

[Act 2000 No 29]



New South Wales

Environmental Planning and Assessment Amendment (Affordable Housing) Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The principal object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* so as to authorise expressly:

- (a) the granting of development consents under that Act that require, in certain circumstances, the dedication of land and the making of monetary contributions to be used for the purpose of providing affordable housing, and
- (b) the making of environmental planning instruments with respect to the retention of affordable housing.

The term *affordable housing* is defined in the 1979 Act as meaning housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations under that Act or as are provided for in an environmental planning instrument.

Explanatory note

South Sydney Local Environmental Plan 1998 (Amendment No 2)—Green Square was declared to be wholly invalid by the Land and Environment Court on 18 February 2000. That local environmental plan contained (among other amendments to the 1998 plan) amendments establishing a scheme for the imposition of conditions on certain development consents to require the dedication of land or the making of monetary contributions to be used for the purpose of providing affordable housing in the Green Square locality (the **Green Square scheme**).

The decision in the case concerned (*Meriton Apartments Pty Ltd v Minister for Urban Affairs and Planning & Or* [2000] NSWLEC 20) is the subject of an appeal to the New South Wales Court of Appeal.

The Bill proposes to remake and validate the local environmental plan described above, with minor amendments, as *South Sydney Local Environmental Plan 1998 (Amendment No 6)—Green Square* and to validate a development control plan approved for, and any consents already granted under, the Green Square scheme.

The Bill also validates:

- (a) certain other instruments that have established two similar schemes relating to the provision of affordable housing for land in the City West region and in the Willoughby City area at St Leonards, and any consents already granted under them, and to continue those schemes and the Green Square scheme for a limited period, and
- (b) certain contributions plans, and provisions of such plans, that authorise provisions to be made with respect to affordable housing, and any consents already granted in accordance with them.

The Green Square, City West and St Leonards affordable housing schemes make dedications or contributions for affordable housing compulsory (that is, not within the discretion of the consent authority). New schemes of the same type would not be authorised under the amendments to be made to the 1979 Act by the proposed Act.

Apart from the above, the Bill validates generally anything (such as the granting of a development consent subject to conditions relating to the provision of affordable housing) already done or omitted to be done that would have been lawfully done if the 1979 Act had then included certain amendments extending the objects of that Act to cover the provision and maintenance of affordable housing and a specific power to make environmental planning instruments with respect to the provision, maintenance and retention of affordable housing. The relevant amendments are set out in Schedule 1 to the *Environmental Planning and Assessment Amendment Act 1999* and Schedule 1 [1] to the proposed Act.

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 the date of assent to the proposed Act.

Clause 3 declares that the *Environmental Planning and Assessment Act 1979* is referred to in the proposed Act as the Principal Act.

Clause 4 is a formal provision giving effect to the amendments to the Principal Act set out in Schedule 1.

Clause 5 makes the general validation referred to above in the Overview.

Clause 6 is a formal provision giving effect to Schedule 2 which sets out detailed provisions that have the effect of making *South Sydney Local Environmental Plan 1998 (Amendment No 6)—Green Square* (set out in Schedule 3) and of validating each of the three affordable housing schemes and other provisions relating to affordable housing as referred to above in the Overview.

Clause 7 provides for consents for development to be granted in accordance with the Green Square, City West and St Leonards affordable housing schemes (or in accordance with provisions of certain contributions plans) validated by the proposed Act. Such a consent may be granted only if the development application is made, with respect to land to which those schemes or provisions originally applied, while the relevant scheme or provisions continue in force and within a maximum of 2 years after the date of assent to the proposed Act.

Clause 8 makes it clear that any environmental planning instrument validated by the proposed Act may be repealed or amended under the Principal Act, except as provided by proposed section 7.

Clause 9 confirms that the *Land Acquisition (Just Terms Compensation) Act 1991* does not apply if land is acquired under the validated Green Square, City West or St Leonards affordable housing scheme.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

Schedule 1 [1] restates section 26 (1) (d) of the Principal Act to confirm that environmental planning instruments can provide for the retention of affordable housing.

Schedule 1 [2] makes an amendment consequential on inserting proposed sections 94F and 94G into the Principal Act, which are explained below.

Schedule 1 [3] inserts Division 6A into Part 4 of the Principal Act, which consists of the following proposed sections:

Section 94F, which allows conditions to be imposed on development consents requiring the dedication of land or the payment of monetary contributions for the purpose of providing affordable housing. Such a condition may be imposed only if a State environmental planning policy identifies a need for affordable housing within the local government area and the condition is authorised to be imposed by a regional or local environmental plan.

Such a dedication or contribution must be reasonable, having regard to:

- (a) the extent of the need in the area for affordable housing, and
- (b) the scale of the proposed development, and
- (c) any other dedication or contribution required to be made by the applicant for consent.

Section 94G, which requires the consent authority to make land dedicated available, or to apply money contributed, for the purposes of affordable housing under such a condition for that purpose within a reasonable time.

Alternatively, the Minister may give directions to a consent authority to transfer land or pay money contributed for the purposes of affordable housing to a person nominated by the Minister. In such a case, the land or money must be made available or applied by that person for those purposes within a reasonable time.

Schedule 2 Validation of affordable housing schemes

This Schedule validates the following instruments, and provisions of instruments, and things that have been done or omitted to be done in accordance with them:

South Sydney Local Environmental Plan 1998 (Amendment No 6)—Green Square (which is taken to be made as set out fully in Schedule 3),

South Sydney City Council Green Square Affordable Housing Development Control Plan,

Sydney Regional Environmental Plan No 26—City West (Amendment No 4—Affordable Housing),

Revised City West Housing Program,

Willoughby Local Environmental Plan 1995 (Amendment No 21),

Willoughby Development Control Plan No 23—Willoughby Local Housing Program,

The provisions of *North Sydney Council Section 94 Contributions Plan—Affordable Housing*,

The provisions of Randwick City Council's section 94 contributions plan relating to affordable housing,

Part 5 of Waverley Council's section 94 contributions plan, titled *Loss of Affordable Housing*.

Schedule 3 Green Square local environmental plan

Schedule 3 contains proposed *South Sydney Local Environmental Plan 1998 (Amendment No 6)—Green Square*, which includes the Green Square affordable housing scheme and which is taken to be made on the commencement of the proposed Act (as referred to above).