



New South Wales

Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008

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*):

- (a) to provide for further objectives of the principal Act, and
- (b) to increase the level of community involvement in the determination of applications for approval of development projects that are made under Part 3A of the principal Act, and
- (c) to make it an offence for any property developer to make a donation to an elected office holder, candidate for election, political party or party official, or for such a donation to be accepted, and
- (d) to make it an offence for any person to make a development application under the principal Act or lodge an expression of interest in carrying out a development within 1 year after making a donation to an elected office holder, candidate for election, political party or party official, or to make such a donation within 1 year after the person's development application is determined.

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 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 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] extends the objects of the principal Act. The new objects are:

- (a) to encourage the reduction of greenhouse gas emissions and mitigation of the effects of climate change, and
- (b) to encourage the protection and enhancement of the health and wellbeing of the community.

Schedule 1 [2] makes it mandatory for the Minister to publish guidelines with respect to the environmental assessment requirements for approving projects under Part 3A of the principal Act.

Schedule 1 [3] makes it mandatory, for the purpose of the environmental assessment requirements under Part 3A of the principal Act, for the proponent of a project to prepare an environmental assessment of the project.

Schedule 1 [4] and [6] require public submissions regarding an environmental assessment of a project under Part 3A of the principal Act to be published on the website of the Department, provided to the proponent of the project and included in the Director-General's report to the Minister on the project.

Schedule 1 [5] allows the Director-General to edit a submission before providing it to a person, or publishing it, for the purpose of ensuring the privacy of the person who made it, or for certain other purposes.

Schedule 1 [7] extends the circumstances in which an objector to a project can appeal against a determination of the Minister to give approval to a project under Part 3A of the principal Act.

Schedule 1 [8] makes it an offence for a property developer to make or offer to make (including through another person) a donation to a member of Parliament, an elected member of a local council, a candidate for election, a political party or party official. It will also be an offence to accept or solicit such a donation. A *property developer* includes any person who has made a development application under the principal Act (or an application for approval under Part 3A) that is undetermined.

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It will also be an offence for any person (whether or not a property developer) to make a development application under the principal Act (including under Part 3A), or to lodge an expression of interest in carrying out a development, within 1 year after making a donation to a member of Parliament, an elected member of a local council, a candidate for election, political party or party official, or to make such a donation within 1 year after the person's development application is determined.

The new offences will not prevent donations by home renovators.

Schedule 1 [9] provides for savings and transitional matters.



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No. , 2008

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* to restore a measure of community and Council control over planning decisions, to increase accountability, to improve definitions, and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Environmental Planning and Assessment Amendment (Restoration of Community Participation) Act 2008</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	7 8
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedule 1.	9 10
4 Repeal of Act	11
(1) This Act is repealed on the day following the day on which this Act commences.	12 13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 5 Objects	3
	Insert after section 5 (a) (viii):	4
	(ix) the reduction of greenhouse gas emissions and mitigation of the effects of climate change, and	5 6
	(x) the protection and enhancement of the health and wellbeing of the community, and	7 8
[2]	Section 75F Environmental assessment requirements for approval	9
	Omit “may” from section 75F (1). Insert instead “must”.	10
[3]	Section 75F (5)	11
	Omit “may”. Insert instead “must”.	12
[4]	Section 75H Environmental assessment and public consultation	13
	Omit “provide copies of submissions received by the Director-General or a report of the issues raised in those submissions” from section 75H (5).	14 15
	Insert instead “publish copies of submissions received by the Director-General on a website maintained by the Department within one week of receiving those submissions and provide a copy of those submissions”.	16 17 18
[5]	Section 75H (5A)	19
	Insert after section 75H (5):	20
	(5A) Before providing a copy of, or publishing, a submission, the Director-General may remove any material from the submission that, in the opinion of the Director-General:	21 22 23
	(a) identifies the person who made the submission, or	24
	(b) is of a defamatory or offensive nature, or the disclosure of which would contravene any law.	25 26
[6]	Section 75I Director-General’s environmental assessment report	27
	Insert “, any submission received from any person about the assessment under section 75H” after “environmental assessment” in section 75I (2) (a).	28 29

[7] Section 75L Appeals by an objector	1
Omit section 75L (1). Insert instead:	2
(1) This section applies to a project if the project would, but for this Part, be development to which the provisions of Part 4 would apply.	3 4 5
[8] Section 148A	6
Insert after section 148:	7
148A Donations by property developers and others	8
(1) A property developer who:	9
(a) makes, or offers to make, a donation to a politician, political party or party official, or	10 11
(b) solicits another person to make, or to offer to make, a donation to a politician, political party or party official on the property developer's behalf,	12 13 14
is guilty of an offence.	15
(2) A politician, political party or party official who accepts or solicits a donation from a property developer is guilty of an offence.	16 17 18
(3) A person (whether or not a property developer) who makes a development application or submits an expression of interest to the Minister, or to a consent authority, within 1 year after making a donation to a politician, political party or party official, is guilty of an offence.	19 20 21 22 23
(4) A person (whether or not a property developer) who makes a donation to a politician, political party or party official within 1 year after a development application made by the person is determined under this Act, is guilty of an offence.	24 25 26 27
(5) For the purposes of this section, a <i>property developer</i> means a person or body that, at the time of making, offering, soliciting another person to make or being solicited to make a donation:	28 29 30
(a) is involved in property development, or	31
(b) is associated with property development (because the person or body provides financial, legal, construction or other related services to a person or body involved in property development), or	32 33 34 35
(c) has made a development application to the Minister or to a consent authority that has not been determined,	36 37
but does not include a home renovator.	38

(6)	This section applies irrespective of the purpose of the donation.	1
(7)	In this section:	2
	<i>development application</i> includes an application for approval of a project under Part 3A, but does not include an application made by a home renovator in connection with renovations or extensions to his or her place of residence.	3 4 5 6
	<i>donation</i> includes money, property or any other benefit.	7
	<i>expression of interest</i> means an expression of interest in carrying out a development.	8 9
	<i>home renovator</i> means an individual whose sole involvement with property development is the undertaking of renovations or extensions to the person's place of residence.	10 11 12
	<i>party official</i> means a person who holds an office in a political party.	13 14
	<i>political party</i> means a party that is officially registered for the purposes of elections to a Parliament or a local council.	15 16
	<i>politician</i> means:	17
	(a) a member of Parliament, or	18
	(b) an elected member of a local council, or	19
	(c) a candidate for election to Parliament or a local council.	20
[9]	Schedule 6 Savings, transitional and other provisions	21
	Insert at the end of the Schedule (with appropriate Part and clause numbers):	22
Part	Environmental Planning and Assessment Amendment (Restoration of Community Participation) Act 2008	23 24 25
	Application of amendments	26
(1)	The amendment to section 75F (5) made by the <i>Environmental Planning and Assessment Amendment (Restoration of Community Participation) Act 2008</i> does not affect any environmental assessment requirements notified to a proponent before the commencement of the amendment.	27 28 29 30 31
(2)	The amendments to sections 75H, 75I and 75L made by the <i>Environmental Planning and Assessment Amendment (Restoration of Community Participation) Act 2008</i> apply only in relation to submissions received under section 75H on or after the commencement of the amendments.	32 33 34 35 36

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Schedule 1 Amendments

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| (3) Section 148A, as inserted by the <i>Environmental Planning and Assessment Amendment (Restoration of Community Participation) Act 2008</i> , extends to development applications (within the meaning of that section) made to the Minister or a consent authority within 1 year before the commencement of that section. | 1
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