

New South Wales

# Local Government Amendment (Planning and Reporting) Bill 2009

## Explanatory note

### Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993*:

- (a) to require a council to have a community strategic plan that identifies the main priorities and aspirations for the future of the local community covering a period of at least 10 years (developed and endorsed by the council following engagement with the local community pursuant to a community engagement strategy), and
- (b) to require a council to have a long-term resourcing strategy for the provision of the resources required to achieve the objectives established by the community strategic plan, and
- (c) to require a council to have a 4-year delivery program detailing activities to be undertaken by the council to achieve the objectives established by the community strategic plan (replacing the current requirement for councils to have a management plan detailing the council's future activities and revenue policies), and
- (d) to require a council's delivery program to be supported by an annual operational plan detailing the activities to be engaged in by the council as part of the delivery program covering that year and providing a statement of the council's revenue policy for that year, and

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- (e) to consolidate and streamline annual reporting requirements for councils to reflect the replacement of the management plan with a delivery program and operational plan (with provision for the matters to be reported on to be included in the regulations) and to require a council's annual report to include a state of the environment report, and
- (f) to provide for the Director-General of the Department of Local Government to establish integrated planning and reporting guidelines to impose requirements in connection with the preparation, development and review of, and the contents of, a council's community strategic plan, resourcing strategy, delivery program, operational plan, community engagement strategy, annual report and state of the environment report, and
- (g) to amend a council's charter to include specific reference to long-term strategic planning on behalf of the local community, and planning for the assets for which it is responsible, and
- (h) to include in the role of a councillor a civic leadership role in the preparation of the council's community strategic plan and responsibility for monitoring the implementation of the council's delivery program, and
- (i) to include as a function of the general manager of a council the function of assisting the council in connection with the development and implementation of its community strategic plan, resourcing strategy, delivery program and operational plan and the preparation of its annual report and state of the environment report, and
- (j) to provide transitional arrangements for the phasing in of the new planning and reporting requirements over a 3-year period.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1 Amendments

**Schedule 1 [1]** amends a council's charter to include specific reference to long-term strategic planning on behalf of the local community, and planning for the assets for which it is responsible.

**Schedule 1 [2], [5], [7]–[9], [11] and [13]–[18]** make consequential amendments.

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**Schedule 1 [3]** requires a council's community strategic plan, delivery program and operational plan to be publicly available free of charge.

**Schedule 1 [4]** provides that the role of a councillor includes a civic leadership role in guiding the preparation of the council's community strategic plan and responsibility for monitoring the implementation of the council's delivery program.

**Schedule 1 [6]** provides that it is a function of the general manager of a council to assist the council in connection with the development and implementation of its community strategic plan, resourcing strategy, delivery program and operational plan and the preparation of its annual report.

**Schedule 1 [10]** replaces existing provisions that require the preparation by a council of a management plan with respect to its work, activities and revenue policy with the following provisions for strategic planning by councils:

Proposed section 402 requires each council area to have a community strategic plan that has been developed and endorsed by the council and that identifies the main priorities and aspirations for the future of the local community covering a period of at least 10 years. A community strategic plan must establish strategic objectives together with strategies for achieving those objectives. A council is also required to establish and implement a community engagement strategy for engagement with the local community in connection with the development of the community strategic plan.

Proposed section 403 requires a council to have a long-term resourcing strategy for the provision of the resources required to achieve the objectives established by the community strategic plan.

Proposed section 404 requires a council to have a delivery program detailing activities to be undertaken by the council to achieve the objectives established by the community strategic plan and including a method of assessment to determine the effectiveness of each activity detailed in the delivery program in achieving the objectives at which the activity is directed. A council must establish a new delivery program after each ordinary election of councillors to cover the activities of the council for the 4-year period commencing on 1 July following the election.

Proposed section 405 requires a council to have an operational plan that is adopted before the beginning of each year and details the activities to be engaged in by the council during the year as part of the delivery program covering that year. An operational plan must include a statement of the council's revenue policy for the year covered by the operational plan.

Proposed section 406 requires the Director-General to establish integrated planning and reporting guidelines (*the guidelines*) that will impose requirements in connection with the preparation, development and review of, and the contents of, the community strategic plan, resourcing strategy, delivery program, operational plan, community engagement strategy, annual report and state of the environment report of a council.

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**Schedule 1 [12]** makes the following changes to the annual reporting requirements for councils:

- (a) a council will report annually on its achievements in implementing its delivery program and the effectiveness of the activities undertaken in achieving the objectives at which those activities are directed (instead of reporting on its achievements with respect to the objectives and performance targets set out in its management plan, as at present),
- (b) a council's annual report in the year in which an ordinary election is held will also be required to report on the council's achievements in implementing its community strategic plan,
- (c) an annual report must be prepared in accordance with the guidelines,
- (d) the detailed content of an annual report will be provided for in the regulations and the guidelines rather than being set out in the *Local Government Act 1993*,
- (e) an annual report will be required to include a state of the environment report.

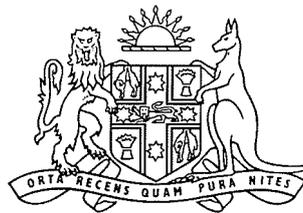
**Schedule 1 [19]** inserts a savings and transitional regulation-making power.

**Schedule 1 [20]** provides for the phasing-in of the proposed new strategic planning provisions over a 3-year period to 1 July 2012 and also provides for the continued application to a council of the existing management plan and annual report provisions until the council is covered by the new strategic planning provisions.

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New South Wales

## **Local Government Amendment (Planning and Reporting) Bill 2009**

No. , 2009

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### **A Bill for**

An Act to amend the *Local Government Act 1993* to make further provision for strategic planning and reporting by councils; and for other purposes.

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Clause 1            Local Government Amendment (Planning and Reporting) Bill 2009

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Local Government Amendment (Planning and Reporting) Act 2009*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Local Government Act 1993 No 30**

The *Local Government Act 1993* is amended as set out in Schedule 1.

**4 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1 Amendments

(Section 3)

**[1] Section 8 The council's charter**

Omit the seventh bullet point paragraph from section 8 (1). Insert instead:

- to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible
- to engage in long-term strategic planning on behalf of the local community

**[2] Chapter 4 How can the community influence what a council does?**

Omit the third paragraph of the Introduction to the Chapter. Insert instead:

Apart from the provisions of this Chapter, members of the public may influence council decisions concerning matters such as the levels of rates and charges, the terms of community strategic plans, delivery programs and operational plans, the granting of development consents, etc (which are dealt with in later Chapters) by making submissions, including comments on or objections to proposals relating to those matters.

**[3] Section 12 What information is publicly available?**

Omit the sixth bullet point paragraph from section 12 (1). Insert instead:

- community strategic plan
- delivery program and operational plan

**[4] Section 232 What is the role of a councillor?**

Insert before the first bullet point paragraph of section 232 (1):

- to provide a civic leadership role in guiding the preparation of the council's community strategic plan and to be responsible for monitoring the implementation of the council's delivery program

**[5] Section 232 (1)**

Omit the last bullet point paragraph. Insert instead:

- to review the performance of the council and its delivery of services, and the delivery program and revenue policies of the council.

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**[6] Section 335 Functions of general manager**

Insert before the first bullet point paragraph of section 335 (2):

- to assist the council in connection with the development and implementation of a community strategic plan, resourcing strategy, delivery program and operational plan and the preparation of its annual report and state of the environment report

**[7] Section 356 Can a council financially assist others?**

Omit “management plan” from section 356 (3) (b).

Insert instead “operational plan”.

**[8] Section 377 General power of the council to delegate**

Omit “management plan under section 406” from section 377 (1) (j).

Insert instead “operational plan under section 405”.

**[9] Chapter 13 How are councils made accountable for their actions?**

Omit the Introduction to the Chapter. Insert instead:

**Introduction.** This Chapter sets out the mechanisms by which a council is made accountable for its actions.

Each council area must have a community strategic plan for the future of the local community covering a period of at least 10 years. To support the community strategic plan a council must have a long-term resourcing strategy that includes provision for long-term financial planning, workforce management planning and asset management planning.

A council must have a delivery program that details activities to be undertaken in order to achieve the objectives established by the community strategic plan. A council must establish a new delivery program after each ordinary election.

Before the beginning of each year a council must adopt an operational plan that includes a statement of the council's revenue policy and the activities to be engaged in by the council during the year. Public notice is to be given by the council of its operational plan.

A council is required to have 2 funds (a consolidated fund and a trust fund). It must keep proper accounts, which are to be audited annually.

Each year a council is required to prepare an annual report to its community on its work and activities.

The Minister retains a supervisory role in relation to councils. The Minister and the Director-General are able to request further information from councils, and the Director-General is able to authorise persons to investigate and report on matters connected with a council's work and activities and to direct a council to act on any recommendations contained in such a report.

Members of the general public are entitled to inspect a wide range of council documents (see section 12). Members of the general public are also entitled, under the *Freedom of Information Act 1989*, to be given

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access to certain other documents held by a council. They are also entitled to require the correction of certain kinds of information in the event that the information is incomplete, incorrect, out of date or misleading.

**[10] Chapter 13 How are councils made accountable for their actions?**

Omit Part 2 of Chapter 13. Insert instead:

## **Part 2 Strategic planning**

### **402 Community strategic plan**

- (1) Each area must have a community strategic plan that has been developed and endorsed by the council. A community strategic plan is a plan that identifies the main priorities and aspirations for the future of the local community covering a period of at least 10 years.
- (2) A community strategic plan is to establish strategic objectives together with strategies for achieving those objectives.
- (3) The council must ensure that the community strategic plan:
  - (a) addresses social, environmental, economic and civic leadership issues, and
  - (b) is based on social justice principles of equity, access, participation and rights, and
  - (c) is developed having due regard to the State government's State Plan and other relevant State and regional plans of the State government.
- (4) The council must establish and implement a strategy (its ***community engagement strategy***) for engagement with the local community in connection with the development of the community strategic plan.
- (5) Within 1 month after a community strategic plan is endorsed or amended, the council must post a copy of the plan or amendment on the council's website and provide a copy to the Director-General. A copy of a community strategic plan or amendment may be provided to the Director-General by notifying the Minister of the appropriate URL link to access the plan on the council's website.

### **403 Resourcing strategy**

- (1) A council must have a long-term strategy (called its ***resourcing strategy***) for the provision of the resources required to achieve the objectives established by the community strategic plan.

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- (2) The resourcing strategy is to include provision for long-term financial planning, workforce management planning and asset management planning.

#### **404 Delivery program**

- (1) A council must have a program (its *delivery program*) detailing activities to be undertaken by the council to achieve the objectives established by the community strategic plan.
- (2) The delivery program must include a method of assessment to determine the effectiveness of each activity detailed in the delivery program in achieving the objectives at which the activity is directed.
- (3) The council must establish a new delivery program after each ordinary election of councillors to cover the activities of the council for the 4-year period commencing on 1 July following the election.
- (4) The general manager must ensure that regular progress reports are provided to the council reporting as to its progress with respect to the activities detailed in its delivery program. Progress reports must be provided at least every 6 months.

#### **405 Operational plan**

- (1) A council must have a plan (its *operational plan*) that is adopted before the beginning of each year and details the activities to be engaged in by the council during the year as part of the delivery program covering that year.
- (2) An operational plan must include a statement of the council's revenue policy for the year covered by the operational plan. The statement of revenue policy must include the statements and particulars required by the regulations.
- (3) A council must prepare a draft operational plan and give public notice of the draft indicating that submissions may be made to the council at any time during the period (not less than 28 days) that the draft is to be on public exhibition. The council must publicly exhibit the draft operational plan in accordance with the notice.
- (4) During the period of public exhibition, the council must have for inspection at its office (and at such other places as it may determine) a map that shows those parts of its area to which each category and sub-category of the ordinary rate and each special rate included in the draft operational plan applies.

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- (5) In deciding on the final operational plan to be adopted, a council must take into consideration any submissions that have been made concerning the draft plan.
- (6) The council must post a copy of its operational plan on the council's website within 1 month after the plan is adopted.

**406 Integrated planning and reporting guidelines**

- (1) The Director-General is to establish integrated planning and reporting guidelines (referred to in this Chapter as *the guidelines*) for the purposes of this Chapter.
- (2) The guidelines can impose requirements in connection with the preparation, development and review of, and the contents of, the community strategic plan, resourcing strategy, delivery program, operational plan, community engagement strategy, annual report and state of the environment report of a council.
- (3) In particular (but without limiting subsection (2)), the guidelines can impose requirements in relation to any of the following:
  - (a) the procedures to be followed in the preparation, development or review of plans, strategies, programs and reports,
  - (b) the matters to be addressed or provided for by plans, strategies, programs and reports,
  - (c) requirements for consultation in connection with the preparation, development or review of plans, strategies and programs,
  - (d) the matters to be taken into account or to which regard is to be had in connection with the preparation, development or review of plans, strategies, programs and reports.
- (4) A council must ensure that the requirements of the guidelines are complied with.
- (5) The guidelines can include other material for the guidance of councils in connection with the plans, strategies, programs and reports to which this section applies.
- (6) The Director-General may review and amend the guidelines from time to time.
- (7) The guidelines and any amendment of the guidelines must be posted on the Department's website and notified in writing to each council by the Director-General.

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**[11] Section 410 Alternative use of money raised by special rates or charges**

Omit “management plan” from section 410 (2) wherever occurring.

Insert instead “operational plan”.

**[12] Sections 428 and 428A**

Omit section 428. Insert instead:

**428 Annual reports**

- (1) Within 5 months after the end of each year, a council must prepare a report (its *annual report*) for that year reporting as to its achievements in implementing its delivery program and the effectiveness of the activities undertaken in achieving the objectives at which those activities are directed.
- (2) In the case of the year in which an ordinary election is held, the annual report for the previous year must also report as to the council’s achievements in implementing its community strategic plan.
- (3) An annual report must be prepared in accordance with the guidelines under section 406.
- (4) An annual report must contain the following:
  - (a) a copy of the council’s audited financial reports prepared in accordance with the *Local Government Code of Accounting Practice and Financial Reporting* published by the Department, as in force from time to time,
  - (b) such other information as the regulations or the guidelines under section 406 may require.
- (5) A copy of the council’s annual report must be posted on the council’s website and provided to the Minister and such other persons and bodies as the regulations may require. A copy of a council’s annual report may be provided to the Minister by notifying the Minister of the appropriate URL link to access the report on the council’s website.

**428A State of the environment reports**

- (1) Each annual report of a council under section 428 must include a report (a *state of the environment report*) as to the state of the environment in the area in relation to such environmental sectors as may be relevant to the objectives for the environment established by the council’s community strategic plan (its *environmental objectives*).

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- (2) A state of the environment report must be prepared in accordance with the guidelines under section 406.
- (3) The state of the environment report to be included in the annual report of the council for the year prior to the year in which an ordinary election is held is to be a comprehensive report. Any other state of the environment report is to be a supplementary report.
- (4) A comprehensive report is a report that:
  - (a) establishes relevant environmental indicators for each environmental objective, and
  - (b) reports on, and updates trends in, each such environmental indicator, and
  - (c) identifies all major environmental impacts (being events and activities that have a major impact on environmental objectives).
- (5) A supplementary report is a report that:
  - (a) updates trends in each of the relevant environmental indicators established by the council's most recent state of the environment report,
  - (b) identifies any major environmental impacts occurring since the council's most recent state of the environment report.
- (6) In preparing a state of the environment report, a council must:
  - (a) consult the community, and
  - (b) involve the community in monitoring changes to the environment over time.
- (7) A state of the environment report for a council's area may be prepared as part of and for the purposes of a state of the environment report for a larger area (such as a region or a catchment management area) and a report for the larger area that includes the required information in respect of the council's area may be included in the council's annual report as the council's state of the environment report.

**[13] Section 532**

Omit the section. Insert instead:

**532 Publication of draft operational plan**

A council must not make a rate or charge until it has given public notice (in accordance with section 405) of its draft operational

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plan for the year for which the rate or charge is to be made and has considered any matters concerning the draft operational plan (in accordance with that section).

**[14] Chapter 15, Part 4 Making of rates and charges**

Omit from the chart at the end of the Part:

—	Council prepares draft management plan which includes the council's revenue policy for the next year	ss 402, 404
—	Council publicly exhibits draft management plan	s 405 (1)
—	Public notice of draft management plan for not less than 28 days	ss 405 (2), 532
—	Council considers submissions concerning draft management plan	ss 406 (2), 706 (2)
—	Council adopts management plan	s 406

Insert instead:

—	Council prepares draft operational plan which includes the council's revenue policy for the next year	s 405
—	Council publicly exhibits draft operational plan	s 405 (3)
—	Public notice of draft operational plan for not less than 28 days	ss 405 (3), 532
—	Council considers submissions concerning draft operational plan	ss 405 (5), 706 (2)
—	Council adopts operational plan	s 405 (1)

**[15] Section 574 Appeal on question of whether land is rateable or subject to a charge**

Omit "management plan" from the note to the section.

Insert instead "operational plan".

**[16] Section 610B Fees to be determined in accordance with pricing methodologies**

Omit "management plan" wherever occurring.

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Insert instead “operational plan”.

**[17] Section 610F Public notice of fees**

Omit “management plan” wherever occurring.

Insert instead “operational plan”.

**[18] Schedule 6 Regulations**

Omit “The form and content of management plans” from the examples under clause 18.

Insert instead “The form and content of community strategic plans, resourcing strategies, delivery programs and operational plans”.

**[19] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts**

Insert at the end of clause 1 (1):

*Local Government Amendment (Planning and Reporting) Act 2009*

**[20] Schedule 8**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of  
Local Government Amendment (Planning  
and Reporting) Act 2009**

**Definitions**

In this Part:

*existing annual report provisions* means section 428 as in force immediately before the substitution of that section by the 2009 amending Act.

*existing management plan provisions* means the provisions of Part 2 of Chapter 13 as in force immediately before the substitution of that Part by the 2009 amending Act.

*new annual report provisions* means section 428 as substituted by the 2009 amending Act.

*new strategic planning provisions* means the provisions of Part 2 of Chapter 13 as substituted by the 2009 amending Act.

*2009 amending Act* means the *Local Government Amendment (Planning and Reporting) Act 2009*.

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## **Phasing in of new strategic planning provisions**

- (1) A council must comply with the new strategic planning provisions in accordance with the following timetable:
  - (a) a council in group 1 must endorse a community strategic plan and adopt a resourcing strategy before 31 March 2010 and must adopt a delivery program and first operational plan before 1 July 2010,
  - (b) a council in group 2 must endorse a community strategic plan and adopt a resourcing strategy before 31 March 2011 and must adopt a delivery program and first operational plan before 1 July 2011,
  - (c) a council in group 3 must endorse a community strategic plan and adopt a resourcing strategy before 31 March 2012 and must adopt a delivery program and first operational plan before 1 July 2012.
- (2) The Minister may by order published in the Gazette place a council in group 1, 2 or 3 for the purposes of this clause.

## **Continued operation of existing annual report and management plan provisions**

- (1) The existing annual report provisions continue to apply to a council in respect of any year before the first year covered by a delivery program of the council. The new annual report provisions do not apply to a council in respect of any year that the existing annual report provisions continue to apply in respect of.
- (2) The existing management plan provisions continue to apply to a council until the council has endorsed a community strategic plan and adopted a resourcing strategy, delivery program and first operational plan in compliance with the new strategic planning provisions.
- (3) The existing management plan provisions (as continued by this clause) do not require a council to prepare a draft management plan (or adopt a management plan) for any year that is covered by a delivery program adopted (or to be adopted) by the council under the new strategic planning provisions.
- (4) When the existing annual report provisions or the existing management plan provisions continue to apply to a council under this clause, those provisions apply as if the amendments made by the 2009 amending Act to the other provisions of this Act had not been made.