

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

#### Overview of Bill

The objects of this Bill are:

- (a) to amend the Environmental Planning and Assessment Act 1979 with respect to the certification of development, development contributions, major projects and other miscellaneous matters, and
- (b) to amend the City of Sydney Act 1988 with respect to the Central Sydney Planning Committee, and
- (c) to amend the Building Professionals Act 2005 with respect to the appointment of a council as principal certifying authority, and
- (d) to amend the Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001 with respect to miscellaneous matters, and
- (e) to amend the Strata Schemes (Freehold Development) Act 1973 and the Strata Schemes (Leasehold Development) Act 1986 to introduce objective criteria that must be met before a strata certificate can be issued.

#### 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 except for a few specified amendments.

Clause 3 is a formal provision that gives effect to the amendments to the Environmental Planning and Assessment Act 1979 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the City of Sydney Act 1988 set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 3.

Clause 6 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 Amendment of Environmental Planning and Assessment Act 1979

Schedule 1 [1] updates the definition of Department used in the Environmental Planning and Assessment Act 1979 (the Principal Act).

Schedule 1 [2] enables the current power of the Minister for Planning (the Minister) to declare Part 3A projects by Ministerial order to be exercised by way of an amendment of any relevant State Environmental Planning Policy (SEPP) that declares projects.

Schedule 1 [3] amends the provisions relating to the declaration of Part 3A projects (which makes it clear that declarations may be made in respect of particular development) so as to confirm that the power to make such a declaration is in addition to the ordinary power to make declarations relating to a class of development.

Schedule 1 [4] ensures that, where non-declared parts of a project are currently treated as a Part 3A project because a part of the project has been declared under that Part, all the development is to be dealt with under that Part as a single project.

Schedule 1 [5] ensures that the process by which Part 3A projects are declared also applies to the declaration of the projects as critical infrastructure projects.

Schedule 1 [6] clarifies the conditions precedent to the determination of an application for approval by the Minister of a Part 3A project.

Schedule 1 [7] provides that the regulations may preclude the Minister from giving approval to a Part 3A project that is subject to a prohibition in an environmental planning instrument by which the Minister is not currently bound.

Schedule 1 [8] enables the Minister to make it a condition of approval of a Part 3A

project that the proponent comply with obligations in a statement of commitments made by the proponent during the assessment of the project (including by way of a planning agreement).

Schedule 1 [9] changes the terminology used in connection with concept plans, so that reference is made to applications for approval of a concept plan rather than to the submission of a concept plan (for consistency with the terminology used in connection with final approvals to carry out projects).

Schedule 1 [10] enables a single application and assessment process for approval of a concept plan for a Part 3A project and for final approval of any part or aspect of the project (such as demolition or subdivision approval for the project).

Schedule 1 [11] clarifies the conditions precedent to the determination of an application for approval by the Minister of the concept plan for a Part 3A project.

Schedule 1 [12] provides that the regulations may preclude the Minister from giving approval to a concept plan for a Part 3A project that is subject to a prohibition in an environmental planning instrument by which the Minister is not currently bound.

Schedule 1 [13] makes a statute law revision amendment.

Schedule 1 [14] enables the Minister to make his or her approval of the concept plan for a Part 3A project contingent on the proponent making satisfactory arrangements to comply with obligations in a statement of commitments made by the proponent during the assessment of the concept plan for the project.

Schedule 1 [15] extends the requirements that may be imposed by the Minister when approving a concept plan for a project in connection with final approval of the project (for example, a requirement for a design competition for any building that is to be part of the project).

Schedule 1 [16] provides that, where the Minister approves the concept plan for a Part 3A project and determines that all or any part of the project is to be finally assessed under Part 4 of the Principal Act, the consent authority must make any consent subject to the conditions determined by the Minister for the purpose of fulfilling the obligations in the statement of commitments made by the proponent during the assessment of the concept plan for the project.

Schedule 1 [17] excludes the application of any underlying prohibition or restriction in an environmental planning instrument for a Part 3A project that may be approved despite the provisions of any such instrument.

Schedule 1 [18] changes terminology as referred to in Schedule 1 [9] above.

Schedule 1 [19] makes a consequential amendment.

Schedule 1 [20] authorises the formal amendment of environmental planning instruments by Ministerial order to remove or modify any underlying prohibition or restriction in the instrument for an approved Part 3A project that is not subject to that instrument (including for a project for which a concept plan has been approved under that Part).

Schedule 1 [21]–[23] ensure that the provisions of the Principal Act relating to occupation and subdivision certificates apply to Part 3A projects in the same as the provisions relating to construction certificates so apply.

Schedule 1 [24] extends the exclusion of legislative provisions relating to the clearing of native vegetation in connection with approved Part 3A projects to the clearing of State protected land under the former native vegetation conservation legislation.

Schedule 1 [25] ensures that the current suspension of certain legislation in relation to approved Part 3A projects extends to any investigative or other activities that are required to be carried out for the purpose of complying with environmental assessment requirements of Part 3A.

Schedule 1 [26] changes terminology as referred to in Schedule 1 [9] above.

Schedule 1 [27] authorises the surrender of approvals under Part 3A and provides for the surrender of existing consents and other approvals as a condition of an approval

of a project under Part 3A.

Schedule 1 [28] deals with savings, transitional and other provisions relating to Part 3A projects, including power to make regulations for the termination or consolidation, or revival, of consents and other approvals. The amendment also ensures the validity of any declaration of a Part 3A project once the project has been finally approved.

Schedule 1 [29] and [30] correct cross-references.

Schedule 1 [31] provides that section 93I of the Principal Act does not affect a provision in an environmental planning instrument requiring satisfactory arrangements to be made in respect of the provision of public infrastructure, facilities or services.

Schedule 1 [32] provides that a planning agreement cannot exclude the application of section 94 or 94A of the Principal Act in respect of development unless the consent authority for the development or the Minister is a party to the agreement.

Schedule 1 [33] provides that a consent authority can require a planning agreement to be entered into as a condition of development consent if it is in the terms of a commitment made by the proponent in a statement of commitments under Part 3A.

Schedule 1 [34] provides that a condition may be imposed under section 94 or 94A of the Principal Act for the provision of a public amenity or public service on land in another State or Territory. Any such condition may be imposed only if the development the subject of the condition is in a local government area that adjoins that other State or Territory and the Minister gives his or her written approval.

Schedule 1 [35] amends the definition of the provision of infrastructure for the purposes of Subdivision 4 of Division 6 of Part 4 of the Principal Act to include any matter or thing done by the Minister, the corporation constituted under section 8 (1) of the Principal Act (the corporation), the Department of Planning (the Department) or the Director-General of that Department (the Director-General) in connection with the exercise of any statutory function under the Principal Act. This permits contributions collected under that Subdivision to be applied for those purposes.

Schedule 1 [37] requires the Minister, when determining the level and nature of those contributions to identify what part (if any) of the contribution is for such purposes and also what part (if any) is for the provision of infrastructure by a local council. Those parts that are so identified are not required to be paid into the Special Contributions Areas Infrastructure Fund established under section 94EJ of the Principal Act and are instead to be paid to the Department or local council as the case requires.

Schedule 1 [36] provides that, for the purposes of Subdivision 4 of Division 6 of Part 4 of the Principal Act, infrastructure may be regarded as being provided in relation to development even if it is provided outside of New South Wales.

Schedule 1 [38] provides that a development consent that is the subject of a deferred commencement condition lapses if the applicant fails to satisfy the condition within 5 years or any shorter time specified by the consent authority.

Schedule 1 [39] and [40] require a local council, if appointed as a principal certifying authority, to accept any such appointment.

Schedule 1 [41]–[43] amend sections 109F and 109G and substitute sections 109H and 109J of the Principal Act which relate to the issuing of construction, compliance, occupation and subdivision certificates. Currently those provisions require a certifying authority to be satisfied of certain matters before issuing a certificate. This is a subjective test. The proposed amendments introduce an objective test that requires those matters to be satisfied before a certificate may be issued.

Schedule 1 [44] corrects an incorrect cross-reference.

Schedule 1 [45] exempts certain activities from the application of sections 111 (Duty to consider environmental impact) and 112 (Decision of determining authority in relation to certain activities) of the Principal Act. Schedule 1 [46] makes a

consequential amendment.

Schedule 1 [47] provides that if a development application made by, or on behalf of, the Crown (Crown development) is not determined within 40 days, the applicant or the consent authority may refer the application to the Minister. Currently the period is 60 days.

Schedule 1 [48] provides that in relation to a development application for Crown development, if the Minister does not agree with a consent authority's proposed refusal of the development, the Minister is to give the consent authority 21 days in which to submit any conditions it wishes to impose as conditions of consent. Currently the period is 40 days.

Schedule 1 [49] permits an authorised officer to enter premises under Subdivision 2 of Division 2C of Part 6 with the aid of such persons as the authorised officer considers necessary.

Schedule 1 [50] permits an authorised officer to require a person to attend at a specified place and time to answer questions. The place and time is to be nominated by the person, or if the place and time so nominated is unreasonable, at a place and time nominated by the authorised officer. The authorised officer is authorised to record the interview and is to provide a copy of any recording to the person.

Schedule 1 [51] permits proceedings for an offence under the Principal Act to be commenced within 2 years after evidence of the alleged offence first came to the attention of an authorised officer.

Schedule 1 [52] permits the regulations under the Principal Act to prescribe charges or fees payable to the Minister, corporation, Department or Director-General if, at the request or for the benefit of a person or body, carries out any research or investigation, prepares any report, study or instrument or does any other matter or thing in connection with the exercise of any statutory function under the Principal Act.

Schedule 1 [53] enables regulations under the Principal Act to make provision for matters of a savings and transitional nature consequent on the amendments to the Principal Act.

Schedule 1 [54] inserts a number of provisions of a savings and transitional nature into Schedule 6 to the Principal Act.

Schedule 2 Amendment of City of Sydney Act 1988

Schedule 2 [3] provides that section 61 (Development contributions) of the City of Sydney Act 1988 (the Principal Act) is to be construed with, and as if it formed part of, the Environmental Planning and Assessment Act 1979. Schedule 2 [10] inserts a note to this effect in section 61. Schedule 2 [1] provides that notes are not part of the Principal Act.

Schedule 2 [4] provides that the Central Sydney Planning Committee (the Planning Committee) is to be made up of the Lord Mayor of Sydney, 2 councillors of the City of Sydney elected by the City Council and 4 persons appointed by the Minister.

Schedule 2 [11] and [12] make consequential amendments.

Schedule 2 [5], [7] and [9] provide that any requirement in an environmental planning instrument that applies to land in the City of Sydney, that development consent not be granted without the consent, permission, approval or concurrence of RailCorp, has effect. Currently, the Planning Committee is only required to consult with RailCorp in respect of any such requirement. Schedule 2 [2] inserts a definition of RailCorp for the purposes of Part 4 of the Principal Act.

Schedule 2 [6] and [8] correct cross-references.

Schedule 2 [13] provides for the appointment of alternates for members of the Planning Committee. Schedule 2 [14] and [15] provide for the remuneration of alternates.

Schedule 2 [16] provides that remuneration is not to be paid to an appointed member of the Planning Committee, or an alternate, who is a State government employee.

Schedule 2 [17] provides for the inclusion of matters in the agenda for meetings of the Planning Committee and it also provides that certain provisions of the Local Government Act 1993 and regulations made under that Act apply to and in respect of members of the Planning Committee in the same way that those provisions apply to and in respect of councillors of a council.

Schedule 2 [18] enables regulations under the Principal Act to make provision for matters of a savings and transitional nature consequent on the amendments to the Principal Act.

Schedule 2 [19] inserts a number of provisions of a savings and transitional nature into Schedule 3 to the Principal Act.

Schedule 3 Amendment of other Acts

Schedule 3.1 amends the Building Professionals Act 2005 in respect of an amendment in that Act to section 109EA of the Environmental Planning and Assessment Act 1979. The amendment made by Schedule 3.1 provides that if the Building Professionals Board approves the appointment of a council to replace another person as the principal certifying authority under 109EA (1) (a) of the Environmental Planning and Assessment Act 1979, the council must accept that appointment.

Schedule 3.2 amends the Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001. Schedule 3.2 [1]–[3] correct cross-references. Schedule 3.2 [4] omits a redundant amendment to a note that is replaced by Schedule 1 [30] to this Bill. Schedule 3.2 [5] provides regulation-making powers under the Environmental Planning and Assessment Act 1979 in respect of temporary structures, places of public entertainment and domestic oil or solid fuel heating appliances (other than portable appliances). Schedule 3.2 [6] and [7] provide that 2 transitional provisions (clauses 40 and 41) that are to be inserted into Schedule 6 to the Environmental Planning and Assessment Act 1979 by the Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001 cease to have effect 2 years after they commence.

The transitional provisions provide for conditions applying to places of public entertainment and conditions applying to the installation of temporary structures. Schedule 3.3 amends sections 37, 37A and 38 of the Strata Schemes (Freehold Development) Act 1973, which relate to the issuing of strata certificates. Currently those provisions require a council or an accredited certifier to be satisfied of certain matters before issuing a certificate. This is a subjective test. The proposed amendments introduce an objective test that requires those matters to be satisfied before a certificate may be issued. A transitional clause provides that the amendments do not apply in respect of an application made before the commencement of those amendments.

Schedule 3.4 amends sections 66, 66A and 67 of the Strata Schemes (Leasehold Development) Act 1986 which relate to the issuing of strata certificates. Currently those provisions require a council or an accredited certifier to be satisfied of certain matters before issuing a certificate. This is a subjective test. The proposed amendments introduce an objective test that requires those matters to be satisfied before a certificate may be issued. A transitional clause provides that the amendments do not apply in respect of an application made before the commencement of those amendments.