



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CCWG/EPD:CBib031123

3 November 2023

The Hon. Sue Higginson MLC
Chair
Portfolio Committee No 7 - Planning and Environment
Parliament House
Macquarie Street
Sydney NSW 2000

Via submission portal

Dear Chair,

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

The Law Society appreciates the opportunity to respond to the terms of reference of this Inquiry into the planning system and the impacts of climate change on the environment and communities. The Law Society's Climate Change Working Group and Environmental Planning and Development Committee contributed to this submission.

In this submission we focus primarily on the terms of reference that broadly consider the effectiveness of current planning powers and how reforms to the planning system can better ensure that communities can mitigate and adapt to conditions caused by the effects of climate change. We welcome the release of the terms of reference and look forward to reviewing the findings and recommendations of the Inquiry in due course.

Climate change adaptation planning

The Law Society has previously advocated for a whole of government approach to climate change, which requires emissions reduction targets set by the State Government to be enshrined in a legislative framework,¹ and crucially, the integration of climate change into the NSW planning system.²

To the extent that it may assist with the Inquiry's consideration of these matters, we reiterate our previous positions, which emphasise that a key issue with the planning system is that it does not effectively factor the projected future physical impacts of climate change into strategic

¹ We note that the [Climate Change \(Net Zero Futures\) Bill 2023](#) has recently been introduced in the Legislative Council by the Hon. Penny Sharpe MLC, Minister for Climate Change, Minister for Energy, Minister for the Environment and Minister for Heritage. We welcome the introduction of the Bill and the inclusion of a climate adaptation objective. See the Law Society of NSW, [Climate Change \(Net Zero Futures\) Bill 2023](#), 26 October 2023.

² See the Law Society of NSW, [EPA Climate Change Policy and Action Plan](#), 4 November 2022, and the Law Society of NSW, [NSW Independent Flood Inquiry](#), 21 June 2022.

planning and project-level decision making. Consideration of these issues is currently piecemeal and often reactive.

We have suggested that, for the sake of affected communities, local authorities and decision makers, there needs to be a State-wide overarching framework in place that ensures that consideration of climate impacts, including extreme weather projections, is appropriately factored into planning decisions:

As a first step, we suggest that a definition of 'climate change' be included in the *Environmental Planning and Assessment Act 1979*. There is currently no explicit reference to climate change in the Act and it does not expressly address the need to plan effectively for climate change adaptation.

A detailed analysis and consideration of how to factor climate change adaptation into the NSW planning system in a holistic way is required. The consideration of climate change mitigation and adaptation should be incorporated into the NSW planning system, encompassing all key stages of the planning process, from strategic land use planning to environmental impact assessment and development assessment. One example of how this might be addressed is by the introduction of a Climate Change State Environmental Planning Policy.³

Indigenous Issues

The inquiry should be cognisant of how planning mechanisms aimed towards protecting the natural environment can disproportionately affect land in which Aboriginal people have rights (including land owned by Local Aboriginal Land Councils (LALCS) and land subject to native title). LALCs and other Indigenous groups should be consulted in detail about any such mechanisms and their views incorporated into any reforms. This issue is particularly relevant to term of reference (a)(iii) (developments proposed or approved in areas that contain threatened ecological communities).⁴

Please do not hesitate to contact Liza Booth, Head of Commercial and Advisory Law Reform on 02 99260202 or liza.booth@lawsociety.com.au if you would like to discuss this in more detail.

Yours sincerely,



Cassandra Banks
President

³ The Law Society of NSW, [NSW Independent Flood Inquiry](#), 21 June 2022, 1, 2.

⁴ See generally, Anna R. Renwick at al., 'Mapping Indigenous land management for threatened species conservation; An Australian case-study' (2017) 12(3) PLOS ONE 1.1, 2
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0173876>