



New South Wales

Environmental Planning and Assessment Amendment Bill 2012

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* (the *principal Act*) and other Acts to remove impediments to the supply of housing and to make other miscellaneous changes. In order to remove impediments to the supply of housing, the Bill:

- (a) clarifies the purpose, status and content of development control plans and how they are to be taken into account during the development assessment process, and
- (b) enables the regulations to exclude certain residential development in bush fire prone land from the special consultation and development requirements of the NSW Rural Fire Service, and
- (c) authorises the Commissioner of the NSW Rural Fire Service to review and revise the designation of land on a bush fire prone land map for an area at any time after the map is certified, and

- (d) specifies development plan costs that may be recovered from owners affected by subdivision orders relating to “paper subdivisions” and makes other amendments relating to the amendment and repeal of such orders and related development plans, and
- (e) clarifies the provisions relating to biocertification of planning instruments in Sydney’s growth centres to ensure they apply to all environmental planning instruments applying to the land concerned and to all development assessment processes.

The Bill also:

- (a) extends indemnification against possible copyright breaches of documents submitted by persons who do not have copyright where the documents are publicly notified or made use of under the Act, and
- (b) makes further provision in relation to the issue of compliance certificates and compliance cost notices, and
- (c) provides for the transfer of relevant records when there is a change of principal certifying authority for development, and
- (d) provides for the ongoing assessment of accredited certifiers, requires written contracts for certification work, specifies certain matters to be taken into consideration in disciplinary proceedings against accredited certifiers and changes the conflict of interest provisions for the issuing of compliance certificates by accredited certifiers, and
- (e) changes the name of the State Property Authority to Government Property NSW and transfers the land register of government property from the annual reports legislation to the legislation relating to Government Property NSW (and requires Government Property NSW to keep that register), and
- (f) makes other minor and consequential changes.

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.

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

Amendments relating to development control plans

Schedule 1 [1], [2] and [3] set out the purpose and status of development control plans which is primarily to provide guidance (and not statutory requirements) with respect to achieving the aims of environmental planning instruments and the objectives of land zones and to facilitating permissible development under those

instruments. The amendments also clarify the provisions of development control plans that do not have effect. Schedule 1 [27] contains a savings and transitional provision.

Schedule 1 [5] clarifies how development control plans are to be taken into account during the development assessment process. In particular, to ensure that they are given less weight and significance than environmental planning instruments and that they are applied flexibly so as to allow alternative solutions to how permissible development may be carried out.

Amendments relating to bush fire prone land

Schedule 1 [4] enables the regulations to exclude certain residential development on bush fire prone land from the special consultation and development requirements of the NSW Rural Fire Service.

Schedule 1 [14] authorises the Commissioner of the NSW Rural Fire Service to review and revise the designation of land on a bush fire prone land map for an area at any time after the map is certified.

Amendments relating to development contributions for complying development

Schedule 1 [6] enables the regulations to require the payment of development contributions under complying development certificates, in particular in circumstances where the relevant development contribution plan has failed to make provision that covers relevant development approved as complying development.

Amendments relating to copyright

Schedule 1 [15] makes provision that continues and extends indemnification against possible copyright breaches of documents submitted by persons who do not have copyright where the documents are publicly notified or made use of under the principal Act.

Schedule 1 [7] and [12] omit provisions that are no longer necessary as a result of the consolidated provision enacted by Schedule 1 [15].

Amendments relating to certification

Schedule 1 [8] makes a minor amendment in relation to the matters for which a compliance certificate may be issued under Part 4A of the principal Act.

Schedule 1 [9] enables persons prescribed by the regulations to issue compliance certificates in addition to the current certifying authorities. **Schedule 1 [11]** makes a consequential amendment.

Schedule 1 [10] enables the Building Professionals Board to give a direction to a person who holds records and other information required to be kept under the *Building Professionals Act 2005* in relation to a certification matter to give those records and information to a principal certifying authority that has been appointed to replace another principal certifying authority for that matter.

Schedule 1 [13] enables a compliance cost notice given in relation to an order under Division 2A of Part 6 of the principal Act requiring a person to do or refrain from doing a specified thing to also include the costs of an investigation that led to the giving of the order and the costs of preparing the notice of intention to give the order. There is already a provision in the principal Act that enables the regulations to limit the amounts to be paid under compliance cost notices. (See section 121CA (5) of the principal Act.)

Amendments relating to paper subdivisions

Schedule 1 [16] inserts a definition of *development plan costs* for the purposes of a subdivision under a subdivision order relating to the consolidation and resubdivision of an old “paper subdivision”. These costs will include report costs, levies, fees or other charges applicable to a proposed subdivision or subdivision works, administrative costs and costs prescribed by the regulations.

Schedule 1 [17] enables the category of works that may be carried out and funded under such a subdivision order to be expanded by the regulations.

Schedule 1 [18] provides that a subdivision order may be repealed by the Minister only if the Minister has consulted with the relevant authority carrying out the subdivision under the order and the local council and is satisfied that notice has been given to the owners of the land concerned. The amendment also makes it clear that a further consent of the owners of the land concerned is not required in respect of an amendment to a subdivision order.

Schedule 1 [19] requires the development plan that applies to land subject to a subdivision order to contain details of the development plan costs.

Schedule 1 [20] provides for a development plan to include details of the proportion of development plan costs to be borne by the owners of the land.

Schedule 1 [21] enables regulations to be made to require the consent of the owners of land subject to a subdivision order to changes to the development plan for the land.

Schedule 1 [22] enables the relevant authority that is proposing a subdivision under a subdivision order to require an owner of land subject to the order to make a reasonable monetary contribution to the development plan costs for the order.

Schedule 1 [23] provides for contributions for development plan costs to be paid to a fund approved by the Minister.

Schedule 1 [24] includes development plan costs as contributions that may be covered by a voluntary contributions agreement between a relevant authority responsible for a subdivision under a subdivision order and an owner of land subject to the subdivision order.

Schedule 1 [25] enables regulations to be made about the effect of the repeal or amendment of a subdivision order or the amendment of a development plan for a subdivision order.

Savings and transitional provisions

Schedule 1 [26] enables the making of savings and transitional regulations as a consequence of the enactment of the proposed Act.

Schedule 1 [27] makes savings and transitional provisions as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Annual Reports (Departments) Act 1985 No 156 and Annual Reports (Statutory Bodies) Act 1984 No 87

Schedule 2.1 and 2.2 amend the annual reports legislation to omit land register provisions that are being consolidated and transferred to the *State Property Authority Act 2006* (to be renamed the *Government Property NSW Act 2006*) without substantive change, other than to require the registers to be kept by Government Property NSW.

Building Professionals Act 2005 No 115

Ongoing assessment of accredited certifiers

Schedule 2.3 [3] enables the Building Professionals Board (*the Board*) to require an accredited certifier to undertake a type of assessment (such as an examination) for any reason.

Schedule 2.3 [1] and [2] provide that the Board may suspend or cancel an accredited certifier's accreditation following such an assessment without the need to take disciplinary proceedings under the Act. Notice and an opportunity to make submissions must be given by the Board and there is a right of review to the Administrative Decisions Tribunal (*the Tribunal*). Other action is also available to the Board under the existing provisions of the Act, such as the imposition of conditions on accreditation.

Amendments relating to certification work

Schedule 2.3 [8] exempts an accredited certifier from certain conflict of interest provisions in the Act when issuing a compliance certificate under the *Environmental Planning and Assessment Act 1979*.

Schedule 2.3 [10] prevents an accredited certifier carrying out certification work for a person unless the accredited certifier or the accredited certifier's employer has entered into a written contract with the person and the contract complies with the requirements of the regulations. **Schedule 2.3 [9]** makes a consequential amendment.

Disciplinary proceedings

Schedule 2.3 [5] and [6] require the Board and the Tribunal, when deciding what disciplinary action should be taken against an accreditation holder in disciplinary

proceedings, to take into consideration previous disciplinary action taken against the accreditation holder. **Schedule 2.3 [4] and [7]** make consequential amendments.

Schedule 2.3 [11] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

Building Professionals Amendment Act 2008 No 37

Schedule 2.4 amends the *Building Professionals Amendment Act 2008* to omit uncommenced provisions that are not being proceeded with.

Environmental Planning and Assessment Amendment Act 2008 No 36

Schedule 2.5 amends the *Environmental Planning and Assessment Amendment Act 2008* to omit uncommenced provisions that are not being proceeded with.

Growth Centres (Development Corporations) Act 1974 No 49

Schedule 2.6 amends the *Growth Centres (Development Corporations) Act 1974* to enable Landcom (and other prescribed public authorities) to work together with Urban Growth NSW and other development corporations on land development without contravening misuse of confidential information provisions.

Heritage Act 1977 No 136

Schedule 2.7 amends the *Heritage Act 1977* to make an amendment that is consequential on the transfer of the land register provisions from the annual reports legislation.

State Property Authority Act 2006 No 40

Schedule 2.8 amends the *State Property Authority Act 2006* to change the name of the State Property Authority to Government Property NSW and to make provision for the register of government property, which is being transferred from the annual reports legislation (and to require Government Property NSW to keep that register).

Threatened Species Conservation Act 1995 No 101

Schedule 2.9 amends the *Threatened Species Conservation Act 1995* to clarify the provisions relating to biocertification of planning instruments in Sydney's growth centres to ensure they apply to all environmental planning instruments applying to the land concerned and to all development assessment processes.