



New South Wales

Environmental Planning and Assessment Amendment (Climate Change Response) Bill 2022

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* to require the exercise of functions under the Act to be consistent with the object of mitigating and adapting to climate change, and for related purposes.

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.

Schedule 1 **Amendment of Environmental Planning and Assessment Act 1979 No 203**

Schedule 1[1] amends the objects of the Act to include addressing the problem of climate change by ensuring that the development of land is consistent with certain premises relating to climate change.

Schedule 1[2] amends the definitions section to insert certain definitions relevant to mitigating and adapting to climate change.

Schedule 1[3] sets out the climate change response principles.

Schedule 1[4] specifies that a *minor impact*, for the purposes of section 1.6(2), which provides that exempt development is development declared to be exempt development because of its minor impact, does not include a material increase in greenhouse gas emissions.

Schedule 1[5] inserts proposed sections 1.8–1.9. Proposed section 1.8 requires that an exercise of a function under the Act must be consistent with the climate change response principles and sets out circumstances in which an exercise will be inconsistent with the principles. Proposed section 1.9 requires the Minister to publish planning proposal assessment guidelines and standard conditions of consent for the purposes of guiding consent authorities in exercising functions consistently with section 1.8. Proposed section 1.10 constitutes the Independent Planning and Climate Change Advisory Group, which has functions including publishing climate change adaptation guidelines and advising the Minister and planning authorities on climate change risks.

Schedule 1[6] requires a consent authority, in determining a development application, to consider whether the granting of consent would be consistent with the climate change response principles.

Schedule 1[7] allows a consent authority to modify a consent for the purposes of imposing a standard climate change condition. The provision also specifies that *minimal environmental impact*, for the purposes of section 4.55(1A)(a), which allows a consent authority to modify a consent if satisfied that the proposed modification is of minimal environmental impact, does not include an increase in greenhouse gas emissions.

Schedule 1[8] specifies that a determining authority's duty to consider the environmental impact of an activity includes a duty to consider the effect of the activity on climate change, in particular whether the activity is consistent with the climate change response principles.

Schedule 1[9] removes a limitation on appeals against decisions of the Independent Planning Commission as consent authority after a public hearing by the Commission.

Schedule 1[10]–[14] provide for appeals against determinations of applications for development consent by *climate advocates*, who are persons who have made submissions during the public exhibition of an application for development consent objecting to the grant of consent on the basis that it would be inconsistent with the climate change response principles.

Schedule 1[15] specifies that the Governor may make regulations for or with respect to standardised assessment processes for determining whether granting consent to proposed development would be consistent with the climate change response principles. For proposed high impact development, the Governor may also make regulations requiring the submission of a *climate impact statement*.

Schedule 1[16] requires the Minister to recommend the Governor make the regulations described in Schedule 1[15] on the recommendations of the Independent Planning and Climate Change Advisory Group and make a regulation requiring that environmental impact assessments are prepared by registered environmental assessment practitioners. This provision also requires the Minister to review certain environmental planning legislation for consistency with the climate change response principles.



New South Wales

Environmental Planning and Assessment Amendment (Climate Change Response) Bill 2022

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Environmental Planning and Assessment Act 1979 No 203	3



New South Wales

Environmental Planning and Assessment Amendment (Climate Change Response) Bill 2022

No. _____, 2022

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* to require the exercise of functions under the Act to be consistent with the object of mitigating and adapting to climate change; and for related purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Environmental Planning and Assessment Amendment (Climate Change Response) Act 2022*.

3

4

2 Commencement

5

This Act commences on the date of assent to this Act.

6

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203 1
2

[1] Section 1.3 Objects of Act 3

Insert at the end of section 1.3— 4

- (k) to address the problem of climate change by ensuring that the development of land is consistent with the following—
 - (i) humans have caused and continue to cause changes to the Earth’s climate, 7
 - (ii) climate change poses a real and serious risk to—
 - (A) the health, livelihoods, food security, water supply and security of people in New South Wales, and 10
 - (B) the natural environment and biodiversity of New South Wales, and 12
 - (C) the growth of the New South Wales economy, 14
 - (iii) failure to take action in New South Wales to mitigate climate change will contribute to similar risks arising in other parts of Australia and the world. 15

[2] Section 1.4 Definitions 18

Insert in alphabetical order in section 1.3— 19

carbon budget means an amount of greenhouse gas emissions that may be released in a particular area as a result of development in the area, as recommended by the Independent Planning and Climate Change Advisory Group. 20

climate advocate—see section 8.8A. 21

climate change means a change of climate that— 22

- (a) is attributed directly or indirectly to human activity, and 23
- (b) alters the composition of the global atmosphere, and 24
- (c) is in addition to natural climate variability observed over comparable time periods. 25

climate change guidelines means guidelines published— 26

- (a) by the Minister under section 1.9, or 27
- (b) by the Independent Planning and Climate Change Advisory Group. 28

climate change response principles—see section 1.4A. 29

direct greenhouse gas emissions, in relation to development, means the release of greenhouse gas into the atmosphere as a direct result of an activity or series of activities, including ancillary activities, that constitute the development. 30

green and blue infrastructure means the following sustainable infrastructure— 31

- (a) urban tree canopy cover, 32
- (b) bushland, 33
- (c) parks, 34
- (d) waterways, 35
- (e) other similar infrastructure. 36

greenhouse gas emissions— 37

- (a) means emissions of carbon dioxide, methane, nitrogen trifluoride, nitrous oxide, sulphur hexafluoride, a hydrofluorocarbon gas, a perfluorocarbon gas or any other gas prescribed by the regulations for the purposes of this definition, and 1
2
3
4
- (b) in relation to development, includes direct and indirect greenhouse gas emissions. 5
6
- high impact development** means the following— 7
- (a) State significant development, 8
- (b) State significant infrastructure, 9
- (c) designated development, 10
- (d) any other development prescribed by the Regulations for the purposes of this definition. 11
12
- Independent Planning and Climate Change Advisory Group** means the Independent Planning and Climate Change Advisory Group constituted under section 1.10(1). 13
14
15
- indirect greenhouse gas emissions**, in relation to development, means— 16
- (a) greenhouse gas emissions released into the atmosphere as a direct result of 1 or more activities that— 17
18
- (i) generate electricity, heating, cooling or steam used by a building on land the subject of the development, but 19
20
- (ii) do not form part of the development, or 21
- (b) other greenhouse gas emissions released into the atmosphere as an indirect result of the development, including emissions released as a result of the following— 22
23
24
- (i) the production of raw materials, or 25
- (ii) the transportation of materials or building equipment, or 26
- (iii) the use of products supplied at the development site. 27
- low impact development** means development other than high impact development. 28
29
- mitigation**, of climate change, means the limiting of the increase in global temperatures to 1.5 degrees Celsius above pre-industrial levels. 30
31
- standard climate change condition**—see section 1.9(1)(b). 32

[3] **Section 1.4A** 33

Insert after section 1.4— 34

1.4A Meaning of “climate change response principles” 35

The *climate change response principles* are that— 36

- (a) climate change can and should be mitigated, including by— 37
- (i) reducing greenhouse gas emissions associated with development, 38
and 39
- (ii) meeting relevant State and Commonwealth emissions reduction targets, and 40
41
- (iii) rapidly phasing out fossil fuel production and use in accordance with relevant recommendations of the United Nations, and 42
43
- (b) some climate change has either already occurred or cannot be prevented, and this unavoidable climate change must be planned for and 44
45

adapted to in accordance with relevant laws and policies and the best available science, including by—	1 2
(i) facilitating the voluntary retreat from inhabited areas that are subject to increased natural disaster risk because of climate change, and	3 4 5
(ii) building green and blue infrastructure, and improving construction standards, to reduce or adapt to extreme heat in urban areas, and	6 7 8
(iii) creating biodiversity corridors to facilitate the migration of animal species affected by climate change, and	9 10
(iv) providing and protecting local habitats for animal species affected by climate change, and facilitating the animals' migration to the habitats, and	11 12 13
(c) planning decisions must facilitate, to the greatest extent practicable—	14
(i) the mitigation of climate change, and	15
(ii) adaptation to unavoidable climate change, and	16
(d) in relation to the granting of development consents, consent authorities must reduce greenhouse gas emissions by—	17 18
(i) prioritising development that will not result in greenhouse gas emissions, and	19 20
(ii) if greenhouse gas emissions cannot be avoided, granting development consent only if satisfied that—	21 22
(A) greenhouse gas emissions associated with the development will be avoided as much as practicable, and	23 24
(B) the development will involve regenerative features sufficient to neutralise remaining greenhouse gas emissions.	25 26 27
[4] Section 1.6 Exempt development	28
Insert at the end of section 1.6—	29
(3) In this section—	30
<i>minor impact</i> does not include a material increase in greenhouse gas emissions.	31 32
[5] Sections 1.8–1.10	33
Insert after section 1.7—	34
1.8 Exercise of functions must be consistent with climate change response principles	35 36
(1) Each person, public authority or other body with functions under this Act must exercise the functions consistently with the climate change response principles.	37 38 39
(2) Without limiting subsection (1), the exercise of a function is inconsistent with the climate change response principles if the effect, including the cumulative effect taking into account existing development, would likely be 1 or more of the following—	40 41 42 43
(a) a carbon budget being exceeded,	44
(b) a State, national or global emissions reduction target not being achieved,	45 46

(c)	a material increase in greenhouse gas emissions,	1
(d)	an unacceptable climate risk,	2
(e)	high impact development that is not carbon neutral,	3
(f)	a material inconsistency with climate change guidelines,	4
(g)	another matter prescribed by the Regulations.	5
(3)	A person, public authority or other body with functions under this Act does not breach subsection (1) by acting consistently with climate change guidelines.	6 7
(4)	In this section—	8
	<i>unacceptable climate risk</i> means the following risks arising from the impacts of climate change—	9 10
(a)	a foreseeable threat to the lives or safety of individuals,	11
(b)	a foreseeable and significant threat to biodiversity,	12
(c)	a threat that cannot be adequately managed by emergency management, the building of infrastructure, or other adaptation measures.	13 14
1.9	Minister must publish planning proposal assessment guidelines and standard conditions of consent	15 16
(1)	For the purposes of guiding consent authorities in exercising functions consistently with section 1.8(1), the Minister must publish the following within 12 months of the commencement of this section—	17 18 19
(a)	guidelines for the assessment of development applications,	20
(b)	standard conditions of consent to remedy aspects of proposed development that would be inconsistent with the climate change response principles (<i>standard climate change conditions</i>).	21 22 23
(2)	The Minister must review and update the guidelines and standard climate change conditions every 12 months.	24 25
1.10	Independent Planning and Climate Change Advisory Group	26
(1)	There is constituted by this Act a corporation with the corporate name of the Independent Planning and Climate Change Advisory Group.	27 28
(2)	The Group—	29
(a)	is a statutory body representing the Crown, and	30
(b)	is not subject to the control or direction of the Minister, and	31
(c)	has the functions conferred or imposed on it by or under this Act or another Act, and	32 33
(d)	must receive adequate funding to effectively perform its functions.	34
(3)	The Group consists of 5 members appointed by the Minister within 2 months of the commencement of this section who have qualifications and expertise in the following fields that will enable the members to assist the Group in exercising its functions—	35 36 37 38
(a)	planning,	39
(b)	climate science,	40
(c)	environmental protection.	41
(4)	A member holds office for 3 years and is eligible for re-appointment.	42
(5)	The Minister must appoint a member to fill a vacancy within 2 months of the vacancy arising.	43 44

(6)	The Group has the following functions—	1
(a)	to publish—	2
(i)	best practice guidelines for adapting to unavoidable climate change (<i>climate change adaptation guidelines</i>) within 12 months of the commencement of this section, and	3 4 5
(ii)	guidelines for using and phasing out fossil fuels in the State consistently with recommendations of the United Nations Intergovernmental Panel on Climate Change, within 12 months of the commencement of this section, and	6 7 8 9
(iii)	updates to the publications mentioned in paragraph (a)(i) and (ii) every 2 years, and	10 11
(iv)	any other guidelines it considers relevant and necessary to guide the Minister or another person or body in exercising functions under this Act, and	12 13 14
(v)	climate change projections,	15
(b)	to identify and advise the Minister and planning authorities on State and regional-level climate change risks,	16 17
(c)	to review draft planning instruments as requested and to provide advice on whether the instruments are consistent with the climate change response principles,	18 19 20
(d)	to advise the Minister on the content of—	21
(i)	Ministerial directions relevant to climate change mitigation and adaptation, and	22 23
(ii)	climate change guidelines published by the Minister, and	24
(e)	to recommend carbon budgets,	25
(f)	other functions prescribed by the Regulations.	26
(7)	Persons may be employed in the Public Service under the <i>Government Sector Employment Act 2013</i> to enable the Group to exercise its functions.	27 28
[6]	Section 4.15 Evaluation	29
	Insert after section 4.15(1)(c)—	30
(c1)	whether the granting of consent would be consistent with the climate change response principles,	31 32
[7]	Section 4.55 Modification of consents—generally	33
	Insert at the end of section 4.55—	34
(9)	A consent authority may modify a consent for the purposes of imposing a standard climate change condition at any time, whether or not an application is made by the applicant or another person entitled to act on the consent.	35 36 37
(10)	In this section— <i>minimal environmental impact</i> does not include an increase in greenhouse gas emissions.	38 39 40
[8]	Section 5.5 Duty to consider environmental impact	41
	Omit section 5.5(3). Insert instead—	42
(2)	Without limiting subsection (1), a determining authority must consider—	43

(a)	the effect of an activity on climate change, in particular whether the proposed activity is consistent with the climate change response principles, and	1 2 3
(b)	the effect of an activity on any wilderness area in the locality in which the activity is intended to be carried on.	4 5
(3)	In this section— <i>wilderness area</i> has the same meaning as in the <i>Wilderness Act 1987</i> .	6 7
[9]	Section 8.6 Decisions subject to appeal to Court under this Division	8
	Omit section 8.6(3)(a).	9
[10]	Section 8.8A	10
	Insert after section 8.8—	11
8.8A	Appeal by climate advocate	12
	A person who made a submission during the public exhibition of an application for development consent objecting to the grant of consent on the basis that it would be inconsistent with section 1.8(1) (a <i>climate advocate</i>) may appeal to the Court against the determination of the consent authority.	13 14 15 16
[11]	Section 8.10 Time within which appeals may be made	17
	Insert “or a climate advocate” after “an objector” wherever occurring.	18
[12]	Section 8.10(2)	19
	Insert “or the climate advocate” after “the objector”.	20
[13]	Section 8.12 Notice of appeals to be given and right to be heard	21
	Insert after section 8.12(1)(a)—	22
(a1)	a climate advocate, in the case of an appeal by an applicant concerning an application for development consent in respect of which the climate advocate has a right of appeal under this Division,	23 24 25
[14]	Section 8.12(1)(b)	26
	Insert “or a climate advocate” after “objector”.	27
[15]	Section 10.13 Regulations	28
	Insert at the end of section 10.13(1)—	29
	, or	30
(h)	standardised assessment processes for determining whether granting consent to proposed low impact or high impact development would be consistent with the climate change response principles, or	31 32 33
(i)	requiring an application for development consent for high impact development to include a statement explaining the following (a <i>climate impact statement</i>)—	34 35 36
(i)	the likely impact of the development on the climate,	37
(ii)	the likely impact of the climate on the development, or	38
(j)	the information that must be included in a climate impact statement, including the following—	39 40

(i)	how the development will emit the lowest possible amount of greenhouse gas,	1
(ii)	the risks climate change poses to the development site and surrounding land over the lifetime of the project,	2
(iii)	appropriate adaptation measures that will be implemented as part of the development,	3
(iv)	a schedule of periodic reviews of the development to ensure ongoing consistency with the climate change response principles,	4
(v)	a declaration that the statement was prepared by a registered environmental assessment practitioner.	5
		6
		7
		8
		9
		10
[16]	Section 10.13(4)–(8)	11
	Insert at the end of section 10.13—	12
(4)	Within 12 months of the commencement of this subsection, the Minister must—	13
		14
(a)	request that the Independent Planning and Climate Change Advisory Group make recommendations on the content of regulations for the purposes of subsection (1)(h)–(j), and	15
(b)	consider the recommendations, and	16
(c)	recommend the Governor make regulations for the purposes of subsection (1)(h)–(j).	17
(5)	Within 12 months of the commencement of this subsection, the Minister must review the following instruments for consistency with the climate change response principles—	18
		19
(a)	<i>Environmental Planning and Assessment Regulation 2021,</i>	20
(b)	<i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.</i>	21
(6)	Within 12 months of the commencement of this subsection, the Minister must recommend the Governor make a regulation requiring that environmental impact assessments made for the purposes of Part 5 are prepared by registered environmental assessment practitioners.	22
		23
(7)	If the Minister identifies an inconsistency, the Minister must recommend that the Governor make a Regulation that remedies the inconsistency.	24
		25
(8)	Without limiting subsections (6) and (7), within 12 months of the commencement of this section, the Minister must—	26
		27
(a)	request that the Independent Planning and Climate Change Advisory Group review the BASIX scheme, and	28
(b)	consider any recommendations of the Group, and	29
(c)	recommend the Governor make Regulations that amend the BASIX scheme.	30
		31
		32
		33
		34
		35
		36
		37
		38
		39

(9) In this section—

BASIX scheme has the same meaning as in the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

registered environmental assessment practitioner means a person who is registered or certified under a professional scheme that is specified as a registered environmental assessment practitioner scheme in the *Accredited Registered Environmental Assessment Practitioner (REAP) Schemes* published on the NSW Planning Portal on 1 July 2021.

1
2
3
4
5
6
7
8