

## PLANNING BILL 2013

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Amendments proposed by Legislative Council on 27 November 2013.

- No. 1 Page 2, clause 1.2. Insert after line 7:  
(2) Despite subsection (1), clause 11.29 commences on the date of assent to this Act.
- No. 2 Page 4, clause 1.8. Insert after line 8:  
(4) For the purposes of this Act, an *affordable housing contribution* is an affordable housing contribution set out in the contribution provisions of a local plan.
- No. 3 Page 5, clause 1.13 (b) (ii), lines 20 and 21. Omit all words on those lines.
- No. 4 Page 9, clause 2.4. Insert after line 38:  
(4) The mandatory requirements for community participation referred to in section 2.5 are taken to include any other forms of community participation that are set out in a community participation plan and that are identified in that plan as mandatory requirements.
- No. 5 Page 9, clause 2.4. Insert after line 43:  
(7) Planning authorities are to publish annual reports, in accordance with the regulations, on their implementation of community participation plans.
- No. 6 Page 10, clause 2.8. Insert after line 27:  
(c) in particular, to provide advice and make recommendations to the Minister on the adequacy of draft community participation plans and the implementation of the Community Participation Charter through the operation of those plans,
- No. 7 Page 12, clause 3.5 (2) (e), lines 21 and 22. Omit “or development proposed for code assessment”.
- No. 8 Page 12, clause 3.6. Insert after line 47:  
(4) When making a decision under this section, the Minister is to have regard to the objects of this Act.
- No. 9 Page 13, clause 3.9, line 37. Omit “development assessment codes and”.
- No. 10 Page 13, clause 3.9, line 44. Omit “or biodiversity offset contributions,”. Insert instead “biodiversity offset contributions or affordable housing contributions”.
- No. 11 Page 14, clause 3.10, line 5. Omit “or biodiversity offset”. Insert instead “, biodiversity offset or affordable housing”.
- No. 12 Page 15, clause 3.13 (c), lines 21 and 22. Omit “and code assessed development”.
- No. 13 Page 15, clause 3.13 (k), line 37. Omit all words on that line. Insert instead:  
(k) providing, maintaining and retaining affordable housing and encouraging housing choice,
- No. 14 Page 17, clause 3.17, lines 30–33. Omit all words on those lines. Insert instead:  
(3) After reviewing the planning proposal, the Minister must determine whether the proposal should proceed (with or without variation).
- No. 15 Page 17, clause 3.17. Insert after line 35:  
(a) the minimum period of public exhibition of the planning proposal (or a determination that no such public exhibition is required because of the minor nature of the proposal),  
**Note.** Under Schedule 2, the mandatory period of public exhibition is 28 days if a determination is not made under paragraph (a).

- No. 16 Page 18, clause 3.18 (4), lines 22 and 23. Omit all words on those lines. Insert instead:
- (4) Further public exhibition of a revised planning proposal is required unless the Minister determines in the revised gateway determination that further public exhibition is not required because of the minor nature of the variation to the planning proposal.
- No. 17 Page 20, clause 3.24 (1). Insert after line 37:
- (c) the objects of this Act.
- No. 18 Pages 20 and 21, clause 3.25, line 44 on page 20 to line 3 on page 21. Omit all words on those lines. Insert instead:
- (1) The public exhibition of a draft strategic plan (or proposal for a strategic plan) is to be accompanied by such documents as are required by the regulations.
- (2) If the draft is a principal regional growth plan or a principal subregional delivery plan, the public exhibition of the draft is to be accompanied by a strategic assessment statement.
- Note.** See Schedule 3 with respect to the preparation of strategic assessment statements.
- No. 19 Page 21, clause 3.25, lines 2 and 3. Omit “or proposal for a development assessment code”.
- No. 20 Page 21, clause 3.27 (2), lines 30 and 31. Omit all words on those lines. Insert instead:
- following if the proposed plan has been publicly exhibited in accordance with the requirements of Part 1 of Schedule 2:
- No. 21 Page 21, clause 3.27 (2) (b), lines 34 and 35. Omit “State, regional or subregional significance”. Insert instead “State or regional significance”.
- No. 22 Page 23, clause 4.2, lines 22 and 23. Omit all words on those lines.
- No. 23 Page 23, clause 4.3, lines 31 and 32. Omit all words on those lines.
- No. 24 Page 26, Division 4.4, heading, line 7. Omit “**Code and merit**”. Insert instead “**Merit**”.
- No. 25 Page 27, clause 4.16. Omit the clause.
- No. 26 Pages 27 and 28, clause 4.17. Omit the clause.
- No. 27 Page 28, clause 4.18 (1), line 17. Omit “if it is not subject to code assessment under section 4.17”.
- No. 28 Page 36, clause 4.41 (1) (c), line 44. Omit all words on that line.
- No. 29 Page 39, clause 5.3 (1), lines 36 and 37. Omit “take into account the matters affecting or likely to affect the environment”. Insert instead “take into account to the fullest extent possible all matters affecting or likely to affect the environment”.
- No. 30 Page 42, clause 5.9. Insert “**and other provisions**” after “**exemptions**” on line 17 and insert after line 27:
- (2) A determining authority is to make publicly available in accordance with the regulations any review or statement of environmental effects, prepared by or on behalf of the determining authority in relation to relevant development for which an environmental impact statement has not been obtained, as soon as practicable after it has been prepared and before the grant of any approval for the development.
- No. 31 Page 48, clause 5.23 (2), line 19. Insert “the Minister has first obtained and made publicly available advice from the Planning Assessment Commission about whether the Minister should make the declaration and” after “may only be made if”.
- No. 32 Page 49, clause 5.26. Insert after line 33:
- (4) The provisions relating to public exhibition and the making of submissions under Part 1 of Schedule 2 apply to the public exhibition of the project definition report under subsection (1) (b). After the public exhibition of the project definition report, the proponent and the NSW Planning Director-General are to consider any submissions made during the public exhibition period.
- No. 33 Page 61, clause 7.1. Insert after line 4:
- affordable housing contribution*** means a contribution imposed under Division 7.5.

No. 34 Page 68, clause 7.23. Insert after line 38:

- (5) Payments from the Funds into which biodiversity offset contributions are paid are to be made, as far as practicable, so the amounts contributed in connection with development in a local government area are used on biodiversity offset measures in the same regional planning area.

No. 35 Page 69, Part 7. Insert after line 9:

## **Division 7.5 Affordable housing contributions**

### **7.26 Affordable housing contributions for proposed development**

- (1) A consent authority can impose an affordable housing contribution on development to fund the provision of affordable housing in the area in which development is proposed to be carried out.
- (2) An affordable housing contribution is a contribution requiring either or both of the following:
  - (a) the dedication free of cost of part of the land comprising the proposed development (or of other land of the applicant for development consent) to be used for the provision of affordable housing,
  - (b) the payment of money as a contribution towards the provision of affordable housing.
- (3) In this Division, the *provision* of affordable housing includes the extension or augmentation of affordable housing and recoupment of the cost of providing, extending or augmenting affordable housing.
- (4) An affordable housing contribution is imposed by means of a condition of development consent for the development concerned.

### **7.27 Contributions to be in accordance with contribution provisions of local plan**

An affordable housing contribution must be in accordance with the local plan for the area, that is:

- (a) an affordable housing contribution can only be imposed in respect of development or a class of development that the local plan provides can be the subject of an affordable housing contribution, and
- (b) the size and amount of an affordable housing contribution is to be determined in accordance with the local plan.

### **7.28 Nexus and other requirements for contributions**

- (1) An affordable housing contribution is to be a reasonable contribution, having regard to the following:
  - (a) the extent of the need in the area for affordable housing,
  - (b) the scale of the proposed development,
  - (c) any local infrastructure contribution imposed in respect of the proposed development.
- (2) An affordable housing contribution can only be imposed if:
  - (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing in the area, or
  - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing in the area, or
  - (c) the proposed development can only be carried out after amendments are made to the local plan, or
  - (d) the regulations otherwise authorise the imposition of an affordable housing contribution.
- (3) Nothing in this Division prevents the imposition on a development consent of other conditions relating to the provision or retention of affordable housing. Such conditions may require, but are not restricted to, the imposition of covenants (including positive covenants) or the entering into of contractual or other arrangements.

### **7.29 Making or payment of affordable housing contributions**

- (1) An affordable housing contribution is to be made or payable to the consent authority that imposes the contribution.

- (2) The time for making or payment of an affordable housing contribution is as required by the local plan.
- (3) The consent authority can accept the carrying out of works-in-kind in part or full payment of an affordable housing contribution.
- (4) The local plan can provide for the indexation of affordable housing contributions under the plan that comprise the payment of money by providing for a contribution to increase at a specified rate of indexation between the date the contribution is imposed and the date of payment of the contribution. The amount payable in satisfaction of a contribution is to be increased in accordance with the indexation provisions of the local plan.

### **7.30 Use of affordable housing contributions**

- (1) Land dedicated as an affordable housing contribution:
  - (a) is to be transferred to the consent authority and made available by the consent authority for affordable housing within a reasonable time, or
  - (b) is to be transferred to a person nominated by the Minister in an applicable direction under subsection (3) and made available by that person for affordable housing within a reasonable time.
- (2) Money paid in satisfaction of an affordable housing contribution:
  - (a) is to be held by the consent authority and applied for the purpose of affordable housing in the area or an adjoining area within a reasonable time, or
  - (b) is to be paid to a person nominated by the Minister in an applicable direction under subsection (3) and applied by that person for the purpose of affordable housing in the area or an adjoining area within a reasonable time.

Money paid in satisfaction of an affordable housing contribution includes any additional amount earned from investment of that money and any proceeds of sale of land received in satisfaction of an affordable housing contribution.
- (3) The Minister may direct a consent authority:
  - (a) to pay any money paid in satisfaction of an affordable housing contribution to a person nominated by the Minister, or
  - (b) to transfer any land dedicated as an affordable housing contribution to a person nominated by the Minister.

### **7.31 Complying development**

- (1) The local plan must specify whether or not an affordable housing contribution for which the plan provides is to be imposed on development when a complying development certificate is issued for the development.
- (2) A certifier must impose a condition on a complying development certificate requiring the making or payment of an affordable housing contribution if the local plan so requires (with the size and amount of the contribution to be as required by the local plan).
- (3) If a certifier fails to impose the necessary condition, such a condition has effect as if it had been imposed by the certifier.
- (4) A certifier (other than a council) cannot accept the carrying out of works-in-kind in payment of an affordable housing contribution.
- (5) An affordable housing contribution imposed by a certifier (other than a council) is to be made or payable to the council of the area.

### **7.32 Appeals**

A condition of development consent that imposes an affordable housing contribution may be disallowed or amended by the Land and Environment Court on appeal under Part 9 because it is not reasonable in the particular circumstances of the case, even if it was in accordance with the local plan. The Court cannot disallow or amend the local plan.

No. 36 Page 69, clause 7.26 (1) (c), line 20. Omit “that is identified in a strategic plan”.

No. 37 Page 69, clause 7.27, line 41. Omit “or Division 7.4 (Biodiversity offset contributions)”. Insert instead “, Division 7.4 (Biodiversity offset contributions) or Division 7.5 (Affordable housing contributions)”.

- No. 38 Page 70, clause 7.27. Insert after line 7:
- (d) a public authority is not to enter into a planning agreement excluding the application of Division 7.5 unless the planning authority is the Minister or does so with the approval of the Minister.
- No. 39 Page 70, clause 7.27, line 9. Omit “or 7.4”. Insert instead “, 7.4 or 7.5”.
- No. 40 Page 71, clause 7.31, line 5. Omit “and 7.4”. Insert instead “, 7.4 and 7.5”.
- No. 41 Page 81, clause 8.18 (1), lines 13–17. Omit all words on those lines. Insert instead:
- (1) A civil action for loss or damage arising out of or in connection with defective building work or defective subdivision work cannot be brought more than 10 years after the date of completion of the work.
- No. 42 Page 81, clause 8.18 (4), line 35. Insert “or the *Home Building Act 1989*” after “the *Limitation Act 1969*”.
- No. 43 Page 117, clause 11.28. Insert after line 7:
- (2) The Minister is to ensure that there is public participation in the conduct of the review.
- No. 44 Page 117, clause 11.28, lines 8 and 11. Omit “5 years” wherever occurring. Insert instead “4 years”.
- No. 45 Page 117. Insert after line 11:
- 11.29 Repeal of SEPP provisions relating to mining**
- (1) Clauses 12AA and 12AB of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* are repealed.
  - (2) A provision of a strategic plan (including a planning control provision of a local plan) cannot be made if it provides that the significance of a mining resource is the principal consideration of a consent authority when determining an application for development consent or if it provides for non-discretionary standards in the determination of an application for development consent to carry out mining.
- No. 46 Page 118, Schedule 1, Dictionary. Insert after line 6:
- affordable housing contribution***—see section 1.8.
- No. 47 Page 119, Schedule 1, Dictionary, line 9. Omit all words on that line.
- No. 48 Page 119, Schedule 1, Dictionary. Insert after line 22:
- environmentally sensitive area*** means any of the following:
- (a) land within a land use zone that is described as an environment protection zone in the standard instrument for planning control provisions (or an equivalent land use zone),  
**Note.** Environment protection zones on the enactment of this Act are: E1 National Parks and Nature Reserves; E2 Environmental Conservation; E3 Environmental Management; E4 Environmental Living.
  - (b) the coastal waters of the State,
  - (c) an aquatic reserve under the *Fisheries Management Act 1994* or a marine park under the *Marine Parks Act 1997*,
  - (d) a wetland of international significance declared under the Ramsar Convention on Wetlands,
  - (e) a World Heritage area declared under the World Heritage Convention,
  - (f) land reserved under the *National Parks and Wildlife Act 1974* or land to which Part 11 of that Act applies,
  - (g) critical habitat,
  - (h) a wilderness area,
  - (i) any other land identified by the planning control provisions of a local plan as an environmentally sensitive area, as an area of high Aboriginal cultural significance or as an area of high biodiversity significance.

No. 49 Page 126, Schedule 2, lines 15–22. Omit all words on those lines. Insert instead:

**2.5 Planning proposals for planning control or other provisions of local plans subject to a gateway determination (other than minor proposals that under the gateway determination are excluded from public exhibition)**

28 days or, if a different period of public exhibition is specified in the gateway determination for the proposal, the period so specified.

**Note.** Public exhibition of a planning proposal includes any neighbourhood impact statement required to accompany the proposal.

**2.6 Draft planning control, code or guide provisions of local plans not subject to a gateway determination**

28 days.

**Note.** Public exhibition of a draft includes any neighbourhood impact statement required to accompany the draft.

No. 50 Page 132, Schedule 3. Insert after line 1:

**3.1 Strategic assessment statements**

A strategic assessment statement to accompany a draft strategic plan (or proposal for a strategic plan) is to include the following:

- (a) a statement of the intended outcomes of the proposed plan,
- (b) a description of the credible evidence used to prepare the proposed plan (including any economic, environmental or social data collected for the purposes of the proposed plan),
- (c) an assessment of any likely cumulative impacts of the proposed plan,
- (d) an assessment of whether the intended outcomes maintain or improve environmental values,
- (e) any other matter prescribed by the regulations.

No. 51 Page 181, Schedule 12, clause 12.6 (4), lines 13–16. Omit all words on those lines.

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