

3 November 2023

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

By email: [portfoliocommittee7@parliament.nsw.gov.au](mailto:portfoliocommittee7@parliament.nsw.gov.au)

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

Dear Ms Higginson,

The Urban Development Institute of Australia NSW (UDIA) is the state's leading development industry body, representing 450 member companies and agencies across the public and private sector. We invest in evidence-based research to inform our advocacy to Government, which enables our members to create liveable, affordable, and connected smart cities. Through our 15 Policy, Research, and Regional Committees, we lead the industry with evidence-based research that informs our advocacy.

UDIA appreciates this opportunity to provide comment to Portfolio Committee No. 7 for its Inquiry into the planning system and the impacts of climate change on the environment and communities.

Access to affordable and secure housing is essential to a well-functioning society. In response to climate change, and as natural disasters become increasingly more frequent, NSW must ensure its regulatory planning framework can adequately plan for and support the delivery of safe and resilient communities, address climate change and transition to a less carbon intensive economy. UDIA has been working on a number of initiatives and research projects in recent years which seek to identify how the construction and development sector can respond to the challenge of transitioning to net zero, as well as identify how to create more resilient communities.

This must be accomplished at a time when our state is facing a chronic housing crisis, with major supply shortages and affordability pressures. NSW has committed to delivering 75,600 new homes per year for five years under the National Housing Accord, which is more homes per year than we have ever delivered. At the same time, our industry faces increased uncertainty from high interest rates, material costs, labour shortages and builder insolvencies. On top of these pressures, the regulatory responses to climate change, natural disasters and biodiversity loss are significantly reducing the availability of viable, developable land for new housing.

In short, NSW requires more new homes than ever before, but the delivery parameters are also more difficult than ever before, in part because of climate change. Against this important backdrop, UDIA makes the following comments in response to the Inquiry's Terms of Reference.

## Planning for Protection from Climate Change Impacts

The Committee is inquiring into how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes, in the context of four considerations. Our submission addresses each of these considerations.

### **Proposed or Approved Developments**

The Committee is seeking feedback on how the planning system can best ensure people and the natural and built environment are protected from climate change impacts and changing landscapes with regard to:

- (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*

UDIA asserts that the NSW planning system, under the *Environmental Planning and Assessment Act 1979* (EP&A Act), already has strong regard to all these matters. The objects of the EP&A Act include facilitation of ecologically sustainable development, protection of the environment and the sustainable management of built heritage. We note that NSW has the country's most complex planning system with an exhaustive list of legislation, regulations and instruments that work together under the EP&A Act to ensure every development proposal undergoes a comprehensive assessment against the latest information relevant to the proposed development site and location, within the context of the wider community. In addition to the EP&A Act, some of the relevant Acts include *Biodiversity Conservation Act*, *Fisheries Management Act*, *Rural Fires Act*, *Coastal Management Act* and *Water Management Act*, among many others.

NSW regularly amends its planning system policies, regulations and laws to update them as a result of new information and conditions, including the impacts of climate change. These normal governmental processes are adequate and appropriate to incorporate any necessary changes for development assessment. For example, each standard instrument local environmental plan now has a compulsory clause 5.21 relating to flood planning. This requires mandatory consideration of the impact of the development on projected changes to flood behaviour as a result of climate change. This clause also calls up for consideration manuals and guidelines on floodplain development which can be varied from time to time to address changes in models, et cetera. Many Councils have also adopted coastal erosion and landslip mapping to inform the community and regulate development on land prone to coastal erosion.

The precautionary principle is often applied by consent authorities and the Land and Environment Court in determining applications for approval. We note this recent decision of the Land and Environment Court Mount Street 1 Pty Ltd v Sutherland Shire Council [2023] NSWLEC 1607 where an application was refused in light of such risks.

The Committee should have confidence that development approval under the EP&A Act is only granted after a proposal has undergone increasingly rigorous and comprehensive assessment to weigh the social, environmental and economic considerations and it has been determined the approval is in the public interest.

### **Review, Amend or Revoke Development Approvals**

The Committee is seeking feedback 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 with regard to:

- (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*

UDIA refers the Committee to our response to (a) above. Development approval under the NSW EP&A Act is only granted when it has been demonstrated that the proposal has satisfactorily addressed all the issues listed under both (a) and (b). Approval is based on merit assessment that the proposed development is determined to be in the public interest because it is consistent with the comprehensive rules of the planning system, which is already well equipped to assess these considerations on behalf of the public.

UDIA would strongly object to an expansion of the powers of a planning authority to retrospectively revoke or modify a development approval beyond those which already exist under section 4.57 of the EP&A Act. Development approval conveys a lawful permitted use of a property, i.e., a property right for the landowner. Such property rights cannot and should not be revoked or modified except under the current statutory rules which require compensation (section 4.57 EP&A Act).

The development industry, businesses and homeowners need certainty about the regulatory environment to support investment and the delivery of new homes. This is especially true in this current housing crisis when so many factors are already working against our ability to deliver the National Housing Accord targets.

Development consents, unlike other approvals, are not personal and “run with the land”. Investments made by one landowner by obtaining and implementing a development consent are then relied upon by other subsequent landowners and the price paid incorporates that earlier investment. To grant expanded powers to authorities to unilaterally revoke or modify those approvals could wipe out the value of the only material asset owned by that person. We reiterate that revocation or modification of an existing approval must be a high bar, and if ever deemed necessary, then compensation must always be provided.

UDIA notes the powers to have time-limited consents already exist and have been used for example in parts of Byron Bay subject to coastal erosion under “planned retreat” planning policies. This

appropriately required significant public education and awareness before “planned retreat” was implemented to give certainty and enable investment to be planned.

We also note that there are already powers given to local Councils to impose orders where the use of land or a building is unsafe (see Schedule 5, Part 1 and 2 of EP&A Act and Part 2 of the *Local Government Act*).

UDIA would prefer that proactive measures and tools of encouragement are used, such as environmental upgrade agreements in the *Local Government Act*, rather than those measures that create significant uncertainty and financial risk with “sticks”.

UDIA considers this aspect of the inquiry to be a perilous slippery slope which has the potential to undermine the NSW Government’s priority and commitment to deliver 75,600 new homes a year for consecutive five years.

### **Planning Reforms for Community Mitigation and Adaptation**

The Committee is seeking feedback 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 with regard to:

- (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*

UDIA refers to our comments under (a) and (b). There is a comprehensive existing and established planning framework that works to consider these aspects through strategic and statutory land use planning and assessment as well as through education programs.

The ability of the existing planning system to adapt to new information has been highlighted this week with the NSW Government decision to not proceed with rezoning land for new housing in high-risk flood plains in parts of Western Sydney, reducing housing capacity by approximately 10,300 new homes over earlier planning expectations. This land use planning decision followed the release of updated Flood Evacuation Modelling report for the Hawkesbury-Nepean Valley. The modelling was undertaken to help make better decisions on emergency evacuations, land use planning and road upgrades in one of Australia’s most consequential flood risk areas.

Likewise, bushfire prone mapping has alerted people to the risks posed by bushfires and the limitations on and costs of developing in such areas.

Sensitive uses such as schools and hospitals already have a greater level of assessment on climate change risk given the vulnerability of users and its status as community infrastructure. Consideration is given now to evacuation pathways and isolation during events.

This decision demonstrates how the current NSW planning system is working to ensure that people are protected from climate change impacts and changing landscapes. It is now important that NSW

Government identify where additional housing can be accommodated safely to ensure we address our systemic housing crisis, maintain a strong housing pipeline and meet our targets set under the National Housing Accord. There are planning processes in place, and UDIA is assisting in this work, as outlined below.

### **Ensuring Residential Dwelling Capacity**

The Committee is seeking feedback 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 with regard to:

- (d) alternative regulatory options to increase residential dwelling capacity where anticipated growth areas are no longer deemed suitable, or where existing capacity has been diminished due to the effects of climate change*

UDIA welcomes this consideration and emphasises the importance of building a healthy, development-ready pipeline of new housing that will be able to deliver on our National Housing Accord commitments as well as sustain supply over time as our population continues to grow. NSW has historically failed to plan for and provide the necessary enabling infrastructure to create a sustainable pipeline of development ready land, which has led to significant undersupply of new housing over many decades.

The analysis of the development-ready pipeline is critically important to ensure government can maximise housing delivery in areas that are unencumbered by risks or environmental or infrastructure constraints.

UDIA is actively contributing to this effort across the Six Cities Region by partnering with DPE on our National Housing Pipeline (NHP) project, which is set to change the conversation about maintaining a sustainable land supply pipeline across Australia. The premise and intention is simple – *to get all stakeholders talking about the ‘development readiness for a sustainable pipeline of land/projects and to do it geospatially so that it can be iterative and collaborative.’* We are pleased that the NSW Government is adopting a similar way of thinking through the Urban Development Program (UDP) Committees which UDIA has long been an advocate and champion for. UDIA are active members of the UDP Committees in Western Sydney, Illawarra-Shoalhaven, Central Coast, Lower Hunter & Greater Newcastle, and Upper Hunter & MidCoast regions, respectively.

The ultimate purpose of the UDIA’s National Housing Pipeline project is to provide an objective and robust measure that can be used by Federal, State and Territory Governments to identify how much development-ready land is available across the capital cities. In NSW, this means acting as a complementary research piece to the UDP to analyse the housing supply pipeline and identify constraints to achieving housing completions, including infrastructure delivery, biodiversity approvals and the wider considerations of the planning system such as fire, flood, and other climate-affected issues. Working together, the UDP and NHP will allow policy makers and planners to curate a realistic picture of future supply and provide Government with the information needed to consider policies and incentives that are needed to boost the housing supply pipeline to deliver sustainable development over the medium to long term. Combining industry and government intelligence is crucial to this objective, and we are pleased to partner with DPE on this effort.

## **Conclusion**

UDIA is actively working with the NSW Government to identify the necessary policy settings needed to address the housing crisis while ensuring all NSW residents have a safe and secure place to call home. Of course, NSW has development needs beyond housing and UDIA is also actively working on an industrial land supply pipeline and key projects to deliver opportunities for employment closer to homes.

UDIA is grateful for the opportunity to offer our comments to the inquiry into the planning system and the impacts of climate change on the environment and communities. The issues are significant and careful evaluation is necessary to ensure planning legislation balances all aspects of the public interest as we address the challenges. UDA commits to ongoing engagement with NSW Government on these important issues. If you would like to discuss UDIA's submission in more detail, please contact Elizabeth York at [eyork@udiansw.com.au](mailto:eyork@udiansw.com.au).

Kind regards,

A handwritten signature in black ink that reads "Steve Mann". The signature is fluid and cursive, with the first name "Steve" and last name "Mann" clearly distinguishable.

**Steve Mann**  
**CEO**