

Submission  
No 207

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

**Organisation:** Local Government NSW

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DRAFT SUBMISSION

# Parliamentary Inquiry: Planning System and the Impacts of Climate Change

NOVEMBER 2023





Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

# OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



Local government in NSW looks after more than **\$177 billion** of community assets



NSW councils manage an estimated **4 million tonnes of waste** each year



Local government in NSW spends more than **\$2.2 billion** each year on caring for the environment



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**



NSW has more than **350 council-run libraries** that attract tens of millions of visits each year



NSW has more than **400 public swimming and ocean pools**

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# Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission to Portfolio Committee 7 Planning and Environment on its inquiry into the planning system and the impacts of climate change on the environment and communities.

Councils have a central role in land use planning in bushfire and flood prone areas, as well as emergency management, and despite limited means, are essential in providing support to local communities as they respond to and recover from disaster events. However, local government must be resourced and supported by other spheres of government in this critical work. Indeed, recommendation 11.1 of the 2020 Royal Commission into National Natural Disaster Arrangements<sup>1</sup> was that:

*State and territory governments should take responsibility for the capability and capacity of local governments to which they have delegated their responsibilities in preparing for, responding to, and recovering from natural disasters, to ensure local governments are able to effectively discharge the responsibilities devolved to them.*

LGNSW has consulted with councils to inform this submission, which is provided as a draft, pending endorsement by the LGNSW Board at its next meeting. We will advise of any amendments to the submission in due course.

## Terms of Reference

Portfolio Committee No.7 – Planning and Environment – of the Legislative Council of the NSW Parliament has established the Terms of Reference to:

*Inquire into and report on how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes, and in particular:*

***(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*

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<sup>1</sup> [Royal Commission into National Natural Disaster Arrangements \(nema.gov.au\)](https://www.nema.gov.au)

- iii. *in areas that are threatened ecological communities or habitat for threatened species*
- (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*
- (c) **short, medium and long term planning reforms that may be necessary** to ensure that communities are able to mitigate and adapt to conditions caused by changing environmental and climatic conditions, as well as the community's expectation and need for homes, schools, hospitals and infrastructure
- (d) **alternative regulatory options** to increase residential dwelling capacity where anticipated growth areas are no longer deemed suitable, or where existing capacity has been diminished due to the effect of climate change
- (e) **any other related matters.**

## LGNSW Position

Local government is becoming increasingly interested in how the planning system can best ensure that people and the natural and built environment are protected from the impacts of climate change. This is reflected in the motions councils submit to LGNSW's annual conference.

To summarise the recurring themes of these motions, multiple councils have called for advocacy on the following matters over the last three years:

- Resilience to natural disasters
- Climate change impacts and resilience
- Flood mitigation financial assistance for infrastructure
- Heatwave Sub Plan to include the provision of practical respite
- Disaster recovery resources and permanent funding for development of resilience and management of disasters for NSW councils
- Embedding of social disaster recovery into council functions
- Improving flood response
- Urban planning to reduce heat related risks
- Access to urban greening grants for rural and regional councils

- Climate change leadership support for renewable energy generation and ensure renewable power for new government buildings
- Damaged and deteriorating seawalls grant opportunities
- Flying planning team for natural disasters
- Movement to a risk-based planning system
- Renewable energy zone support for councils
- Benchmarks and reporting for environmental outcomes across NSW councils

These advocacy themes reflect recent natural disasters and the significant impact on councils that are looking to planning reforms to provide solutions.

LGNSW has joined councils in responding to inquiries following flood and fire disaster events in recent years. The scale of these natural disasters has made clear the need for a paradigm shift where the future focus embodies a far greater emphasis on resilience and adaptation to ensure communities are better prepared for future disasters, along with urgent action to avert a climate crisis.

These rolling disasters of drought, bushfire, pandemic and flood have meant that NSW Government agencies have been focused on response and recovery, rather than shifting attention to policies and actions for resilience, which NSW and our communities so sorely need.

LGNSW recommendations in this submission highlight the need for an evolution from the traditional approach which is based on response and recovery from impacts of climate change events toward a more proactive approach, which sees a planning system that recognises and responds to land use impacts with strategic action plans and a clear direction for communities to respond to the inevitable future climate change events.

All levels of government must be able to plan jointly for a changing climate and deliver well designed, sustainable communities. Ensuring the right policy settings, tools, funding and resources to do this are in place and given the right priority is essential. For this reason, one of LGNSW's nine advocacy priorities for 2023 calls for improved resilience to natural disasters<sup>2</sup>.

## State Policy: Net Zero 2050

Central to the management of the planning system in relation to climate change is the NSW government's adopted commitment to halve our state's emissions by 2030 and achieve net zero emissions by 2050.

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<sup>2</sup> [2023 Advocacy Priorities LGNSW](#)

LGNSW supports the establishment of the Net Zero target and highlights the need to progress swiftly with identifying and implementing actions to achieve effective emissions abatement.

Greater leadership is required from the NSW Government on all issues pertaining to climate change. Local government plays a critical role in implementing initiatives at a local community level but does not have sufficient resources to adequately respond to all policy challenges related to this issue. A best practice approach should be modelled in the statutory framework, with specialised guidance and funding being made available to local government organisations that are experiencing localised climate change impacts (e.g. sea level rise, bushfires or severe heat).

### Recommendations

1. That information about adaptation is available for councils in a centralised location, with effective coordination across all levels of government.
2. Councils be supported with the creation and implementation of local planning requirements/guidance that responds to the priority needs of any specific local government area (LGA) relating to climate change adaptation and mitigation (for example: light-coloured roofs and residential electrification).

## Response to Terms of Reference

*Inquire into and report on how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes.*

### (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
- iii. In areas that are threatened ecological communities or habitat for threatened species

LGNSW has long-advocated for improved adaptation actions and using the land-use mechanisms in planning to better manage understanding and predictability of climate change, flood and fire impacts<sup>3</sup>.

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<sup>3</sup> Refer to LGNSW submissions to the [2020 Independent Bushfire Inquiry](#) and [2022 Independent Flood Inquiry](#)



## Mitigation and adaptation in strategic planning

Bushfire and flooding risks continue to be framed as an emergency management response rather than an adaptation response. While the 2019/20 bushfire season and 2022 floods were unprecedented in many ways, they were not an unknown risk.

The vast majority of government funding (around 97 per cent) is spent on disaster recovery, with only 3 per cent spent on preparation and mitigation. We know that climate change will continue to increase the severity and frequency of natural disasters.

Councils resolved at the LGNSW 2022 Special Conference that local government should be funded and supported to undertake essential resilience and adaptation measures to address future climate risks through a special purpose one per cent increase in local government rates to fund resilience and adaptation measures.

To reduce the impacts and costs of such disasters, more funding should be invested in mitigation and adaptation, which is comparatively cheaper than disaster recovery.

Although the NSW Government's Floodplain Management Program provides financial support to councils and eligible public land managers to help them manage flood risk in their communities, the majority of these projects are focused on current flood risk. It is important that this focus shifts to include more projects aimed at mitigating future flood risks through strategic land use planning activities and both regional and local levels.

### Recommendation

3. That the NSW and Australian Governments place greater emphasis on supporting and resourcing adaptation actions, which can reduce the need for, or severity of, emergency responses.

## Coastal planning

LGNSW supports the recent update of the NSW Coastal Design Guidelines. Best practice management of the coastal zones in NSW could be improved with the preparation and certification of Coastal Management Programs (CMPs) for all local government areas along the coast. To facilitate this, councils require ongoing funding and resourcing support for the development and implementation of their CMPs.

Some coastal management plans identify land for acquisition due to sea level rise and inundation, allowing species to gradually move up slope. More funding should be given to the coastal land protection scheme to support all LGAs to identify areas and support their ongoing management.

## Biodiversity

The UN Paris Agreement includes a goal on climate adaptation to “enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change”. Climate change adaptation is recognised in the Biodiversity Conservation (BC) Act purposes, which sets out the aim to “support biodiversity conservation in the context of a changing climate” (Section 1.3(d)). However, there are no specific provisions supporting this.

Councils’ experience is that adaptation is not effectively considered in the Biodiversity Assessment Methodology (BAM), which considers habitat to be a species’ current range. This fails to account for a changing climate and the need for species to relocate, for example, to adapt to higher baseline temperatures, longer drought periods or rising sea levels. The BC Act should set out a requirement for the BAM to take into account a changing climate and what species will exist there in the future.

Areas that can provide climate refuges, such as riparian areas and land at higher altitude need to be identified and protected. Corridors connecting existing habitats to these areas also need protection to allow the safe movement of species during extreme weather events, which will become more frequent under a changing climate. Additional protections are also required for species and ecological communities at the edge of their range.

### Recommendation

4. That changes to the *Biodiversity Conservation Act 2016* are made to enable climate change adaptation to be factored into land use planning. These changes were outlined in [LGNSW’s submission to the statutory review of the Biodiversity Conservation Act](#) (April 2023) and include:
  - (a) Setting out the role biodiversity has to play in the NSW net zero targets, and government agencies work collaboratively to identify and prioritise projects that achieve shared climate and biodiversity objectives.
  - (b) Including a requirement in the Act for climate change mitigation and adaptation to be addressed within the Biodiversity Assessment Methodology (BAM).
  - (c) Integrating climate change impacts into assessment frameworks for establishing offset requirements and the value of stewardship sites.

## (b) The adequacy of planning powers and planning bodies

### Role of NSW Reconstruction Authority

As a response to the multiple significant natural disasters over recent years, the State Government has brought about significant changes to roles and responsibilities, notably the introduction of the NSW Reconstruction Authority, and removal of Resilience NSW. As key stakeholders, councils would like clarification on the role and

responsibility of the NSW Reconstruction Authority in the governance of emergency planning, preparedness and recovery.

In particular, councils have identified the need for clarity on the Reconstruction Authority's role in placing constraints on development, including in the setting of flood planning levels. Allied to this is the important role of the Reconstruction Authority to engage with councils to actively manage mitigation of constraints as appropriate.

#### **Recommendation**

5. That the NSW Government provide clarity on the role and responsibility of the NSW Reconstruction Authority in the governance of emergency planning, preparedness and recovery, particularly the Authority's role in placing constraints on development, including in the setting of flood planning levels.

### **(c) Short, medium and long term planning reforms that may be necessary**

#### **Build back better, rebuild and/or relocate**

The aftermath of the February 2022 floods, and similarly, following the 2019/20 bushfires, led to many posing difficult questions around whether homes and businesses in some areas should be rebuilt or relocated.

In addition to considering betterment of infrastructure, councils have had to consider the long-term options for their bushfire or flood impacted communities, including building back better, building differently and/or building elsewhere.

One of the challenges facing local government in bushfire and flood prone areas in the rebuilding process and indeed in future land use planning, is pressure to increase areas designated as prone to disaster risk, and for the imposition of higher planning and building standards for development on this land. During the height of the bushfires in January 2020 for example, then Rural Fire Service Commissioner Shane Fitzsimmons warned that those who lost homes may face higher than expected rebuilding costs because of the need to comply with tougher standards.<sup>4</sup>

The imposition of more stringent, and hence more costly, building and development standards presents a tension with the pressure to allow and assist property owners affected by bushfire, for example, to simply and cheaply rebuild their homes.

In the longer term, stronger policy and alternative approaches need to be explored to reduce the need to build in vulnerable locations and to plan for a transition of development away from flood prone land. However, there appear to be limitations in the existing provisions (legal, policy and financial) to facilitate and implement these often-

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<sup>4</sup> <https://www.smh.com.au/politics/nsw/financial-shock-looms-for-those-looking-to-rebuild-rfs-boss-warns-20200117-p53sd2.html>

challenging decisions. To escalate the ability to relocate businesses and dwellings to higher ground, transitional requirements and incentives, and funded alternatives need to be explored.

#### **Recommendation**

6. That the NSW Government review existing provisions to more fully support relocations and compensation for landowners where changes in land use occur.

### **Housing design and resilience**

Looking beyond land use planning as part of the medium to longer term flood response, consideration also needs to be given to enabling more resilient and sustainable design in the planning system more broadly. A failure to consider floods and fires before building new homes has the potential to perpetuate the losses experienced in the past five years and exacerbate the problems in future.

All areas of NSW are forecast to be impacted by climate change and require climate resilient design. Designing housing for ongoing climate resilience and livability will assist in long-term value and asset protection. This includes, but is not limited to: external shading, local canopy coverage, energy efficiency, use of renewable energy and materials, water saving measures, ventilation and thermal mass strategies, and design elements fitting of local character (including those relevant to coastal areas, hinterlands and rural settings.)

In 2023, councils resolved to call for:

*the NSW Government to develop and instil high levels of liveability and climate sensitive design standards into all new government delivered housing, with this to include working with councils to ensure local character and values are retained in the provision of social and affordable residential assets.*

Government-delivered social and affordable housing has the potential to showcase high levels of climate-resilient and livable design that can assist in defining the character and built form of unique locations across NSW.

#### **Recommendations**

7. The NSW Government should work with local government and industry on policy initiatives in the NSW planning system that will help deliver more resilient and sustainable homes, buildings and places.
8. That the NSW Government develop and instil high levels of liveability and climate sensitive design standards into all new government delivered housing, with this to include working with councils to ensure local character and values are retained in the provision of social and affordable residential assets.

## BASIX Standards

Heat kills more Australians than any other natural disaster and under future climate scenarios we can expect this to worsen. NSW councils have also identified extreme heat as their highest risk to manage through their climate change risk assessments. LGNSW advocates for developments to include measures to alleviate the urban heat island effect.

NSW councils would like more flexibility in responding to local risks and the aspirations of their community to set high BASIX standards for their community e.g higher thermal performance to manage urban heat, additional incentives for solar photovoltaics etc.

Increases to the existing BASIX standards came into effect on 1 October 2023. The increases include higher thermal performance standards and higher energy standards. While LGNSW supports the higher thermal comfort standards to NatHERS 7 stars (up from 5.5-6 stars) plus updating the climate files from 1970-2004 with data to 2015, it does not reflect the current situation (when the hottest years have occurred in the last 6 years) nor what is expected in a changing climate. The continued use of historic climate data in the NatHERS engine and BASIX tool will result in new housing stock not safeguarding the thermal safety of occupants, resulting in additional reliance on mechanical cooling. This leaves people vulnerable if they are unable to afford their energy bills or the energy network fails.

Electrifying development, fostering the use of the most efficient technologies available and sourcing electricity from renewable sources is needed to reach net zero. Installing new onsite gas is counter to the NSW Government's net zero goal and becomes a costly retrofit in apartments. Local government is of the view that on-site gas should be limited across all residential development and should not be preferenced within the BASIX tool.

### Recommendations

9. The NSW Government enable a process whereby councils can apply higher BASIX standards with the concurrence of their community.
10. That the BASIX standard use a future climate file (CSIRO climate file for 2050 or 2070) to ensure thermal safety of the occupants over the expected life of the home.
11. That the BASIX tool should exclude on-site gas for cooking, heating and hot water.

## Addressing land banking

One approach that should be central to minimising biodiversity loss and exposure of the community to climate-related hazards is to give greater focus to ensuring that development of land occurs in the areas which have already been through an approved strategic planning process. This should be unequivocal, however, councils regularly cite examples where planning approvals that have been in place for some time and could

have the benefit of unlocking many hundreds of additional housing lots that are not proceeding due to decisions of private landowners.

Councils provide the infrastructure when the land is rezoned but have no control over private landowners' decisions on when they will develop their land. This creates financial and resourcing implications for local government because the infrastructure in which they have invested millions of dollars to service this rezoned land often remains underutilised for many years.

The issue of land banking means that land which has already been through a strategic planning process and approved as suitable for development is not being developed, placing greater pressure on state and local governments to open up new development areas. It is desirable and sensible to prioritise housing in approved areas rather than leaving these undeveloped and pressing into new areas which require further challenging planning and environmental constraints to be addressed.

There is a general lack of regulation to require the completion of development and to prevent land banking which has led to a tightly held market that has failed to provide housing supply in areas already planned and zoned for this purpose.

In these circumstances, measures are needed to incentivise landowners to unlock the significant housing potential that already exists.

#### **Recommendation**

12. That the NSW Government investigate regulatory or other measures to incentivise landowners to unlock the significant housing potential that already exists.

### **Delayed implementation of development consents**

Alongside the issue of land banking, another important consideration is to address the converse problem of development applications that can be activated many years (sometimes a decade or more) after approval as a result of minor physical commencement (or concept approval) even though the development may no longer align with contemporary standards and practice in regard to biodiversity and climate change.

For some years, councils have sought regulatory reform of the NSW planning system to address the delayed implementation of development consents, colloquially referred to as 'zombie developments'. The issue is that the delayed implementation of decades old development consents results in development proceeding that is out of step with contemporary planning and environment and planning standards.

Councils argue that where there are undue delays, development should be required to adhere to present planning standards and the community's expectation for sustainable development.

There is a need for reforms to the planning system to provide for a sunset provision or the like on consents to avoid unreasonable delays in implementation of development consents and development not reasonably meeting contemporary environmental standards.

#### **Recommendation**

13. That the NSW Government reviews regulatory provisions in the planning system to provide for a sunset provision or the like on consents to avoid unreasonable delays in implementation of development consents and development not reasonably meeting contemporary environmental standards.

## **Conclusion**

Councils carry a broad range of roles and responsibilities in land use planning and regulation, biodiversity assessment and conservation, as well as supporting their communities to respond to and recover from disaster events. As such, they have a strong interest in legislative arrangements and administration of the planning system and its consequences for local communities.

This submission has highlighted some of the issues of concern to the local government sector that relate to the NSW planning system and its effectiveness in addressing and mitigating the impacts of climate change. It outlines the following areas where the planning system could be improved:

- Increased support and resources for adaptation planning, including centralising information and effective coordination across all levels of government.
- Changes to biodiversity legislation that would enable climate change adaptation to be factored into land use planning.
- Developing policy initiatives in the NSW planning system and updated tools to help design and deliver more resilient and sustainable homes, buildings and places.
- Ensuring that development of land occurs in the areas which have already been through an approved strategic planning process.
- Regulation changes to deal with the issue of development applications that can be activated many years after approval as a result of minor physical commencement (or concept approval) even though the development may no longer align with contemporary standards and practice in regard to biodiversity and climate change.

For further information regarding this submission, please contact Jane Partridge, LGNSW's Strategy Manager, Planning

# Summary of Recommendations

1. That information about adaptation is available for councils in a centralised location, with effective coordination across all levels of government.
2. Councils be supported with the creation and implementation of local planning requirements/guidance that responds to the priority needs of any specific local government area (LGA) relating to climate change adaptation and mitigation (for example: light-coloured roofs and residential electrification).
3. That the NSW and Australian Governments place greater emphasis on supporting and resourcing adaptation actions, which can reduce the need for, or severity of, emergency responses.
4. That changes to the *Biodiversity Conservation Act 2016* are made to enable climate change adaptation to be factored into land use planning. These changes were outlined in [LGNSW's submission to the statutory review of the Biodiversity Conservation Act](#) (April 2023) and include:
  - (d) Setting out the role biodiversity has to play in the NSW net zero targets, and government agencies work collaboratively to identify and prioritise projects that achieve shared climate and biodiversity objectives.
  - (e) Including a requirement in the Act for climate change mitigation and adaptation to be addressed within the Biodiversity Assessment Methodology (BAM).
  - (f) Integrating climate change impacts into assessment frameworks for establishing offset requirements and the value of stewardship sites.
5. That the NSW Government provide clarity on the role and responsibility of the NSW Reconstruction Authority in the governance of emergency planning, preparedness and recovery, particularly the Authority's role in placing constraints on development, including in the setting of flood planning levels.
6. That the NSW Government review existing provisions to more fully support relocations and compensation for landowners where changes in land use occur.
7. The NSW Government should work with local government and industry on policy initiatives in the NSW planning system that will help deliver more resilient and sustainable homes, buildings and places.
8. That the NSW Government develop and instil high levels of liveability and climate sensitive design standards into all new government delivered housing, with this to include working with councils to ensure local character and values are retained in the provision of social and affordable residential assets.
9. The NSW Government enable a process whereby councils can apply higher BASIX standards with the concurrence of their community.



10. That the BASIX standard use a future climate file (CSIRO climate file for 2050 or 2070) to ensure thermal safety of the occupants over the expected life of the home.
11. That the BASIX tool should exclude on-site gas for cooking, heating and hot water.
12. That the NSW Government investigate regulatory or other measures to incentivise landowners to unlock the significant housing potential that already exists.
13. That the NSW Government reviews regulatory provisions in the planning system to provide for a sunset provision or the like on consents to avoid unreasonable delays in implementation of development consents and development not reasonably meeting contemporary environmental standards.