

NSW Planning system and the impacts of climate change

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate. PIAC receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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Contents

- 1. Recognising vulnerability to climate change impacts 2**
 - 1.1 Embedding climate change in decision-making 3
 - 1.2 Strong community engagement 4

- 2. Safe, affordable and healthy housing 4**
 - 2.1 Affordable homes for all 5
 - 2.2 Minimum standards for new housing..... 5
 - 2.3 Upgrading existing housing 7
 - 2.4 Planning for heat 7

- 3. Planning for a zero carbon emissions future 8**

Introduction

PIAC welcomes the opportunity to comment on the Committee's inquiry into how the planning system can best ensure that people and the environment are protected from the impacts of climate change.

The climate crisis is an urgent environmental, economic and social justice challenge with far reaching impacts. Climate change has increased and will continue to increase both mean and extreme temperatures. With that, the frequency and severity of extreme weather events such as heatwaves, bushfires, floods and storms, will all increasingly affect NSW. The impacts of this will extend far beyond weather events, creating risks for health, livelihoods, water supply, human security and economic growth.

Climate change is fundamentally a social justice issue. Climate-related risks and the costs of mitigating and responding to them disproportionately impact people and communities experiencing disadvantage. PIAC's climate change work is directed to ensuring a just transition to a zero-carbon emissions energy system and society in a way that builds, rather than undermines social equity. A just transition requires both urgent action to reduce greenhouse gas (GHG) emissions and putting people and communities first in planning and decision-making to ensure the costs, burdens and opportunities associated with the transition are distributed fairly. Building resilience requires broader social and economic transformation to eradicate poverty and achieve social equity and inclusion.

We understand the inquiry is directed to the NSW planning system. There is substantial scope to reform aspects of the planning system to better consider climate risk and enable more effective and fairer mitigation of climate change impacts. However, coordination with a broader range of policy areas outside of planning (such as housing policy, welfare and social policies, energy, employment and transport) is vital. We urge the Committee to recognise the need for integrated, consistent policy development working towards clear objectives for climate change mitigation and adaptation.

Those objectives should include:

- Embedding the latest available evidence of what is required to maintain average increase in global temperatures below 1.5 degrees, and no more than 2 degrees;
- Reducing emissions from the built environment and land use to the greatest extent possible;
- Minimising climate related harm to people and communities through robust planning for future development that properly considers the risks of climate change related impacts in all decision-making; and
- Strengthening the resilience of people and communities in responding to the impacts of climate change through appropriate place-based adaptation measures developed with and to meet the needs of communities.

This submission begins with some broad observations about the vulnerability of people and communities experiencing disadvantage and marginalisation to climate change impacts. It outlines the importance of recognising these factors in frameworks for decision-making in the planning system, through objectives, principles and robust community engagement. We highlight

the importance of a planning system that helps to deliver safe, affordable and healthy housing for all and comment specifically on the need for the planning system to plan for a net-zero ready built environment powered by renewable energy.

1. Recognising vulnerability to climate change impacts

PIAC supports the work of the Australian Council of Social Service (ACOSS) and others in promoting fast, fair and inclusive climate change action and considers that all policies to address the impacts of climate change should be viewed through a lens of equity and social justice.

People experiencing disadvantage are more vulnerable to climate change impacts. They lack access to the resources to manage, adapt and recover from disasters and changing conditions, and face barriers accessing services and support. They are more susceptible to displacement, housing and food insecurity, and health risks, and are often located in communities at greater risk of extreme weather events or environmental degradation. Poor infrastructure and social support systems leave them more exposed to immediate and long-term consequences of climate change, perpetuating a cycle of poverty and vulnerability. Climate change also poses particular threats to First Nations people, who have strong social, cultural and economic ties to their traditional lands and waters, often leaving them more exposed to likely impacts.

Any planning system reforms that seek to address the impacts of climate change on communities must recognise this starting point of inequality of experience, and understand the need to integrate planning with other policy areas, guided by priorities which underpin justice and equity. PIAC recommends those priorities should include:

- **Meaningful, robust and inclusive community engagement** – The planning process should actively engage all stakeholders, including marginalised communities, to ensure their voices are heard and their needs are considered in climate adaptation strategies. This engagement should meet contemporary best practice standards and be robust, timely and transparent enough to respond to the significance of the issues under consideration.
- **Affordable housing and sustainable development** – Development of affordable and sustainable housing options should be supported and promoted, enabling vulnerable populations to access safe and resilient living spaces.
- **Climate-resilient development** – Climate resilience should be integrated into standards, laws, policies and regulations impacting planning, construction, and maintenance of local infrastructure to ensure that communities are equipped to avoid, withstand and recover from the impacts of extreme weather events and environmental changes.
- **First Nations justice** – The rights of Aboriginal peoples to self-determination must be recognised and promoted. They should be actively equipped with resources and capacity to realise those rights, including encouraging and enabling Aboriginal leadership in relevant policy-making.
- **Environmental justice** – Environmental justice must be embedded in planning policies, regulations and standards to safeguard natural resources and ecosystems and support their resilience and sustainability in the face of increasing climate impacts.
- **Net-zero ready** – The adoption of renewable energy sources should be promoted and enabled, and the rapid transition to a zero-carbon economy actively supported. Access to affordable and sustainable energy solutions for all communities must be facilitated, maximising opportunities to improve outcomes for those experiencing disadvantage.

1.1 Embedding climate change in decision-making

The planning system has a critical role to play in reducing GHG emissions. NSWs' ability to meet its targets of 50% reduction in GHG emissions from 2005 levels by 2030 and net zero by 2050 is dependant upon maximising the contribution of the planning system, policies, standards and regulations. We welcome the introduction into Parliament of the *Climate Change (Net Zero Future) Bill 2023* legislating those targets and establishing a Net Zero Commission to monitor progress. This is a crucial step in co-ordinating all available Government tools to respond to the challenge of climate change and is important step towards embedding climate change considerations consistently in all NSW government decision making. Further action is needed to fully integrate climate change considerations into the planning process.

The planning system must aim to:

- Make contributions based on updated evidence regarding what is required to keep climate-related temperature increases to between 1.5-2 degrees.
- Minimise emissions from the built environment and land use;
- Minimise climate related harm to people and communities through robust planning for future development that properly considers the risks of climate change related impacts in all decision-making; and
- Strengthen resilience of people and communities in response to the impacts of climate change through appropriate place-based adaptation measures developed with communities to meet their needs.

We refer the Committee to the 2019 report from the Environmental Defenders Office recommending climate-ready planning laws for NSW.¹ In particular, EDO's recommendations to add legislative objectives to planning laws to reduce GHG emissions, develop an overarching State Environmental Planning Policy for Climate Change, and make climate change considerations mandatory in strategic planning. These are all recommendations which provide substantive mechanisms for incorporating both mitigation and adaptation considerations into planning decisions.²

In addition, fairness, equity and inclusion should be embedded into climate change planning legal and regulatory frameworks. This should ensure the impacts of climate change on communities experiencing disadvantage and the actions taken to address them, are properly considered.

Recommendation – Embed climate change considerations in decision-making

The Committee should recommend reforms to embed climate change considerations into planning system decision-making, including through legislatives objectives, State planning policies and other mechanisms.

¹ Environmental Defenders Office NSW, *Climate Ready Planning Laws*, March 2019
<https://www.edo.org.au/publication/climate-ready-planning-laws/>

² Ibid, see Recommendations 2, 3 and 4.

1.2 Strong community engagement

Climate change impacts will vary considerably across communities. People living in communities with experience of particular forms of disadvantage or discrimination will have valuable knowledge and understanding of their own situations. Their lived experience must inform policymaking to ensure that actions are fair, equitable and appropriate to meet their needs. This requires dedicated, place-based mechanisms for affected people and communities to be directly involved in decision-making, prioritising those experiencing disadvantage.

Public participation and consultation has long been a feature of the NSW planning system. It must continue to evolve in response to contemporary best practice in engagement and consultation. Previously acceptable levels of consultation are no longer fit for purpose and best practice community engagement in planning processes and decisions must be robust, meaningful, timely, transparent, representative, and inclusive and structured to ensure final decisions promote the best interests of impacted communities. Best practice engagement practices are increasingly community in regulatory decisions in the energy and water system and this experience should be drawn on in developing engagement practices to shape planning system reform and ongoing decision-making processes.

Particularly where decisions could require the relocation of homes or entire communities, robust early engagement with those communities is essential to ensure that decisions meet people's needs. This must include strategies to overcome barriers to participation from people experiencing disadvantage to ensure inclusion and representation.

Recommendation – Prioritise community engagement in planning processes

Planning policies and decisions must have meaningful community input through strong, best practice engagement processes to ensure they respond to climate change impacts in ways that meet community needs.

2. Safe, affordable and healthy housing

In our 2020 submission to 'A Housing Strategy for NSW Discussion Paper' ('Housing Strategy Submission'), PIAC outlined how a health and wellbeing framework could help deliver homes in NSW that keep people safe from extreme weather, maintain a healthy thermal environment and support good health, while making a substantial contribution to meeting the goal of net zero emissions by 2050.³ We highlighted the need for such work to involve integrated and collaborative work across government, as well as with community and industry stakeholders. This includes reform of the planning system to ensure people and communities are safe and healthy in their homes.

We reiterate our vision for housing (and indeed community development and planning) in NSW that is focused on people and their wellbeing, so that all people at all stages of their lives have access to a safe, secure, affordable homes and communities that support their health, wellbeing and participation.⁴ This is the foundation for climate resilient communities. This requires a

³ PIAC, *Transforming our housing system towards housing for all: Submission to A Housing Strategy for NSW Discussion Paper*, 31 July 2020, p1 <https://piac.asn.au/wp-content/uploads/2020/08/20.07.31-PIAC-Submission-to-A-Housing-Strategy-for-NSW-Discussion-Paper-Final-all-sections-3.pdf>

⁴ *Ibid*, p7.

planning system which facilitates the provision of diverse, sustainable, accessible, zero-carbon ready, affordable housing catering to the needs of all people.

2.1 Affordable homes for all

PIAC's Housing Strategy Submission made a range of recommendations aimed at meeting our vision for housing. Fundamental to this is the need to invest in social housing to meet the needs of communities. While the delivery of new social housing requires policy commitments outside of the planning system, there is a role for planning system reforms to support the supply of affordable and accessible housing, including:

- Implementing a mandatory inclusionary zoning mechanism mandating that at least 15% of new floor space or cash equivalent is set aside for the purpose of social and affordable housing where rezoning occurs across Greater Sydney, and in other areas in NSW where this does not fundamentally undermine development feasibility.
- Amending *State Environmental Planning Policy (Affordable Rental Housing) 2009* to introduce an affordability requirement for dwellings delivered to be let at a price affordable to lower income households.
- Working with local government to harmonise Development Control Plans towards better universal design standards in all local government areas, ensuring people with disability or accessibility needs have housing choice, amenity, affordability and stability, as well as independence and dignity.
- Ensuring all social and affordable housing units and the buildings they are part of are zero-carbon ready as a matter of urgency.

PIAC repeats these recommendations, as the delivery of affordable, safe and healthy homes for all people must be the backbone of ensuring resilience to climate change impacts among our communities.

Recommendation – Prioritise safe, affordable and healthy housing

Planning reforms that actively encourage and enable the delivery of efficient, accessible social and affordable housing that meets the needs of all people should be prioritised.

2.2 Minimum standards for new housing

The planning system must ensure new and existing housing can keep people safe from extreme weather, support good health and provide a sustainable (and affordable) basis for productive engagement in the community. Planning policies and regulations should incorporate minimum standards for health, safety and water efficiency and zero-carbon readiness, and incentivise the NSW property development and building industry to contribute to meeting and outperforming those minimums.

As we outlined in our submission to the Commonwealth National Energy Performance Strategy, improving residential energy performance represents the greatest opportunity to rapidly impact households and communities and deliver multiple benefits in emissions reduction, health, housing

affordability, social participation, community resilience, social equity, employment, domestic industry development and overall economic productivity.⁵

The NSW planning system has a role to play in relation to planning controls for new residential buildings and through the application of building standards. We welcome the recent updates to the BASIX rating system in NSW and the adoption of the updated National Construction Code. However, as we outlined in our submission to the BASIX review process, further reforms are needed to ensure BASIX is fit for purpose in a changing climate.⁶ The NSW Government can, and should ensure that all new buildings are constructed and operated to be zero carbon ready, as a matter of urgency.

The Insurance Council of Australia, responding to the increasing insurance costs of climate-related disasters, has recently highlighted the need for robust building standards that embed principles of resilience taking account of future weather events and projections.⁷ Similarly, the work of the Western Sydney Regional Organisation of Councils (WSROC) through the 'Turn down the heat' initiative and the Urban Heat Planning Toolkit, underlines the critical importance of improving the thermal performance of homes so that conditions inside the home remain survivable for longer, pointing to BASIX improvements as the key mechanism for achieving this.⁸ Another recent study finds current BASIX and NatHERS tools are not meeting future climate needs for heat, and should be updated, and that building standards should incorporate thermal safety.⁹

PIAC urges the Committee to consider the opportunities for BASIX to support better outcomes for climate change policy, energy system transition policy and household health, wellbeing and social equity. In particular, BASIX should no longer support fuel neutrality for new residential construction and should focus on delivering better long-term outcomes for households in line with key objectives to:

- Improve building energy efficiency as part of delivering zero-carbon ready homes now;
- Improve housing cost affordability by delivering better long term household health and wellbeing outcomes through more efficient energy usage across the life of the home;
- Support household resilience to the increasing extremes of hot and cold weather resulting from climate change;
- Optimise the capacity of household energy generation and load to contribute to a more flexible, reliable, locally resilience and efficient energy system; and
- Immediately reduce methane emissions and the health impact of methane in homes.

⁵ PIAC, *Submission to National Energy Performance Strategy Consultation Paper*, 3 February 2023, p10 <https://piac.asn.au/wp-content/uploads/2023/02/23-03-03-PIAC-submission-in-response-to-the-National-Energy-performance-Strategy-Consultation-paper.pdf>

⁶ PIAC, *Submission to Sustainability in Residential Buildings: Proposed BASIX Changes*, 28 February 2022, <https://piac.asn.au/wp-content/uploads/2022/06/22-02-23-PIAC-sub-to-DPE-on-review-of-BASIX-and-sustainability-measures-final40.pdf>

⁷ Insurance Council of Australia, *Insurance Catastrophe Resilience Report 2022–23*, p21 https://insurancecouncil.com.au/wp-content/uploads/2023/09/20897_ICA_Cat-Report_Print-2023_RGB_Final_Spreads.pdf

⁸ WSROC Urban Heat Planning Toolkit 2021 <https://wsroc.com.au/media-a-resources/reports/send/3-reports/306-wsroc-urban-heat-planning-toolkit>

⁹ Upadhyay, A., Asha, N., Fallowfield, K., Rocha, P., Bruinsma, J., & Gee, K. *Future Proofing Residential Development in Western Sydney* (Western Sydney Regional Organisation of Councils, 2022), p15. <https://wsroc.com.au/media-a-resources/reports?task=download.send&id=360&catid=3&m=0>

Recommendation

Urgently implement further improvements to BASIX to optimise contribution to housing affordability, health, climate, resilience and energy system policy objectives. Specifically, BASIX should move to immediately implement standards ensuring all new housing is zero-carbon ready.

2.3 Upgrading existing housing

Standards and targets for existing housing will require policy coordination outside the planning system, but the planning system has a role to play in ensuring the existing communities evolve and are upgraded to be more sustainable, healthy and resilient. Energy performance standards must be developed and implemented for all residential buildings, and the planning system has a role to play, for example, through the incorporation of updated BASIX requirements into development approvals for renovations and upgrades. In addition, PIAC continues to recommend that mandatory disclosure of residential energy performance at point of sale and lease is implemented immediately.

Planning system measures must also be accompanied by policies to ensure people in public and social housing and in the private rental market have access to climate resilient homes. Key to this is the need to implement mandatory minimum energy efficiency standards for rental properties, alongside rental reforms that ensure renters can uphold their rights. PIAC is a signatory to the Community Sector Blueprint: A National Framework for Minimum Energy Efficiency Rental Requirements and recommends the objectives, principles and outcomes contained in the Blueprint are adopted in NSW.¹⁰

Recommendation: Residential energy performance disclosure

That Mandatory disclosure of residential energy performance at the point of sale and lease be implemented immediately, or that implementation be committed to subject to the completion of the process developing the national framework for disclosure.

Recommendation: Minimum standards for rental properties

That the NSW Government commit to implement minimum energy efficiency standards for rental properties and initiate a consultation process to consider implementation in line with the Community Sector Blueprint.

2.4 Planning for heat

Increasingly challenging heat conditions are not specifically mentioned in the inquiry's terms of reference, but must be prioritised in planning system reforms. This is particularly vital in ensuring appropriate consideration of issues faced by communities in Western Sydney as well as many remote and regional communities across the state. We note the substantial work on urban heat and resilience for Western Sydney undertaken by the WSROC.

In addition to the critical importance of fit for purpose building standards, the Urban Heat Toolkit outlines a range of measures that are necessary to enable resilience in hotter conditions. It notes

¹⁰ Healthy Homes for Renters, *Community Sector Blueprint: a National Framework for Minimum Energy Efficiency Rental Requirements*, Nov 2022, <https://www.healthyhomes.org.au/news/community-sector-blueprint>

the limited role for local planning controls in ensuring these can be implemented.¹¹ Consideration and reform of state-wide planning policies and regulations is necessary to ensure these align with resilience objectives and principles. For example, substantial new development proceeds outside of local planning frameworks through exempt and complying development pathways (*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*), site-specific SEPPs for growth areas, or State significant development. These developments may not necessarily meet the standards expected more broadly, undermining the consistency of improvements to climate resilience. This again points to the need for an overarching framework for considering climate change mitigation and adaptation in all aspects of the planning system.

3. Planning for a zero-carbon emissions future

PIAC supports reforms to the planning system which deliver a net-zero ready homes, built environments and communities which can meet the energy needs of people living in a fully decarbonised, climate changed economy. Some of this can be achieved through building standards and complementary measures outlined above. In addition, PIAC considers that planning for a zero carbon emissions future specifically requires planning for efficient, renewable electrification of Australian households now and ensuring planning, energy and other laws and regulations are updated to enable this.

Efficient household electrification is a key part of the lowest cost, most rapid pathway for decarbonising the energy system. Crucially it is also central to improving long term energy affordability and equity, and enabling communities to mitigate and adapt to the impacts of climate change. We refer to our detailed submission to the recent Senate inquiry into Residential Electrification.¹² Electrification requires a range of complementary policy measures at Federal, State and Local levels, and the NSW planning system has an important role to play in removing barriers to efficient electrification.

The planning system should be directed towards achieving a zero-carbon built environment and climate resilient communities as soon as possible, including:

- All new commercial and residential developments are designed to be zero-carbon ready and minimise emissions both in construction and in use.
- Energy systems for new development are required to be efficient, robust and meet people's needs. This includes removing scope for gas connection in new developments and instead requiring all-electric, efficient design. Designs should also reduce peak demand through robust minimum energy efficiency standards and appliance standards, integrate load shifting capability and enable the efficient use of Electric Vehicles.
- The use of gas must be phased out for all homes and businesses, starting with no new connections for new developments or buildings. This is particularly important for apartment buildings or developments with shared energy infrastructure which will be difficult to change retrospectively if gas connections are embedded now.

¹¹ WSROC Urban Heat Planning Toolkit 2021 <https://wsroc.com.au/media-a-resources/reports/send/3-reports/306-wsroc-urban-heat-planning-toolkit>, p36.

¹² PIAC, 350 Australia and Renew, *Joint Submission to the Economic Reference Committee Inquiry into Residential Electrification*, 29 September 2023. <https://piac.asn.au/wp-content/uploads/2023/09/PIAC-Joint-Submission-to-Senate-Residential-Electrification-Inquiry.pdf>

- Planning and development controls should emphasise and encourage sustainable water supplies and reduced water demand.

Recommendation:

That the planning system have an objective to achieve a zero-carbon built environment through development approval requirements and building standards which require efficient, all-electric homes and businesses designed to meet a zero-carbon emissions energy system. This includes an immediate end to new gas connections.