wellbeing of individuals and communities.<sup>13</sup> In particular, without adaptation to climate change, areas like Western Sydney will be significantly impacted by heat waves as by 2050 we can expect 93 days of hot weather and 26 days with extreme heat.<sup>14</sup> To address these impacts it will be necessary for a holistic look into adaptation strategies that exist and can be implemented into the built

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<sup>9</sup> Such as, for example, Singapore. See, National Parks Board, A Handbook on Developing Sustainable Highrise Gardens: Bringing Greenery Skywards, 2017, <https://www.nparks.gov.sg/-/media/srg/files/handbook-1.pdf>.

<sup>10</sup> For example, France: Green Roofs for Healthy Cities, *In France, a New Law Supports Green Roofs on Buildings*, 2023, <https://livingarchitecturemonitor.com/articles/france-new-law-supporting-green-roofs-sp22>; and New York City: New York City Council, Climate Mobilization Act, 2023, <https://council.nyc.gov/data/green/>.

<sup>11</sup> National Parks Board, A Handbook on Developing Sustainable Highrise Gardens: Bringing Greenery Skywards, 2017, <https://www.nparks.gov.sg/-/media/srg/files/handbook-1.pdf>, p 8.

<sup>12</sup> Western Sydney University, Wicked Urban Challenges in Western Sydney: Researchers Respond, 2022, [https://www.westernsydney.edu.au/\\_\\_data/assets/pdf\\_file/0012/1997589/Wicked\\_Urban\\_Challenges.pdf](https://www.westernsydney.edu.au/__data/assets/pdf_file/0012/1997589/Wicked_Urban_Challenges.pdf).

<sup>13</sup> Western Sydney University, Making Healthy Places, 2021, [https://www.westernsydney.edu.au/\\_\\_data/assets/pdf\\_file/0007/1997593/Making\\_Healthy\\_Places.pdf](https://www.westernsydney.edu.au/__data/assets/pdf_file/0007/1997593/Making_Healthy_Places.pdf).

<sup>14</sup> Western Sydney University, Wicked Urban Challenges in Western Sydney: Researchers Respond, 2022, [https://www.westernsydney.edu.au/\\_\\_data/assets/pdf\\_file/0012/1997589/Wicked\\_Urban\\_Challenges.pdf](https://www.westernsydney.edu.au/__data/assets/pdf_file/0012/1997589/Wicked_Urban_Challenges.pdf), p 29.

environment immediately. Associate Professor Sebastian Pfautsch has recommended a number of key changes, all of which require changes to the way we build. These include:

- Changing roof colour, and colours used for residential and commercial buildings from dark to lighter tones, which will reduce surface temperatures, radiant heat and related warming of ambient air;
- Reduce unshaded car parks and change asphalt surfaces to “cool seal”, which can reduce road temperatures by 13°C;
- Introduce smart cool playgrounds that includes trees and shade structures, removing hot bark and rubber surfaces;
- Green track infrastructure where on light rail, concrete is replaced by groundcover and irrigation systems; and,
- Introduction of well-watered trees that can reduce heat by up to 1.5°C.

Associate Professor Pfautsch’s research concluded that significant changes to incorporate heat-sensitive urban design is needed. Heat responsive cities will need to increase shade, operate more blue-green infrastructure, maximise stormwater storage for irrigation and increase open space rather than decrease it. At the fringes of Sydney, his key recommendation to reduce the urban heat island is to stop building flat and wide sprawling seas of single dwellings.<sup>15</sup>

Although there are no prohibitions on the above building suggestions under our current system, to mandate many of these changes would be far more efficient. We therefore **recommend** planning legislation and policy reforms include amendments to galvanise and mandate green infrastructure requirements.

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<sup>15</sup> Western Sydney University, Wicked Urban Challenges in Western Sydney: Researchers Respond, 2022, [https://www.westernsydney.edu.au/\\_data/assets/pdf\\_file/0012/1997589/Wicked\\_Urban\\_Challenges.pdf](https://www.westernsydney.edu.au/_data/assets/pdf_file/0012/1997589/Wicked_Urban_Challenges.pdf), p 32.



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

**Powers to review, amend or revoke development approvals**

EDO has previously noted that major catastrophic events, such as the Black Summer bushfires or the 2022 floods, can have such severe impacts that certain approved activities should not be allowed to proceed as originally approved. For example, a situation may arise where an existing approval permits the clearing of an area of habitat that, following a major event, is now a critical remaining stand of habitat for a particular species. Approval frameworks need to provide the ability for decision makers to intervene in circumstances where, if an approved action were to proceed, there is a high likelihood that a species would be severely impacted or become more endangered (in danger of extinction).

This could be achieved in a number of ways, such as:

- Standard conditions of consent that trigger a review of relevant conditions following a major event;
- Powers for decision makers to vary approvals or approval conditions, including in response to a material change in circumstances or a major event review and
- Powers for decision makers to suspend or revoke approvals.

EDO has previously considered the main relevant legislative provisions that allow development approvals to be approved, varied, suspended or revoked in NSW.<sup>16</sup> These are reproduced in the table below, and can be found in our EDO Report: [EDO-Wildlife-cant-wait.pdf](#).

<b>Example</b>	<b>EDO comment</b>
<p><b>Part 9 Division 3 of the EPBC Act</b> Under Part 9 Division 3 of the EPBC Act there are powers for the Minister to:</p> <ul style="list-style-type: none"> <li>• vary an approval, including by revoking, varying or adding conditions (section 143),</li> <li>• suspend an approval (section 144), or</li> <li>• revoke an approval (section 145).</li> </ul> <p>The Minister can use these powers where an approved action is likely to have a significant impact, which:</p> <ul style="list-style-type: none"> <li>• was not identified at the time of the action’s approval; or</li> <li>• is substantially greater than the impact identified at the time of the action’s approval.</li> </ul>	<p>Section 158A of the EPBC Act prevents the Minister using these powers relying on a listing event.</p>

<sup>16</sup> We note there is also a reference to the EPBC Act, which is Commonwealth legislation. This has been included in the list because an EPBC Act approval may relate to development that is based in NSW, although such an approval is limited to only Commonwealth listed matters.

<p><b>Section 4.57 Environmental Planning and Assessment Act 1979 (NSW)</b></p> <p>If it appears to either:</p> <ul style="list-style-type: none"> <li>the Planning Secretary, having regard to a proposed state environmental planning policy, or</li> <li>a council, having regard to a proposed local environment plan</li> </ul> <p>that any development should not be carried out or completed, or should not be carried out or completed except with modifications, the Planning Secretary or council may, by instrument in writing, revoke or modify that consent.</p> <p>A person aggrieved by the decision is entitled to compensation for expenditure incurred pursuant to the consent during the period between the date on which the consent becomes effective and notice is given of the notice revocation or modification of the consent.</p>	<p>It is unclear why this provision is limited to circumstances where a proposed state environmental planning policy or proposed local environment plan is considered, rather than in circumstances where impacts may be greater than anticipated (as per EPBC Act provisions).</p> <p>Immediately following the 2019-2020 bushfires, EDO and HSI wrote to the NSW Premier outlining how, amongst other things, section 4.57 could be used to ensure address bushfire impacts.</p>
<p><b>NSW Coastal Integrated Forestry Operation Approval (IFOA) – Clause 23 - Special provisions requiring a review or amendment to the approval</b></p> <p>Under clause 23 of the Coastal IFOA, Forestry Corporation of New South Wales (<b>FCNSW</b>) can seek from the NSW Environment Protection Authority ‘site specific operating conditions’ (<b>SSOCs</b>) if it is unable to comply with the ordinary conditions at a particular site.</p>	<p>FCNSW made use of this provision in the immediate aftermath of the fires and requested that the EPA issue SSOCs. The EPA agreed to issue SSOCs for 17 State Forests across coastal NSW. However, the EPA cannot issue SSOCs in its own right – it can only do so on the request of FCNSW.</p>
<p><b>Section 57 - Protection of the Environment Operations Act 1997 (NSW) (POEO Act)</b></p> <p>Under section 57 of the POEO Act, a regulatory authority can vary an environmental protection licence (<b>EPL</b>), including the conditions of an EPL.</p>	<p>Chapter 3 of the POEO Act sets out a framework for regulating polluting activities through EPLs. There are broad powers for the NSW EPA to vary conditions of an EPL.</p>

**Recommendation: Revise the review, amend and revoke development approval provisions found in the NSW planning system**

*Standard conditions of consent that trigger a review of approvals or approval conditions after a major event (EP&A Act)*

When an approval is granted, there could be a condition attached to that approval that requires a proponent to review their operations and relevant conditions within a specified time period following a major event. That condition would require the proponent submit a report to the approval authority indicating what impact the major event may have on operations and the ability of the proponent to meet approval conditions, including in relation to threatened species protection. That report would inform an approval authorities’ decision to vary, suspend or revoke an approval or conditions of an approval (subject to relevant powers).

*Powers should be introduced to allow decision makers to vary, suspend or revoke approvals*

Powers similar to those in the EPBC Act should be available in all jurisdictions and should be available in response to major events, updated climate change modelling and forecasts, and in response to a listing event.

In particular, we **recommend**:

- *A general power to vary approval conditions* would be consistent with powers available under NSW pollution laws, the EPBC Act and overseas laws.<sup>17</sup> In a different context, EDO has argued that the ability to vary approval conditions for certain industrial and resource developments would address out-of-date approval conditions that do not meet modern standards of technology, efficiency or environmental compliance.<sup>18</sup> Similarly, the ability to vary approval conditions would allow conditions relating to threatened species protection to be updated.
- *Powers to suspend or revoke approvals* should be available in limited circumstances. For example, in a worst-case scenario the impacts of a major event on a particular species or community may be so severe that if certain approved actions were to proceed, the impacts of the actions would be catastrophic, and could include possible extinction of a species. In these circumstances, an approval authority should be able to either suspend an approval until such time as catastrophic impacts would no longer occur, or revoke an approval.

### **Recommendation: Reform the EP&A Act provisions relating to “Zombie” development consents**

The EP&A Act contains a provision relating to when a development consent lapses. A development consent is time limited and will lapse after a prescribed time.<sup>19</sup> However, a development consent does not lapse when “building, engineering or construction work relating to the building, subdivision or work is physically commenced.”<sup>20</sup> Currently, we are seeing an influx of proponents who are reviving projects that were approved a number of years ago, but that were not substantively commenced, often in circumstances where environmental and regulatory conditions have significantly changed. These are colloquially known as Zombie development consents.

As outlined above, there is an extremely limited ability for a consent authority to require a new environmental impact assessment, or to impose better consent conditions which more accurately reflect the current environmental impacts. This is contrary to the intent of the provision providing for the lapsing of consents. It is also problematic as we face a climate-impacted future.

Accordingly, Division 4.9 of the EP&A Act requires revision. We **recommend**:

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<sup>17</sup> See for example, *Protection of the Environment Operations Act 1997* (NSW), s 58; *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 143(1)(b)-(ba); and the *Clean Air Act* (USA).

<sup>18</sup> EDO, Submission on the draft Environmental Planning and Assessment Amendment Bill 2017, March 2017, p 18 – 19, <https://www.edo.org.au/wp-content/uploads/2021/08/Submission-on-the-draft-Environmental-Planning-and-Assessment-Amendment-Biodiversity-Conservation-Regulation-2017.pdf>.

<sup>19</sup> EP&A Act, s 4.53(1)

<sup>20</sup> EP&A Act, s 4.53(4).

- Tightening the wording of s 4.53. The Courts have interpreted “building, engineering or construction work” in a very broad way. The provision should be augmented to require more substantive work to have been undertaken in a certain amount of time to avoid the consent lapsing. This would avoid triggering any right to compensation under s 4.57(7).
- Revising s 4.57, which relates to the revocation or modification of development consents, to include provisions to modify or revoke development consent conditions issued under repealed statutes (such as the *Native Vegetation Act 2003*) to ensure development consents comply with the environmental assessment requirements under the current Acts and Regulations.
- Revising s 4.57 to trigger reassessment where activities would have a substantially greater impact than those identified at the time of the action’s approval (similar to the EPBC Act powers in ss 143-145).

**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*

In the last few years, bushfires and floods have had catastrophic impacts throughout Australia and in NSW. The bushfire season of 2019-2020 was unprecedented in terms of scale, intensity and duration in Australian bushfire history. Around the country 33 lives were lost, an estimated 417 people died due to smoke inhalation, more than 3,000 homes burnt down, and other property and infrastructure was impacted or destroyed. In the first six months of 2022, NSW and Queensland experienced multiple, unprecedented floods across vast areas of the landscape. Flooding events have occurred in many of the same areas as the bushfires, devastating regional communities and further compromising already reduced populations of species. Climate change impacts also compound other threats to threatened species (such as through increased susceptibility to disease, invasive species and pests and habitat loss). The NSW planning framework must be reviewed and reformed within this context.

Broadly, and as noted above, the planning system can best ensure people and the natural and built environment are protected from climate change impacts and changing landscapes through the introduction of a standalone Climate Change Act, supported by subordinate legislation, planning instruments and the amending of various pieces of relevant legislation. This involves clear laws for **both emissions reduction (mitigation) and adaptation**.

A key part of any such legislative reform is a requirement for decision-makers to consider climate change mitigation and adaptation opportunities in all relevant NSW legislation. For example, we **recommend** decision-makers should be required to assess the increasing risks and impacts of climate change on a particular development proposal, including the proposal itself and the locality, particularly with reference to climate projections of increased temperature, sea level rise, variable rainfall or future bushfire risks. EDO has outlined a range of recommendations with respect to bushfire risk in its **Submission to the NSW Independent Bushfire Inquiry** (April 2020).

We note, however, that beyond a certain point, adaptation will not be possible – communities and ecosystems will be unable to be protected or recover from successive floods and other climate change driven disasters. It is therefore imperative that preparation and planning by government and agencies for disasters such as fires and flooding include **mitigation of harm by putting limits on development**.

Difficult decisions will need to be made to mitigate further potential for climate harm. While there is significant pressure for planning laws to rapidly facilitate urban growth and housing development for example, it may simply be too risky to approve development in certain flood prone or bushfire prone areas. The law needs to provide certainty by identifying these areas and updating information and mapping over time.

A contemporary example of this type of planning can be found in a recent report released by Fairfield Council shows that a Department of Planning flood advisory panel gave advice that a proposal to add housing density to south-west Sydney town centres had not adequately

considered evacuation routes during a theoretical worst-case scenario flood. Consequently, the rezoning process has stalled.<sup>21</sup>

EDO has previously argued that what is missing at the strategic level is a clear and compelling link between the best available science on likely climate change impacts (for example, projections from AdaptNSW, advice from OEH or the Climate Advisory Council) and the planning system, such as an upfront requirement to identify regional or local risks and address climate impacts. Local plan-makers and authorities should not be left to identify best available science on an ad hoc basis themselves. Rather EDO **recommends** that local councils should be supported by clear institutional and policy guidance, such as from a statutory Climate Change Advisory Council (or a strengthened version of the proposed Net Zero Commission) and adaptation planning guidelines at the relevant scale (whether national, state, regional or local). EDO's **Climate-ready planning laws for NSW** report examines how to address this, and to integrate climate change into the NSW planning system. Parts of this report have been reproduced throughout this submission, most notably with respect to ToR (c), but are also of particular relevance to ToR (a).

We have provided some further considerations with respect to ToR (a), below.

### **Climate-ready LEPs**

The types of development referred to in ToR (a) are predominantly governed by local councils, based on what is permissible under the relevant LEP. The development of the Standard Local Environmental Plan (**LEP**) has attracted criticism.<sup>22</sup> Prior to the Standard LEP, Councils were afforded more creativity, which led to place-based plans built on rigorous community involvement. For example, councils more often utilised overlay zones where issues such as bushfire impacts, flood zones, riparian corridors and significant biodiversity could be considered and appropriately managed when assessing development for a particular site. While there can be benefits in having consistency of terminology and zoning across NSW LGAs, the current Standard LEP limits this type of flexibility in the way development is conducted as it establishes more rigid standardised rules for particular zones.

In order to plan for and implement climate adaptation, more flexibility for climate adaptation measures is needed within LEPs, whilst maintaining environmental protections. In addition to identifying and updating no-go zones, development requirements should be reviewed and updated. For example, in flood zones, existing building height provisions could be changed to enable buildings to be raised to minimise flood impacts or built in ways that enable them to be mobile and moved such as tiny homes. Similarly, biodiversity overlays enable the development of robust wildlife corridors and habitat protection, and can facilitate species movement to climate refugia where possible. In light of the climate and nature crises, we should be treating vegetation corridors as essential infrastructure within our planning frameworks, given the important impacts it has in adapting to climate change, managing heatwaves and protecting endangered flora and fauna. For example, the NSW Principal Landscape Architect, Barbara Schaffer laments that when

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<sup>21</sup> SMH, Strict new rules threaten construction of thousands of homes in south-west Sydney, November 2023, <https://www.smh.com.au/politics/nsw/strict-new-rules-threaten-construction-of-thousands-of-homes-in-south-west-sydney-20231031-p5egfq.html>.

<sup>22</sup> See, for example, Andrew Kelly, The Development of Local Government in Australia, Focusing on NSW: From Road Builder to Planning Agency to Servant of the State Government and Developmentalism, UOW Research Online, <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=1542&context=lawpapers>.

new suburbs are designed, there is not enough space on the pavements for trees.<sup>23</sup> She has recommended developing urban canopy to create shade, improve biodiversity, evapotranspiration and creating beautiful places expressing concern that the lowest socioeconomic groups have the lowest amount of green cover, least access to parks and least sustainable built form.<sup>24</sup>

With the effects of climate change being felt with more frequency and intensity, it is important that planning laws are able to be applied flexibly at the local level to assist climate adaptation. For example, there have been many recent examples of local councils taking enforcement action against tiny homes that have been placed permanently on rural residential blocks. This is often targeting people who cannot afford alternative accommodation or who are trying to make efficient use of their available space, and is impacting the provision of affordable housing. Tiny houses may present a unique solution to various planning issues, including temporary relocation due to fire or flood, and affordable housing on larger blocks of land. Exploring this option further may also be relevant to ToR (d).

EDO **recommends** that the Standard LEP be reviewed and updated to assist Councils implementing best practice climate adaptation measures at the local level. We also recommend that expert guidance, advice and resourcing be made available to help local Councils to do this.

## Heatwaves

Heatwaves have the greatest impact on children, elderly people, First Nations communities and people with pre-existing health conditions and disabilities. As a result of climate change, heatwaves are becoming more intense and will occur more often and last longer. Heatwaves can increase the pressure on health and emergency departments, with heatwaves between 2011-2019 leading to 14% increase in hospital admissions.<sup>25</sup> Heatwaves, particularly in Western Sydney are being made worse by the urban heat island effect with higher temperatures in an area that houses two-thirds of Sydney's population growth- by 2036, 3.5 million residents will be exposed to more extreme summer heat.<sup>26</sup> Last summer, Western Sydney saw 37 days over 35°C<sup>27</sup>, which impacts more on vulnerable populations such as those without air conditioning or low-income family households. For example, many who live in public housing have no insulation or cooling measures in their buildings, with no legal protections for tenants to ensure they have a safe environment in summer.<sup>28</sup> Vulnerable households can be particularly susceptible to hot nights where the body has no opportunity to cool down and recover, resulting in heatwaves killing more people than bushfires, floods and storms.<sup>29</sup> Despite this there are no local or national adaptation policies with actions often being left to Local Councils. EDO **recommends** all SEPPs are reviewed, particularly the Building SEPP to ensure that new buildings are not contributing to the liveability of our buildings and there are incentives to retrofit buildings and landscapes to address heatwaves.

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<sup>23</sup> Sweltering Cities, Interview with Barbara Schaffer, GANSW Principal Landscape Architect, <https://swelteringcities.org/2023/07/27/interview-with-barbara-schaffer-gansw-principal-landscape-architect/>.

<sup>24</sup> Sweltering Cities, Interview with Barbara Schaffer, GANSW Principal Landscape Architect, <https://swelteringcities.org/2023/07/27/interview-with-barbara-schaffer-gansw-principal-landscape-architect/>.

<sup>25</sup> <https://www.climatechange.environment.nsw.gov.au/impacts-climate-change/weather-and-oceans/heatwaves>

<sup>26</sup> <https://theconversation.com/why-western-sydney-is-feeling-the-heat-from-climate-change-more-than-the-rest-of-the-city-201477>

<sup>27</sup> <https://www.abc.net.au/news/2021-01-14/western-sydney-heat-refuge-strategy-needed-for-summer-heatwaves/13026882>

<sup>28</sup> <https://swelteringcities.org/2023/08/09/peters-story/>

<sup>29</sup> <https://wsroc.com.au/media-a-resources/releases/heatwaves-are-killing-the-people-of-western-sydney>

## Bushfires

The interaction between bushfire preparedness and land use planning has long been recognised. A 2014 report from the former Bushfire Cooperative Research Centre found that “(t)he succession of bushfire inquiries over the last 100 years increasingly highlights the important role of land use planning in minimising bushfire risk to urban communities”.<sup>30</sup>

In NSW, substantial changes were made to the EP&A Act in 2002 to strengthen the way NSW planning laws responded to bushfire risks. These changes, and the current regulatory situation is outlined from page 7 in EDO’s [Submission to the NSW Independent Bushfire Inquiry](#).<sup>31</sup> However, the key factor missing in NSW planning laws with respect to managing bushfire risk is the explicit requirement for the increased risk of bushfires from climate change to be factored into decision-making. Further, the EP&A Act assessment process applies to new development proposals, with limited ability to retrospectively update or modify consent conditions or require retrofitting of existing development. As such, the environmental impact assessment process does not consider the increasing risks and impacts from increased bushfire risk on existing homes, buildings, infrastructure or surrounding landscapes – nor the need to increase community and environmental resilience to these threats. There are no retrofitting requirements for buildings, for example. Nor is there a significant assistance or compliance and audit program for existing homes, businesses or infrastructure to assess vulnerability to climate risks such as bushfire.

EDO’s Submission to the NSW Independent Bushfire Inquiry contains various recommendations relevant to this inquiry. We outline a few key recommendations from that submission, but also refer the Committee to the full submission. Key recommendations include:

- The introduction of an explicit requirement to consider climate risks when assessing development proposals on bushfire prone land.
- Ensuring local councils and the Rural Fire Service have sufficient capacity and capability to continually update mapping and responsiveness to reflect the best available science and technology, including in relation to climate change projections.
- The introduction of an explicit requirement that climate change risks be considered in decision-making (particularly in relation to bush fire planning) under the *Rural Fires Act 1997 (RF Act)*, and addressed consistent with the principles of ESD.

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<sup>30</sup> Norman B, Weir JK, Sullivan K and Lavis J (University of Canberra), (2014), Planning and bushfire risk in a changing climate, Bushfire CRC, Australia, [https://www.bushfirecrc.com/sites/default/files/urban\\_and\\_regional\\_planning.pdf](https://www.bushfirecrc.com/sites/default/files/urban_and_regional_planning.pdf), p 3.

<sup>31</sup> <https://www.edo.org.au/wp-content/uploads/2020/04/200416-EDO-Submission-to-the-NSW-Independent-Bushfire-Inquiry.pdf>